

Governance for Churches / Charities

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Governance - a definition

- The act of governing
- The specific work of directors or committee members in fulfilling their duties to their organisation

Do you know the objects?

- The **fundamental role and duty** of directors of a charitable organisation is to ensure the **objects or purposes** of the charity, as set out in it's constitution, statement of purposes or trust deed, **are being carried out.**

To Whom are you accountable?

- Directors are usually elected from the membership
- But
- The members may be the Directors
- Or
- The Directors may be appointed by a controlling body
- UNDERSTAND your form of incorporation

Are you incorporated?

- Your Charity may be
- An Association
- A Company Limited by Guarantee
- A Special Purpose company
- An Unincorporated organisation as part of a bigger legal structure
- A Charitable Trust with a Trustee association or company
- ASK THE QUESTION – IT WILL AFFECT YOUR ROLE

The role of directors

- Carry out the **objects** of the charity;
- Set **strategies and plans** for carrying out the objects;
- Set **policies** for the charity;
- **Monitor performance** of the charity, it's staff and volunteers;
- Ensure legal and accounting **compliance**;
- Ensure there are **internal controls** and reporting procedures;
- **Appoint CEO** and ensure there are adequate staff, support and resources;
- Ensure there are systems in place to identify and **look after the stakeholders**.

What is good governance?

- Governance encompasses;
- Legal duties;
- Processes for overall management of the charity;
- Ensuring accountability;
- Risk management;
- Optimal performance; and
- Compliance within the legal framework and within an internally set framework or code of conduct.

How to ensure responsible decision making?

- (1) **Proper briefing**, ensuring the directors are sufficiently briefed on the charity, their duties and their role:
- (2) Attendance at, and involvement in, **board meetings**:
- (3) Adequate **reporting** and internal monitoring.

Board Charter

A **board charter** may be developed clearly identifying:

- The role of the directors,
- any specific activities and responsibilities of the board,
- the roles of the chairperson, treasurer, secretary and any other positions,
- Roles of any board committees,
- Delegations to management,
- Reporting requirements, and
- a code of conduct.

Board meetings

- Directors should be expected to **attend** all directors' meetings (as far as practical) and to **ask questions** and make **suggestions**.
- Directors should bear in mind that they cannot avoid responsibility and liability by not attending meetings or by not **reading board papers**.
- The board must ensure that it puts in place **proper reporting** and monitoring procedures and asks sufficient questions to ensure **familiarity with the activities and the position of the charity**.

Conflict of interest

- disclose any material personal interests prior to any discussion by the board on a matter which may relate to those interests.
- The code of conduct may require the interested director to leave the room and not be involved in the discussion or the voting

Confidentiality

- The directors should be aware that they are not permitted to take advantage of property or information of the charity or their position with the charity, or opportunities arising from these, for personal gain, or to compete with the charity.
- The directors should understand that the board papers and the discussions at board meetings are confidential.

Legal duties

- Duty to **act in good faith** in the best interest of the objects of the charity;
- The duty **not to act for an improper purpose** i.e.. Not to exercise powers for any purpose other than for the objects of the charity.
- The duty to act **with care and diligence** which a reasonable person would exercise.
- The duty **not to improperly use their position or information**.
- The duty **to avoid a conflict of interest** and disclose a material personal interest that relates to the affairs of the charity.

Business Judgement Rule

There is a defence referred to as the business judgement rule, under the Corporations Act, if the director can show he or she:

- Made the judgement in good faith for a proper purpose;
- Did not have a material personal interest;
- Informed themselves about the subject matter; and
- Rationally believed that the judgement was in the best interests of the charity;

You may be a Trustee Director

- Directors of a charity/ association which is trustee of a charitable trust must
- To acquaint themselves with the terms of the trust;
- To execute the trust according to its terms and the general law;
- To protect and preserve the trust property;
- To exercise discretionary powers or discretions in good faith, upon a real and genuine consideration and according to the purpose for which the power was conferred;
- not to delegate except as permitted by the trust instrument; and
- To invest as permitted under the trust deed and legislation.

