



EFA Board Code of Conduct

Date: 18 February 2001
[Approved by Board Feb 2001
Approved by AGM Nov 2001]

1. Preamble

This Code of Conduct sets out standards of conduct required of EFA's elected and co-opted Board Members and those of EFA's officers with access to the EFA Board list ("Board Members").

The Code does not void or diminish the obligation of Board Members to comply with laws and statutory regulations applicable to them in their role as a Board Member.

The Code does not address standards of conduct relative to all duties and obligations of Board Members.

The Code does, however, address a number of areas where a higher standard of conduct and level of attention to duty of care is required of Board Members than may be required by law.

Board Members are expected to take into account the spirit of the Code in resolving ambiguous or contentious issues.

2. Undertaking to Comply with Code

Individuals interested in becoming a member of the EFA Board shall be provided with a copy of this Code prior to nominating and are required to undertake in writing to comply with the Code prior to their nomination for Board membership being accepted by the Board, or being co-opted to the Board.

3. Abiding by the Law

Without detracting from Board Members' obligation to comply with all laws and statutory regulations applicable to them as Board Members, particular attention is drawn to the Act under which EFA is incorporated, that is, the [South Australian Associations Incorporation Act 1985](#).

The definition of "officers" in the Act includes all Board Members, either with or without vote. [Section 39A "Duties of officers, etc."](#), for example, includes penalties relative to fraud, improper use of information acquired by virtue of a Board position, improper use of a Board position, etc.

3.1 A Board Member must comply with the provisions of the [South Australian Associations Incorporation Act 1985](#), the associated [Regulations](#) and the [EFA Rules of Incorporation](#) established as required by Division 3 of the Act.

4. Outside Activities

The term "**outside activities**" herein refers to activities undertaken by Board Members outside EFA and includes activities undertaken in a professional capacity, or as an employee, or as an individual or in any other context. Outside activities include, but are not limited to, holding positions as directors in companies, holding office in other organisations or clubs, membership of councils, committees, taskforces, panels, advisory boards, etc (whether public, quasi-public or private entities), activities or work undertaken for an employer or a client (whether paid or unpaid), participating in political party activities, running for public office, etc.

The Board recognises that the majority of Board Members participate in EFA on a voluntary and/or part-time basis and that outside activities will be the norm and that Board Members' participation in outside activities will often be beneficial to EFA's interests.

4.1 A person undertaking to comply with this Code acknowledges that his or her duties or obligations (whether or not arising in law) in relation to present or future outside activities do not void or diminish his or her duties or obligations as a Board Member (whether paid or unpaid).

4.2 A Board Member must undertake best efforts to ensure that his or her participation in outside activities is not misrepresented as participation by EFA.

4.3 A Board Member who is invited to or wishes to participate in an outside activity involving holding office in or membership of another entity, in his or her role as an EFA Board Member, must obtain Board approval prior to doing so.

4.4 A Board Member must undertake best efforts to ensure that his or her personal views and opinions contrary to EFA policy are not published in a manner suggesting that they are the views of EFA.

5. Conflict of Commitment

The term "**conflict of commitment**" herein refers to conflict between an individual's duties and obligations to EFA and that individual's duties and obligations to outside activities, whether or not for pecuniary benefit. The term does *not* refer to a Board Member's actual commitment to EFA - a Board Member can have a conflict of commitment while at the same time being fully committed to EFA's charter and policies.

A conflict of commitment arises when a Board Member's participation in, or activities related to, outside activities are, or have the potential to be, or have the appearance of being, detrimental to the interests of EFA. Activities detrimental to the interests of EFA may include, but are not necessarily limited to, those that:

- adversely affect or have the potential to adversely affect EFA's reputation or credibility; or
- are contrary to one or more of EFA's objects and purposes set out in the EFA Rules of Incorporation; or
- are contrary to EFA policy positions including those:
 - contained in formally issued documents such as policy statements, submissions, media releases and formal responses to media and other inquiries,
 - agreed by the Board but not yet documented in a form suitable for public issue,
 - that can reasonably be deduced by Board Members (as distinct from members of the public) by reference to the above materials;or
- adversely affect the Board's or EFA's ability to conduct its normal activities.

Examples of *serious* conflicts of commitment include, but are not limited to:

- employment by a government department or agency in a role directed to developing laws intended to restrict freedom of speech, or enforcing same;
- engaging in (or assisting a client or other person in) activities directed to censoring or suppressing speech, or actual or implied threats of such, in instances where the justification is questionable having regard to EFA's commitment to freedom of speech;
- activities directed to development of blocking or similar technologies directed towards imposition of involuntary, external censorship regimes on Internet users;
- activities directed to development of dataveillance or other surveillance technologies;
- standing for public office as a representative of a political party with policies substantially opposed to those of EFA.

