



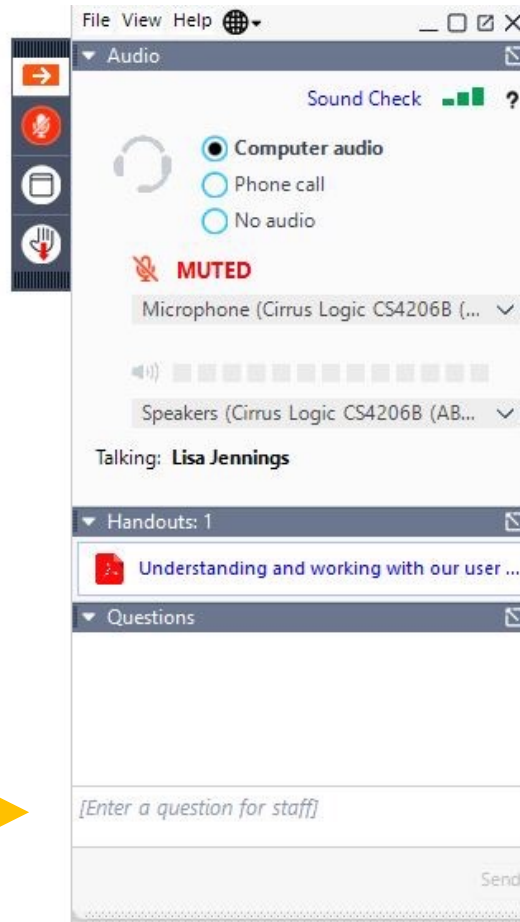
Being a committee member made easy

Laura Mondon, Institute of Community Directors Australia

Tuesday 3 May 2022

Please get involved!

Use the arrow to expand the webinar control panel



Submit comments and ask questions at any time

Click on the questions tab & type your question during the webinar

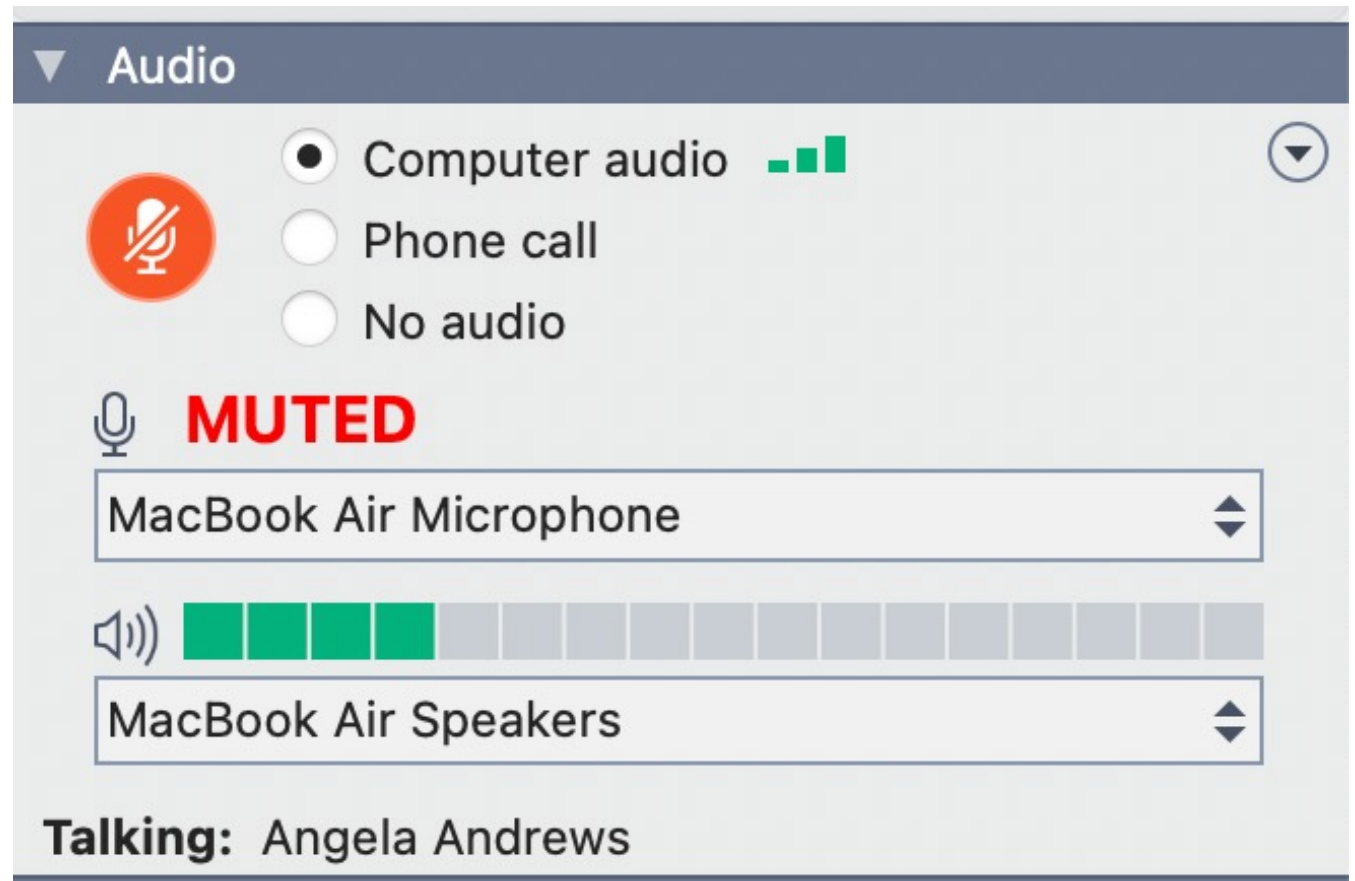
You can download a copy of the slides from Handouts

