

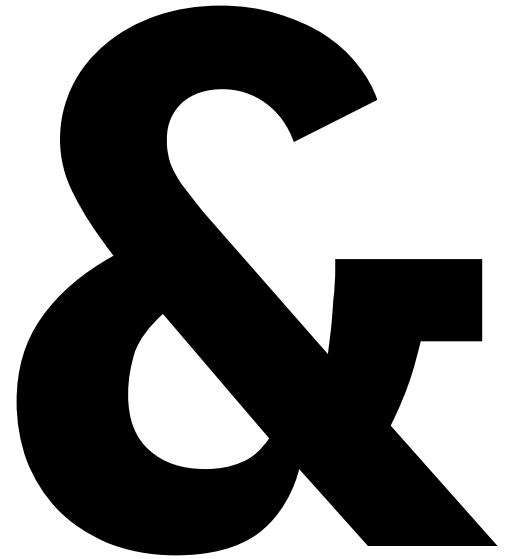
DEALING WITH DISPUTES IN THE BOARDROOM

*NSW Office of Sport
SSO Professional Development Webinar*

30 November 2022

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**LANDER
& ROGERS**



AGENDA



Introduction

Distinction between debate and a dispute

Types of board disputes and conflicts

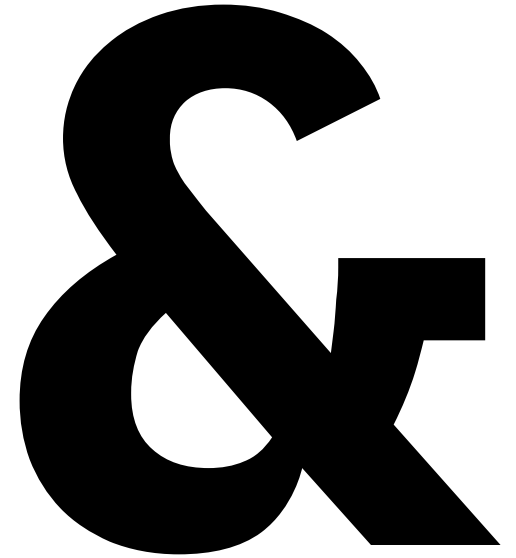
Chair's role

You have a dispute – what next?

Managing and resolving a dispute

Things to consider

Methods of avoiding future disputes



INTRODUCTION

While SSOs will have policies and procedures to deal with complaints or grievances by individual and club members, staff and the public, there is often a lack of process and a reluctance to deal with conflicts in the boardroom.

Directors of SSOs have fiduciary duties to their organisation and have a responsibility to implement good governance. The board is expected to operate collegially. Each director brings to the boardroom their own skills, knowledge, and experience, and has a duty to apply them for the benefit of the organisation.

An effective board seeks to stimulate the flow of ideas, identify key issues, consider alternatives, and make informed decisions. To do so requires often vigorous debate, which can sometimes turn into conflict, but there are more reasons why issues might arise. Such disputes must be dealt with as soon as possible, since if left unresolved, they can undermine the board's effectiveness and the organisation's performance.

DISTINCTION BETWEEN DEBATE AND A DISPUTE

Common principles

- Distinction between robust discussion and a dispute
- Level of tension and disagreement is healthy
 - Can boost board effectiveness
 - Necessary to avoid groupthink
 - Legal problems without critical questioning
 - There is a tipping point – effectiveness or otherwise
- Diversity and its effect
 - Increasing diversity on SSO boards – age, gender, nationality, professions, experience in the sport
 - Different individuals with different attitudes, behaviours, backgrounds
 - Varying areas of expertise and risk appetites
- Overarching directors' duties



TYPES OF DISPUTES AND CONFLICTS

Conflicts of interest

- Whether a director is subject to a material personal interest
- Dealing with an actual or perceived conflict of interest

Misuse of board documents and information

- Leaking information
- Failing to maintain necessary confidentiality

Financials and risk

- Strategic and operational decisions of the organisation
- Various areas – capital expenditure, key procurement (TV / commercial rights), engagement of contractors

Undermining board decisions

- Failing to support board decisions
- Actively undermining resolutions of the board



TYPES OF DISPUTES AND CONFLICTS

Interpretation of rules, policies and procedures

- Scope, application, effect, outcomes

Relationships with other members

- Disciplinary matters / breaches of SSO rules
- Supporting 'mates'

New directors

- Prospective or preferred candidates
- Appointed Directors / casual vacancies

Chair / succession

- Identity of chair
- Additional terms in office

Relationship with CEO / management

- Access to information
- Decision-making

&



CHAIR'S ROLE

Responsibilities

- First among equals
- Managing debate
- Informal conflict resolution
- Addressing unacceptable behaviour

Enforcing applicable policies and procedures

- Adopting appropriate board charter and code of conduct
- Enforcing applicable policies and procedures
- Seeking advice as required



YOU HAVE A DISPUTE – WHAT NEXT?

Applicable documents

- Are there any policies / regulations that govern behaviour of directors?
- Board charter / code of conduct / governance policy
- Does the conduct breach the Constitution or any delegated policy?
- Is there a potential breach of directors' duties?

