



**Danila Dilba**  
Health Service

## DIRECTORS CODE OF CONDUCT

*The Code provides guidance to Directors to assist them in carrying out their duties and responsibilities, as well as defining the expected standards of ethical and professional conduct.*

*Attachment A: Guidelines for the Interpretation of the Principles of the Code of Conduct*

*Attachment B: Protocol regarding Conflicts of Interest*

*Attachment C: Protocol for Directors Obtaining Expert advice in the Exercise of their Fiduciary or other duties*

<b>Category</b>	<b>Board</b>	<b>Policy number:</b> GOV006
<b>Related forms, policies and procedures</b>	<ul style="list-style-type: none"> <li>Directors Board Charter</li> <li>Constitution</li> </ul>	
<b>Key words</b>	Code, CATSI Act, ethics, responsibilities, conduct	
<b>Relevant legislation</b>	<ul style="list-style-type: none"> <li><i>Corporations (Aboriginal and Torres Strait Island) Act 2006</i></li> </ul>	
<b>References and resources</b>		

<b>Review due by</b>	Chief Executive Officer	June 2017	
<b>Approved by</b>	DDHS Board of Directors	23 October 2015	
<b>Version</b>	<b>Date</b>	<b>Author</b>	<b>Summary of changes</b>
2.0	9 March 2015	O. Havnen	Section 2.6 and Attachments A, B, C
3.0	23 October 2015	O. Havnen	Attachments A and B

### 1. Introduction

The Code of Conduct for Danila Dilba Health Services (DDHS) Board of Directors (the Code) has been adopted to promote the highest ethical and professional standards amongst Directors. The Code provides guidance to Directors to assist them in carrying out their duties and responsibilities, as well as defining the expected standards of ethical and professional conduct.

The Code is based on the Code of Conduct for Directors as set out in the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (the CATSI Act). These duties are consistent with those of the Corporations Act 2001 as regulated by the Australian Securities and Investments Commission.

Details of the Board's role are set out in the Danila Dilba Constitution and the relevant provisions of the CATSI and Corporations Acts.

The Code is not an exhaustive statement. It seeks to encapsulate the primary obligations and responsibilities of directors in performing their functions pursuant to the CATSI Act, Corporations law and the common law.

The Code provides a degree of permanence in an expected standard of behaviour that compliments the changing legal and regulatory framework. Separate protocols dealing in more detail with the matters contained in the code may be developed over time and will be incorporated into the Code when adopted by DDHS Board.

Once the Code has been adopted by the DDHS Board it will, contribute to the development of a culture of accountability and enhance the image and standing of Danila Dilba Health Service.

### 2. Danila Dilba Directors Code of Conduct

1. A Director must act honestly, in good faith and in the best interest of Danila Dilba as a whole.
2. A Director has a duty to use care and diligence in fulfilling the functions of office and exercising the collective powers of the board.
3. A Director must fulfil their functions for a proper purpose, in the best interest of Danila Dilba as a whole.
4. A Director must not make improper use of information acquired as a Director.
5. A Director must not take improper advantage of the position of Director.

6. A Director must ensure that any material personal interests that they have, or of any associated person, which conflicts with the interests of Danila Dilba are appropriately disclosed in accordance with DDHS protocols.
7. A Director has an obligation to be independent in judgement and actions and to take all reasonable steps to properly acquaint himself/herself with the matters before the Danila Dilba Board, as well as being satisfied as to the soundness of all decisions taken by the Danila Dilba Board.
8. Confidential information received by a Director in his/her capacity as a Director remains the property of Danila Dilba and it is improper to disclose it, or allow it to be disclosed, unless that disclosure had been authorized by the Danila Dilba Board, or such disclosure is required by law. A Director must preserve confidentiality of information acquired through:
  - a. Their position as a Director;
  - b. the content of Danila Dilba Board papers and resolutions; and
  - c. discussions with fellow Danila Dilba Board members or staff about the business of Danila Dilba Health Service.
9. A Director should not engage in conduct likely to bring discredit upon Danila Dilba.
10. Directors recognize the Danila Dilba Chairperson and Chief Executive Officer as the appropriate persons to make public comment on behalf of Danila Dilba and, accordingly, other Directors should generally refrain from public comment unless they have been otherwise authorized by the Danila Dilba Board.
11. A Director has an obligation, at all times, to comply with the spirit, as well as the letter, of the law and the principles of the Code.
12. Directors must establish and maintain a sufficient level of skills and understanding of the responsibilities of the Danila Dilba Board generally so as to perform competently as a director and as a member of any Danila Dilba Board Committee. This obligation includes:
  - a. Making reasonable efforts to become and remain familiar with the affairs of Danila Dilba;
  - b. Attending all Danila Dilba Board meeting and Committee meetings (of which they are a member) and functions unless there are valid reasons for non-attendance; and
  - c. Reading and fully understanding all Board and Committee papers and information provided.