NB: Today's webinar is being recorded and will be available for watching at a later stage

Audio problems

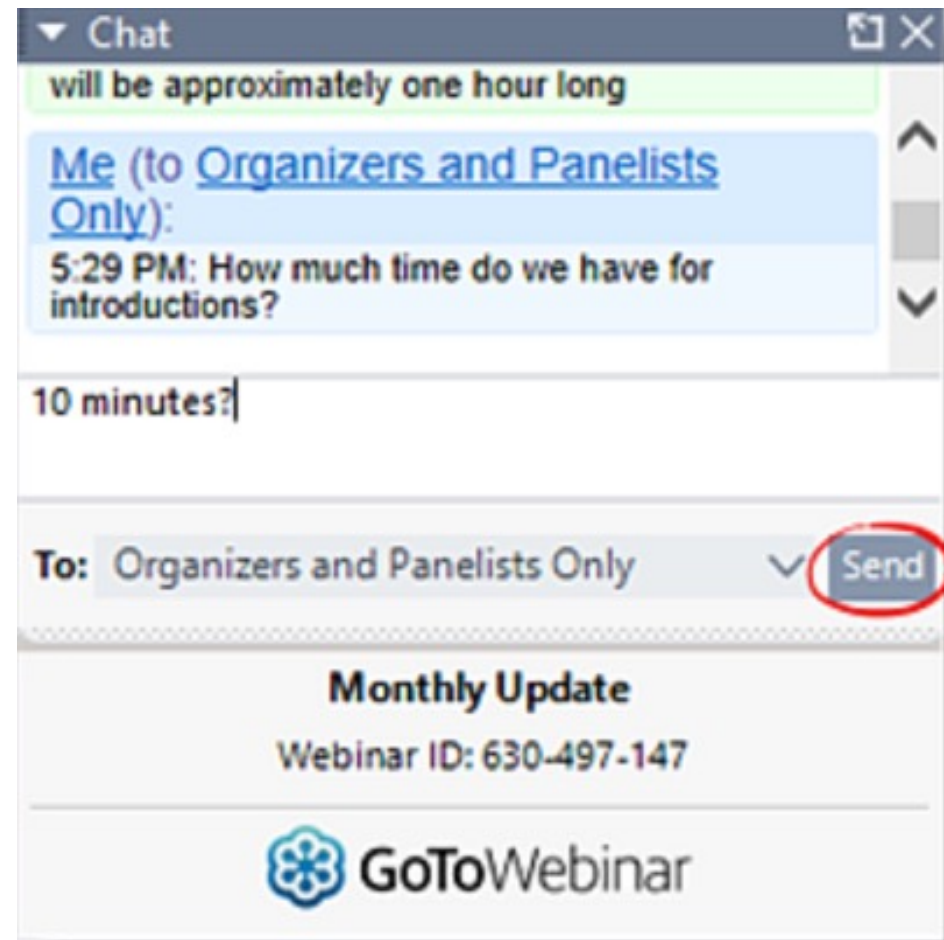
If you have no sound, please open the “Audio” section of the panel.

Then click “Phone call” and then “Computer audio”



Audio problems

If you still have no sound, please check the “Chat” section of the panel for a message from the Organiser for assistance.



A note on language

Committee	means the governing body of a community organisation, community group or school	<ul style="list-style-type: none">• Councils• Board• Committees of Management
Committee member	means a member of a governing body	<ul style="list-style-type: none">• Board Members• Directors• Trustees
Chair	means the board's head person or the person in charge of the meeting	<ul style="list-style-type: none">• President
Chief Executive Officer (CEO)	means the (paid) head manager of the organisation	<ul style="list-style-type: none">• Managing Directors• Administrative Officers• Principals

Introduce yourself

- Your name
- Your position, role or title and how long you've been involved.