Examples of *declarable* conflicts of commitment include, but are not limited to:

- membership of a task force, etc, potentially likely to issue recommendations contrary to the objectives and/or policies of EFA;
- membership of an organisation with policies or activities opposed to those of EFA;
- association with a company, organisation or other entity involved in activities similar to those referred to in examples of serious conflicts of commitment above;

The mere appearance of a conflict of commitment may be as serious and potentially damaging to EFA as an actual conflict. Reports of conflicts based on appearances can undermine the trust of other EFA Board Members, EFA members at large and the public in ways that may not be adequately restored even when the mitigating facts of a situation are brought to light. Apparent or potential conflicts, therefore, should be evaluated and managed with the same vigour as known conflicts.

5.1 A Board Member must be alert to possible conflicts of commitment and avoid acting simultaneously in potentially conflicting situations without informing the Board in advance that this is intended.

5.2 A Board Member must, on becoming aware of an actual, apparent or potential conflict of commitment, disclose the nature and extent of same to the Board.

5.3 A Board Member must be alert to the potential for his or her outside activities to be reported in public fora due, in part, to the nature of the Internet.

5.4 A Board Member shall not participate in the decision on any matter in which he or she may have a *serious* conflict of commitment.

5.5 A Board Member shall not participate in the discussion of any matter in which he or she may have a conflict of commitment unless the nature of the conflict has first been disclosed to the Board.

5.6 A Board Member's silence during discussion and decision making processes relative to matters in which they have an actual, apparent or potential conflict of commitment does not of itself constitute acceptable conduct. A Board Member must declare the conflict in order that Board records clearly state that the Board Member did not participate in the decision and/or discussion on the matter, as applicable.

5.7 In circumstances where an actual, apparent or potential conflict is, in the opinion of half or more of other Board Members, both *serious* and cannot readily be managed so as to avoid detriment to the interests of EFA, a Board Member must stand down from the Board until the conflict has ended or until an alternative means of avoiding detriment to the interests of EFA has been agreed by a majority of the remainder of the Board and implemented.

5.8 A Board Member who stands down from the Board in accord with Clause 5.7 shall advise the Board when the conflict has ended and whether it is likely to recur, together with grounds for his or her belief. Provided that a majority of other Board Members are in agreement that such advice provides adequate assurance that the conflict has been wholly resolved, the Board Member shall resume his or her Board membership.

6. Conflict of Interest

The term "**conflict of interest**" herein refers to situations in which financial or other personal considerations may compromise, or have the appearance of

compromising, a Board Member's judgement or advice in their Board role. A conflict of interest occurs when a Board Member's personal interests diverge from his or her duties or obligations to EFA such that another person might reasonably question whether the Board Member's actions or decisions are determined by considerations of personal gain, financial or otherwise. A conflict of interest depends on the situation, and not on a Board Member's character or actions.

Conflicts of interest have the potential to bias Board Members directly or indirectly not only in relation to contracts involving selection of services, equipment and supplies, etc but also in relation to other EFA actions. Board members are in a position to set policies and manage campaigns and projects which may involve, for example, advocating that members of the public boycott a company or other entity in which a Board Member has an interest.

The mere appearance of a conflict of interest may be as serious and potentially damaging to EFA as an actual conflict, or actual distortion of processes or outcomes. Reports of conflicts based on appearances can undermine the trust of other EFA Board Members, EFA members at large and the public in ways that may not be adequately restored even when the mitigating facts of a situation are brought to light. Apparent or potential conflicts, therefore, should be evaluated and managed with the same vigour as known conflicts.

6.1 A Board Member must be alert to possible conflicts of interest and must, on becoming aware of an actual, apparent or potential conflict of interest, disclose the nature and extent of their interest to the Board.

6.2 A Board Member must be alert to the potential for actual or apparent conflicts of interest to be reported in public fora due, in part, to the nature of the Internet.

6.3 A Board Member shall not vote on any matter in which he or she has an actual or apparent conflict of interest.

6.4 A Board Member shall not participate in the discussion of any matter in which he or she has an actual or apparent conflict of interest unless the nature of the conflict has first been disclosed to the Board, and the Board is satisfied that such disclosure should not preclude the Board Member from participating in discussion.

6.5 A Board Member's silence during discussion and decision making processes relative to matters in which they have an actual, apparent or potential conflict of interest does not of itself constitute acceptable conduct. A Board Member must declare the conflict in order that Board records clearly state that the Board Member did not participate in the decision and/or discussion on the matter, as applicable.

