

Association Governance

PCAAE: 29 June 2015

John Peacock, General Manager, Associations Forum

Disclaimer: This is practical advice based on our work with associations and charities. The contents of this presentation do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such. You should seek specialist advice in relation to any particular matters you or your organisation may have.



© Associations Forum 2015

About Associations Forum

Associations Forum Pty Ltd is a commercial user group for not-for-profit organisations, with 500+ associations & charities as members, providing:

- *Member Meetings, workshops, AF National Conference*
- *Communications, information, surveys and resources*
- *Advice and consulting*

Our members include professional & industry associations, arts & sporting groups, charities and special cause groups.



© Associations Forum 2015

Facilitator's Career as a CEO and Volunteer Director

1. 20's – Commerce degree, large corporates; Board of professional association
2. 30's – Association manager and CEO of small association; Board of professional association and Chair of local community association
3. 40's – Established Associations Forum: providing education and advice to associations
4. 50's – Consolidation of Associations Forum and training of associations in Australasia and Asia



© Associations Forum 2015

Definitions

1. Three forms of ownership:
 1. Private businesses (ownership can be bought & sold)
 2. Government (it's compulsory and is the law)
 3. Mission-driven (involvement & control at that time)
2. "Mission-driven" organisations, which are independent and mutually owned, include:
 1. Associations = any legal cause or interest
 2. Charities = specified good causes
3. Missions include professions, industries, communities, sports, arts, hobbies, unions, NGOs



© Associations Forum 2015

Terminology

Governing Document	<u>Constitution</u> , Rules, Memorandum and Articles of Association
Members	Members
Governing Body	<u>Board</u> , Trustees, Council, (Management) Committee
Individuals on Governing Body	<u>Directors</u> , Trustees, Councillors, Committee Member
Senior Staff Person	<u>Chief Executive Officer (CEO)</u> Executive Officer (EO) Executive Director (ED)



© Associations Forum 2015

What is corporate governance?

1. "Corporate governance is the system by which (entities) are directed and controlled
2. Boards of Directors are responsible for the governance of their (entities)
3. (Members) role in governance is to appoint the Directors and the Auditors and to satisfy themselves that an appropriate governance structure is in place."

- Cadbury Report (UK) 1991



© Associations Forum 2015

How governance differs from management

	MEMBERS	BOARD OF DIRECTORS	CEO/MANAGEMENT
Number	Between 2 and 1,000,000	8 members (including Chair)	1 CEO and various staff
Why be involved	Most members only join to receive services = inactive	Actively volunteer up to 1 day per month (more if Chair)	Paid employee to implement Plan and achieve Budget
Role	Clients & stakeholders	Governance	Management
Money flow	Members pay annual fees	Directors usually not paid	CEO and staff are paid
Account-able?	No. Members can join if they wish.	Yes. Members vote on who will be on the Board	Yes. Board employs CEO and can dismiss CEO



© Associations Forum 2015

Why bother incorporating?

1. Limits liability: the corporate veil
2. Entity is sued, not individual
3. Credibility and legitimacy
4. Ease of succession from member to member and director to director
5. However, a new independent entity is created and it is more than a gathering of interests



© Associations Forum 2015

NATION	ACT / LAW	ENTITY	REGULATOR	ISSUES
Australia	Corporations Act	Company Limited by Guarantee	ASIC	
	Associations Incorporation Acts	Incorporated Association	State regulator	
Hong Kong	Companies Ordinance	Company Limited by Guarantee		
	Societies Ordinance	Incorporated Society		No limited liability ☹
Singapore	Companies Act	Company Limited by Guarantee	ACRA	
	Societies Act	Registered Society	Registry of Societies	No limited liability ☹
Malaysia	Companies Act	Company Limited by Guarantee		Need large assets
	Societies Act	Registered Society	Registry of Societies	No limited liability ☹
Philippines	Corporations Code		Securities & Exchange Comm	
Korea	Civil Act	TBA		

The importance of avoiding personal liability for Directors

1. "(HK associations) should be under either Companies Ordinance or Societies Ordinance depending on their nature.
2. But societies or associations registered under the Societies Ordinance have unincorporated structures that means members of the management committees may incur personal liability.
3. For HKMA, we are under the Companies Ordinance as a Company Limited by Guarantee".