Differences between incorporated associations and companies

- Differences between action that can be taken
- Ability (or otherwise) to remove directors
- Clause in Constitution

- (g) is directly or indirectly interested in any contract or proposed contract with the Association and fails to declare the nature of their interest;
- (h) in the reasonable opinion of the Board (but subject always to this Constitution) has:
 - (i) acted in a manner unbecoming or prejudicial to the Objects and interests of the Association; or
 - (i) brought themselves or the Association into disrepute;
- (i) is removed by Special Resolution; or
- (j) would otherwise be prohibited from being a director of a corporation under the *Corporations Act 2001 (Cth)*.

CORPORATIONS ACT 2001 - SECT 203E

Director cannot be removed by other directors--public companies

A [resolution](#), request or notice of any or all of the directors of a [public company](#) is void to the extent that it purports to:

- (a) remove a director from their office; or
- (b) require a director to vacate their office.

YOU HAVE A DISPUTE – WHAT NEXT?

Consider the best approach

- *Can the chair talk to the director/s?*
- *Can the situation be salvaged?*
- *Can one director be convinced to resign? Could this option be cushioned by an agreed statement about why they are resigning?*
- *Is there damage to the perception of members/reputation of the board going to be more significant/problematic than the difficulties encountered with the director/s?*
- *Is there another director who would be perceived as friendly, that could sit down and talk through the board's concerns?*
- *Is there an actionable breach of a relevant document?*
- *Can the director be removed?*
- *Is there a required dispute resolution process or procedure?*

MANAGING AND RESOLVING A DISPUTE

Issues to consider

- Defamation
- Directors' duties
- Stakeholder management
- Media / communications
- Whistleblower requirements (companies)
- Relevant dispute resolution process
- Applicable disciplinary action
- What has the director signed?
- Removal / vacation of director – by directors or members



THINGS TO CONSIDER

Considerations moving forward

- What does your SSO Constitution say about:
 - automatic vacation of office;
 - removal (by members or directors)?
- What documents do you have in place governing director conduct?
- Have you previously had disputes? How were they resolved?
- Are your directors aware of the dispute resolution process?
- If a CLG, do you have a whistleblower policy in place?

If I am found by a majority of my fellow Directors acting reasonably and in good faith that:

- I have not upheld my duties and/or legal responsibilities as a Director;
- I have not acted in the best interests of [REDACTED];

Board Charter & Governance Statement

July 2022

- I have failed to attend a minimum of 60% of General Committee meetings (without the approval of the President based on extenuating circumstances) and are considered not to be meeting my obligations as a Director;
- I have failed to follow a Board resolution;
- I have breached this Code of Conduct or the Constitution or other rules, regulations, policies or by-laws of [REDACTED];
- I have been charged with or convicted of a crime;
- I have breached confidentiality;
- I have brought myself or [REDACTED] into disrepute as a result of my action or omission including any statement I make;
- I have made disparaging comments about other Directors, management or [REDACTED] or
- I have acted in a manner prejudicial to the interests of [REDACTED] or unbecoming of a Director;

I hereby agree that my position on the Board would be no longer tenable and that I will submit my written resignation immediately.

Signature of Director

Date

METHODS FOR AVOIDING FUTURE DISPUTES

What can your SSO do?

- Director induction processes – expected behaviours; alignment with values and culture
- Director training – fiduciary duties, being an effective director, proper conduct
- Regularly review the conduct and effectiveness of the board
- Encourage open, honest feedback on board dynamics and leadership
- Adopt appropriate dispute resolution processes – informal before formal
- Manage disputes head on – do not avoid or leave unaddressed



QUESTIONS

This presentation cannot be regarded as legal advice. Although all care has been taken in preparing this presentation, readers must not alter their position or refrain from doing so in reliance on this presentation. In particular, the clauses included in this presentation are randomly selected from sample project documents and are not to be assumed to be drafting models. Where necessary, advice must be sought from competent legal practitioners. The author does not accept or undertake any duty of care relating to any part of this presentation.

KEY CONTACTS



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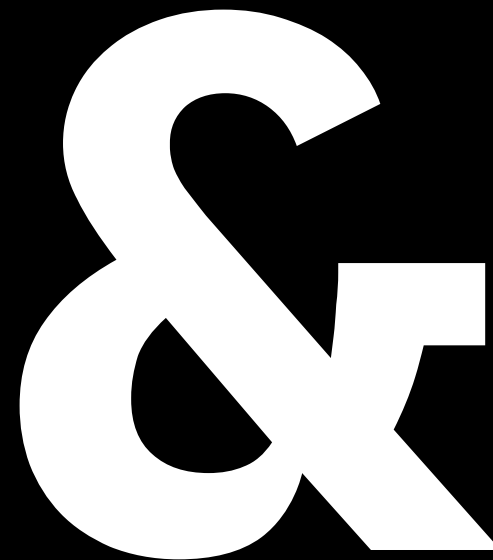
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THANK YOU!



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