What we will cover

What is good governance and why does it matter?

Committee responsibilities

Role of the committee

- Governance and management

Core duties

- Fiduciary
- Legal

Constitution



The importance of good governance

What is Governance?

“The systems and processes put in place to steer an organisation’s operations and directions, stipulating the rights and responsibilities of the board (or committee), staff and other stakeholders to ensure it meets its purpose”

Institute of Community Directors Australia



What is Governance?

“Governance is like the brain and the nervous system.

“When working well it provides clear direction, anticipates danger, communicates, is inclusive, moves and acts, all the while giving out and receiving information so that it can take remedial action and change course.

“Poorly governed organisations have poor ‘nervous’ systems.

“They can’t always see where problems are likely to occur or have occurred and they don’t scan their environment or listen to messages from users.”



Broad board responsibilities

Meetings – decision making

Policy

Leadership
(Organisational purpose & strategic direction)

Risk management

Renewal & succession

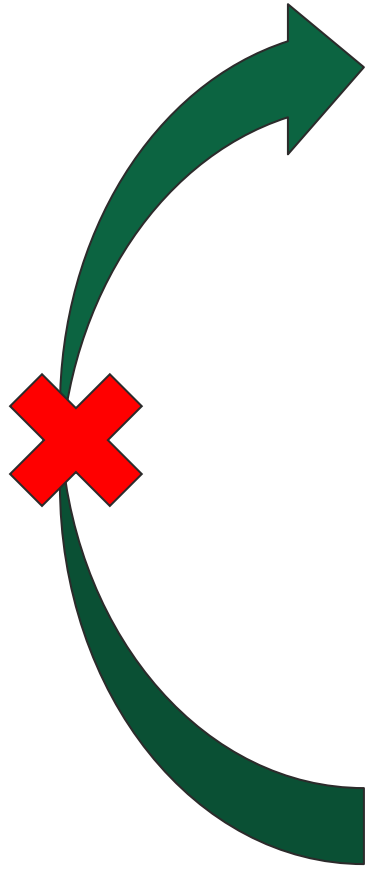
Advocacy

**What is the difference between
governance
and
management?**

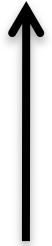
What should the Committee do?

GOVERN
not
MANAGE

'Noses in hands out'



