

SLSNSW Governance workshop

3 September 2022



SURF LIFE SAVING
NEW SOUTH WALES

What will be covered?

- Introduction
- Governance
- Constitution
- Statutory requirements
- AIA and ACNC requirements
- Legal obligations
- Boards and committees
- Judiciaries and complaints
- Finance and accounts
- Other



SNAPSHOT



- Incorporated association under the *Associations Incorporation Act 2009 (NSW)* (AIA)
- Not-for-profit
- Charity
 - NSW Charitable fundraising authority & ACNC
- Legal owners and equitable owners(members)
- Turnover
- Board/Executive
 - Elected portfolio positions

Induction

Why a Board induction?

- AIA and ACNC
- Directors' duties

Constitution

- Corporate agency
- Powers and role
- Regulations



SLSNSW Club management Induction program

<https://www.surflifesaving.com.au/resources/club-management-induction>

Introduction to Corporate Governance

- Constitution and rules
- Legal obligations
 - *AIA*, *ACNC* and common law duties
- Role of the Board
 - Governance obligations
 - Board structures
 - Role of committees & the chair
 - Conclusions

What is corporate governance?

- Corporate governance is the system by which your organisation is controlled. It is about how your organisation can better manage its resources to good effect for both members and stakeholders.
- Providing overall direction to the organisation, controlling the executive actions of management and satisfying legitimate expectations (of members) of accountability and regulation.
- Not day to day operations of the organisation – involves dealing with issues of policy, strategy and direction

What is corporate governance?

- Corporate Governance
 - process by which an entity is made responsive to the rights and wishes of members
 - relevance?
 - distinction between governance and management
 - who is a director?
 - long term or short term?

Constitution

- Constitution & rules
 - What is the Constitution?
 - Regulations
 - What should it contain?
 - Statutory requirements
 - What is its effect?
 - S 26 AIA
 - Key clauses
 - Objects
 - Board
 - Members
 - Divisions of power

Membership contract



- Contract
 - Subject to this Act, an association's constitution binds the association and its members to the same extent as if it were a contract between them under which they each agree to observe its provisions.
 - Must reapply. No obligation to renew.
 - No right or expectation of renewal.
 - Reasonableness and good faith.

Membership contract cont'd

- Contract
 - No discrimination.
 - Reasons?
 - “best interests of the Club”.
 - Refund?
 - Communication.
 - Appeal.
 - Natural justice?

Statutory requirements

- Statutory requirements
 - Why incorporate? (S 26 AIA)
 - Type of entity: Inc Assn or CLG
 - Not-for-profit requirements?
 - S 40 AIA must not provide pecuniary gain for its members
 - S 5 definition of “pecuniary gain”
 - Obligations of organisation
 - <https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/associations/about-associations>
 - Obligations of officers

AIA requirements



- S 30A Duty of Committee Members
 - Duty of each committee member to carry out his or her functions for the benefit, so far as practicable, of the association and with due care and diligence
- S 30B Personal liability of Committee Members
 - A matter or thing done or omitted to be done by a committee member, or by a person acting under the direction of a committee member, does not, if the matter or thing was done or omitted to be done in good faith for the purpose of exercising the committee member's functions under this Act, subject the committee member or person so acting personally to any action, liability, claim or demand