Dr Victor Lee, Chief Executive Hong Kong Management Association



Fiduciary duty – common law

1. Fiduciary implies trust and confidence
2. Must act honestly, in good faith, and to the best of their ability in the interests of the organisation.
3. Must not allow conflicting interests or personal advantage to override the interests of the organisation.
4. The organisation must always come first



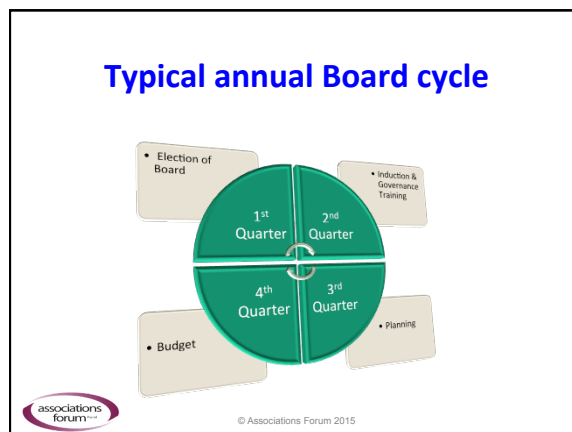
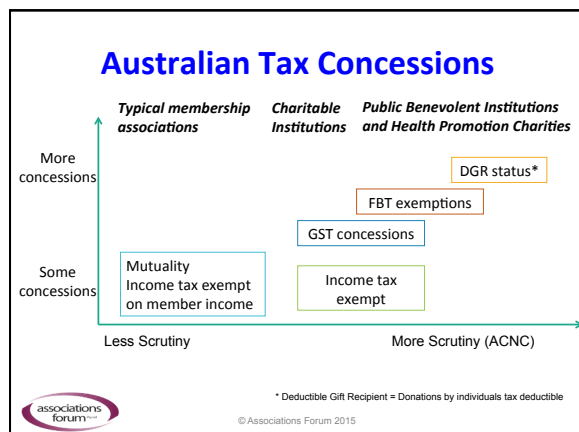
© Associations Forum 2015

Aust'n Corporations Act – duties summarised

Fiduciary duty	Common Law	Directors and Officers
Reasonable, financial, objective	s180(1)	Directors and Officers
Honest, interests of organisation as a whole, avoid conflicts, independent, positive action	s181(1)	Directors and Officers
Not to gain personal advantage	s182	Directors and Officers
Not to misuse information	s183	Directors and Officers
Avoid insolvent trading	s558(G)	Directors only



© Associations Forum 2015



Associations Forum Board Survey

	2008	2009	2010	2011	2012	2013	2014
Number Meetings Face to face	7.0	7.0	6.4	6.3	5.9	5.6	5.6
Number Meetings Total			9.4	8		8	7.4
Average Board Size	11.2	11.6	9.6	10.0	11.2	10.1	9.5
Ideal Board Size	N/A	8.4	8.0	8.6	8.5	8.4	8.1

© Associations Forum 2015

- ### Reality of being an association Director
1. Broadly same obligations as "for-profit" directors
 2. Often less resources
 3. More complex environment as making profit isn't the key objective = more interesting
 4. Usually no or minimal remuneration
 5. Directors are the stewards i.e. the current custodians
- © Associations Forum 2015

- ### Ways to attract new directors
1. Efficient structures that maximise the use of a director's time
 2. Clear expectations of level of commitment expected
 3. Clear goals and strategies
 4. Good communication and reports that impress the candidate
 5. Directors publicly acknowledged and thanked
- © Associations Forum 2015

- ### Directors are not 'delegates'
1. Directors are not 'delegates' of another body or the people who elected them
 2. It is understandable Directors who wear more than one hat may feel some responsibility to advance interests of nominating body
 3. However, Directors must act in the interests of the organisation
- © Associations Forum 2015

Board/staff relationship

RESPONSIBILITY	BOARD	STAFF
Governance	Decides "what"	Decides "how"
Personnel	Evaluates CEO	Hires and manages staff
Policy	Sets policies	Implements policies
Legal and finance	Ensures compliance and oversight, approves budget	Develops budget, manages and reports
Strategy	Plans and monitors	Plans, implements and reports
Programmes	Approves	Develops, proposes and implements
Representation	Represents to other organisations	Represents as delegated by Board



© Associations Forum 2015

Conflict of Interest

1. Fundamental duty to act in best interest of association
2. All directors must be able to say decisions made fairly and impartially
3. Most obvious where there is financial gain for director or family
4. Indirect financial benefits – giving employment to spouse, awarding grant to friend
5. Director must declare, Board must have policies on what to do if conflict arises
6. Have a standing agenda item: eg conflict register



© Associations Forum 2015

Do Directors necessarily have to act for the benefit of members?

