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Orana Steiner School Board Paper

Prepared by Dr Paul Teys, 21 July 2022

Governance and Management

The Role of Governance

Boards are responsible for governance in their school and carry ultimate responsibility for the school's overall performance, success, and direction. While the principal runs the school, the board's role is to ensure it runs well and in the right direction.

The board governs, and management (the principal and school executive) manages. This means directors operate on a strategic, 'big picture', longer-term basis. At the same time, the school executive is focused on the delivery of strategy, day to day activities, the short-term challenges.

Directors act only as a group, not as individuals. They come together to make joint decisions about the direction of the school and are individually and collectively liable for their decisions.

Key governance responsibilities of school boards include:

- set culture and codes of conduct
- overseeing the school's strategy and its development
- monitor organisational performance
- appoint and review the principal
- ensure compliance
- risk management
- build the chair and principal relationship
- establish the policy framework for governance
- effective board self-evaluation
- stakeholder evaluation
- review plans and budgets established by the school management
- approve all material expenditures outside the budget
- maintain the solvency of the school.

For optimal performance, boards and management must work together cohesively as a team with respect and candour.

Responsibilities and expectations of the board include:

- being prepared for board meetings, reading board papers, showing curiosity, and asking thoughtful questions
- making quality informed decisions based on relevant and material information being available to the board, especially from management
- overseeing, managing, and holding management accountable
- satisfying itself of the competence, capability and capacity of management
- sharing learnings, experiences and insights from board members' and experience
- being visible to the school and attending key management, school and community events

- building relationships with and accountability to staff, parents, and regulatory authorities.

Legal Obligations of a Board Director

Each board director of an Australian company owes duties to the company established by statute and by common law. With a fiduciary relationship existing between a director and the school, there is an overriding responsibility to act in the school's best interest. Thus, the legal duties imposed by the Corporations Act 2001 and at common law aim to protect the school. In addition, it ensures that directors satisfy high standards of good faith and loyalty to the school.

Four Primary Duties

Both statute and common law have developed the legal obligations imposed upon board directors. Specifically, the Corporation Act specifies four primary duties for directors, which similarly exist in common law:

1. Exercise powers with reasonable care and diligence

Imposes an obligation on the director to act with the degree of care and diligence that a reasonable person would exercise if in that role. Fulfilling this duty involves keeping informed about the school's activities and appropriately guiding and monitoring the school's activities. Additionally, a director should attend and be attentive at board meetings unless exceptional circumstances prevent otherwise.

2. Act in good faith

This duty requires a director to act in good faith in the school's best interest and for a proper purpose. Common law considers this duty a fiduciary duty. Indeed, to act in good faith includes avoiding conflicts of interest and properly managing conflicts if they arise. A director will breach this duty if they fail to consider the separate interests of the school ahead of other interests.

3. Not to improperly use position

Directors must not improperly use their position to gain an advantage for themselves or the school's detriment. For example, a director should not apply the school's property for their benefit or any other person without the school's authority.

4. Not to improperly use information

Like the above duty. Directors must not improperly use the information gained during their position as board directors to gain a personal advantage or to cause a detriment to the school. They must not make unauthorised use of confidential information belonging to the school.

Other Statutory Duties

In addition to the four basic duties, there are other legal duties that the Corporations Act imposes.

Directors have a duty to prevent insolvent trading:

- when the school is insolvent; or
- when, by incurring the debt, the school becomes insolvent; and
- there are reasonable grounds for suspecting that the school is insolvent or will become insolvent at the time of incurring the debt.

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Keeping of Financial Records

Directors are expected to take reasonable steps to ensure that the school complies with its obligations regarding the adequate keeping of financial records and financial reporting.

Disclosing Interests

Under the statute, directors should also disclose matters relating to the school's affairs in which they have a personal interest. Consequently, this imposed responsibility helps ensure the director is acting in good faith, as the overriding duty of the fiduciary relationship is to act in the school's interest.

Consequences of Breaching Directors' Duties

If a board director breaches one of their legal obligations, they can be liable under Australian law. The legal consequences can vary depending upon the severity of the breach and the particular duty breached.

Proceedings can be brought against a breaching director either by:

- the school.
- staff or parents.
- regulators such as ASIC or the ACCC
- third parties for misleading and deceptive conduct or anti-competitive behaviour; or
- creditors.

Both statute and common law impose various legal obligations upon a board director that are considered significant legal responsibilities—designed to protect the school and ensure that directors satisfy high standards of good faith and loyalty to the school.

With the relationship between a board director and the school being fiduciary, it is imperative that a director acts in good faith and does not engage in any activity that could be to the school's detriment. Indeed, there can be severe legal consequences when breaching a director's duty, so it is important if you are a director to be aware of your duties both in common law and statute.

Distinguishing Governance from Management

Defining the differences between governance and management responsibilities determines whether a duty or responsibility focuses on the big picture. Guiding questions to determine whether something falls under governance and is thus the board's responsibility:

- Is it about the future?
- Is it core to the mission?
- Is a high-level policy decision needed to resolve a situation?
- Is a red flag flying?
- Does the principal want and need the board's support?

Board of Directors and Management

Boards should refrain from getting directly involved in daily matters. Without being directly involved, boards must work closely with managers by providing guidelines.

Management should be sharing financial reports, the annual budget and other reports to assist the board in their monitoring duties. Boards analyse financial reports for risks and make many decisions, including decisions about significant acquisitions, disposals and capital expenditures.

The board recruits, appoints and monitors the appointment of the principal, reviews their performance, and sets their pay and other benefits. Boards allow managers to develop their operational strategies, and boards review the strategy to ensure they're in keeping with the overall planning.

The Role of the Principal and School Executive

Together with the school executive, the principal is responsible for school management. School management is about the day to day running of the school. It includes the organisation of the teaching and learning, recruitment and performance management of all staff, curriculum planning, and assessing learners and educators/teachers.

The school executive is also responsible for recommending goals and policies, developing plans and budgets in support of the strategic direction set by the board, enforcing policies set by the board, establishing operating procedures, and creating a work environment in which everyone thrives.

In carrying out their responsibilities, the principal has a duty to the board to:

- reporting relevant material information to the board.
- stimulating board discussion on emerging issues.
- assisting the board in analysing and considering issues.
- seek the board's counsel.
- responding to issues raised by the board.
- be responsive to requests for additional information; and
- communicate with honesty and transparency.

While school boards and school executives have different roles, effective governance and the ultimate success of your school rely on the two working closely together and respecting each other's areas of responsibility.

Open, transparent, respectful, and cooperative relationships will make the work of the board and executive easier. Still, it will also reduce the risk of conflict to the benefit of the whole school.

Relationship between individual board members and executive management

Individual board members have no inherent authority or executive power.

Enquiries by board members of management and by management of individual board members should primarily be channelled via the Chair and Principal.

Where there is any direct material contact between individual board members and executive management, the chair, principal, and board secretary should be kept informed by way of courtesy.

References:

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