Karlup Aboriginal Corporation

ICN 9728

ABN 68711075359

Role Description – Non-Executive Director

Title: Non-Executive Director

Introduction

The Karlup Aboriginal Corporation follows the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act) which sets out the duties required of directors and other officers. These duties are consistent with the duties under common law and in the Corporations Act 2001

The common law (that is the law developed by judges) imposes special duties on directors and other officers of a corporation, such as a duty of loyalty and a duty of care. The CATSI Act also imposes duties on directors and other officers. Some of these duties overlap. Directors and other officers owe these duties to the whole corporation—this means to all its members—and to stakeholders (such as funding bodies and creditors)

The directors make up the governing body of the corporation. They are appointed by the members as described in the Rule Book.

Once appointed the directors have full authority over the corporation and are ultimately responsible for its management. This is why the directors' duties exist.

They are legal duties that keep the directors loyal and accountable to the corporation—in other words, answerable to the corporation's members—and to stakeholders.

Duties[1]

Duty to act with Care and Diligence, (CATSI Act: section 265-1)

Directors and other officers must exercise their powers and carry out their duties with reasonable care and diligence. This means they take their responsibilities seriously. Directors who act carefully and diligently are interested in what is happening at their corporation and are well prepared to make decisions. For example, they are across their corporation's affairs and:

• follow their corporation's rule book

• never miss a directors' meeting and always arrive on time

• read all the pre-meeting background papers

• know their corporation's financial position

• are not afraid to ask a lot of questions—especially if some of the matters presented to them are complicated or unclear.

DUTY to act in Good Faith (CATSI Act: section 265-5)

Directors and other officers must exercise their powers and carry out their duties in good faith in the best interests of the corporation. This means they must be honest and loyal in their dealings with each other and with the corporation.

For example, directors and other officers who act in good faith never decide for their own personal advantage. Their one and only concern is to act in the best interests of the corporation. A breach of this duty may lead to a civil penalty or criminal liability, if the breach is reckless or intentionally dishonest

DUTY to NOT improperly use position or information. (CATSI Act: sections 265-10 and 265-15)

Directors, other officers, and employees must not misuse their position, or use information obtained because of their position, to gain a benefit for themselves, someone else or to cause harm to the corporation. For example, they must never pass on personal details about members to other people nor give out information that might allow someone competing for a corporation contract an unfair advantage. A breach of this duty may lead to a civil penalty or criminal liability, if the breach is reckless or intentionally dishonest.

DUTY to disclose material personal interests. (CATSI Act: section 268-1)

Directors must tell each other their personal interests in matters relating to the affairs of the corporation.

This is so directors can avoid making decisions about the corporation which could personally benefit them or their family. ‘Material personal interest’ is better known as a ‘conflict of interest.’

If not handled correctly, conflicts of interest may prevent directors from acting only in the best interests of the corporation.

It is particularly important to always remember that the corporation’s interests come first.

To manage a conflict of interest, a director must declare ‘the conflict’ to the other directors. This disclosure can take the form of a ‘standing notice’ or a notice to a specific directors’ meeting (where the issue causing the conflict of interest may be up for discussion.

Disclosing a conflict of interest does not automatically mean a director cannot be part of a directors' meeting. It may just mean that for a certain part of the meeting (while the matter is discussed) that director steps out. This allows the other directors to talk freely and to make their decision in a neutral environment.

Alternatively, the director may be invited to stay if they have 'the fully informed consent of the other directors to be present and vote'—see section 268-20(4) in the CATSI Act.

A breach of this duty may result in a criminal penalty. There is nothing wrong with having a conflict of interest so long as you, as a director, disclose all the information on about the conflict of interest to the other directors and abide by their decision how it is to be managed.

Duty to NOT trade while insolvent (CATSI Act: section 531-1)

Directors must not allow their corporation to trade when it does not have enough money to pay its bills when they are due. To be 'insolvent' is to be unable to pay your debts when they fall due. If any one of the directors authorises a transaction, or decides, which causes their corporation to become insolvent, they will have breached their duty to not trade while insolvent.

Directors should always know their corporation's financial position. Only then can they be sure that their corporation is not trading while insolvent.

A breach of this duty may result in a civil penalty and, if dishonest, a criminal penalty.

VERSION

	Date Board Approved	**Author**
Version 1 DRAFT		A.Paterson