



Leading the pack in Aged Care Good Governance

LASA Queensland State Conference,
Broadbeach, March 2018

Will your governance allow you to disrupt, innovate and thrive?

Why is it important?

- Demand for more transparency and accountability
- Greater scrutiny of the actions of organisations and those who govern them (boards, committees) and manage them (management)
- Increase in principles, standards and frameworks for organisations' operations and behaviour
- Changing societal expectations
- Creating value and avoiding risk

Aged care sector governance challenges

- Strategic future
- Dynamic, changing environment
- Stakeholder management and avoiding mission drift (NFP)
- Stakeholder expectations (Consumer Driven Care)
- Government funding
- Sector regulation
- Board renewal

Activity

Introduce yourself to the person next to you and talk about your key challenges (including something not on the list)

Governing and managing

What is the difference?

- Board roles vary between organisation types and size
- Small privately owned - directors may be hands-on
- Large listed company - directors' role is a monitoring one
- Management's role is day-to-day running of the business
- NFPs – the role is a monitoring one BUT directors may be involved in organisation's services
- Be aware of which hat they are wearing
- Noses in, fingers out

Governing

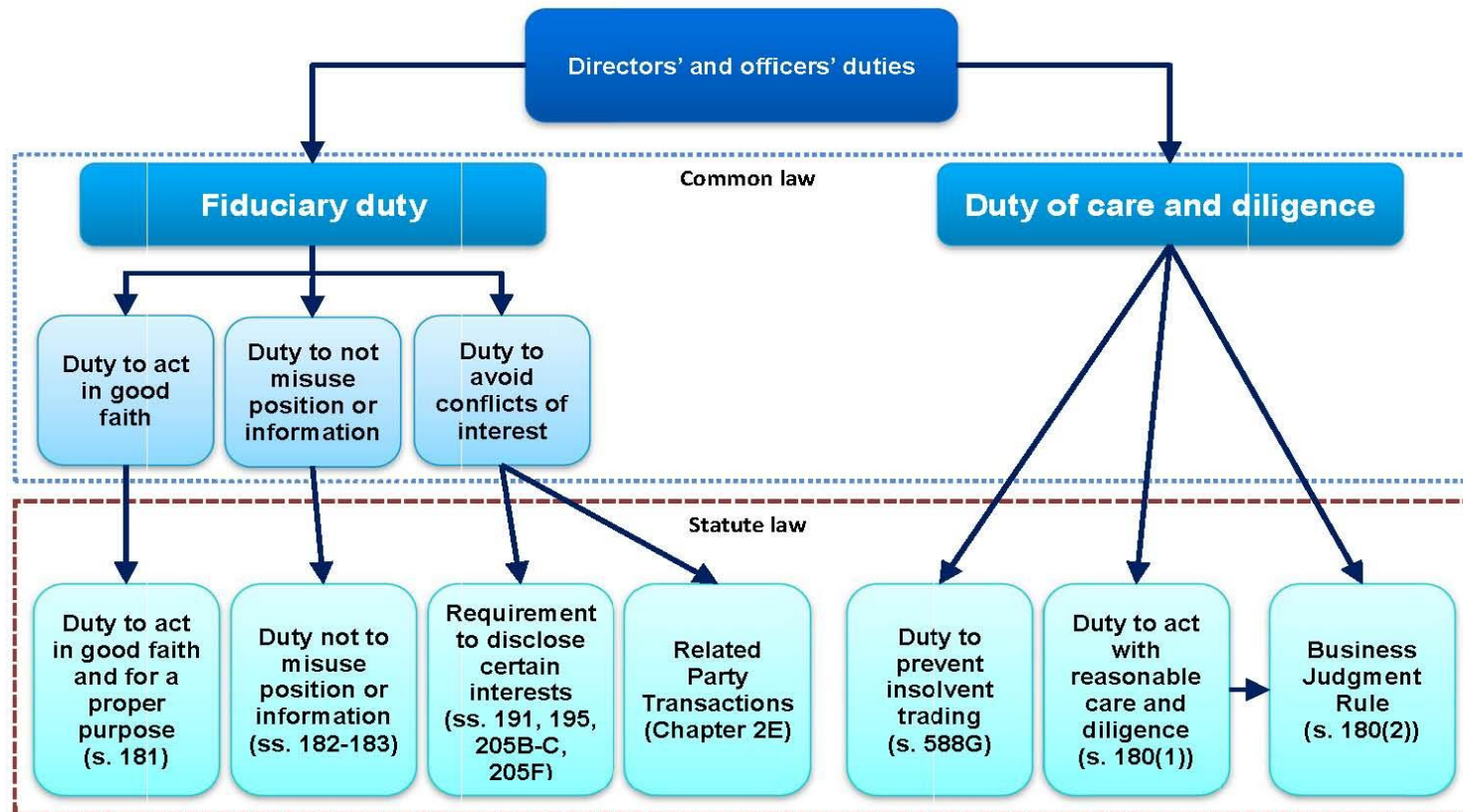
- Monitoring – oversight of management
- Strategy
- Appointment, remuneration and assessment of performance of CEO and other members of the senior management team
- Delegation of powers and authorities
- Monitoring of company performance
- Approval of annual reports and accounts
- Oversight of compliance with appropriate laws and regulations

