



THE BOARD CHARTER

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Part 1: Central Governance Elements

The purpose of the Board Charter is to:

- Clarify roles and expectations between board Directors and senior management.
- Communicate the board's policies and expectations to management.
- Provide a point of reference for disputes.
- Provide an induction tool for new Directors and senior managers.
- Be available to members.

Objectives

Transport Heritage NSW is a not-for-profit institution established to preserve the heritage of transport in NSW. It operates under Corporations Act 2001 (Commonwealth). The purpose of the Board is to ensure that the organisation meets its objectives and its commitments (safety, financial and environmental). The Board must be able to demonstrate that it is meeting the requirements of the funding deed in its approved plan(s) and budget.

The objective of Transport Heritage NSW is to actively promote in the community, an interest in transport heritage. In addition, the Board supports other transport heritage organisations, via the Funding Deed provided by Transport for NSW. This document should be read in conjunction with the Constitution for more detail on objectives.

Board structure and the community expectation of directors

The THNSW Board has eight Directors. Three Directors are appointed for two years as non-elected Directors. These Directors are appointed by a panel of the Chair, one elected Director and one representative of Transport for NSW (TfNSW). There are four Directors elected by the voting members. There is a vote for all elected Directors positions every two years. The Minister nominates an eighth Director as the Chair. The Minister's power to appoint the Chair is determined by the continued existence and funding from the Funding Deed. Otherwise the Chair would be appointed by the majority of the four elected Directors.

Decisions are made by the majority of votes. The only time the Chair votes is if there is a deadlock between the remaining Directors.

Directors should be informed of their legal, fiduciary, ethical and financial responsibilities. A Director should be aware of the workings of the Board, best practice governance, board meetings, financial reports and accounting best practice. All Directors need to understand Transport Heritage's:

- Constitution, vision, strategy and performance particularly financial position and outlook.
- Safety and environmental issues.
- Strengths and weaknesses.
- Requirements, perceptions and aspirations of its stakeholders.

Safety

Safety is Transport Heritage's primary objective. Directors' obligations are detailed in Appendix One: Safety Duties of Directors – extracts. Transport Heritage Directors must follow these obligations to assure the safety of the visiting public, members, and volunteers and remunerated employees.

Funding

The Funding Deed and Master Custody Management Agreement set out the agreed funding commitment from the NSW Government to Transport Heritage NSW to manage a portfolio of transport heritage assets. Transport Heritage NSW is also able to source other funding, revenue may be generated from members, visitors and other sources.

Role of the Board

Decision making roles are critical for governance. The Board has the governing role, and management 'manages' the day to day operations of Transport Heritage NSW. Roles should therefore be designed to ensure that governing is separate from doing. Establishing clear roles supports the organisation operating effectively to achieve its objectives and meet its obligations and commitments, keeps a Board clear of conflicts of interest, on the right side of relevant legislation and removes the confusion about who has the right to do what.

The role of the Board is to apply best practice corporate governance to ensure that Transport Heritage NSW is well managed without the Board itself becoming involved in operations. The Board will develop and express a collective responsibility for all aspects of the Board's decisions. Directors collectively form the Board and can only influence decision making when meeting as a group. The Board should not make any determinations regarding its policy advice and any recommendations made to it without consultation with the CEO. The CEO is to arrange for information, reports, advice and comment as required by the Board in undertaking its role. Board Directors and committee members must ensure the efficient and responsible expenditure of funds under the CEO's direction. A Board member cannot spend funds.

The Board will encourage a diversity of opinions and views. Directors are also expected to work in a collegiate way to reach agreed positions. The Role of the Board is to:

- Approve the strategic objective and goals and spend its time on strategic issues rather than administration.
- The Board has into to, approves and monitors strategic direction setting so that the organisation is equipped to respond to changing circumstances and situations in the external and internal environments.
- The Board establishes Transport Heritage NSW's mission, values, goals and objectives, employs the Chief Executive Officer (CEO) and company secretary, identifies and monitors the management of corporate risks and monitors and assesses the CEO, company secretary and organisation performance
- Provide strategic direction and approving the strategic plans, performance objectives, monitoring performance and approving variations.
- Approving annual business plans that have been prepared by the CEO.
- Approving the financial plan and budget.
- Require adequate internal control systems and procedures and reporting are put in place.
- Monitoring to ensure compliance with financial and business systems and procedures is maintained and that they are operating effectively.
- Set the organisation's risk appetite, approving risk management strategy and mitigations and monitoring effectiveness of risk management.