Risk Management

- The directors should identify, assess, monitor and manage risks to the charity.
- Risks include financial exposures, legal status, compliance, insurances, as well as **reputational risks**.
- All aspects of the charity's operations should be considered in the **risk assessment process**
 - such as risks of breaching employment laws or discriminating against employees or volunteers, false or misleading statements made by staff, including directors.
- Insurance brokers may also be helpful in assisting with the review of necessary insurance to cover existing risks.
- The auditors should be able to help in advising on appropriate procedures to minimise the risk of fraud or theft

Insolvency

- Under the *Corporations Act* there is a positive duty upon directors to ensure that :
- **the charity does not incur debts while insolvent.**
- A charity is insolvent
 - if it is not able to **pay all its debts as and when they become due and payable.**
- Directors have potential personal liability if the charity incurs a debt and at that time:
- The charity is insolvent (or becomes insolvent) by incurring that debt and
- There are reasonable grounds for suspecting the charity is insolvent.

Adequate financial monitoring

The directors should ensure;

- A **budget** is drawn up each year;
- There is a **review of management accounts against the budget** on a regular basis throughout the year;
- they are aware of the main sources of **income and its reliability**;
- They are aware of the **costs of administration**;
- There is a **clear delegation** to incur costs and expenses for the charity, where necessary, limited without board approval;
- The **staff have adequate experience and competency**;

Accountability and reporting requirements

- At the time the annual financial report is prepared, the directors must review this and make a declaration that:
- The financial statements **comply** with all (or relevant) **accounting standards**;
- The financial statements give a **true and fair view**; and
- Whether, in the directors' opinion:
 - * there are reasonable grounds to believe the company will be **able to pay its debts as and when they become due and payable**; and
 - * (If a Company) the financial statements and notes are in accordance with the *Corporations Act* including the requirements to comply with the accounting standards and give a true and fair view.

Accountability and reporting requirements

- The directors can require the financial officer to certify to the board the steps that have been undertaken in the preparation and checking of the annual accounts and that the accounts meet the requirements for the director's solvency declaration.

Composition of the Board

- Board members need to have a **passion for the mission** of the charity
- a range of experience and knowledge such as
- Mission or Program expertise
- Governance
- Marketing or Promotions
- Finances
- Legal matters
- Employment matters
- Fundraising

The Role of the Chairperson

- Setting Board **agendas** with the CEO
- Guiding supporting and mentoring **the CEO**
- **Leading the Board** in fulfilling its responsibilities
- **Leading Board meetings** & ensuring the minutes reflect the meetings
- **Facilitating** the contribution of each Board member
- Ensuring **the CEO's performance & remuneration** is reviewed
- Ensuring proper Board delegations , reporting and **monitoring systems**
- Ensuring the composition and functioning of the Board is reviewed and acts within its **code of conduct**

The role of the Treasurer

- Ensures that financial reports are can be understood by the Board
- Leads a finance committee to advise the Board
- Authors a Monthly Financial report to the Board
- Carefully examines the monthly accounts & budget variances
- Ensures that the monthly accounts are properly prepared
- Consults the CEO and Finance officer on financial matters
- Ensures that a budget is prepared & implemented
- Liaises with the Auditor
- Recommends the annual financial statements to the Board

The Role of the Board Secretary

- Ensures that Board decisions are properly minuted
- Prepares an action list to attach to Board minutes to remind directors and staff of tasks to be done and the agreed time line
- Distributes the agenda , minutes , action list and Board papers
- Ensures that proper Notice of meetings is adhered to
- Takes a special interest in the Constitution and its protocols for meetings and resolutions especially requirements for special resolutions

What every director should know

- The charity's objects and powers, as set out in its constitution, and its activities;
- If the charity is trustee of a trust, the trust's objects and powers, as set out in the trust instrument, and its activities:
- A director's legal duties
- The implication of any relevant laws affecting the charity's activities e.g. fundraising, Tax, employment practices, **occupational health and safety** etc.

What every director should know

- If the charity is trustee of a trust, state and Territory Trust Acts or Trustee Acts and common laws duties;
- The stakeholders and contractual arrangements or relationships the charity has and its obligations under these;
- The position (including the financial position) and direction of the charity, including its strategic plans, business plans and budget;

What every director should know

- The reporting and monitoring systems of the charity;
- The experience and competence of those providing information to the board;
- Any standing notices of a conflict of interest given by any of the directors

FINALLY

- **A wise Director should know that it is impossible to know everything**
- But
- It is always possible to **ask a question**
- AND
- Request that the Board **obtain advice** on the matter at hand.
