



**Forward Directions in  
Governance**

**GOVERNING FOR SUSTAINABLE  
HUMAN DEVELOPMENT AND THE  
COMMON GOOD**

Immersion Tour and Roundtable

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Rome

# Overview

- Our duties
- The changing expectations for those in a Governance (oversight) role – what is “reasonable”
- The importance of:
  - a board-management relationship;
  - The importance of strategy; and
  - The value of information

## Why Do we have a Board?



Too many to sit around the table

# Who owns the organisation?

1. Act in good faith and best interests of organisation as a whole
  - Those who only speak from one interest may be misusing their privileged position to steer resources
  - Argue for your area with passion, but not the only time you engage – Speak as a director first, functional expert second
  
2. Act with care and diligence
  - Do some homework – not what an expert says but what is reasonable
  - Court not interested in price (unless negligent) but is interested in bias

..... Duty of Interest

= Conflict of interest (when it is misused)

## So always remember...

- It might be that a duty of good faith is no more than a duty to act reasonably....
- A director or other officer of a corporation must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise (s180 Corporations Act (2001))

Reasonable behaviour....

=  $f$  (Society Expectations)

... expectations have changed

And the law has evolved..

... with great impact on the relationship between those in governance and those in management

# From whence we came

**Governance / Management relationship**

Master/Servant relationship

1990s/2000 – turn of the century

**Legal Environment**



**Governance Challenge**

What did the directors know?





# The Challenge of Modern Governance

## Governance / Management relationship

Master - Servant

- Reliance on management
- Reliance on advisers

2007



## Legal Environment

## Governance Challenge

What should the directors know?

# Growing responsibility for culture

**Governance / Management relationship**

Need for an engaged culture  
Reliance on management to inform – good and bad



**Legal Environment**



**Governance Challenge**

Did the board create a culture that led to the illegal act?

# The future?

**Governance / Management relationship**

Board responsible for culture  
Engaged Management  
Supported with positive assurance



**Legal Environment**



**Governance Challenge**

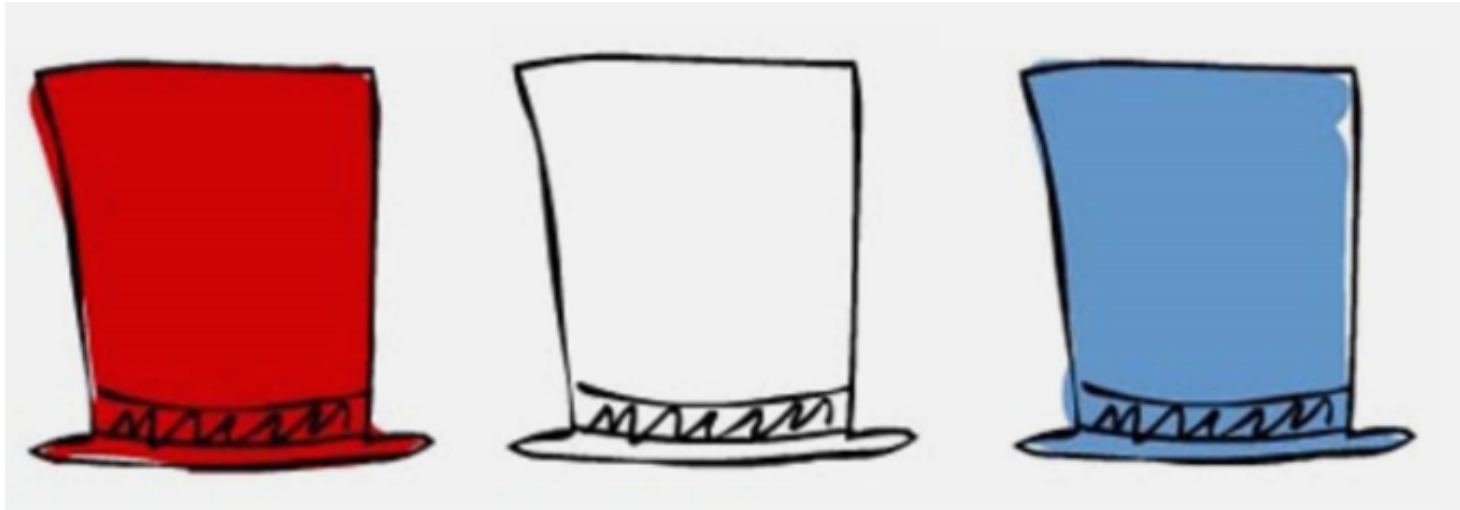
How do I know if what is meant to be happening, IS happening?



## Areas to consider

- Align Board reports to governance outcomes and responsibilities
- Gives those in an oversight role comfort that
  - what's meant to be happening is
  - initiatives are on track
  - there is a culture of outcome, not activity
- Supports governance to the issue, when needed – not just to the calendar
- Allows time-poor directors to clearly and quickly see key governance issues
- Provides comfort that today and tomorrow are under control, so Board/Committee can focus on next month and next year
- Clear distinction between “ownership”, “oversight” and “management”
- Build an engaged, trusting relationship both within the Board and with the management

# Three Hats of Governance




**“Owner”/  
Stakeholder**

**Steward**

**Management**

## Lessons from Hayne

- Shareholder  Stakeholder
- “Noses in fingers out.....  
... until it is “reasonable” to put the fingers in”

# Master-Servant Relationship

from



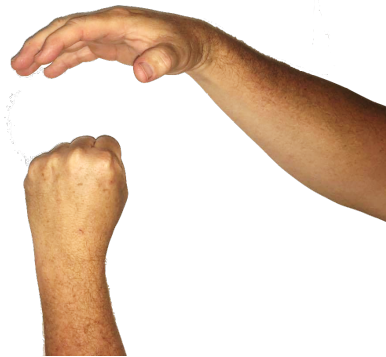
## Governance Impact:

- Detailed governance papers – bordering on management
- Little direction on risk/return and resource allocation
- Response to questions

**but what is the right question?**

# The modern relationship has evolved

to



## **Governance Impact:**

- Succinct, focused board papers supporting oversight
- Positive assurance
- Focus on Governance Outcomes
- Set the tone for a culture of accountability & outcome, rather than activity



# The Right Information

“Boards cannot operate properly without having the right information. And boards do not operate effectively if they do not challenge management.”



Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Commissioner Hayne

“it is the entities, their boards and senior executives who bear primary responsibility for what has happened, close attention must be given to their culture, their governance and their remuneration practices.”

# Damage to reputation

“These are bright signs that reputation risk, historically tried in the court of public opinion, is now both a corporate and personal matter in the court of law. Directors and officers would be wise to head off this new material corporate and personal exposure with an appropriate protection strategy.”

Reputational Risk: A Bigger Piece of Investor Legal Actions

By Dr. Nir Kossovsky

“What recent actions against SeaWorld, Wells Fargo, and others, portend for corporate and director exposure” April 30, 2019

“Today’s Societal expectations are next years law....”

# Forward Directions in Governance

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