The Board and individual Board Directors do not 'instruct' staff in any matters relating to their work. The expert knowledge and experience of individual Board Directors is available to the CEO, and to nominated staff where deemed appropriate and requested by the CEO.

Role of individual Directors

The role of a Director is to fulfil their fiduciary and statutory duties. This means to behave in Transport Heritage NSW's best interest at all times regardless of personal position, circumstances or affiliation. Directors should be familiar with Transport Heritage NSW's constitutional arrangements and be aware of, and fulfil, the statutory and fiduciary responsibilities of a Director. Directors' govern, they do not do. Neither the Board nor individual Board Directors will 'instruct' staff in any matters relating to their work.

Board Directors must be financially literate. They should be able to read financial statements and understand the use of financial ratios and other indices used for evaluating Transport Heritage NSW's performance. If something is not understood a Director should question it until it is understood.

A board Director must not disclose official information or documents acquired as a consequence of membership of the board or committee other than is required by law or when the member has been given proper authority to do so.

Each member of the Board must understand and question the assumptions upon which strategic and business plans and important proposals are based, and are to be able to form an independent judgement as to the probability that such plans can be achieved, or proposals successfully implemented.

Role of the Chair

The role of the Chair is to ensure that the Board performs its functions, acting within any relevant statutory powers and legal obligations. The Chair shall:

- Provide the CEO with regular opportunities to discuss ideas, check directions and act as a supportive sounding board for the CEO.
- Liaise with the relevant Ministers, Secretary and Chief Executives.
- Ensure that the Company Secretary takes valid minutes.
- Facilitate the flow of information to members and stakeholders.
- Count the show of hands in the Board room or request a poll of Directors on an issue.
- Decide if non-Directors are to be heard at a meeting.
- Be non-voting unless to break a deadlock of all other Directors.
- Have the power to request an extraordinary meeting.
- Ensuring individual Directors make an effective contribution.

Role of the CEO

The Board must ensure that there is an appropriate separation of duties and responsibilities between itself and its CEO. In doing this, the Board delegates to the CEO responsibility for implementation of its strategic plan while complying with the Chief Executive Delegation policies. The Board must act as a unified body to instruct the CEO. The Board will advise the CEO in writing of any limitations it places upon the delegations. The Board will also make clear Transport Heritage NSW's strategic direction including performance indicators to be applied by the Board when reviewing the organisation's and the CEO's performance.

The CEO is responsible for the:

- Day-to-day management and financial planning of the organisation.
- Exercising of the delegation for the employment, management and performance evaluation of staff and volunteers, the CEO must ensure that there is provided a workplace environment conducive to sound workplace practices, consistent with workplace legislation and Transport Heritage NSW's core corporate values.
- Establishing appropriate control frameworks, systems and policies
- Drafting and implementing the strategy and business plans that have been approved by the board, organisational performance.
- Provision of support and information in a timely, accurate and understandable fashion addressing the various issues to be monitored by the Board.

The CEO's decisions must be consistent with and not defeat the stated intent and the spirit of the Board's policies. He/she is authorised to establish all operational policies, make all operational decisions and design and implement and manage all operational practices and activities.

The CEO may defer instructions or requests from individual Board Directors or from unofficial groups of Board Directors if, in his/her opinion, such requests or instructions are inconsistent with the Board's policies; are deemed to make unjustifiable intrusions into the CEO's or other staff member's time; or are an unjustifiable cost to the organisation and notify the Chair on each occasion.

The CEO provides financial reports that make clear:

- Significant trends.
- Performance against agreed benchmarks and Board-agreed measures,
- Financial data as determined by the Board from time-to-time.

The CEO informs the Board of significant external environmental trends, achievement of, or progress towards the achievement of, the Board's strategic direction statement or changes in the basic assumptions upon which the Board's policies are based.

The role of the CEO includes informing Directors:

- When for any reason there is actual or anticipated noncompliance with a Board policy.
- Of any breach of any externally imposed compliance requirement.
- Of any serious legal conflict or dispute or potential serious legal conflict or dispute that has arisen or might arise.
- On occasions when the Board is in breach of its Board Processes policies particularly when this relates to the CEO's ability to carry out his/her responsibilities.

