

TASMANIAN

DIRECTOR

2009 SUMMER EDITION



From left, Denis Rogers AO FAICD (Tasmanian Development Board), Heather Chong FAICD (AICD Councillor), Christopher Chong FAICD (ACH Investments), Ann Cunningham FAICD (Public Trustee) and Don Challen FAICD (Department of Treasury and Finance).

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HAIL FELLOWS, WELL MET

MORE than 80 AICD Tasmanian Fellows and their partners enjoyed a presentation by AICD CEO John Colvin at the inaugural Fellows Dinner at the Henry Jones Art Hotel last month.

Eighteen new Fellows were also presented with their certificates during the evening. During his

address John took the opportunity to reflect on the challenges to the company director space resulting from the global financial crisis as well as to inform guests of a number of AICD achievements over the past 12 months as it pursues its aim to be the voice of governance and directorship in Australia.

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From left, Kathy Baker, John Colvin FAICD (CEO, AICD) and Lyn Cox FAICD, (Tasmania Division Council President).

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MAKING A DIFFERENCE IN A YEAR OF CHANGE

The AICD Tasmania Division records its appreciation for the generous support of the following corporate partners:

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IT has been a year of change at AICD. Nationally, John Colvin assumed his position as Managing Director and Chief Executive Officer and has made a difference with his ability to enunciate AICD policy and then promote it and defend it in the media.

His ascendancy coincided with an increase in government interest in matters related to corporations and directors. Also, the three-year chairmanship of John Story came to an end and at the November board meeting, Richard Lee, from Sydney, was appointed the new chairman.

Throughout the year in this column I have mentioned the many important issues that have been addressed by the AICD, including director liability, remuneration, termination payments, harmonisation of relevant state and federal laws through COAG, and recently the diversity issue has been on the agenda and an AICD position announced.

It has also been a year of change at the Tasmanian division of the AICD.

After many years in the position Len Robertshaw retired and Cathie Goss was appointed State Manager in January. Cathie – with her new team of Polly Venning, Ann Lennon-George and Tanya Stephenson joining Karen Butters – fine-tuned the offerings of the State Division.

More director briefings were added to the director development portfolio; there has been a focus on membership acquisition and retention and many qualified members were elevated to Fellow status; new venues were used for the various events including Moorilla, which proved a great success for the recent Gold Medal Award lunch; then last month the first Fellows function was held with a sold-out dinner at the Henry Jones Art Hotel.

In addition, there was a conscious effort to increase services to northern members with State Council meetings and member networking events in Launceston and Ulverstone.

I would like to acknowledge the work Cathie has done in bringing her team together and delivering such a variety of events and functions. Thank you Cathie, Polly, Ann, Tanya and Karen. We look forward to seeing what they have in store for 2010!

I would also like to thank members of State Council for their efforts during the year, particularly in the area of policy development. Council is addressing its membership and succession planning.

At the December Council meeting Sally Darke announced her intention to resign from Council. Sally has put in an enormous effort on behalf of Council, in particular being the sole northern representative for the past couple of years. Thank you Sally.

Finally, the State Council and I wish you and your families a happy and safe Christmas.

DIRECTLY SPEAKING



LYN COX
President

SAVE THE DATE!

Please diarise our first luncheon for 2010.

Date: Friday, February 19
Topic: The Challenges Facing Directors in 2010
Guest Speaker: Linda Nicholls AO, FAICD
Event Sponsor:



Shadforth Financial Group

TASSIE WOMAN'S BUSINESS PROWESS STRIKES A CHORD

ENTREPRENEUR Diane Tompson has become the first Tasmanian woman to receive an Australian Institute of Company Directors Gold Medal Award for outstanding community service.

At the Gold Medal luncheon at Moorilla in Hobart in October, Mrs Tompson was presented with her AICD Gold Medal Award by the Governor of Tasmania, His Excellency the Honourable Peter Underwood AC.

Mrs Tompson is co-owner and managing director of The Powercom Group, national President of Women Chiefs of Enterprises International and the 2005 Tasmanian Telstra Business Woman of the Year winner.

The function was attended by 150 members and guests including several former Gold Medal recipients. The Tasmanian AICD Divisional Council selected Mrs Tompson from a shortlist of business leaders as the 16th annual Gold Medal Award winner.

Aon Risk Services sponsored the Gold Medal Award presentation lunch.



