



CORPORATE GOVERNANCE STATEMENT

1. INTRODUCTION

Corporate Governance is core to ensuring the creation, protection and enhancement of membership value.

Corporate governance is the system by which companies are directed and managed. It influences how the objectives of the company are set and achieved, how risk is monitored and assessed, and how performance is optimised.

The corporate governance system detailed in this document is designed to encourage Abalone Council Australia (the “ACA”) to create value for and on behalf of the Australian wild catch abalone industry (via entrepreneurship, innovation and development) and provide accountability and control systems commensurate with the risks involved.

The ACA is a peak national abalone body representing the collective interests of abalone divers, quota owners, processors and exporters for all five abalone producing states – NSW, Victoria, Tasmania, South Australia & Western Australia. Collectively, these state fisheries produce over 4 000 tonnes of abalone representing one half of the total global production of wild harvest abalone.

Abalone in various product forms (live, dried, canned and frozen) is exported mainly to China, Taiwan, Hong Kong, Japan and Singapore. Total annual value of production (at the beach before processing) is in the order of \$200 million.

The primary function of ACA is to act as an Advisory Board for national abalone related R&D.

The ACA provides a forum for communication between the five abalone producing states within Australia making representations on their behalf to a wide range of people and authorities including but not limited to;

State and Federal Fisheries Ministers,

Commonwealth Department of Agriculture

Commonwealth Department of Foreign Affairs and Trade

State Departments of Primary Industry (Fisheries)

Fisheries Research and Development Corporation (FRDC)

Seafood Cooperative Research Centre (Seafood CRC)

Austrade

Australian Customs

Australian Quarantine and Inspection Service (AQIS)

Abalone Association of Australasia Ltd (AAA Ltd)

Local, regional, State and Commonwealth Seafood sector organisations,

In addition to the above entities, there is involvement with members of State and Federal Opposition parties who have an interest in and/or shadow portfolio responsibility for the seafood sector.

2. THE COMPANY

Abalone Council Australia Ltd was incorporated in February of 2004 and is a **“Not for Profit” Public Company Limited by Guarantee.**

The overarching principles and practices governing the activities of Abalone Council Australia Ltd are contained in the following principal documents;

- a. *Corporations Act 2001*
- b. The Abalone Council Australia Ltd Constitution

3. THE BOARD

The Board is the body of directors of the Council – each director exercises individual judgement, and the Board is collectively responsible for the management and direction of the organisation.

“The Board’s role involves setting strategic direction, appointing management, reviewing progress in line with the strategic direction, and ensuring adequate internal controls, reporting mechanisms and accountability for these responsibilities to stakeholders.” (*Enhancing Board Performance*, Chartered Secretaries Australia Ltd, page 3, 2005)

The Abalone Council Australia Board has up to ten (10) director positions - i.e. 2 directors from each of the five abalone producing states of Australia – NSW, Tasmania, Victoria, South Australia and Western Australia.

Two (2) observers may also attend ACA meetings – these are appointed from within and on behalf of the Abalone Association of Australasia Inc (AAAI). Observers do not have any voting rights at ACA meetings.

Two (2) ACA directors are welcome as observers at AAAI meetings. Observers do not have voting rights at AAAI meetings.

Current roles within the Board are as follows; Chairman, Vice Chairman, Treasurer and seven general members.

The management of the administrative and financial affairs of ACA is undertaken by a contracted Administration Officer.

The management of the operational and industrial advocacy affairs of ACA is undertaken by a contracted Executive Officer/Executive Chair.

