GILSHENAN & LUTON
LEGAL PRACTICE



Directors' duties and personal liability: what boards need to know about governance risk

Author: Claire McGee
Email: cmcgee@gnl.com.au
Phone: 0450 630 612
Date: Sunday July 12, 2026

Regulatory scrutiny of boards is increasing, and directors are facing greater personal exposure when governance failures occur. While the Corporations Act 2001 (Cth) has long set out the legal duties of directors, the practical question is no longer what the law says, but whether directors can demonstrate informed, active and defensible oversight.

Attending meetings and approving papers is not enough. Directors are expected to understand material issues, ask questions and test management's assurances. In high-risk settings, passive oversight is rarely sufficient.

What are directors' core duties under the Corporations Act?

Under the Corporations Act 2001 (Cth), the key duties include care and diligence, good faith for a proper purpose, proper use of position and information, management of conflicts, and prevention of insolvent trading.

Care and diligence requires more than passive reliance on management. Directors should understand the business, stay across solvency and ask questions where material issues arise.

The business judgment rule can protect genuine business decisions made in good faith, without a material personal interest, and on an appropriately informed basis. It will not protect decisions made without proper attention, reasonable inquiry, or response to obvious risks.

How should boards manage conflicts and escalate concerns?

Conflicts are not unusual in complex organisations, but they must be identified early and handled transparently. Boards often encounter difficulty where conflicts are identified late, handled informally, or not properly recorded.

Directors must disclose material personal interests and must not improperly use information or their position. A recurring governance issue is not simply what the board knew, but whether serious concerns were escalated, tested and documented.

Solvency, insolvent trading and financial stress

Insolvent trading remains a major exposure point. Directors may face personal liability where debts are incurred in circumstances giving rise to reasonable grounds for suspecting insolvency.

Directors should closely monitor cash flow, debt levels, and contingent liabilities. Safe harbour may be available in some cases, but it is technical, fact-specific and not a substitute for early advice.

Regulatory exposure beyond the Corporations Act

For many organisations, governance exposure extends beyond the Corporations Act. Directors and senior officers may also face obligations under workplace health and safety, privacy, competition, consumer, environmental, taxation and other specialist regimes.

The legal framework may differ across corporate, public sector, charitable and other settings, but the practical expectations are often similar: active oversight, proper escalation, careful documentation and disciplined decision-making.

What boards should do when red flags emerge

Red flags may include inconsistent reporting, delayed escalation, unexplained variances, or repeated reassurances unsupported by data.

When serious compliance, financial, misconduct or probity concerns arise, boards should move quickly and ensure the response is defensible. This will likely require Boards and directors to:

- escalate the issue promptly
- seek further information and test management assurances
- identify and manage conflicts
- obtain external advice where appropriate
- keep a clear record of how the issue was considered and addressed

What recent litigation shows about board oversight

Recent litigation shows that directors' duties are not mere governance formalities. When risk indicators are missed or poorly escalated, the consequences can include penalties, disqualification, compensation exposure and reputational damage.

In *Australian Securities and Investments Commission v Bekier (Liability Judgment*) [2026] FCA 196, the Federal Court considered allegations arising from the handling of money laundering and criminal activity risks at The Star Entertainment Group. The Court found that former senior executives, including the former CEO and former Chief Legal &Risk Officer, breached their duties under s 180 of the Corporations Act, while ASIC's case against the seven former non-executive directors was dismissed.

Director exposure and the consequences of governance failures

Director exposure is often framed in civil penalty terms, but the consequences may also include disqualification, compensation claims, regulator action and, in some cases, criminal prosecution.

In high-profile matters, the commercial consequences often arrive first through regulatory scrutiny, stakeholder concern, media attention and loss of confidence.

Key lessons from ASIC v Bekier for boards and senior officers

The decision in ASIC v Bekier highlights how courts assess whether obvious risks were identified, escalated, and addressed — and distinguishes between failures at management level and the responsibilities of non-executive directors. The broader lesson is that boards and senior officers must ask questions, test management assurances, and ensure serious issues are escalated and documented properly. The decision also shows the importance of analysing who knew what, when, and whether management failures can properly be attributed to non-executive directors.

A practical takeaway

Effective governance depends on disciplined habits: understanding the business, testing information, managing conflicts, documenting decisions, and acting decisively when risks arise. The legal position will depend on the entity, the governing framework and the facts. Early advice can be critical where concerns arise about governance, solvency, compliance or escalating regulatory scrutiny.

How Gilshenan &Luton can help

Gilshenan &Luton advises boards, directors, officers and organisations on governance failures, regulatory investigations, internal reviews and high-stakes response decisions. Our work often involves assisting boards to respond to emerging governance issues under pressure — including where there is regulatory scrutiny, potential personal exposure, or significant reputational risk.

We help clients assess risk early, respond to emerging concerns, engage with regulators and defend proceedings where liability is alleged.

Contacting Gilshenan &Luton Lawyers

07 3361 0222 (24/7)

gnl@gnl.com.au

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.