From left, Neil Buttery (Aon Risk Services), Gold Medal recipient Diane Tompson FAICD (Powercom), His Excellency, the Governor of Tasmania, the Hon Peter Underwood AC and Divisional President, Lyn Cox (FAICD).

DIRECTOR PROFILE, PAGE 6



From left, Denis Rogers AO FAICD (Dept of Economic Development and Tourism), Robyn Kelly and Chas Kelly, 2008 Gold Medal winner.



From left, John Fisher (Public Trustee), Sarah Merridew FAICD (myState Financial) and Peter Rowell GAICD.



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BUYING OR RESTRUCTURING A BUSINESS UNDER THE NEW FAIR WORK ACT

By AUDREY MILLS*

THE new Fair Work Act substantially amends the provisions relating to employees on the sale or restructure of a business.

Under the Work Choices legislation only transferring employees carried forward their entitlements to the new business while new employees of the new business were unencumbered and treated as 'cleanskins'.

The role of the Australian Industrial Relations Commission was very limited. It could only terminate or vary transmitted instruments.

The test, which applied under Work Choices, was the business characterisation test. That test required the legal character of the business to be identified and then to identify the assets that had moved.

A good example of how the law operated under Work Choices is the decision *PP Consultants Pty Ltd v. Finance Sector Union of Australia* (2000) 201 CLR 648 (known as the St George's Bank case).

In that case, the St George Bank had closed its branch in a rural area and restructured its services with an agreement of a local pharmacist to run a branch agency from the pharmacy. The pharmacist took on the employment of some women who had been tellers for St George Bank to perform the transaction work.

The Finance Sector Union claimed that the award binding St George Bank also applied to these employees when they became employees of the pharmacist.

The case went to the High Court which held there had been no transmission of business therefore the pharmacist was free to engage former St George Bank employees on his own terms. The court stated that in characterising the business of the St George Bank, its business was one of banking, whereas the new employer was simply in the business of taking a fee for service for conducting clerical work for the bank.

This decision led to a significant increase in the restructure of business and in outsourcing and, in particular, the growth of labour hire companies.

Under the New Fair Work Act

The new changes to the Fair Work Act apply to all transfers of business from July 1 2009. The 'transmission of business' is now known as a 'transfer of business' with a new test to determine 'transfers'.

Section 311 of the Fair Work Act sets out four criteria to define when a transfer occurs:

- Employees' employment has been terminated by old employer.
- Within three months, employee is employed by new employer.



- Work performed by transferring employee (called 'transferring work') must be the same or substantially the same as performed for the old employer.
- There must be a 'connection' between the old and the new employers. The Act gives a broad definition of 'connection'.

Implications of the Fair Work Act changes

The St George's Bank case is no longer good law and most outsourcing to an agency or labour hire entity will be caught by the Fair Work Act.

New 'non-transferring' employees doing the same work will also be covered by the transferring instrument if no modern award applies or if they are not already covered by an enterprise agreement.

The changes abolish the 12 months rule, which existed under Work Choices, so that the entitlements for transferring employees continue until a new enterprise agreement is in place.

The other significant change is that new broad powers have been given to Fair Work Australia. This authority can decide which instruments will apply after a transfer of business and which employees will be covered.

Most transfers and restructures of business will be caught by the new provisions of the Fair Work Act, entitling employees to continue their employment with the new employer under the same employment conditions and entitlements as with the old employer.

This highlights the need for businesses who are considering purchasing or restructuring to do a careful due diligence of the other organisation so that the costs of labour are fully known.

**Audrey Mills is consultant with Dobson Mitchell & Allport*

The 'transmission of business' is now known as a 'transfer of business' with a new test to determine 'transfers'.

A MOMENT WITH AN EXPERIENCED DIRECTOR

“A director should have a great deal of common sense, be a good communicator and learn only to speak when one has something positive to contribute.”



Diane Tompson

Name/Title: Ms Diane Tompson

Current directorships:

Novaris Pty Ltd
Powercom Consultants Pty Ltd
Datacall Telemetry Pty Ltd
Powercom Systems Pty Ltd
Novaris Technologies (M) Sdn Bhd
Family Business Australia
Women Chiefs of Enterprise International

Previous directorships:

Skills Tasmania
Tasmanian Chamber of Commerce and Industry

What was your first job?