## **Attachment A: Guidelines for the Interpretation of the Principles of the Code of Conduct**

**Associated Person** in relation to a Director includes any spouse (including a de facto spouse), parent, child, sibling of the director or any company, corporation, partnership trust or other entity owned or controlled by the Director or in which the Director has a material personal interest within the meaning of the Corporations Law and may also include any person in relation to whom a Director stands in a position of kinship by virtue of culture or tradition.

**Corporations (Aboriginal and Torres Strait Islander) Act 2006** (CATSI Act) as amended from time to time.

### **Duties to Danila Dilba Health Service**

A Director should endeavour to ensure that the functions of DDHS and DDHS Board are properly understood and are competently discharged in the interests of DDHS.

A Director should endeavour to ensure that the management of DDHS is competent and is devoting its best endeavours in the interests of DDHS and promoting the objects and functions of DDHS.

A Director should endeavour to ensure that DDHS is financially transparent and accountable, properly managed and constantly improved so as to promote the functions and objects of DDHS.

### **Duties under Relevant Legislation**

A Director must endeavour to ensure that DDHS at all times complies with the legal framework governing its operations. The primary (but not only) legislation setting that framework is the CATSI Act.

A Director should pay particular attention to the role of DDHS as an exemplary corporate citizen in a broader social context. Without limiting in any way the nature of the issue which a Director must be concerned in the running of DDHS, this broader social context includes compliance with all relevant laws in the following areas:

- Child safety
- Work, health and safety
- Industrial relations
- Environment
- Equal opportunity for employees and
- Such other legislative initiatives that may arise from time to time.

## Due Diligence

A Director should attend all Board meetings, but where attendance at all meetings is not possible appropriate steps should be taken to obtain leave of absence from the Chairperson. Directors are expected to have read and understood board papers and attachments prior to attending all meetings.

A director must acquire knowledge about the business of DDHS, the regulatory requirements affecting Directors in the discharge of their duties to DDHS, and be aware of the physical, political and social environment in which it operates.

In order to be fully effective, a Director should be provided by the Chief Executive Officer all relevant information to be considered by the DDHS Board in relation to its decision making process. This information should be made available in sufficient time to allow proper consideration of all relevant issues. In the extreme circumstance where information is not provided, the Director should make his or her concerns known to the Chairperson who then should take the appropriate action with the CEO. Failure to provide the information may mean the director could, if necessary, abstain from voting on the particular matter on the basis that there has not been the time necessary to consider the matter properly. Any abstention, and the reason for it, should be appropriately minuted. Directors should not contact staff directly without the consent of the CEO. All requests for further information should be through the CEO and with the approval of the Chairperson. It may also be appropriate to vote against the motion or move for the deferment until proper information is available.

The Board should endeavour to ensure that the Chief Executive Officer has put in place systems within DDHS to provide the Board, on a regular and timely basis, with necessary data to enable the DDHS Board to make reasoned judgements and discharge their duties of care and diligence. This is the role of the Chairperson.

A Director should endeavour to ensure that relations between the DDHS Board and the DDHS auditors are open, unimpeded and constructive. DDHS Board shall establish an Audit and Risk Management Committee including two or more Board members and an independent Chair. However, all members of the DDHS Board are entitled to attend any sub-committee meeting, provided an appropriate request has been submitted to the Chairperson of the Board and the relevant Chairperson of the sub-committee, Members of the Audit and Risk Management Committee are not to be employees of DDHS. A Director should be satisfied that the scope of the financial audit is adequate and that it is carried out thoroughly and with the full co-operation of management and the internal auditors.

A Director from time to time may need expert advice (whether it be legal, financial or other professional advice and whether it relates to fiduciary or other duties) in order to discharge that Director's duties properly. The DDHS Board shall consider the need for such expert advice and as appropriate seek independent expert advice to that it may properly and effectively discharge its functions. ***Please refer to – Protocol for Directors obtaining expert advice in the exercise of their fiduciary or other duties.***

A Director must carefully read and understand financial reports of DDHS and actively enquire into such reports and seek such further information as may be necessary to have a sound understanding of the financial position of DDHS at any point in time.

A Director should understand the relevant policies and programs of DDHS and ensure that in making decisions, the Director has appropriate regard to them.

A Director is expected to commit the necessary time and energy to the Board and sub-committee matters to ensure that they are contributing their best endeavours in the performance of their duties for the benefit of DDHS, without placing undue reliance on other Directors to fulfil these duties.