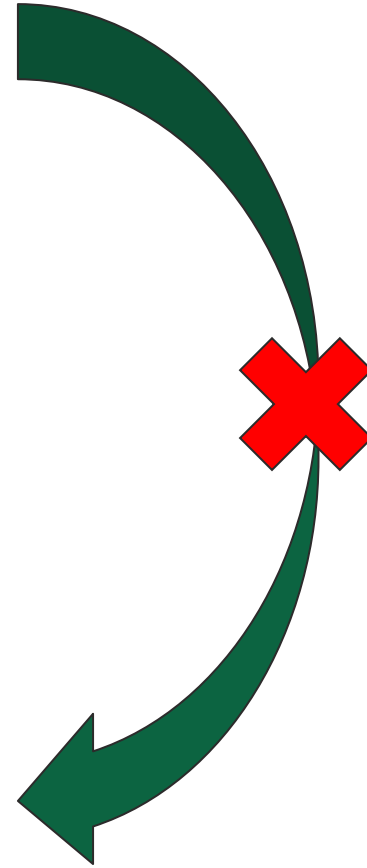
BOARD



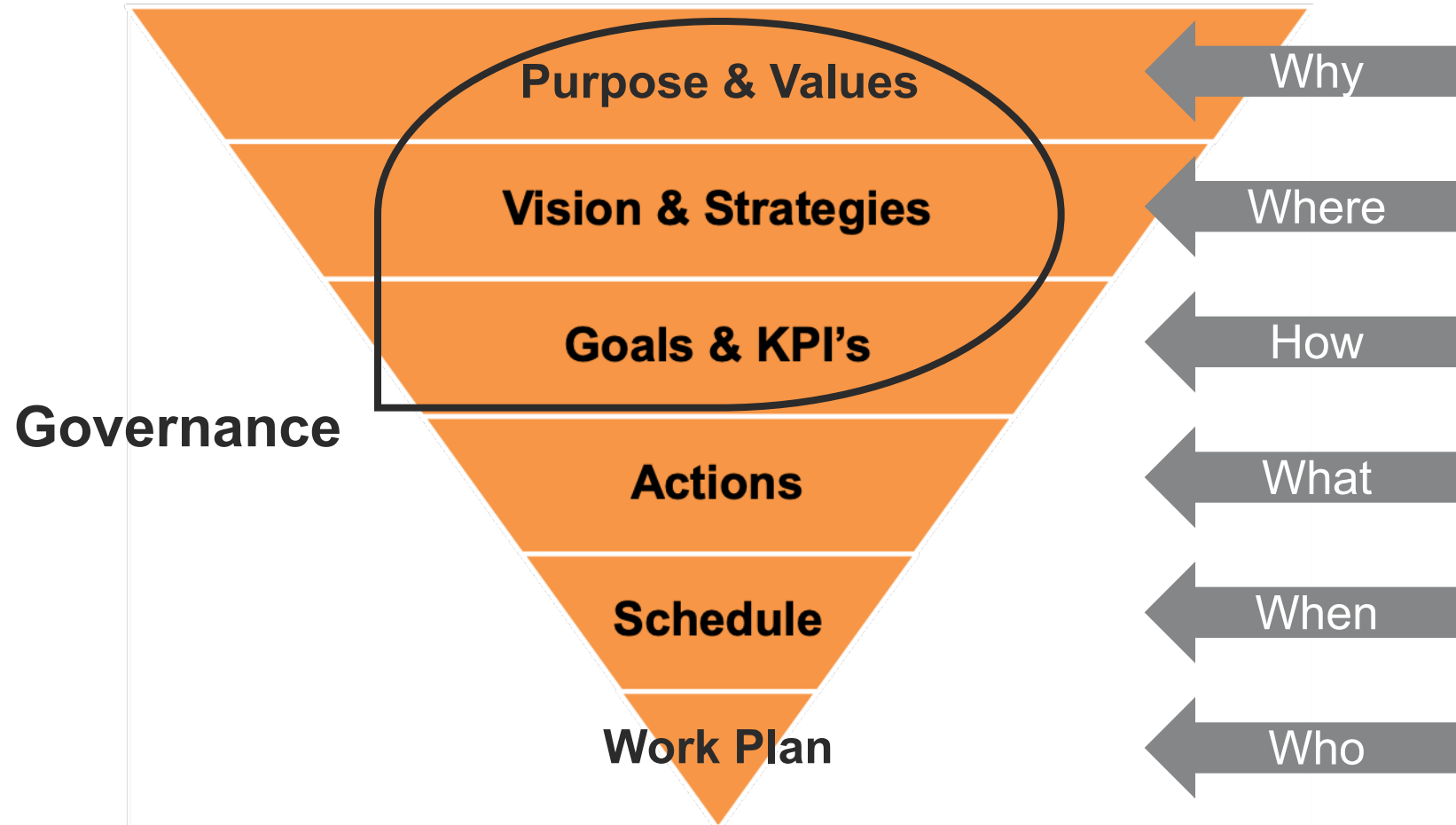
CEO



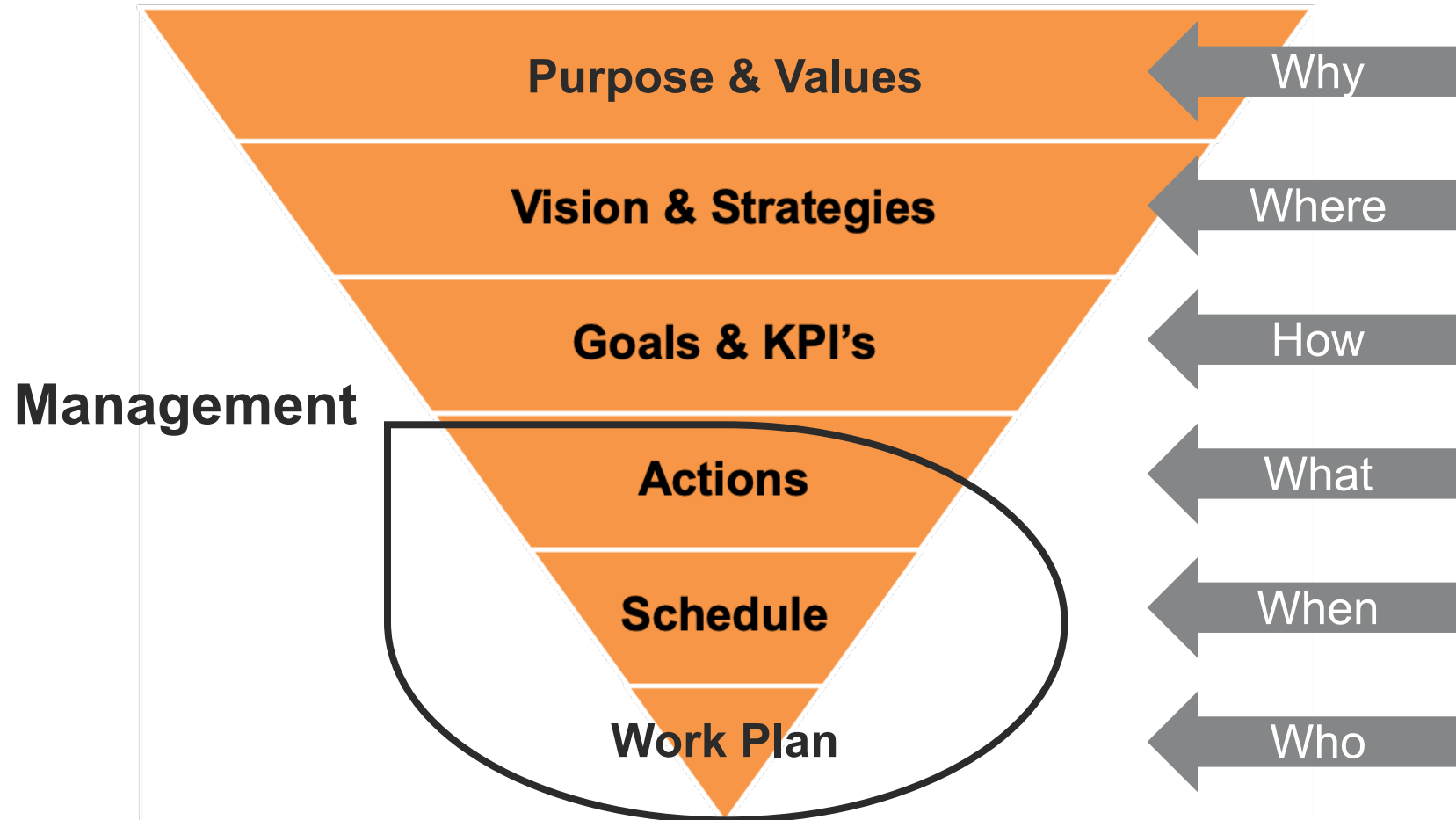
