



INSTITUTE OF
SISTERS *of* MERCY
OF AUSTRALIA & PAPUA NEW GUINEA

ISMAPNG New Director Induction

Civil law and Directors' Duties
22 March 2021

Agenda

- ▶ Principles underpinning good governance
 - ▶ Legislative and policy framework
- ▶ Board focus
 - ▶ The role of the board
- ▶ Individual Director focus
 - ▶ Responsibilities of Directors

Legal Framework

- ▶ Corporations Act 2001 (Cth)
- ▶ Australian Charities and Not for Profit Commission (ACNC)
- ▶ AICD Not for Profit Principles
- ▶ ACNC Governance Standards

6 ACNC Governance Standards

- ▶ Purposes and not-for-profit nature
- ▶ Accountability to members
- ▶ Compliance with Australian Laws
- ▶ Suitability of Responsible Persons
- ▶ Duties of Responsible Persons
- ▶ ****NEW**** Maintaining and Enhancing Public Trust

What is the role of the board?



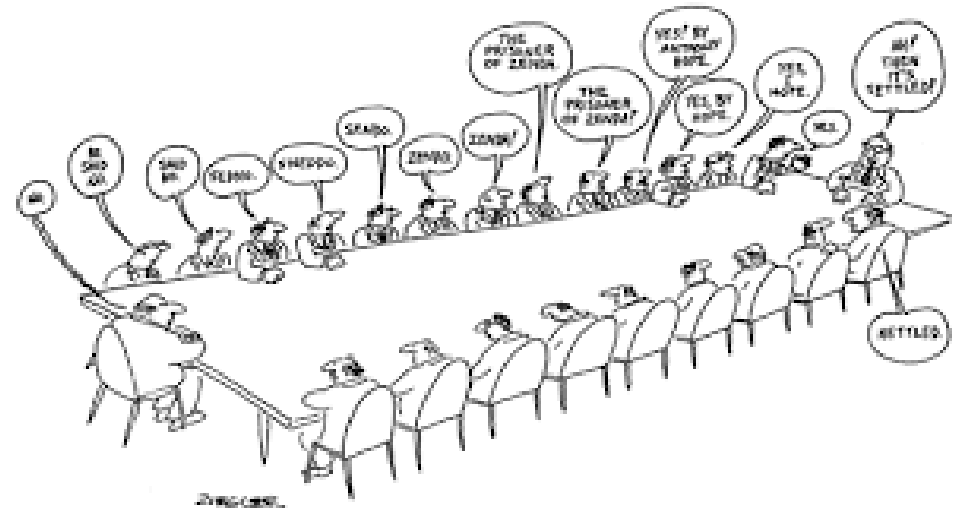
- ▶ What makes an effective board?
- ▶ Good (effective) boards
v
▶ Bad (ineffective) boards



Board dynamics



OR?





What are the legal responsibilities of directors?

- ▶ Common law
- ▶ Corporations Act 2001 (Cth)
- ▶ Australian Charities and Not for Profits Commission Act 2012 (Cth)

Scenario

A charity foundation was losing money, and had been running at a financial loss for four out of the past five years. It had been set up to make distributions to several community organisations. However, in its worst year, the foundation raised \$465,000 but spent \$550,000. Making the annual donations it promised to charities had meant using the foundation's cash reserves, putting its future financial health in jeopardy.

The problem had worsened since 2011 under each CEO appointment, including the founder's brother Jason, and a former Rugby League community relations manager. The accounts confirmed that the foundation distributed only 16 cents of every dollar raised for the charity between 2011-13. One CEO had also been paid \$80,000 in salary in the same year the foundation had donated just \$54,600.

The foundation closed its doors in 2017 after its board intervened.

What do you think was the purpose of the foundation? Did it fulfil this purpose?

What was the role of the board?

What other issues can you see in this case study?



Directors Duties

- ▶ Act with care and diligence
- ▶ To act honestly and in the best interests of the organisation
- ▶ Don't misuse your position or information
- ▶ Disclose conflicts of interest
- ▶ Ensure financial affairs are managed responsibly
- ▶ Don't operate while insolvent



Due care and diligence

- ▶ Bring an “inquiring mind”
- ▶ Take a diligent and intelligent interest in the company
- ▶ Reliance on advice cannot be uncritical
- ▶ Need basic level of financial literacy
- ▶ Board should control the flow of information



Solvency

“Safe Harbour” provisions

Liability for insolvent trading does not apply if:

- a) At a particular time after suspecting insolvency, the person starts developing a course of action reasonably likely to lead to a better outcome for the company, and
- b) Debt incurred directly/indirectly with such course

COVID 19 Safe Harbour provisions

Recent board failures

James Packer's Crown Resorts unsuitable to hold casino licence in NSW, report finds

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AMP executives facing potential criminal charges for no service, Fed court hears

By Daniel Ziffer
9 Feb 2021 10:12pm



Questions?



**THE ONLY DUMB
QUESTION IS THE
QUESTION YOU
DON'T ASK**