The Abalone Council Australia Board is responsible for;

- ensuring enduring value is created within Abalone Council Australia and within the Australian Abalone Industry.
- improving the performance of the Council through strategy formulation and policy making,
- appointing, contracting and overseeing any officers/employees of the Council.
- ensuring there are adequate processes in place to comply with all the relevant legal and accounting requirements.
- ensuring that the risks to which the Council are exposed are clearly identified and that suitable processes are in place to manage those risks.
- ensuring that the Council can meet the challenges of the present without compromising its ability to meet the challenges of the future – to do this the Board must strike a balance between the short and long term as well as between the social, environmental and economic results of the organisation.
- advising on National Research and Development Priorities.
- reviewing the 10 year ACA Strategic Plan and ensuring adequate and timely progress is being made in achieving the stated objectives within the Plan.

4. DIRECTORS DUTIES AND RESPONSIBILITIES

The nature of the legal relationship between the director and the Council is referred to as a *fiduciary* one, that is, it is built on the concept of trust and honesty.

This obliges each director to act honestly, in good faith and to the best of his or her ability in the Council's interests.

A director must not allow conflicting interests or personal advantages to override the Council's interests.

Nor should a director participate in the deliberations of the Council if the director has personal interests or duties that may conflict with those of the Council.

The regulation of ACA director’s duties and responsibilities is enshrined / characterised / outlined by the following;

1. Statute Law (principally the *Corporations Act 2001*)
 2. Common Law (including negligence)
 3. “Fiduciary” relationships
 4. Australian Securities and Investment Commission (ASIC) guidelines
 5. Australian Institute of Company Directors (AICD) guidelines
 6. Chartered Secretaries Australia (CSA) guidelines
 7. Abalone Council Australia Ltd Constitution
- **Statute Law**; Laws passed by Parliament become statute law –statute law overrides common law – e.g. *Corporations Act 2001, Living Marine Resources Management Act 1995, Trades Practises Ac 1974t, Environment Protection and Biodiversity Conservation Act etc etc*
 - **Common Law**; common law is created by judges making decisions and then applying those decisions as precedents. If Parliament has not spoken on the subject, then the common law is the applicable law.
 - **“Fiduciary” relationships**; directors are obliged to act honestly and to give preference to the well being of others – the High Court of Australia defines “fiduciary duty” as the “duty to act with fidelity and trust” to another.
 - **ASIC Guidelines**; the Australian Securities and Investment Commission is the regulatory body responsible for administering the *Corporations Act 2001*.
 - **AICD**; the Australian Institute of Company Directors is a national service provider for Australian Corporations.
 - **CSA**; Chartered Secretaries Australia is the peak body for governance and risk professionals.
 - **ACA Ltd Constitution**; The constitution sets out the objectives and rules of the Council.

Directors’ duties can be broadly categorised into three areas;

4.1 Loyalty and good faith

This category includes the following duties;

- to act in good faith in the best interests of the organisation for a proper purpose – the concept of ‘proper purpose’ is determined by the facts of each case but a good starting point for ACA Ltd directors is to consider whether the power has been exercised for a purpose permitted under the Council’s constitution.
- to avoid conflicts of interest – directors must not allow a conflict of interest to compromise their position. If there is a potential conflict, then the director is obligated to declare the nature of the conflict which must then be minuted. The director must excuse himself from the meeting while the matter is being considered or voted on. He may remain only if those directors present are satisfied that the interest should not disqualify the director from voting or being present. The importance of disclosure to the board and recording the board’s decision in the minutes cannot be overstated.
- not to misuse position – section 182(1) of the *Corporations Act 2001* provides that directors and officers must not improperly use their position to;
 - gain an advantage for themselves or someone else, or
 - cause detriment to the organisation

This duty may be expressed by saying that a director must not act in a manner which promotes their personal interests where there is a conflict between those personal interests and those of the organisation.

- not to misuse information – Section 183(1) of the *Corporations Act 2001* provides that a person who obtains information because they are, or have been, a director or officer of a company must not improperly use the information to gain an advantage for themselves or someone else, or cause detriment to the company. This duty continues after the person stops being a director of the company.