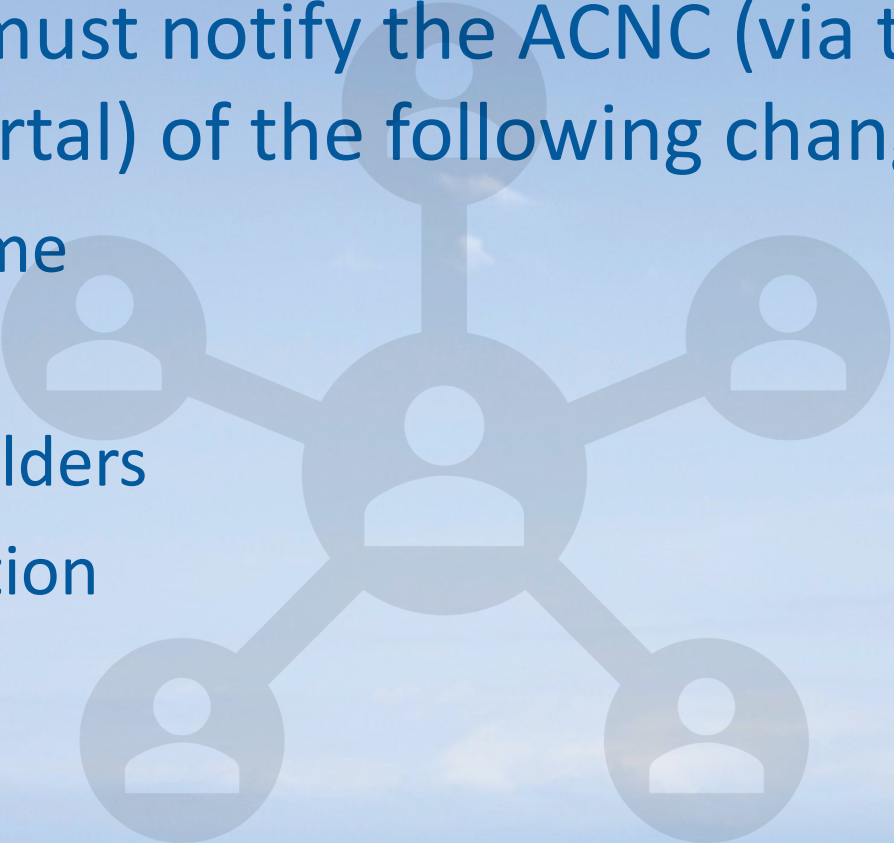
AIA requirements

- S 31 Disclosure of interests
 - Maximum penalty for a breach is 60 penalty units.
- S 32 Dishonest use of information
 - Maximum penalty: 240 penalty units or imprisonment for 2 years, or both
- S 33 Dishonest use of position
 - Maximum penalty: 240 penalty units or imprisonment for 2 years, or both

ACNC requirements

- Every charity on the ACNC Register must adhere to certain obligations and responsibilities in accordance with the *Australian Charities and Not-for-profits Commission Act 2012 (Cth)*
- Annual reporting obligations are required
- Breaches can cause revoking of status

ACNC requirements

- Charities must notify the ACNC (via the ACNC Charity Portal) of the following changes:
 - Legal name
 - Address
 - Office holders
 - Constitution
- 
- A faint, light blue network diagram is overlaid on the slide. It consists of a central circle with a person icon inside, connected by lines to five other circles arranged around it, each also containing a person icon. The diagram is semi-transparent and serves as a background element.

ACNC requirements

- Annual reporting requirements
 - Annual Information Statement
 - Financial report (medium & large charities)
 - Submission date listed on portal
 - Failure to comply can invoke penalties and revoke status

Directors' duties

- Legal obligations
 - Directors owe certain duties to the organisation and its members by virtue of the position of trust they hold (fiduciary duty)
 - Directors are bound to exercise rights and powers in good faith and for the benefit of the organisation
 - Directors are required to comply with both common law duties and statutory duties
 - If directors fail to satisfy their duties they may be liable to compensate members of the organisation or 3rd parties

Directors' duties

- Legal obligations (cont'd)
 - Duty to act for a proper purpose
 - Duty of good faith and honesty
 - Duty of care, skill and diligence
 - Duty to avoid conflict and disclose interests
 - Confidential information
 - Duty not to divert corporate opportunities

Directors' duties

- Legal obligations (cont'd)
 - Duties relating to incurring debt (insolvent trading)
 - S 68 AIA
 - Joint and several liability
 - Maximum penalty: 50 penalty units or imprisonment for 1 year, or both

Board

- Role of a board
 - Primary function is to govern the organisation, to give direction to the organisation and to accept initial responsibility for its management
 - Key functions of all boards include:
 - Monitor the performance of the senior management of the organisation
 - Adopt an annual budget (Board NOT Council or Members)
 - Ensure that internal control systems are in place (Risk)
 - Monitor the progress and results associated with these functions
 - It is usually not a director's role to take part in the day to day management of the organisation

Board

- Governance obligations
 - take reasonable steps to monitor the management of the organisation
 - acquire a working knowledge of the business of the organisation
 - keep informed of the organisation's activities and assess the safety of business practices
 - Risk management
 - maintain a familiarity with the financial status of the organisation by regularly reviewing financial statements
 - make enquiry into matters revealed by financial statements where necessary or prudent

Governance style

- Govern with an emphasis on
 - Strategy and policy advantageous to Club
 - Anticipating and planning for change
 - Objectivity but transparency
 - Strategic and ethical leadership
 - Clear distinction of roles (Board v EO v vols)
 - Collective rather than individual decision making
 - Focus on the future direction of the Club
 - Proactive rather than reactive

Board composition

- Comprise people with appropriate range of skills to ensure board responsibilities can be effectively discharged
 - Skill sets
- Develop and apply specific criteria for directorship
- Skill based as opposed to representative based
- Gender equality (?)