The CEO must ensure that nothing is done, or authorised to be done, that could in any way cause financial harm or threaten the organisation's financial integrity and reputation. In developing the operational financial plan and budget, the CEO must not:

- Fail to demonstrate a credible projection of revenues and expenses, separation of capital and operational items, projection of cash flows, and disclosure of planning assumptions.
- Create financial risk beyond Board-determined parameters.
- Fail to accommodate medium to long-term financial plans/projections and direction.
- Design a financial plan that anticipates the achievement of a 'bottom line', materially different from that determined by the Board.
- Design plans that would/could threaten the achievement of Board determined financial ratios.
- Fail to provide for current and future capital requirements such as future buildings.
- Fail to provide for the Board's developmental and other expenditure.

Role of the Company Secretary

The company secretary is appointed by the Board and is accountable for:

- Developing an annual calendar of Directors' meetings with a minimum of six meetings per year.
- Being summoned at any time by a Director to hold a meeting of Directors by written notice that outlines the matters to be discussed.
- Organising and taking of minutes at all Directors meetings, except specially organised in-camera meetings, in line with the requirements of the Charitable Fundraising Act 1991 and the Corporations Act 2001.
- Issuing the notice of AGM or Special General Meeting
- Calling for nominations for election to the Board etc.
- Managing the election
- Ensuring the lodgement of Annual returns to regulatory authorities
- Ensure that all Directors have undertaken working with children checks as required by the NSW Government Boards and Committees Guidelines.

Part 2: Key Board Functions

The Board will review Transport Heritage NSW's situation and agree the broad framework within which the strategic medium-term and annual business plans will be prepared each year. The Board reviews and approves Transport Heritage NSW's financial objectives, plans and actions, including significant capital allocations and expenditures.

The Board sets governance-level policies only. Policies at this level are developed and adopted by the Board and relate to high-level, organisation-wide matters. These include policies in respect of the Board's operating processes and duties, and its delegation to the CEO in areas such as finances, and human resources. The Board will carry out its governance responsibilities via:

- Strategic direction policies; describing the strategic outcomes the Board wants to be achieved. Including the Purpose or Mission statement and the Key Performance Indicators.
- Board Processes policies; describing the way the Board carries out its governing role.
- Board-CEO Interrelationship policies; defining the Board's relationship with, and the nature of its delegation to the CEO.
- Chief Executive Delegation policies; making clear constraints or limits on the choice of operational means available to the CEO for the achievement of organisational outcomes or results.

The CEO determines Management-level policies. These policies are developed by the CEO and relate to the operational management of the organisation. The Board is not required to approve policies at this level. Management-level policies flow logically from the governance policies.

Monitoring and risk management

The Board will monitor corporate performance against the strategic direction, including assessing operating results to evaluate whether the business is being properly managed. Every three years, the Board should be subject to an independent review of its own performance.

The Board will identify and evaluate the principal risks faced by Transport Heritage NSW. It will ensure that appropriate systems are in place to avoid or mitigate these risks including the protection of intellectual capital developed with the resources of Transport Heritage NSW.

Compliance / Code of conduct

The Board will ensure ethical behaviour and compliance with the Board's Code of conduct and Conflict of Interests policies, State and Federal laws and regulations, audit and accounting policies. The Board will ensure the integrity of Transport Heritage NSW's internal control and management information systems so that its decision-making capability and the accuracy of its reporting are maintained at a high level at all times.

This Board of Directors is subject to Transport Heritage NSW policy regarding conflicts of interest and working with children checks. Board Directors are to declare any actual or perceived conflicts of interest they may have with any matter before the Board. Any business or personal matter which could lead to a conflict of interest of a material nature involving a Board member and their role and relationship with Transport Heritage NSW, must be promptly and fully disclosed and declared at a Board meeting and registered in the Register of Interest. The Board member concerned shall not vote on any resolution relating to that conflict or issue. The Board Director shall remain in the Board room during any related discussion only with Board approval.

Part 3: Documentation including committees

The Board will review and approve transactions that are beyond the authority delegated to the CEO. The Board will ensure that it makes the best possible use of its meetings by dealing only with matters that

have governance-level significance, by delegating as much as appropriately possible to the CEO. The Board will establish a Safety & Environment Committee (SEC), Finance, Audit & Risk Committee (FA&RC), Business Development & Marketing Committee (BD&MC), Curatorial Committee, and other committees as appropriate.