1. Constitutions need to state the "Objects" of the association or charity
2. Directors need to work towards achievement of the "Objects"
3. Of course, the "Objects" may say "the association will help members", but this may or may not be the case



© Associations Forum 2015

Strategic Thinking

Jack Welsh (ex CEO of GE) has a series of 5 questions with the answers ultimately leading up to what he called "the Big Aha."

- What does the playing field look like now?
- What has the competition been up to?
- What have we been up to?
- What's around the corner?
- What is our winning move?



22

Members' responsibilities

1. Members must consent to join that association – they cannot be "deemed" to be a member
2. On joining, members must confirm they agree to conditions of membership e.g. Constitution and Code of Conduct
3. For CLG, members contract to "guarantee" an amount (usually small eg \$10) in the event of a windup
4. Members cannot be sued as members



© Associations Forum 2015

Directors have a duty of care but do Members?

1. **Directors** have fiduciary and statutory duties - they must act in the interests of the association as a whole
Members have no fiduciary or statutory duties and can act in their own interest, subject to the Objects
2. **Directors** must manage conflicts of interest
Members do not have conflicts of interest as they owe no fiduciary duty
3. **Directors** must meet regularly at Board Meetings to perform the governance function and make decisions
Members may choose to attend and vote at a General Meeting or not



© Associations Forum 2015

Moving from 'management' to 'governance'

1. When sufficient and regular income, staff should be employed
2. Paying for administration is the first, easier step which needs to be managed by the Board
3. Hiring an association professional e.g. CEO who will manage is a harder step
4. When management level staff are employed, the Board culture has to change from management to governance
5. Directors need avoid overwork and burnout – their role is oversight and not to do everything
6. Associations must have association and governance training



© Associations Forum 2015

Board Meetings (for Directors) cf. General Meetings (for Members)

1. Board Meetings can happen frequently and at short (but reasonable) notice according to needs
General Meetings require 21 days notice or > per constitution
2. Subject to previous advice, any subject can be raised and decided on-the-spot at a Board Meeting
General Meetings require prior documentation stating matters to be covered and no matters to come from the floor
3. Directors should not be able to give proxies to another Director - and Alternate Directors are not recommended
Members should be able to vote in person or by proxy at General Meetings

General Meetings have more process than Board meetings



© Associations Forum 2015

Boards must ensure Plans

1. Boards should focus on the Mission and strategic objectives
2. When an association employs management, Boards should allow management to achieve the Plan
3. When you know your Plan and Balance Sheet, a Budget can be developed
4. Association plans can be strategic plus operational
5. Refer to plans at every Board meeting – Board monitors
6. Plans need ownership by Board and CEO - other volunteers and staff must see where they fit in to the Plan and Budget



© Associations Forum 2015

Board matters

1. Board agenda
2. Board decisions
3. Board minutes
4. Office Bearers
5. Chairing meetings
6. Sub-Committees
7. Finances and budgets



© Associations Forum 2015

Board agendas

1. Enable Board to concentrate on items that require their input, discussion and decision
2. Order the agenda and reports as per the strategic plan
3. Avoid business arising from previous minutes
4. Items "For information" can be elevated to discussion



© Associations Forum 2015

Board decisions

1. Decisions are what is minuted or actioned
2. Formal motions may add clarity to the decision
3. However, formal motions are not obligatory nor do they need to be proposed and seconded
4. Once the Board makes a decisions, all Directors should support the decision
5. When decisions are made that Directors do not personally agree with, they may ask that their position be recorded in the minutes
6. In some circumstances, Directors may decide to resign



© Associations Forum 2015

Board minutes

1. Minutes show attendance, date & decisions
2. Minutes record context but do not attribute comments unless requested
3. Minutes are not verbatim or Hansard
4. If contentious or for clarity, do minutes live but never audio record
5. Give enough information for an historian or judge to understand what was decided
6. Minutes are private but communiqué OK



© Associations Forum 2015

Chairing meetings

1. The President of the association usually chairs Board meetings and General Meetings
2. Chairs need personal authority & attendees' respect
3. CEO supports Chair and ensures Chair is briefed
4. Agendas - clear and have timing
5. Chairs need to sense the flow of the meeting; including when to speed up or go into detail
6. At AGM, Chairs need a step-by-step "run sheet"



© Associations Forum 2015

Office Bearers

1. Office Bearers are the directors with titles
2. Sometimes referred to as "Executive Committee"
3. If very large board, often too many Office Bearers
4. Act and assist under delegation – not an inner Board and keep Board informed
5. Company Secretary - ideally not a volunteer
6. Company Secretary must receive specific training
7. All Directors share financial responsibility. Have a Finance & Audit Committee rather than "Treasurer"



© Associations Forum 2015

Sub-Committees

1. Effective sub-committees bring together a cross section of knowledge and experience to generate group consensus.
2. For staff, it provides guidance for programme planning or action.
3. The most essential sub-committee is Audit, Finance and Risk Committee
4. However as capable staffing grows, sub-committees may become less relevant and effective.