4.2 Care and diligence

Directors have a duty to act with a degree of care and diligence that a reasonable person would exercise. There has long been a common law duty requiring directors to act with care and diligence – this duty is set out in section 180(1) of the *Corporations Act 2001* as follows;

“A director or other officer of a corporation must exercise their powers and discharge their duties with a degree of care and diligence that a reasonable person would exercise if they;

- (a) were a director or officer of a corporation in the corporation’s circumstances; and
- (b) occupied the office held by, and had the same responsibilities within the corporation as, the director or officer.”

The standard of care takes into account subjective elements such as the office held and the responsibilities of the particular director and the corporation’s circumstances but applies an objective test of what a reasonable person, with the knowledge and experience of the director, might have been expected to have done in those circumstances.

The “corporation’s circumstances’ refers to matters such as the type of company, the size and nature of its enterprise, its constitution, the board’s composition, the distribution of work between the board and other officers, the state of the corporation’s financial affairs and the urgency and magnitude of any problem.

One aspect of this duty of care and diligence is that a director must attend all meetings of directors unless there is a reasonable excuse for failure to attend a particular meeting or meetings. Further, when attending such meetings, the directors must be diligent and place themselves in a position to monitor and guide the management of the company. This requires them to;

- * acquire by all reasonable means an understanding of the business at hand,
- * keep informed and updated about the activities of the business,
- * monitor the organisations’ affairs and practises; and,
- * maintain familiarity with the ongoing financial performance of the organisation

4.3 Other specific duties

There are a number of other specific duties set out in the *Corporations Act 2001* that are relevant to an organisation such as the ACA Ltd, including;

- duty to prevent insolvent trading – directors must ensure, as they deal with the affairs of the organisation, that they do not allow the organisation to trade while insolvent, or not to incur a debt that would lead the organisation to insolvency
- duty to disclose director's interests – directors have an obligation to disclose any interest which may give rise or lead to the occurrence of a conflict of interest with the objects or aims of the organisation.

There are several final points regarding director's duties;

Business Judgement Rule; the law does not intend through the imposition of a duty of care and diligence to inhibit unnecessarily proper entrepreneurial activity. A director who makes a business judgement is taken to meet the requirements of the *Corporations Act 2001*, and their equivalent duties at common law and equity, in respect of the judgement if they;

- make the judgement in good faith and for a proper purpose
- do not have a material personal interest in the subject matter of the judgement
- inform themselves about the subject matter to the extent they reasonably believe appropriate and,
- rationally believe that the judgement is in the best interests of the organisation.

Duties arising from organisation's activities; As well as those general duties under the *Corporations Act 2001*, directors are subject to a wide range of specific responsibilities and corresponding liabilities in the legal areas of, for example, trade practises, occupational health and safety, environmental law, privacy, anti-discrimination, contract law and intellectual property law. Directors could rarely be said to be complying with their *Corporations Act 2001* duties if they do not ensure that the organisation was acting at all times in a legally compliant manner in these areas.

Directors' rights and powers; Directors have been given a wide range of rights and powers to enable them to fulfil their obligations and duties. The *Corporations Act 2001* provides that "the business of a company is to be managed by or under the direction of the directors" and that "the directors may exercise all the powers of the company except any powers that this Act or the company's constitution requires the company to exercise at a general meeting". Furthermore, directors have the right to;

- Delegate – unless the constitution provides otherwise, directors may delegate any of their powers provided the delegation is recorded in company minutes. Delegation does not excuse a director of their duty of care and diligence and if directors delegate a power, then the directors are responsible for the exercise of the power by the delegate as if the power had been exercised by the directors themselves.

- Access to documents and information – directors have a common law right to inspect and to take copies of documents belonging to the organisation, as long as the director is acting for a proper purpose and while he or she remains on the board.
- Access to professional advice – directors may seek expert professional advice in addition to the advice provided from within the organisation if they believe that advice to be necessary for them to adequately discharge their obligations as directors.