The Board appoints the Chair of each of the Committees and sets and approves the Terms of Reference for the Committee. The Chair of the Committee, in consultation with Committee members, shall determine the frequency, method, agendas and the business program of Committee meetings. The Chair of the Committee shall be responsible for the effective conduct of Committee meetings. The Committee may nominate individuals to be co-opted as additional members with suitable expertise to assist it in its work. A Committee makes recommendations; the Board makes any related decisions.

The minutes of Board and Committee meetings shall comply with the Charitable Fundraising Act 1991 and section 251A (1) of the Corporations Act 2001, they will record the proceedings and resolutions of Directors' meetings (including Board Committee meetings) and resolutions passed by Directors via circulation.

Agendas are to be prepared in consultation with the Committee Chairs and the CEO. Each Board member is free to suggest the inclusion of item(s) on the agenda. To the extent possible agendas will be based on a schedule of subjects agreed at the beginning of each year.

The Board will expect that the CEO will ensure that reports and proposals for the Board are timely, contain content and are formatted so as to reinforce and support the Board's governance role. A key report presented at each Board meeting is the CEO's report. This report includes financial performance (balance sheet, income statement, financing arrangements, confirmation of solvency, cash flow statements and explanations of variances greater than 5%), forecasts for the period to the end of the current financial year, strategic plan progress, regulatory issues, competitor update, staffing, marketing activities, a compliance report, and risk management (assessed risk profile, risks and their likelihood, impact and mitigations). Other regular reports are expected to include Board Committee reports particularly the report of the Finance, Audit & Risk Committee (FA&RC).

All Committee papers are to be regarded as confidential documents. Disclosure of documents or their contents to external parties must not occur without Board approval. The Committee Chair should consult the Board Chair if appropriate regarding conflicts of interest issues.

The Committee should not make any determinations regarding its policy advice and recommendations to the Board without consultation with the CEO. The CEO is to arrange for information, reports, advice and comment as required by the Committee in undertaking its role.

Part 4: Board Improvement

Director Protection and Development

A good and protected Board is one that understands and follows good governance. Therefore, the training and education of Directors in the community's expectations (as reflected in law) should be a priority for all Directors. This is particularly the case for Transport Heritage NSW where Directors have a significant role in the expenditure of NSW Government funds.

In the event of poor performance or unacceptable outcomes, the Board must be able to demonstrate that it made the best possible decision under the circumstances at the time and that it monitored the impact of its decisions and reconsidered them in appropriate timeframes. In these circumstances, it is also vital that the Board is able to demonstrate that it used good governance practices and maintained the separation between its role and the role of its CEO, and that the Board had sought and taken appropriate advice.

Board and CEO Evaluation

The Board should ensure a regular, objective, evaluation of its performance, particularly:

- The extent to which the Board follows its governance process.
- Individual Director's understanding of Transport Heritage NSW's mission and strategic plan.
- Individual Director's understanding of the business and appropriate measures of performance and where it is reaching its potential.
- The strength of the Board as a team.
- Areas for improving statutory or other reporting.
- The Board's approach to the understanding and management of risk.
- The strength of the governance and working relationship between the Board and management.

The CEO assessment must be based on previously signed off objective performance criteria, the overall performance of Transport Heritage NSW and the Board's performance and be linked to a remuneration policy that reflects objective performance.

Appendix One: Safety Duties of Directors – extracts

Work Health and Safety Act 2011 NSW

Transport Heritage Directors have a health and safety duty and is required to exercise ‘due diligence’ to ensure the organisation meets that duty. Due diligence means taking reasonable steps:

- To gain and update knowledge of Work Health and Safety matters;
- To understand the nature of operations and the general hazards and risks involved;
- To ensure appropriate resources for eliminating/minimizing risks, and that resources are used;
- To ensure processes for receiving, reviewing and responding to information about incidents, hazards and risks; and
- To ensure implementation of processes for complying with their duties, such as:
 - Consultation;
 - Providing training and instruction; and
 - Reporting of notifiable incidents

Rail Safety National Law 2012 (NSW) Section 55

(1) If a person has a duty or obligation under this Law, an officer of the person must exercise due diligence to ensure that the person complies with that duty or obligation.