6.6 Clauses 6.1 to 6.5 inclusive do not apply in respect of a pecuniary interest that exists only by virtue of the fact-

- (a) that the Board Member is an employee of EFA, or is a Board Member appointed under a contract for provision of services to EFA, or
- (b) that the Board Member is a member of a class of persons for whose benefit EFA is established; or
- (c) that the Board Member has the pecuniary interest in common with all or a substantial proportion of the members of EFA.

To avoid doubt, Clause [6.3](#) applies to a decision of the Board to enter into, modify, renew, discontinue or cancel a contract with a Board Member.

6.7 A Board Member must also comply with the provisions of [Section 31 of the SA Associations Incorporation Act](#), an extract (as at December 2000) from which follows:

[SECT 31 Disclosure of interest](#)

(1) A member of the committee of an incorporated association who has any direct or indirect pecuniary interest in a contract, or proposed contract, with the association-

- (a) must, as soon as he or she becomes aware of his or her interest, disclose the nature and extent of his or her interest to the committee; and
- (b) must disclose the nature and extent of his or her interest in the contract at the next annual general meeting of the association (if an annual general meeting is required to be held by the association).

Maximum penalty: \$5 000.

(2) Subsection (1) does not apply in respect of a pecuniary interest that exists only by virtue of the fact-

- (a) that the member of the committee is an employee of the association; or
- (b) that the member of the committee is a member of a class of persons for whose benefit the association is established; or

- (c) that the member of the committee has the pecuniary interest in common with all or a substantial proportion of the members of the association.

7. Confidentiality

The words "**confidential**" and "**confidentiality**" herein have their ordinary meaning. To avoid doubt, the words do not necessarily have the same meaning as they may have in law.

While a Board Member is legally obligated to comply with the provisions of [Section 39A of the SA Associations Incorporation Act](#), an extract (as at December 2000) from which follows:

[SECT 39A](#) Duties of officers, etc.

[...]

(2) An officer or employee of an incorporated association, or former officer or employee of an incorporated association, must not make improper use of information acquired by virtue of his or her position in the association so as to gain, directly or indirectly, any pecuniary benefit or material advantage for himself or herself or any other person, or so as to cause a detriment to the association.

Maximum penalty: \$20 000 or imprisonment for four years.

a higher standard of duty of care is required of Board Members in relation to confidentiality and use and disclosure of information received by virtue of their EFA Board position.

Some types of information received by Board Members in their EFA Board position can readily be identified to be confidential, such as that involving development of campaign strategies, responses to government inquiries and policy positions, financial information, personal information about EFA members and other persons, etc. However, the confidentiality of some information will not always be apparent to all Board Members. This includes, for example, information received directly from an external source or via a Board Member where the sensitivity of all or parts of same may not be

apparent to persons who are not aware of the full background. It also includes comments and views expressed by Board Members for Board information only, for example, not written in a form that the speaker regards as suitable for wider distribution due to insufficient context, background, or for any other reason. It is therefore difficult, perhaps impossible, to exhaustively define information that is, or is not, confidential.

In establishing the confidentiality requirements below, the Board recognises that there will be other circumstances in which particular information could be disclosed without such disclosure being detrimental, or potentially detrimental, to the interests of EFA or other parties. The following should therefore not be interpreted to imply that disclosure in such instances will necessarily subject a Board Member to reprimand, etc, but may do so dependent on the information and circumstances. Ultimately, the onus is on a Board Member to comply with the confidentiality requirements herein, which include the option to seek permission to disclose information, or knowingly place his or herself at risk of sanction for breach of this Code.

7.1 A Board Member must undertake best efforts to ensure that information that he or she receives by virtue of their Board position is not used or disclosed in a manner, or for a purpose, detrimental to the interests of EFA.

7.2 A Board Member must regard all discussion and information received on the Board list, and during Board meetings, as strictly confidential and must not disclose same to other persons, except as specifically permitted below.

7.2.1 Messages received on the Board list must not be distributed or onforwarded to other persons unless:

- the express prior permission of the writer of the message and of any other Board Member quoted, or mentioned by name or position, in the message (and of the Board in cases where the message contains, for example, draft policy documents or the like), has been received, or
- the message was also posted by the writer of same to a publicly accessible mailing list (i.e. a mailing list that any person can join at will without their subscription request being approved by the list provider/s) as evidenced by the "To" or "CC" fields of the message, or
- Sub-clause 7.2.5 is applicable to the message.