4.4 A Final Word

Ultimately, the best protection for a director is to act in good faith, to apply due care and diligence in carrying out their responsibilities for a proper purpose, without conflict of interest and without abuse of position, and to ensure that the organisation is not trading whilst insolvent.

4.5 The Board Chair

The Chair is responsible for;

- Leadership of the Board
- The efficient organisation and conduct of the Board's function and meetings
- Facilitating the effective contribution of all Board members
- The promotion of constructive and respectful relations between Board members and between Board and staff
- Committing the time necessary to discharge effectively his/her role as Chair

5. CODE OF CONDUCT FOR THE BOARD

Preamble;

Directors of ACA Ltd are expected to adhere to the highest ethical standards and to ensure that these standards permeate the Council. Directors are charged with the responsibility to ensure that the Council's activities are sustainable – i.e. that they can meet the challenges of the future as well as the present. To do this, they must strike a balance between the short and long term as well as between the social, environmental and economic results of the organisation.

This Code of Conduct is designed to maintain confidence in the integrity of Abalone Council Australia Ltd.

Directors of Abalone Council Australia Ltd (the "Council");

- 1 Must act honestly, in good faith and in the best interests of the Council
- 2 Must use care and diligence in fulfilling the duties required of them as directors of the Council

- 3 Must not take improper advantage of the position of director or attempt to improperly influence other Board members
- 4 Will make decisions in the best interest of the Council ahead of their own personal or professional/business interest
- 5 Have an obligation to be independent in judgement and actions and take all reasonable steps to be satisfied as to the soundness of all decisions of the board
- 6 Shall not engage in conduct likely to bring discredit upon the Council
- 7 Must not disclose confidential information received in the course of the exercise of directorial duties unless otherwise authorised (this includes former directors)
- 8 Have an obligation at all times to comply with the spirit as well as the letter of the law and with the principles of this code and will actively promote compliance within the Council
- 9 Must be generally aware of their broader obligations as directors as specified by the Australian Institute of Company Directors
- 10 Must attend all meetings of directors unless there is a reasonable excuse for failure to attend a particular meeting or meetings. Where attendance is not possible, directors will notify the Chairman in advance. Leave of absence may be requested of the Board in advance if the director reasonably believes they will miss two consecutive meetings
- 11 Must acquire a clear understanding of the role and purpose of the Board and the Council, including the statutory and regulatory requirements
- 12 Must become familiar with the fundamentals of the business in which the Council is involved and the environment in which it operates
- 13 Are under a continuing obligation to keep informed about the activities of the Council
- 14 Should maintain familiarity with the financial status of the Council by a regular review of financial statements
- 15 Must treat other Board members with professionalism, courtesy and respect. They will work cooperatively with fellow members towards agreed goals – all directors will strive to achieve consensus within the Board, but if the final position is a majority decision, that will be the decision of the Board. All directors (including any dissenting directors) are then obligated to support (in word and deed) the majority decision. A dissenting director may have his/her vote recorded in the minutes upon request
- 16 Must not make public statements regarding Council business unless authorised by the Chairman to do so
- 17 Must disclose interests such as other directorships, partnerships, consultancies to the Board on joining. If a situation of actual or potential “conflict of interest” should arise, the director concerned will discuss the matter with the Chairman and will withdraw if requested while the Board discusses the potential conflict. If it is decided that a conflict does exist, then depending on the assessed significance, the director involved will be requested to take one of the following courses of action (in order of increasing significance);
 1. Refrain from voting on a relevant matter during a Board meeting;
 2. Withdraw from discussion of relevant matter(s) during a Board meeting;
 3. Take leave of absence from the Board for a period;
 4. Resign from the Board

6. MATTERS RESERVED FOR THE BOARD

- Approval of strategy, business plans and objectives, and monitoring of performance against them.
- Approval of financial statements.
- Approval of annual budgets.
- Executive/staff/contractor appointments.
- Monitoring of performance of staff/contractors.
- Remuneration of staff/contractors.
- Corporate Governance principles and codes of conduct.
- Appointment of auditor and principal professional advisers.
- Approval of policies such as health and safety, environmental, continuous disclosure and communications etc.