Governing

- Oversight of recommendations by management about: finance matters, operating budgets, risk management, human resources, significant mergers, acquisitions, restructures, internal and external audit and other operational matters
- Board has control of:
 - director nomination and appointment
 - sub-committees (membership and role), performance assessment and remuneration, frequency and agendas
 - Stakeholder communications and relations
 - directors' interests (conflicts) and related-party transactions
 - company policies
 - director and senior executive succession planning

Directors' duties

Paid or unpaid - directors' duties do not alter



Board tensions

Not bad tensions, but they need to be managed

- Decisions are collective – individuals are accountable
- Non-executive vs executive director role
- Independence vs detailed knowledge
- Monitoring vs guiding and supporting
- Diversity vs harmony
- Time constraints
- Conflicts of interest
- They often make the most critical decisions

Conflicts of interest

Not inherently bad – how they are managed goes to the heart of good governance

- Conflict of interest - directors' (councillors/committee members) interests or those of their families, friends or other organisations with which they are involved are incompatible or in competition with organisation's interests
- Conflict of duty - competing loyalties between the organisation to which they owe a primary duty and some other person or entity
- Real/perceived
- May be in the best interests of the organisation - eg employing director's spouse to work for NFP who is the best in field BUT appearance of a conflict can be damaging
- Can:
 - damage effective decision making and undermine the functioning of the governing board
 - attract adverse publicity
- Appropriate structures, policies and management are critical

Case Study – conflicts of interest

CASE STUDY 2

The circumstances

The charity provides aged care services. The charity is large sized and has been registered with the ACNC since 2013. The ACNC obtained information indicating that the charity had entered into a contract with a for-profit company and this contract generated a private benefit for one of the charity's responsible persons. The available information indicated that the responsible person of the charity was also a director of the for-profit company and used this as a means to divert charitable funds to the for-profit entity.

The ACNC takes the misuse of charitable funds very seriously. The ACNC readily uses its information gathering powers to obtain evidence from third parties, such as banks and financial institutions, and forensically analyses material to see where charity money actually goes.

The ACNC commenced an investigation into the charity to establish the governance arrangements in place and whether the charity was complying with its not-for-profit character.

Governance considerations

1. Directors who have an interest in for-profit entities must declare those conflicts if that business is engaging with the charity.
2. Charities need to ensure that appropriate mechanisms are in place to manage conflicts of interest and take reasonable steps to ensure its responsible persons comply with their duties including to disclose perceived or actual material conflicts of interest, to act in good faith in the charity's best interests, to further the charity's purposes, and not to misuse their position.
3. A charity must be able to demonstrate and comply with its purposes and character as a not-for-profit entity.

Governance issues identified

The ACNC found that the contracts directed significant amounts of charity funds to the for-profit company. The charity was unable to demonstrate that the arrangements with the for-profit company were made at arm's length. The charity's responsible person who held an interest in the for-profit company had significant influence over the decisions to engage the for-profit company and the terms of the contract.

The charity did not maintain operational records to establish that services provided by the for-profit company were delivered and reviewed to ensure the contract with the for-profit company was providing 'value for money' results to support the charity's purpose.

The outcome

The ACNC issued the charity with a notice to show cause as to why its registration should not be revoked for not complying with the ACNC Governance Standards. The charity's response did not address the ACNC's concerns, and the material that was provided was insufficient to satisfy us that the charity was not-for-profit. The charity failed to demonstrate that it had sufficient governance in place to ensure its financial affairs were managed responsibly, conflicts of interest were disclosed and that decisions were made in the charity's best interest to further the purposes of the charity.

The charity's revoked status was published on the Charity Register and the [compliance decision page](#) on the ACNC website and the charity lost its access to charity tax concessions.