STAFF/VOLUNTEERS



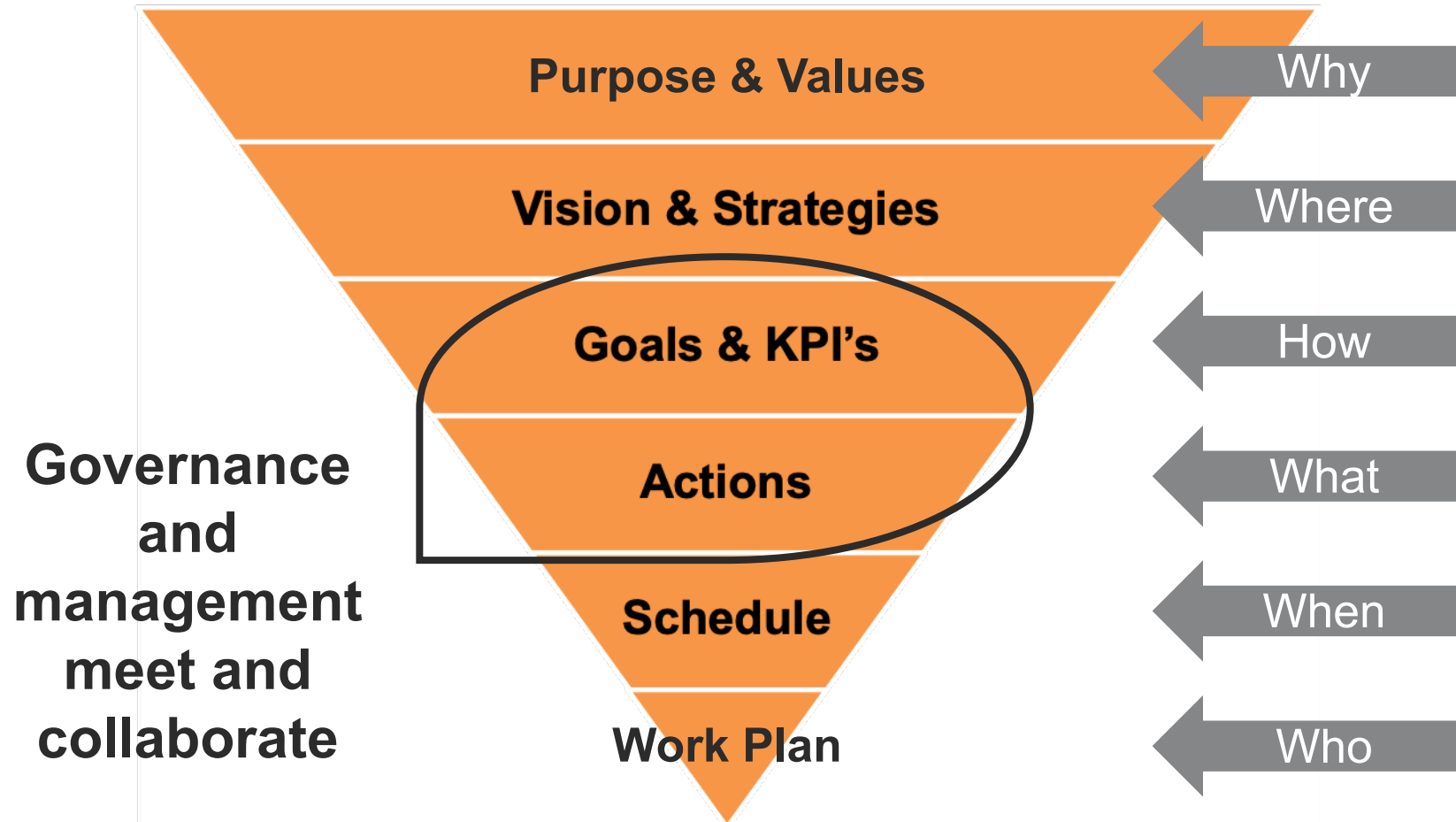
What is the difference between governance and management?



