



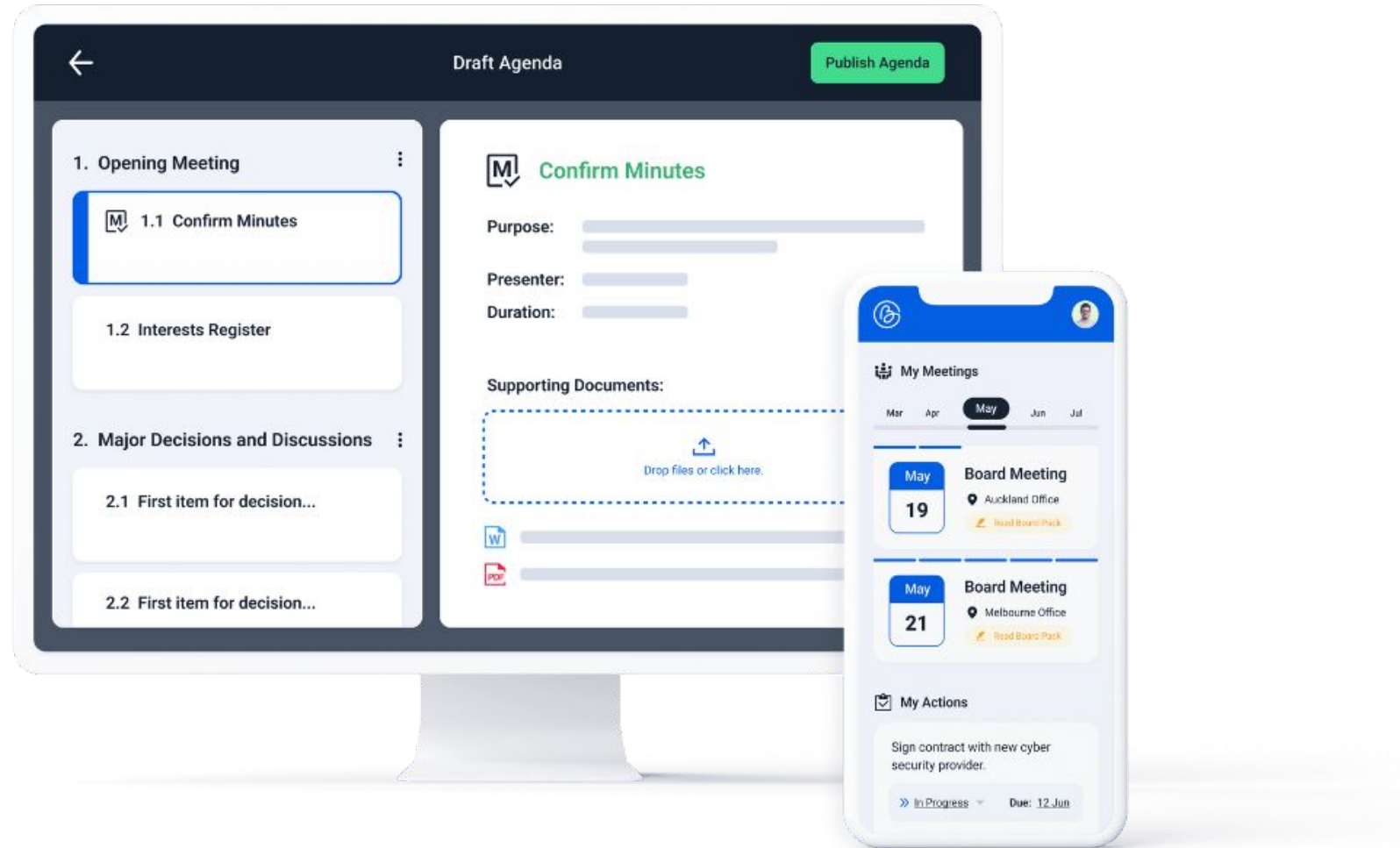
Webinar

Compliance in the boardroom: **Who is responsible for what?**

Special Guest -Margot Foster AM OLY

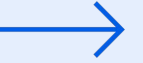








Making the fundamentals of governance free and easy to implement



**Margot
Foster**

Director & Founder
Boardroom Excellence



**Steven
Bowman**

Managing Director
**Conscious
Governance**



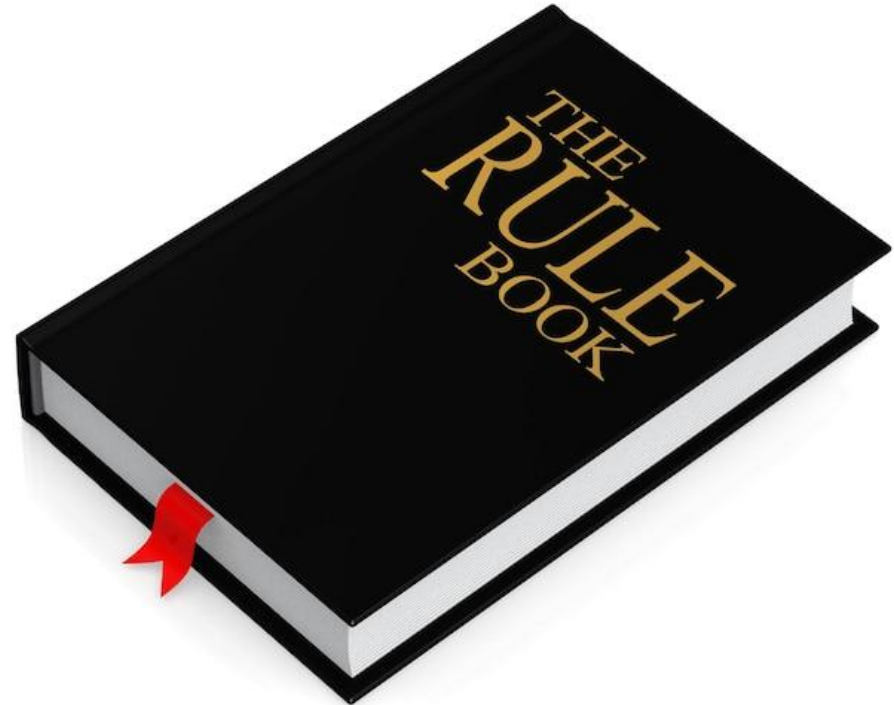
**Julie
Garland
McLellan**

Managing Director
Directors Dilemma



The other side of
the Risk coin

Compliance





Think about
compliance in
these ways at your
peril

We've always done it this way

Set and forget; she'll be right

It's only box-ticking and form-filling



Board Oversight

01

Internal policies, plans, programs and projects

02

External regulatory requirements

→ Employment, human rights, privacy, licencing, work health & safety

03

Compliance obligations will depend on

→ Industry

→ Corporate Status

→ Jurisdiction



Director duties

Every director has a fiduciary duty, or a duty of trust (or loyalty) to act in the best interests of the organization.

Every director also has a duty to be fully informed when making decisions and to take steps to obtain more information if needed to make those informed decisions.

It follows that directors need to satisfy themselves, in their oversight role, that

01

There is a compliance framework in place

02

They are advised of changes to its content whether internally or externally required

03

There is a formal process to ensure compliance obligations are met



Internal Compliance: The Board

01

Constitution

- Annual review >4 months before AGM

02

CEO employment contract

- Annual review of performance against kpis

03

Board policies

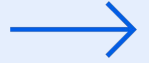
- Review every 2 or 3 years depending on the policy eg
- Code of Conduct/Board Charter
- Conflicts of Interest
- Financial Delegations
- Gifts & Hospitality



Internal Compliance: Management



- HR management
- Asset management
- Insurances eg D&O, public liability, pandemic
- AI, Data & Cyber security
- Property safety eg electrical, fire, chemicals, walkways
- Office management eg WFH safe systems of work
- Financial controls eg expenses, credit cards
- Events held by the organization and run by third parties
- The process for internal audit