Selection, appointment & assessment of directors

- Formal process to nominate, select, reward and replace
- Criteria for eligibility for nomination
- Director agreements and acknowledgment
 - Terms of office
- Review the collective performance of the Board as well as individual directors
 - Establish goals and measurable objectives
- Directors should be provided with sufficient freedom of action to exercise the leadership necessary to ensure successful implementation of strategy

Board and the future

- Terms of office
 - 2 year terms
 - Staggered terms
- Succession planning
 - Routinely addressed by Board to ensure smooth transition from outgoing to incoming directors
 - Board should actively take an interest in senior management and define career path opportunities

Board and the future

- Ethics and code of conduct
 - Set the standard for the movement in the Branch Area
 - Maintain integrity and effective control
 - Develop code of conduct and identify standards of behaviour
 - Declare potential and actual conflicts of interest
 - Transparency and integrity

Board culture

The Board

- defines and models a desired culture that aligns to its purpose and strategy
- oversees a strategy to develop and maintain the desired culture
- oversees mechanisms to monitor and evaluate organisational culture
- ensures its values are clear, periodically reviewed and communicated to stakeholders
- oversees a framework for the reward and recognition of workers

Committees

- Relieve the board of certain tasks
- Capitalise upon specialist skills of persons willing to contribute their time and expertise
- Ideally, a committee will have a charter developed by the board which sets out its scope of work, roles and responsibilities
- Required to circulate minutes to the board and management
- Report to the board on a regular basis
- Should not be too large so as to compromise effective decision making

Finances and accounts

- Prepare and submit audited annual reports required under the AIA
 - S 42-45 AIA
- Report consolidated national financial accounts annually
- Meet ACNC compliance requirements
 - AIS annual statement

Other issues

- Insurance and indemnity
 - Clause 58 SLSI Constitution
 - D&O cover
 - Volunteer protection
- Risk management



FAQs



Question: *Who has access to members' SurfGuard records/accounts and what can they see? Is SLSA able to determine which members have accessed other members SurfGuard accounts?*

Answer: *Members have access to SLSA IT Systems based on the F49 application form. Clubs approve Club level access, Branches approve Branch level access, States approve State etc. Dependent on what access the Club allows will be what the member may be able see. Some can have access to input data and some can have 'read only' access where they are unable to edit any information within the records.*

YES, SLSA can track who has accessed a member's details if required.

Question: *Is there an opportunity to provide additional training and answer questions for Member Protection Officers and Child Protection Officers ? Do we have any scheduled training for this cohort in Year 1 of the Business Plan?*

Answer: *Yes. SLSNSW will be identifying and creating the training to support this roll out. This will include the MPIOs, Complaint Handlers, PPAs (which would include Club officers). SLSNSW has also identified that the general membership will need some support to understand the policies. Training will be linked to the roll out of the policies.*

FAQs

Question: *Is it possible to have Skills Maintenance online theory component released prior to September 1?*

Answer: There is currently Skills Maintenance online theory components within the Members Area.

Question: *Please clarify the point that Clubs should be minuting membership applications and transfers? Should a club Registrar provide a list of the pending applicants at every meeting?*

Answer: It is recommended that a list of renewals be endorsed by the Club Board/Executive Committee, especially at the beginning of the season, as some Club Constitutions notes that membership is accepted by the relevant Boards: *"The Board has the sole discretion of deciding whether to approve or reject any application for membership. Where the Board accepts an application, the applicant becomes a Member upon acceptance and that Member shall be added to the Register."*

A list of membership renewals should be included with the documents distributed to the Executive who are considering the membership renewals and transfers in and out. Minutes do not need to be distributed.

Conclusions

Corporate governance is:

- common sense and knowing your responsibilities
- understanding and meeting your legal obligations
- listening to your members and other stakeholders and responding to them
- carefully monitoring the activities and finances of your board and your organisation
- attending and actively participating in the governance of your organisation

QUESTIONS?

THANK YOU

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