© Associations Forum 2015

Overview of Finances

1. "Not-for-profit" is the wrong term: surplus or profits are necessary
2. Reserves are never to be distributed to members
3. Directors are reimbursed for reasonable expenses
4. Adequate financial reserves are important for future growth and shocks
5. Associations & charities must have diverse incomes
6. Maintain high standard of financial reporting
7. Budgets must be linked to Plans



© Associations Forum 2015

What makes an effective Board?

1. Culture: mutual respect, openness that encourages constructive and active debate
2. Diversity: Board with a range of backgrounds, experience, expertise, age and gender
3. Delegation: the Board can't and shouldn't do it all
4. Experienced & trained Chair: encourages debate, helps resolve differences, motivates, impresses
5. Board structure and processes: including committees, Board papers and information flow



© Associations Forum 2015

Boards should not be overworked

1. Minimal "Board" work required between meetings
2. If there are no staff, need more volunteers and sub-committees plus culture of delegation
3. If paid management / CEO level staff, consider CEO as the spokesperson
4. If too many Board-required emails or calls are happening, add them to agenda for next meeting
5. Distinguish between Board's role on the Board and their role as a regular volunteer



© Associations Forum 2015

Improving Board performance

1. Boards should undertake a process of Board and meeting evaluation and assessment
2. The process should be established before a problem occurs
3. This process, often externally facilitated, occurs outside regular Board business
4. Volunteer Director assessment is challenging, but can be tackled indirectly
5. Ensure rigorous process before elections



© Associations Forum 2015

Board induction and training

1. Training starts with the written roles
2. Chair requires specific training on leadership or chairing meetings, and perhaps coaching
3. Prospective Directors need brief training to make them aware of what's coming
4. Induction of new Directors requires history, constitution, finances, governance training
5. Senior and former leaders can be mentors



© Associations Forum 2015

For ongoing viability, major change may be required

1. Most NFP organisations are viable: some tiny, niche-causes exist for years
2. Internal changes in constitution, governance, operations, services
3. Some merge with other organisation(s)
4. External influences e.g. government cutbacks
5. All associations have evolution in what they do – and some have a revolution



© Associations Forum 2015

Reminder: 'preventable' problems

1. Scandal or fraud
2. Going broke
3. Confusion as to purpose
4. Internal schisms, factions and politics
5. No regular transition to new Directors
6. Poor governance by the Board
7. Micromanagement by the Board
8. Wrong person as CEO
9. Not seeking professionals advice when required



© Associations Forum 2015

Conclusion

1. The right foundations matter
2. Associations need to understand and act upon the difference between governance and management
3. Best practice processes for Plans, agenda, minutes and so forth need to be followed
4. Then the association can service members 😊



© Associations Forum 2015

**10TH ANNUAL
ASSOCIATIONS FORUM
NATIONAL CONFERENCE**
14 - 15 JULY 2015 • ADELAIDE CONVENTION CENTRE, SOUTH AUSTRALIA



SPECIAL GUEST SPEAKER
FREE

ADL
ADL 1000000

Associations and their related business need to be innovative, flexible and able to work with all stakeholders and their members, across all sectors and all levels of government. In this session, speakers will discuss the challenges and opportunities for associations in the future.

Associations are essential to business growth and the economy. They provide a platform for business to grow and the economy to thrive. Associations are also a key part of the social fabric of our communities, providing a sense of belonging and support to their members.

ASSOCIATIONS FORUM

**Our conference
& magazine**



ASSOCIATIONS
INFORMING ASSOCIATIONS AND CHARITIES IN AUSTRALIA, NEW ZEALAND AND NZTA

NZ associations mean business
Businesses that are successful are those that are innovative, flexible and able to work with all stakeholders and their members, across all sectors and all levels of government.

STRUCTURAL CHANGE
Associations are facing a number of challenges, including the need to be more innovative, flexible and able to work with all stakeholders and their members, across all sectors and all levels of government.


PLUS
Associations are facing a number of challenges, including the need to be more innovative, flexible and able to work with all stakeholders and their members, across all sectors and all levels of government.

Thank you!

John Peacock, General Manager, Associations Forum Pty Ltd
jpeacock@nfp.net.au
 +61 2 9904 8200

www.associations.net.au

Associations Forum National Conference
 14 - 15 July 2015 Adelaide Convention Centre



© Associations Forum 2015