What is the difference between governance and management?

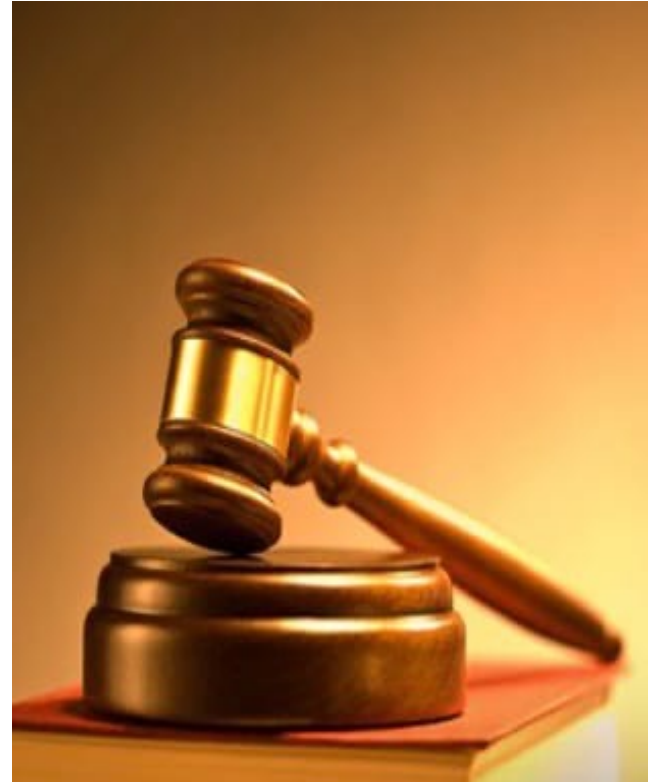


What is the difference between governance and management?



Legal Duties

- Duty to act bona fide* in the best interests of the company
- Duty to exercise powers for proper purposes
- Duty to retain discretion
- **Duty to avoid conflict of interest**
- Avoiding improper use of position in the company
- **Use of confidential information**
- Related-party transactions
- Payments to directors
- **Duty of care, skill and diligence**
- **The duty to prevent insolvent trading**



** Bona fide – genuinely, without intention to deceive*

Understanding your legal obligations

Legal and financial responsibilities

The committee is responsible for ensuring the organisation meets its legal requirements and remains accountable to donors and other stakeholders.

These responsibilities include:

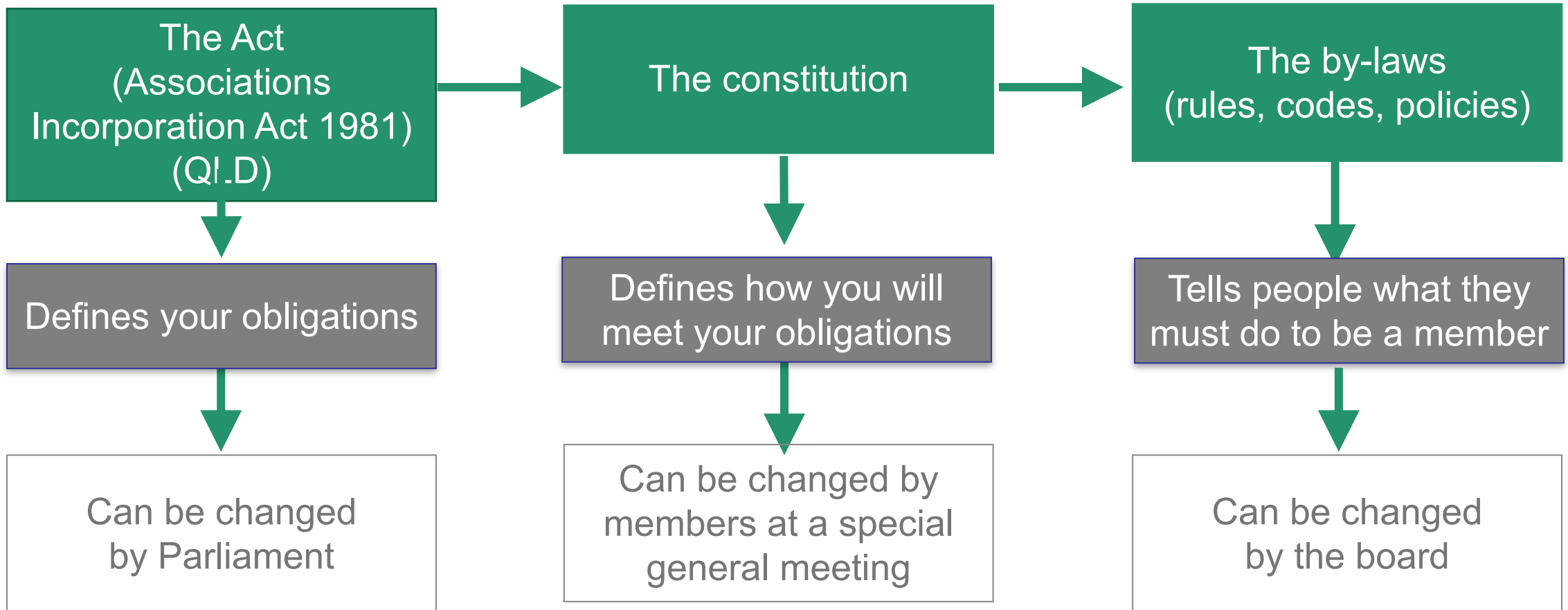
- Ensuring the group conforms to all laws
- Ensuring the group acts according to the purposes for which it receives any tax exemptions
- Finalising, approving and monitoring the group's annual budget
- Ensuring auditing requirements are fulfilled
- Managing risk - through regular risk auditing and mitigation activities

COMMITTEE SOLIDARITY

An incorporated association is, in the eyes of the law, a legal person – but only **one** legal person: it can only have one opinion at a time.

Committee solidarity means that a decision taken in proper form by the committee is a decision of all committee members. It is improper to behave as if it hadn't happened, or criticise the decision to outsiders, or keep agitating outside the board for your own proposition.

What gives you the power to meet and make decisions?



Under what structures do Constitutions exist?

Structure	Focus	Owners	Regulator
Company	Profit	Shareholders	ASIC
Company Ltd	Not for Profit	Members	ASIC
Indigenous Corporation	Profit/NFP	Shareholders/ Members	ORIC
Registered Australian Body	NFP	Members	ASIC+State Body
Incorporated Association	NFP	Members	Office for Fair Trading (QLD)
Co-Operative	Non Profit/Profit	Members	State Bodies (Dept Consumer Affairs)

Why constitutions matter

- A Constitution is established when an organisation files for incorporation with the appropriate state or federal government agency.
- A constitution specifies the governing rules of an organisation in order to manage the relationship between its activities, directors and members.
- It can be thought of as a guide for running your organisation
- There is also a legal requirement that an organisation and its members follow these rules.

Understanding and using your constitution

A committee gets its authority from the constitution. This governing document specifies the organisation's name, the purpose of the organisation, place of business, primary officers etc.

- Statement of purpose
- Who can be a member and who gets a vote at AGM/SGM
- When am I a member/When aren't I?
- Committee member removal
- Liability clause
- Committee member – process for election/tenure/term
- Meeting/Quorum/proxy/electronic voting
- Changes to constitution (general meeting requirements)

What a Constitution is NOT!

- NOT a strategy plan
- NOT a procedures manual
- NOT an automatic governance machine
- NOT a guarantee

Conflict of Interest

The duty to avoid conflict of interest

A conflict of interest occurs when a person who is part of the decision-making process is considering an issue in which they or a family member etc. (not arms-length) stand to benefit in some way.

Conflicts of interest are not a problem in themselves or something to feel ashamed about.

The problem only starts when a conflict of interest is not properly dealt with.