## **Separation of Administration**

The DDHS Board is not responsible for the day-to-day administration of DDHS. Pursuant to the DDHS Constitution, that role vests in the DDHS Chief Executive Officer and includes the role of employing, terminating and managing DDHS staff. A Director should ensure that he/she clearly understands and respects this important division of responsibilities.

Any view of a Director or the DDHS Board on staffing issues or day-to-day administration should be raised exclusively with the Chief Executive Officer and not directly with any other staff member. Board protocol and good governance suggests any such action, complaint or question be placed through the Chairperson.

## **Conflicts of Interest**

A Director must not take improper advantage of the position of Director to gain directly or indirectly, a personal advantage or an advantage for any Associated Person.

The personal interests of a Director, and those of an Associated Person, must not be allowed to prevail over the interest of DDHS. A Director should seek to avoid conflicts of interests wherever possible. Full disclosure of any conflict or potential conflict, must be made to the DDHS Board. In considering these issues, account should be taken of the significance of the potential conflict for DDHS and possible consequences if it is not handled properly. Where a conflict does arise,

a Director must comply with legislative requirements and any protocols for dealing with the issue of conflict of interest. ***Please refer to – Protocol regarding Conflicts of Interest.***

A Director must not receive the payment of ‘success fees’ in situations of potential conflict of interest. The accepting of gifts by a Director can create either an actual conflict of interest or a perception of a conflict of interest. Accordingly, as a general rule, directors should avoid accepting gifts. Gifts may take many forms and may include gratuities such as free dinners, attendances at corporate boxes, free conference flights or accommodation.

In some circumstances, it may be inappropriate for a Director to decline a gift as such action may cause unnecessary offence. Where a Director accepts any gift or gratuity because to decline it may be inappropriate, then that gift must be reported immediately in writing to the next Board meeting. The DDHS Board will then consider what action if any might be appropriate to deal with the gift or gratuity and the decision of the DDHS Board will be appropriately minuted.

## **Use of Information**

A Director must not make improper use of information acquired by virtue of the Director’s position as a Director. This prohibition applies irrespective of whether the Director would gain directly or indirectly a personal advantage or an advantage for an Associated Person or might cause detriment to another person or DDHS.

Matters such as trade secrets, business projections or business acquisitions, strategic directions, personal information held by DDHS and any other confidential information must not be disclosed.

A Director should ensure that unless required by law any information which is not publicly available is not disclosed to a third party without such disclosure having been authorized by the DDHS Board. Such information includes, but is not limited to:

- Income forecasts
- Borrowings
- Impending changes in the nature of DDHS programs or policies
- Impending litigation
- Significant changes in operations
- Existing assets and business transactions
- Proposed acquisitions or disposal of assets.

## Professional integrity

A Director should be prepared, if necessary, to engage in debate, with colleagues including the Chairperson in the context of full and frank deliberations by the DDHS Board prior to a decision being made. However, once a decision has been made by the DDHS Board as a whole, then all Directors should be prepared to implement the decisions of DDHS as a member of the Board.

When a Director feels strongly as to be unable to accept a proposed decision of the DDHS Board, some of all of the following steps can be considered in the course of the DDHS Board's deliberations:

- (a) Making the extent of the dissent and its possible consequences clear to the Board as a means of seeking to influence the decision;
- (b) Asking for additional legal, accounting or other professional advice. ***Please refer to – Protocol for Directors obtaining expert advice in the exercise of their fiduciary or other duties.***
- (c) Asking that the decision be postponed to the next meeting to allow time for further consideration and informal discussion;
- (d) Asking (or if in writing) that the Directors concerns with the decision be minuted;
- (e) Writing to the Chairperson, or all members of the Board, and asking that the letter be filed with the minutes. When a decision has been made by the DDHS Board but a Director feels so strongly as to be unable to abide by the decision as set out above, the Director may consider the appropriateness of resigning.

“Opinion shopping” and searching for loopholes in the law is unacceptable.

## Evaluation and Performance

The DDHS Board should from time to time assess the skills and competencies of its Directors and offer such training and courses as may be appropriate from time to time, at the cost of DDHS, to ensure that all Directors can effectively perform their duties and obligations effectively as set out in the Code and the Protocol regarding Conflict of Interest. Directors are expected to undertake such courses and training.

## Sanctions

The Code of Conduct is the Board's expression of what it considers to be appropriate conduct of its members, is not a legally binding document but it reflects many of the broad requirements of Directors outlined in the DDHS Constitution and CATSI Act.



Any breach of the Code of Conduct does not necessarily constitute a breach of the CATSI Act.

Where it is consistent with the responsibility of the Board to ensure the proper and efficient performance of the functions of DDHS, the Board can make resolutions concerning the conduct of a member of the Board and in particular can make resolutions as to whether or not a Director of the Board has engaged in any conduct which is in breach of the DDHS Board of Director's Code of Conduct.