External Compliance: Management

01

Governance

- Corporations Act/national legislation
- State incorporations acts

02

Regulatory

- ASIC – federal regulator
- State regulatory bodies
- OH&S
- Consumer affairs (states)
- UN treaty obligations
- Environment protection



- Standards
- Policies
- Licences
- Accreditations
- Certifications
- Authorisations
- Permits



- A policy and compliance framework is a solid guide for all staff to follow
- Having a framework imbues a culture of compliance – and comfort
- An expectation-setter: internal and external audits are easier when the understanding of what's required year-round is clear
- It is a risk mitigator
- A money saver over time
- Courts and regulators will look for “reasonable” (in all the circumstances) compliance processes in the event of an adverse event



The Benefits of Compliance

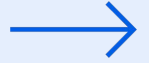




Compliance calendar

Just as the board has a meetings calendar it should also have a compliance calendar showing what is due to be paid or filed or registered by when. To be included in each meeting's papers with CEO/CFO to certify and sign off

Meeting date:	28 August 2024				
Task	Monthly	Quarterly	Annual	Last paid	Next due
Wages	✓			1/8/24	1/9/24
Super	✓			1/8/24	1/9/24
Insurance- general			✓	10/1/24	9/1/25
Insurance - workcover		✓		1/7/24	1/1/24
Land tax			✓	1/1/24	1/1/25
Regulator returns			✓	30/6/24	30/6/25

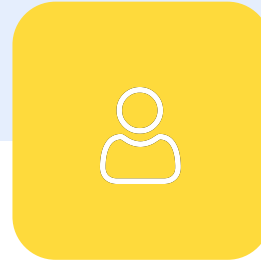


Penalties



Civil or criminal penalties

- Financial amounts
- Director disqualification
- Jail for malfeasance
- Industrial manslaughter in the event of death



Commercial or personal

- Media scrutiny
- Organisation reputation and financial viability
- Director reputation
- Staff, family, stakeholder/member livelihoods destroyed



Matters for the board to discuss and decide

- Agree first up that the board views compliance as essential: the tone from the top
- Decide if the board needs a director with specific skills or not
- Agree who in senior management has the remit – CEO/CFO/COO or CoSec
- Agree compliance scope and real-time reporting mechanisms – including who's responsible for what
- Assess the resources needed for the compliance regime to be effective
- Review internal controls – from policies to expenses
- Determine the triggers for the reporting of compliance breaches to the board
- Decide if the CEO's remuneration is linked to management of the regime (industry dependent)
- Understand the senior team's buy-in to the regime



More matters



- Include a mitigation strategy in the event of a breach/failure to comply
- Decide if any matter ought be referred to a board committee eg risk
- Implement a process for any compliance-related complaints including investigation and remediation (if it doesn't fall within a whistleblower scheme)
- Consider a Chief Compliance Officer if the volume is beyond the capacity of the CEO/CFO/COO
- Conduct an external compliance audit: does it meet legal and regulatory requirements and is it effective
- Confirm at each meeting via embedded processes that compliance is important, questions are essential and it's not a box-ticking, out of sight out of mind exercise.



Marchand v Barnhill (US) 2018

Listeria outbreak at an ice cream company that killed 3 people

"As a . . . company that makes a single product—ice cream— [the company] can only thrive if its consumers enjoyed its products and were confident that its products were safe to eat. That is, one of [the company's] central compliance issues is food safety. Despite this fact, the complaint alleges that . . . the board had no committee overseeing food safety, no full board-level process to address food safety issues, and no protocol by which the board was expected to be advised of food safety reports and developments. Consistent with this dearth of any board-level effort at monitoring, the complaint pleads particular facts supporting an inference that during a crucial period when yellow and red flags about food safety were presented to management, there was no equivalent reporting to the board and the board was not presented with any material information about food safety."



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Thank you