Common forms of conflict of interest

- ⊘ **Self-dealing**, in which public and private interests collide; for example issues involving privately held business interests
- ⊘ **Outside employment**, in which the interests of one job contradict or conflict with another
- ⊘ **Family interests**, in which a spouse, child, or other close relative is employed (or applies for employment) or where goods or services are purchased from such a relative or a firm controlled by a relative
- ⊘ **Gifts** from friends who also do business with the person receiving the gifts. Such gifts may include intangible things of value such as transportation and lodging.



The duty to avoid conflict of interest

- **What are the important issues for the individual, for the organisation and for its stakeholders?**
 - **What are ways of resolving potential conflicts of interest and associated embarrassment?**
1. Policy – Charter (declaration)
 2. Register of interests
 3. Declare interests before discussing issues (even non agenda items)
 4. Give opinion if asked or required to, but do not seek to unduly influence
 5. Excuse yourself from decision-making process or implementation
 6. Record declaration and actions in meeting minutes



Conflict of interest: case study

For the past five years, your organisation has contracted the same cleaning business to clean its facilities.

The treasurer of your club buys the cleaning business, then signs off payments to himself.

How would you manage this?



Maintaining Confidentiality

What information is confidential to the board?

How would you manage a breach of confidentiality?

A tip for maintaining confidentiality might be that instead of talking about what board members should NOT talk about (which may lead to people thinking even more about it!), instead the Chair notes what CAN be taken outside the board room.



The duty to act with care, skill and diligence

Can you tick the boxes?

1. Maintain appropriate levels of skill
2. Receive regular reporting
3. Question management and record responses
4. Exercise independent judgement at all times
5. Act honestly
6. Ensure you have sufficient information
7. Don't be afraid to be the stick in the mud where appropriate
8. If the matter is significant – seek EXPERT advice

The duty to act with care, skill and diligence

In general terms you will meet the duty of care and diligence if you:

- Make a decision to take, or not to take, action in good faith and for a proper purpose; and
- Do not have any material personal interest in the matter* ; and
- Inform yourself about the matter to the extent you reasonably believe is appropriate; and
- Reasonably believe that your judgement is in the organisation's best interests.

**Material personal interest means you won't gain anything personally out of decisions you make on the board*

The duty to prevent insolvent trading

Insolvent trading provisions compel committee members:

- not to allow the organisation to trade while insolvent (unable to pay debts);
- not to allow the organisation to become insolvent.
- You will breach this duty if you dishonestly fail to prevent your organisation from incurring a debt, when a reasonable board member would have been aware that there were reasonable grounds for suspecting the organisation's debts could not be paid as and when they fell due.
- An offence is committed in Australia if the organisation becomes insolvent by incurring the debt in question, even if the organisation was solvent at the time of incurring the debt.
- We are yet to see a committee member charged under these provisions!



Other legal responsibilities

What laws apply to your organisation?

How do you know?

Who can help?


Australasian Legal Information Institute
(www.austlii.edu.au)

Not-for-profit Law (www.nfplaw.org.au)

Free newsletters and alerts from legal services

Paid legal advice and support

Collaborations and Mergers

- Could this work for your organisation?
 - What the pros and cons?
 - What information do we need as a committee?
- 

Collaborations and Mergers

- Informal Cooperation
- Formal Cooperation
- Auspice arrangement



Upcoming sessions:

- Thursday 12 May - Running effective meetings (webinar) 6-7pm
- Tuesday 17 May - Attracting and retaining volunteering (webinar) 6-7pm
- Monday 30 May - Budgeting (webinar) 6-7pm
- Thursday 2 June - Social Media (webinar) 6-7pm
- Saturday 11 June - All Day Face to Face workshop in Dysart

ICDA supports & resources

- ICDA Policy Bank: <https://communitydirectors.com.au/tools-resources/policy-bank>
- ICDA Tools & Resources: <https://communitydirectors.com.au/tools-resources/home>
- ICDA Board Matching service: <https://communitydirectors.com.au/board-positions>
- ICDA Code of Ethics policy: <https://communitydirectors.com.au/policies/code-of-ethics>
- The Funding Centre: <https://www.fundingcentre.com.au/>
- Good Jobs, Great HR: <https://www.goodjobs.com.au/>
- Our Community: <https://www.ourcommunity.com.au/>



QUESTIONS

A wide-angle landscape photograph capturing a sunset or sunrise over a mountainous region. The sky is filled with soft, horizontal bands of color, transitioning from a pale yellow near the horizon to a deep, muted orange and then a light blue at the top. The mountains in the foreground and middle ground are mostly in silhouette, appearing as dark, layered shapes against the bright sky. The valleys between the mountains are filled with dense, dark green forest. The overall mood is serene and peaceful.

Thank you!