Where it comes to the Board's attention that they may have been a breach of the Code of Conduct by a Director, it should establish to the best of its ability the facts of the matter and it should provide the affected Director with a reasonable opportunity to comment and should give genuine consideration to any comments made by the Director. Depending on the circumstances, it might be reasonable for a Director to be given written notice, an opportunity to obtain their own independent legal advice and to provide a written response before any final deliberations and resolution of the Board. Having provided comment to the Board, the affected Director should not then part of the Board's consideration of proposed action.

If the Board finds that a Director has engaged in any conduct which is not consistent with or is in breach of the Code of Conduct, it is open to, depending on the nature and seriousness of the breach:

- (a) Censure the Director on the basis of a breach of the Code of Conduct and seek assurances that no such breach will occur into the future
- (b) Ask the Director to consider their position on the Board.
- (c) Refer the matter to the Police for any issues of possible breaches of the criminal law.

## **Attachment B: Protocol regarding Conflicts of Interest**

Any potential conflict of interest must be dealt with by Directors in accordance with DDHS Policies and guidelines.

A Director has an obligation to inform the Chairperson of the Board , either orally or in writing (preferably prior to the meeting taking place) of any personal conflict of interest that relates to the affairs of DDHS as soon as practicable after such a matter comes to the attention of the Director. The disclosure must include details of the nature and extent of the interest and how it relates to the affairs of DDHS. The Chairperson should then disclose the Conflict of Interest to the Board as a whole at the appropriate time.

A personal interest declared by a Director must be recorded in the minutes of the Board meeting and the Directors Register of Interests.

(a) A Director who has a material personal interest in a matter that is being considered at a meeting of the DDHS Board:

- i. Must not vote on the matter; and
- ii. Must not be present while the matter (or proposed resolution of that kind) is considered at the meeting.
- iii. If appropriate, not receive certain sections of the board papers relating to the issue or decision.

Paragraph (a) does not apply if the DDHS Board has made a declaration in writing that:

- i. Specifies the Director, the interest and the matter; and
- ii. States that the DDHS Board is satisfied that the interest should not disqualify the Director from considering or voting on the matter.

If a Director or the CEO of DDHS believes another Director has a potential Conflict of Interest then that Director or CEO should notify the Chairperson either orally or in writing (preferably prior to the meeting taking place) of any perceived conflict of interest that relates to the affairs of DDHS as soon as practicable after such a matter comes to the attention of the Director or the CEO. The Chairperson should then discuss the potential Conflict of Interest with the Director concerned to establish any link to Conflict of Interest.

After this discussion, if the Chairperson feels there is no Conflict of Interest to declare the meeting can take place. The Board however should be made aware of the reporting Directors or CEO's concerns at the appropriate time.

## **Attachment C: Protocol for Directors Obtaining Expert advice in the Exercise of their Fiduciary or other duties**

### **Background**

It is expected that as a general rule, the majority of information regarding DDHS operations and matters for which the Board will be required to make a decision will be sourced from DDHS. The guidelines indicates that if Directors consider the information made available to the Board for consideration is insufficient, the CEO should be asked to provide additional information as necessary for the Board to adequately consider any matter before it.

The Guidelines indicates that from time to time a Director may need expert advice (whether it be legal, financial or other professional advice and whether it relates to fiduciary or other duties) in order to discharge Director's duties properly. It would be expected that such requests would be infrequent and that DDHS would be able to adequately meet information provision requirements of the Board. On occasion, when warranted, it may be that the CEO obtains expert advice and provides that to the Board.

### **Procedures**

In the first instance, the Board shall consider the need for such expert advice. This may have been recommended by a sub-committee of the Board or from one or more members of the Board. If endorsed, the Board will instruct the CEO to obtain independent expert advice so that it may properly and effectively discharge its functions. The CEO should ensure that he/she complies with any applicable directors on such matters.

Any engagement of a consultant for professional advice must occur through the CEO and precludes any Director of the DDHS Board from unilaterally incurring a liability for the engagement of a consultant on DDHS' behalf.

There is nothing preventing a Director seeking, at their own expense, independent advice on a matter. However, in so doing, a Director should be mindful that the guidelines note that 'opinion shopping' and searching for loopholes in the law is unacceptable. Directors should also be aware of any confidential information that may be disclosed to any third party.

On the very rare occasion, i.e. When the matter relates to conduct of the CEO or one or several members of the Board, the Chairperson may direct DDHS to engage consultants to provide advice and assistance not through the CEO (when the matter relates to the CEO) or without the Board's agreement (when the matter relates to actions of one or several members of the Board).

Where the matter relates to actions on the part of the Chairperson, Deputy Chairperson, in consultation with other Board members may request the CEO to engage consultants to provide advice and assistance in connection with the matter.