7. COMMUNICATION POLICY

The ACA recognises that disclosure and transparency is an integral part of maintaining the integrity of the organisation. The ACA therefore aims to ensure the timeliness, quality and clarity of communication to members and other stakeholders via;

- Regular written/verbal updates to relevant state abalone bodies via their serving directors
- Broadcast emails to abalone stakeholders when appropriate
- Hosting a dedicated ACA website
- Hosting a National Abalone Conference once every three years
- Any other means as deemed appropriate by the Board

8. FINANCIAL REPORTING, BUDGETING and CREDITOR PAYMENT

8.1 Financial Reporting

Abalone Council Australia Ltd is a Public Company and as such must comply with all of the relevant Australian Securities and Investments Commission (ASIC) filing and reporting requirements. The company accounts are audited and form part of the Annual Report which is distributed to all directors.

A detailed finance report prepared by the Administration Officer is presented by the Chairman at each Board meeting. The finance report and attached accounts are duly examined by the Board and are formally approved by a show of hands.

Directors are free to ask questions and request further detailed information in relation to the finance report.

8.2 Budgeting

A detailed budget is prepared prior to the Annual General Meeting by the Chairman and the Administration Officer (on behalf of the Board) and is presented to the directors for their consideration and approval.

Budget (actuals vs budget) is presented at each Board meeting as mentioned above and progress is monitored.

8.3 Creditor Payment Procedures

Three Board members and the Administration Officer are currently signatories to the ACA Ltd cheque account (working account). Two signatures are required for each payment.

The Administration Officer prepares payments by electronic transfer or by cheque, following receipt of approval for payment from two directors.

The finance report presented at each ACA meeting will detail all incoming funds as well as provide a full MYOB listing of all cheque/credit card payments made since the last meeting.

9 DUTIES OF ADMINISTRATION OFFICER

In general terms, the Administration Officer is responsible for;

- The administration and office procedures and systems of the ACA Ltd.
- The provision of administrative and support services to the ACA board.
- Ensuring that the ACA Ltd conforms to with all statutory obligations under legislation relevant to the organisation's corporate structure.

Specifically, the Administration Officer is responsible for;

- Managing the financial and accounting functions of the Council and submitting reports at each ACA meeting reflecting cash balances, transaction (cheque, EFT and credit card) registers and financial results to the board.
- Liaising with the Chairman to produce an annual budget.
- Liaising with the Chairman to compile annual reports for the organisation.
- Liaising with external auditors to produce the annual audit.
- Keeping abreast of, and provide advice to the Board on the organisation's statutory obligations.

- Liaise with the Chairman to prepare agendas, notices, minutes and other correspondence related to meetings of the Board.
- Co-ordinate and manage special industry events, including the National Abalone Convention.
- Co-ordination of projects including liaison with contractors, clients, Government departments etc through to project completion and final reports.
- Any other task as determined from time to time by the Board or the Chairman

10 DUTIES OF EXECUTIVE OFFICER/EXECUTIVE CHAIR

In general terms, the current role of the Executive Officer can be summarised as follows;

- To provide effective leadership and management of the operational activities of the ACA Ltd,
- To work towards achieving the goals set out in the ACA Strategic Plan and in the “Objects” section of the Council’s Constitution and/or other strategic goals as determined from time to time by the members of the ACA Ltd and
- To develop relationships and build networks with key stakeholders and relevant entities/organisations so that the broad interests of the Australian Wild Harvest Abalone industry are credibly advocated in a manner that supports the growth and sustainability of the abalone industry.
- To Chair the meetings of the ACA Ltd (if EO also holds the role of Chair)

Specifically, the Executive Officer is responsible for:

- Core Strategy Tasks

Progression towards strategic goals as outlined within the ACA Strategic Plan and the Objects within the ACA Constitution. Initiating, overseeing and managing the steps/tasks required to achieve the strategic outcomes specified in the plan. Monitor and report to board on achievement against agreed goals and targets, and take corrective action as required.