(2) An officer of a person referred to in subsection (1) may be convicted or found guilty of an offence under this Law relating to a duty under this section whether or not the person has been convicted or found guilty of an offence under this Law relating to the duty or obligation.

(3) In this section, ‘due diligence’ includes taking reasonable steps-to:

- (a) acquire and keep up-to-date knowledge of rail safety matters; and
- (b) gain an understanding of the nature of the railway operations of the person and, generally, of the risks associated with those operations; and
- (c) ensure that the person has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to safety from the railway operations of the person; and
- (d) ensure that the person has appropriate processes for receiving and considering information regarding incidents and risks and responding in a timely way to that information; and
- (e) ensure that the person has, and implements, processes for complying with any duty or obligation of the person under this Law; and
- (f) verify the provision and use of the resources and processes referred to in paragraphs (c) to (e).

Appendix Two: Constitution of THNSW

Appendix Three: Delegations Policy - Confidential

(known as *THNSW Schedule of Delegations (PF02)*)

Appendix Four: Schedule of Board Policies - to be completed

Appendix Five: Charter Case Studies and Decision Trees

A Board Charter documents the authorities, roles and responsibilities for the Board and senior management. The Charter is also a key part of risk mitigation for Directors as it helps Directors avoid strategic dangers and guides their role in an often complex and potentially litigious environment.

These case studies are designed to facilitate consideration of some of the key issues. The examples in this section draw on the work of Australia's leading board governance thinkers, in particular Kiel and Nicholson (Boards That Work, 2003) as well as notes and recommendations from the Australian Institute of Company Directors.

Case Study – what can Transport Heritage spend money on and who decides?

It is the role of the Board to set the strategic direction of the organisation. In doing this the Board must be aware of, and meet legislative requirements particularly in regard to safety and the environment, it must also meet its funding deeds and business contracts.

The Board may ask the CEO for advice on the implications of the legal and commercial environment on the strategic direction. The funding deeds provide Transport Heritage with specific deliverables that go into its plan. The Board is to ensure that in meeting its constraints, it represents the interest of all members.

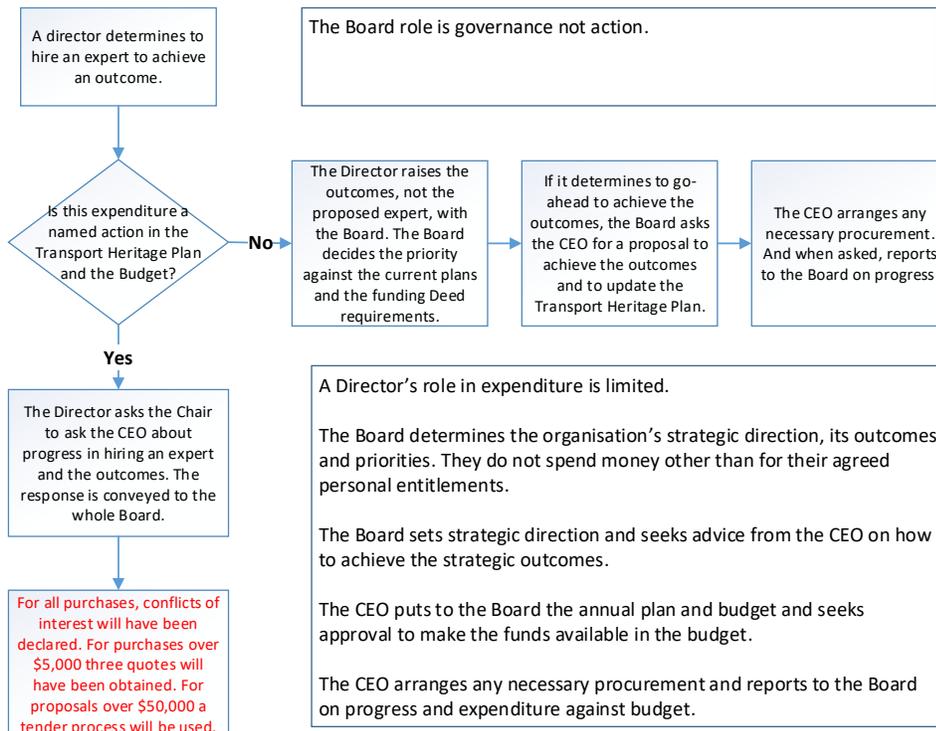
The Board provides the strategic direction to the CEO for documentation and communication. The Board must ensure that the organisation stays solvent and can meet its payments as they fall due.