7.2.2 Obviously public information that has been obtained from external sources such as web sites, publicly accessible mailing lists, newsgroups, newspapers, government reports, etc. may be extracted from a message received on the Board list, or from a meeting log, and distributed.

7.2.3 Documents comprising finalised EFA policy, submissions, media releases, etc, that have been approved by Board for external issue may be distributed within the limits of that approval. For example, a submission to a Parliamentary inquiry may be approved for issue to the relevant Parliamentary Committee but not approved for public issue pending receipt of permission to publish same from the relevant Committee.

7.2.4 A Board Member who acts, in their EFA Board position, as a member of, or liaison with, another organisation may disclose information relevant to the purpose of that membership or liaison, for example, in the course of mutual collaboration on campaigns or projects, etc. This provision, however, does not over-ride that Board Member's primary duty to comply with Clause 7.1, nor does it over-ride Sub-clause 7.2.1.

7.2.5 The confidentiality requirements in Clause 7.2 do not apply to:

- a message received on the Board list, or information received in any other way, that indicates intent to cause bodily harm to persons within or outside the EFA Board, or
- a message received on the Board list, or information received in any other way, that a Board Member has a legal obligation, directly arising from their position as a Board Member, to disclose, for example, to comply with a court order. In such instances, the Board Member must, on becoming aware of the obligation, inform the Board accordingly and of the type of information to be disclosed in order that the Board may take appropriate steps, if considered necessary, to ensure that Board Member does not receive further information that would or may be required to be disclosed, or
- information that a Board Member has a legitimate need to disclose to another person in order to obtain legal, professional or other advice, directly concerning his or her duties or obligations as a Board Member. In such instances, a Board Member must undertake best efforts to ensure that the information will be held in strict confidence by the recipient.

7.3 In circumstances where a Board Member wishes or perceives a need (for example, as a result of duties or obligations arising from his or her outside activities) to disclose information otherwise than as specifically permitted herein, the Board Member must obtain the Board's permission to disclose such information prior to so doing.

7.4 A Board Member must be alert to circumstances that may place him or her in a situation of being unable to comply with the confidentiality requirements herein, as a result of conflicts of commitment, conflicts of interest or for any other reason, and inform the Board accordingly on becoming aware of such a circumstance.

7.5 In circumstances where a Board Member has declared an inability to comply with the confidentiality requirements herein and, in the opinion of half or more of other Board Members, it is not possible to prevent the Board Member from potentially receiving information on the Board list that he or she may feel obligated to disclose, without adversely affecting the normal operations of the Board, the Board Member shall be removed from the Board list until he or she advises the Board of ability and willingness to comply with confidentiality requirements herein.

7.6 A Board Member's declaration of inability to comply with the confidentiality requirements herein does not void or diminish that Board Member's duty to comply with same.

8. Non Compliance with Code

8.1 These rules apply to the period from the date of this document to the adoption of a final version of this Code by a Special General Meeting of EFA.

8.2 A complaint as to non-compliance with this Code by a Board member may be made:

- (a) By resolution of the Board, following a motion moved and seconded by Board members; or
- (b) By petition of not less than 10 per cent of EFA's voting members.

8.3 A complaint shall state:

- (a) The name of the Board member against whom the complaint is made;
- (b) The particulars of the complaint;
- (c) The section or sections of this Code upon which the complaint is made;
- (d) The sanction pursuant to clause 8.5 that the complainants seek.

8.4 The Board member under complaint shall be entitled to respond in writing to the complaint prior to the Board proceeding to sanction, provided such response is made within 2 days of the Board member receiving particulars pursuant to Clause 8.3.

8.5 Following receipt of a complaint under Clause 8.2, the Board shall impose one of the following sanctions:

- (a) If a trivial or vexatious complaint, acknowledge without sanction;
- (b) Reprimand, with or without apology;
- (c) Censure, with or without apology;
- (d) Suspension from the Board for a period not exceeding 6 months;
- (e) Dismissal from the Board; or
- (f) Expulsion from EFA pursuant to Rule 8 of the Rules.

8.6 A Board member shall comply with the sanction imposed by the Board forthwith, failing which the Board may impose such further sanction as it thinks fit.

8.7 A Board member aggrieved at the sanction imposed may appeal to a General Meeting of EFA and the Board shall within one month of the receipt of the request, convene a general meeting. The intention to appeal shall be communicated to the Board by the aggrieved Board member within 7 days after the determination of the Board has been communicated to that Board member.

8.8 A General Meeting hearing an appeal by a Board member pursuant to Clause 8.7 may, by majority vote, dismiss the original complaint or substitute any of the sanctions specified in Clause 8.5.