- Board generated tasks

These are the tasks that are generated at ACA meetings and form the Action List. New items are added each meeting and completed items are removed. These tasks are dealt with between meetings and progress is reported at each ACA meeting.

- Interactions with internal and external stakeholders

This category includes everyone that has some form of interaction (temporary or ongoing) with the ACA – e.g. State abalone organisations and their members, State Research organisations (e.g. SARDI, IMAS etc), Fisheries Research & Development Corporation, Australian Seafood Co-operative Research Centre, Principal Investigators of CRC and FRDC projects, Abalone Association of Australasia Inc, various State and Commonwealth departments and media (TV, Radio, Print). These interactions may be a phone call, an email, a teleconference, face to face meeting and occur on any day of the working week but occasionally during weekends (media). They almost always involve some form of response/action that may take the form of further meetings, document reviews, email responses and/or return phone calls. When acting as an advocate/spokesperson on behalf of the ACA Ltd in matters relating to public comment and the media it is important to present whenever possible a positive media image of Australia's abalone industry.

- Attendance at Meetings/Conferences/Conventions

This includes; AAA meetings, FRDC AGM, CRC AGM and various other National committees/working groups/reference groups that are created from time to time as issues arise.

- Administration/Management of ACA Office and Staff/Governance and Compliance

This involves ensuring that the ACA “virtual” office functions as it should and that the day to day tasks are being taken care of in a timely and professional manner. Interaction with the Administration Officer occurs on any day of the working week and may be via skype, a phone call or emails.

This also involves ensuring the necessary compliance with all relevant legislative and corporate governance requirements as well as monitoring and responding to potential legislative changes that could impact on members interests and if necessary work to ensure that any such changes be beneficial to the industry overall.

- Governance & Oversight of ACA/CRC Abalone Research & Development Portfolio

This role includes the following tasks;

1. To coordinate the planning, implementation, and reporting of Abalone R&D projects conducted by the Seafood CRC to achieve the outcomes specified in the ACA Strategic Plan
2. To facilitate the abalone industry participation in Seafood CRC projects and the extension and utilization of the project results
3. Liaison with researchers regarding design of projects suitable for ACA/CRC portfolio and in line with the ACA Strategic plan – this is quite intensive during the project design phase with many phone calls and emails, meetings, letters of support written etc

- 4. Ongoing liaison with CRC Theme Managers re ACA/CRC project design issues and progress of current ACA/CRC projects in terms of key project milestones and project outcomes
 - 5. Liaison with all ACA/CRC project Principal Investigators re ongoing project management in terms of project timelines and project outcomes.
 - 6. Monitoring of ACA/CRC portfolio budget, assisting PI’s with project management and milestone payment issues that arise from time to time
 - 7. Reporting of ACA/CRC project progress to ACA board as well as at other forums such as state abalone organizations and the Abalone Association of Australasia Inc.
 - 8. Attendance at CRC Member Meetings and the CRC Annual General Meeting
- Maintenance and Oversight of the Partnership Agreement between the ACA and the FRDC

This role includes the following tasks;

- 1. ensuring that FRDC sponsored Abalone RD&E investment aligns wherever possible with the ACA Strategic Plan
- 2. ensuring that ACA directors have been advised of abalone related FRDC project applications
- 3. ensuring that wherever appropriate, advice from the ACA Board regarding proposed abalone RD&E projects is communicated to FRDC for incorporation into their project approvals process
- 4. maintaining a viable and constructive working relationship between the ACA and FRDC
- 5. facilitating contribution to the FRDC of at least 0.25% Abalone GVP (GST exclusive)

Dean Lisson;

Executive Chairman; November 2013