

Legal Framework of Governance

Course outline

Acknowledgements

Written and designed by:

Professor Michael Adams FGIA Head of School of Law, University of Western Sydney (at the time of authoring), now Head of School, University of New England Law School

Revised by:

Anne Wardell, Lecturer at University of Technology Sydney, Faculty of Law

Copyright

Copyright strictly reserved. No part of these course materials covered by copyright should be reproduced or copied in any form or by any means without the written permission of Governance Institute of Australia.

© Governance Institute of Australia Ltd 2022

Course Outline

All corporate governance practitioners need to understand the Australian governance framework and have a basic understanding of the Australian legal system. Although corporate governance has a broad meaning that covers various disciplines, including management, finance, accounting and law, the focus of corporate governance tends to be firstly on minimum compliance obligations and secondly on the structures, policies and procedures that go above and beyond the legal standard and instil a culture of compliance and good governance.

The core principles of corporate governance are founded in common law and statutory obligations that are owed by corporate entities or their senior officers and directors. These legal obligations create the minimum standard and fall into the following broad categories:

- Laws in relation to the governance of corporations: the exercise of powers of officers and directors and their obligations to members.
- Laws for the protection of public assets or the achievement of social goals: workplace health and safety, environmental protection and the elimination of workplace discrimination and harassment.
- Laws in relation to public sector ethics and accountability, corruption prevention, misuse of statutory powers and the protection of whistleblowers.

Companies should strive to reflect 'best practice' in corporate governance. This means going beyond the minimum compliance obligations and implementing policies and procedures that embed a culture of good governance. The ASX Corporate Governance Council's Corporate Governance Principles and Recommendations (4th edition, 2019) are an example of guidelines that encourage practices beyond the minimal legal requirements.

The aim of this course is to outline the various definitions and legal frameworks that underpin corporate governance and provide an understanding of the key principles and statutory requirements associated with being a director or officer of an organisation.

The key objectives are to:

- recognise that good corporate governance practice goes beyond the minimum compliance obligations and involves embedding an organisational governance culture
- provide an overview of the Australian corporate governance framework and the different types of corporate structures
- examine the various sources of Australian law and governance-related areas of law
- outline the fundamental governance duties of directors and officers
- recognise the importance of due diligence and compliance programs in managing governance obligations.

Course content

1 Introduction

- 1.1 What is the background to this course?
- 1.2 What is the aim of this course?

2 Legal framework of the corporate legislation

- 2.1 Why is the legal framework of corporate legislation relevant to corporate governance?
- 2.2 Background to the legal framework
- 2.3 Structure of the corporate legislation
- 2.4 Corporations Act bodies

3 What is corporate governance?

- 3.1 Definitions of corporate governance
- 3.2 Overview of the Australian corporate governance framework

4 Governance law

- 4.1 Sources of Australian law
- 4.2 Areas of governance-related law
- 4.3 Civil and criminal classification
- 4.4 Legal actions and processes
- 4.5 Additional legal/regulatory requirements

5 Corporate structures

- 5.1 Historical background
- 5.2 Types of corporations

6 Duties of directors and officers

- 6.1 Who are corporate officers?
- 6.2 How does the law define an officer?
- 6.3 Who are senior managers?
- 6.4 The company secretary
- 6.5 Who are the directors?
- 6.6 Fundamental duties of officers

7 Managing governance obligations

- 7.1 Due diligence
- 7.2 Compliance programs

8	ASX corporate governance principles and recommendations
8.1	Overview
8.2	Governance principles
8.3	Foreword to the 4th edition
8.4	4th edition revisions
9	Final report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
10	Role of the company secretary today
10.1	Investor relations
10.2	Insurance and superannuation
10.3	Employment
10.4	Intellectual property
10.5	Personal property securities reform
10.6	Environmental issues
10.7	Competition and consumer legislation
11	Conclusion
12	Resources
12.1	Legislation and regulators
12.2	Standards and guidelines
12.3	Governance Institute resources
12.4	Reference books
12.5	Reports and journal articles
12.6	Other resources
13	Readings