Boardroom dynamics

More effective directors – more effective boards

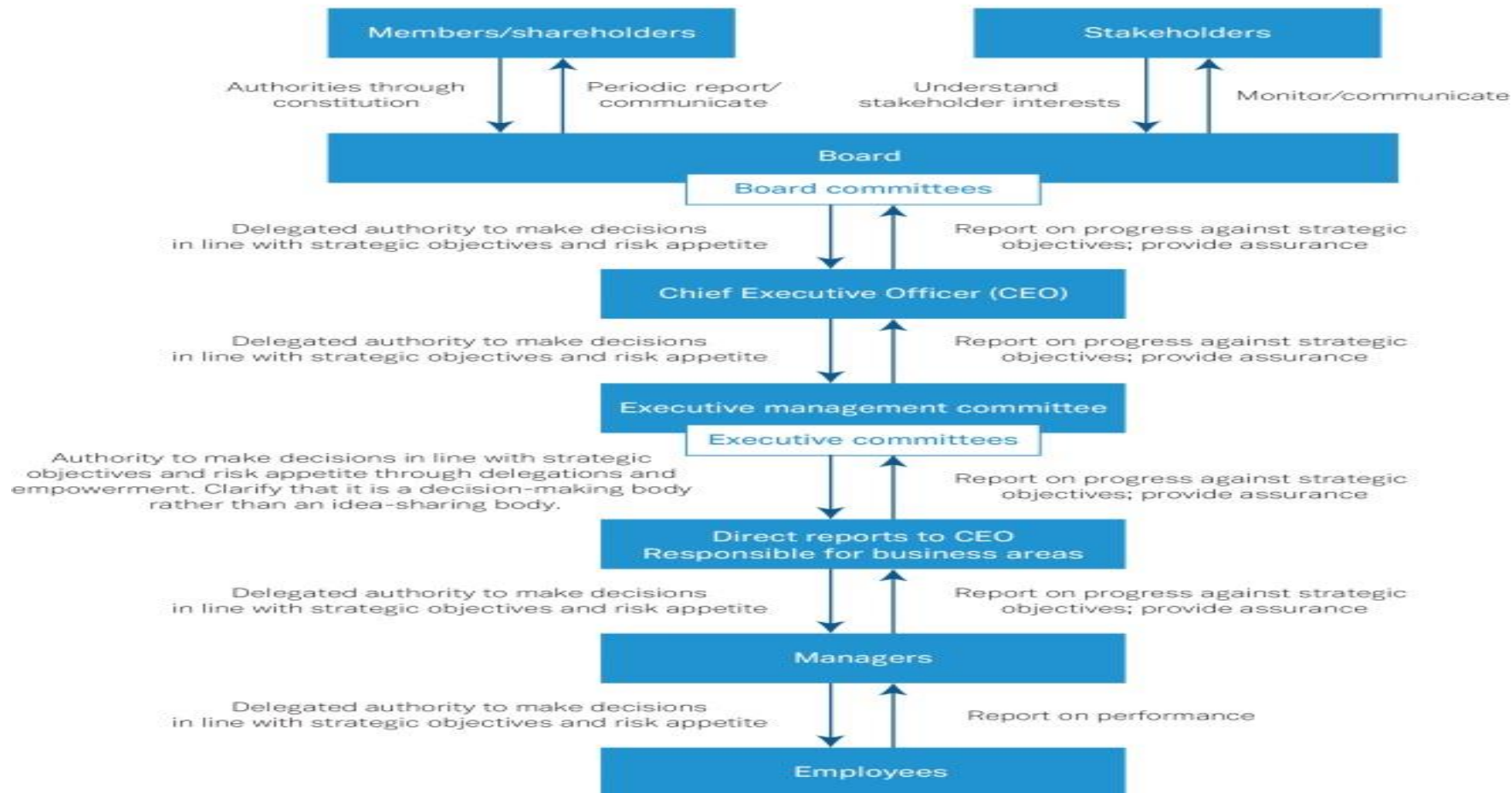
- Directors need to:
 - LISTEN – seek to understand others' viewpoints
 - Invest in key relationships – outside board meetings
 - Understand their own and others' preferences
 - Modify own behaviour to interact better
 - Adopt board processes to manage conflict
 - Encourage disagreement – allow time to debate
- Directors should:
 - Recruit directors wisely
 - Agree and articulate desired behaviours:
 - Prepare beforehand
 - Debate to an outcome
 - Demonstrate respect for others' views
 - Say what you really think
 - Before big decisions, express the emotion
 - Solidarity once decision is made
 - Give regular feedback – act quickly if needed

Top 10 tips for board members

1. Know your organisation's mission (and charitable purpose)
2. Know how your organisation operates – resources and values
3. Understand the board's role and the CEO's role and how the board performs its role and works with the CEO
4. Understand your organization's financial position
5. Always keep your responsibilities and legal duties front of mind
6. Know your Constitution, policies and the role of your board committees
7. Do not follow the crowd – have an enquiring mind
8. Understand your organisation's legal obligations and obligations to government agencies
9. Be confident to declare and manage conflicts of interest
10. Always act in the best interests of your organisation

Governance cascades down from the board

Whole-of-organisation governance



Governance check list

- Structure
 - Constitution/governing document
 - Register of members
 - Board role and structure
 - Delegations
 - Liability of members
 - Relationship with owners/members
- Charitable status (if applicable)
 - ACNC registration
 - ACNC *Governance Standards Guidance*
 - Suitability requirements (ACNC Governance Standard 4)
 - Duties of responsible persons
 - Annual financial report
- Key policies
 - Code of Conduct
 - Conflicts of interest
 - Risk Management
 - WHS
 - Whistleblowing
 - Media
 - Bullying and harassment
 - Last reviewed?

Next steps and further guidance

- Consider your documents: Constitution, policies, delegations, strategy, risk management framework, compliance program
- When were they last reviewed?
- Any changes required? Who/how will you do this?
- When and over what period?

- *Adding value to governance in aged care*, February 2017 Governance Institute of Australia
- *Guidelines: Whole of organisation governance*, October 2015, Governance Institute of Australia
- *Governance for Good*, ACNC publication at www.acnc.org.au
- www.justiceconnect.org.au
- www.asic.gov.au