The CEO's role is to assess and to recommend actions and expenditure to achieve the Board's strategic direction. The Board signs off this action plan and budget within the available funding, or asks for revisions.

Once the plan and budget is signed off by the Board, the CEO follows the organisation's delegations to spend the approved expenditure. This is the only way that the organisation can appropriately spend money.

Therefore, the Board and individual directors should not develop, approve and spend their own budgets. This means that projects, consultancies or expenses cannot be committed unless they are part of a Board approved and a CEO developed action plan.

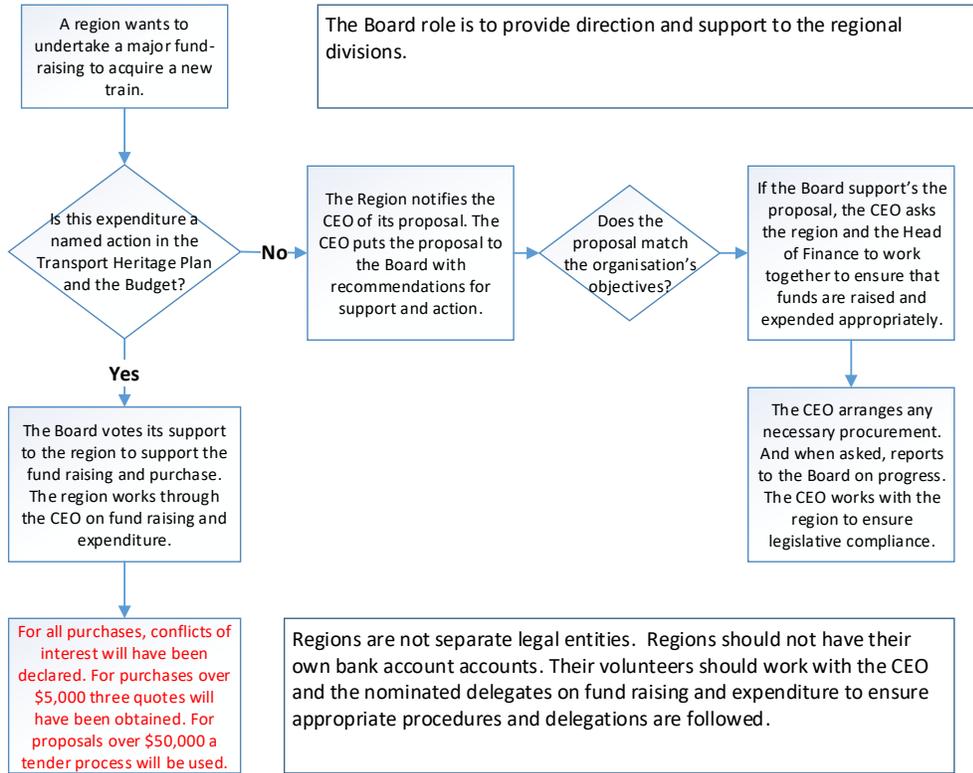
Decision Tree



Case Study: rules for, the creation and operation Regional divisions

Transport Heritage NSW has three regional divisions, Northern, Illawarra and Valley Heights. These divisions provide volunteers with a level of autonomy and freedom to express their commitment to heritage transport. The Board needs to ensure these divisions meet legislative requirements, funding requirements and pursue the Transport Heritage NSW objectives.

Decision tree



Case Study: Role of an Individual Director

The Directors have no authority to direct volunteers and employees.

A Director of Transport Heritage NSW can also be a member and a volunteer. In making Board decisions, a Director's focus must only be on the attributes of the directors' role. Therefore, a Director's role may be conflicted when voting on decisions in which the Director has been an advocate as a member or volunteer. Examples of where this may occur include the purchase of assets or employment decisions in particular areas of activity.

For the volunteer who is also a Director, requests to other volunteers and to employees, can only be made in the capacity of volunteer. This means that in volunteering, a Director has the same standing as a volunteer.

Decision Tree

