

DIRECTORS' DUTIES: LESSONS FROM THE PAST TO GUIDE FUTURE CONDUCT FOR DIRECTORS – SOME PRACTICAL TIPS FOR NFPs

On 30 November 2017, we presented a webinar in partnership with Better Boards Australasia on “*Directors’ Duties: Lessons from the past to guide future conduct for Directors – some practical tips for NFPs*”.

The objective of the webinar was:-

“to gain a non-lawyers general understanding of a role of a Director in a modern incorporated entity, and to consider some strategies in fulfilling that role.”

The webinar considered Directors’ duties under:-

- Corporations Act 2001 (Cth);
- Associations Incorporation Reform Act 2012 (Vic); and
- Australian Charities and Not-for-profits Commission Act 2012.

The term “Director” was used in the webinar to include Directors, Officers, Officeholders and Committee Members.

The Webinar described the sources of Directors’ duties as being contained in:-

- General law – fiduciary;
- Statutory; and
- Constitution (of the organization).

The general law (fiduciary) Directors' duties can be defined as:-

- to act in good faith and for a proper purpose;
- to act with due skill, care and diligence;
- not to misuse information or position; and
- to disclose and manage conflicts of interest.

The webinar went on to discuss how these general duties are codified in various applicable legislation and in ACNC Governance Standard 5.

An explanation of the manner in which these duties have been interpreted by the Courts was provided in case study examples, principally from the following cases:-

- *ASIC v Hellicar & Ors [2012] HCA 17 (3 May 2012)* (the James Hardie Case).
- *ASIC v Healey & Ors [2011] FCA 717 (27 June 2011)* (the Centro Case).
- *ASIC v Sino Australian Oil and Gas Ltd (in Liq.) [2016] FCA 934 (11 August 2016)* and *ASIC v Sino Australian Oil and Gas Ltd (in Liq.) [2016] FCA 1488 (8 December 2016)* (the Sino Case).
- *Commonwealth Bank of Australia v Friedrich and Ors (1991) 9 ACLC 946* (the National Safety Council of Australia case)
- *Morley v Statewide Tobacco Services Ltd [1993] 1 VR 451* (the Morley case)

The key message of the webinar was that the Board can delegate but it can't abdicate responsibility. Similarly, a defence of "I am just a volunteer" is of itself not an adequate excuse.

The webinar also provided some practical tips in a checklist format to guide Directors of NFPs. If you would like to see the PowerPoint presentation slide deck please download below.

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