I began my working life as a high school music teacher after graduating from the Tasmanian Conservatorium of Music. My first appointment was at Geilston Bay High School where I was exposed to my first experience in marketing in promoting the school concert band.

What was your first directorship?

My first directorship began when my husband and I changed the status of Powercom Consultants (established 1991) from a partnership to a company in 1993.

What are a good director's attributes?

A director should have a great deal of common sense, be a good communicator and learn only to speak when one has something positive to contribute. A good director also comes well prepared to board meetings and asks searching questions of the CEO, intelligent or otherwise. (Sometimes what you consider to be the most ridiculous question often produces the most successful outcome.)

What piece of advice would you give an aspiring director?

I would say to an aspiring director: Don't be afraid to speak up or to offer an opinion. If a board member fails to contribute in both meetings and outside the boardroom then they are not functioning positively as a member of the board.

What is the highlight of your career as a director?

I have had many positive experiences as a director but a highlight for me was the appointment by my peers as national chair of Women Chiefs of Enterprises International. Of course, being awarded the AICD Tasmania Gold Medal recently was most certainly a career highlight and a great honour.

What is your best career decision?

The best career choice for me was in entering the Telstra Awards. Although I had been working for many years as a director of companies owned by the Tompsons, I had no external recognition for my efforts. After receiving the Telstra Business Woman of the Year Award, I have been offered many opportunities to participate as a member of a variety of boards both in paid and unpaid

appointments enabling me to work towards helping causes that I am passionate about.

What is the best advice you have received and from whom?

I am unable to single out one outstanding piece of advice but have three that are important to mention because they have impacted quite dramatically on the way that I behave as a board member and as a business operator.

- Firstly, my mother always insisted that I could achieve anything as long as I worked hard and conscientiously.
- Secondly, my father advised me to always listen to people proffering advice. He told me: "It doesn't cost anything to listen to someone's opinion" but then he followed that piece of wisdom with: "Of course you don't have to do what they say". (In other words make your own decision based on as much considered advice as possible.)
- Finally, when experiencing difficulty with a board member, a very dear friend advised me to stand my ground and believe in myself or I don't deserve to be national president. She was right! Sometimes it's very difficult to see the wood from the trees and a little perspective is always useful. Seeking help is often very worthwhile.

Key issues facing company directors today?

I believe a successful board needs absolutely watertight reporting. The key to a successful company is therefore the CEO or general manager (depending on the size of the company).

Another challenge for directors is one of compliance. Operations these days are almost completely stymied by compliance requirements. Sometimes the poor CEOs can be so taken up with meeting these often onerous responsibilities that they lose sight of the need to think constantly of operations that will either make or save money for their company.

How do you achieve work/life balance?

Life takes many turns and at the moment I believe that I have a good work/life balance. If I disliked being involved in the extracurricular boards the outcome may have been different. However, I love the challenges that it offers. In addition I am fortunate in meeting absolutely wonderful people from all over Australia and abroad by attending those board meetings.

I do try to spend as much time as possible with adored family which in the case of the two boys means travelling quite a bit. I also have a lovely little granddaughter in Tasmania whose company I enjoy at every opportunity so I am grateful that her wonderful parents returned to our beautiful isle.

My advice for a successful work/life balance and one that I try to pursue as an important goal is that you should do what you love and do it well and the rewards will often follow.

WELCOME NEW MEMBERS

CONGRATULATIONS to AICD's newest members:

Colin Allen

Business Guidance and Assistance Pty Ltd

Peter Burridge

Tasmanian Skills Institute

Jan Butler

Alliance of Girls' Schools Australasia

Diane Carroll

Aged Care Deloraine

Barry Davidson

TOTE Tasmania Pty Ltd

Judy Dew

RACT Ltd

Scott Gadd

Dept Primary Industries, Parks Water and Environment

Karen Hampton

Cradle Coast Authority

Jane Huntington

The Two Metre Tall Company

Margie Jenkin

Tasmanian Landcare Association

Christie le Goy

Mary Ogilvy Homes Society

Sue Martin

Tasmanian Skills Institute

Frank McGregor

Australia Post

Kent Medwin

Kingdom Enterprises Pty Ltd

Nicola Morris

The Van Diemens Land Company

Marion Myhill

University of Tasmania

Stuart Nicholls

Tasfreight Pty Ltd

Bruce Rose

Benzulla Actuarial Pty Ltd

Davis Shelley

Page Seager Lawyers

Michael Spinks

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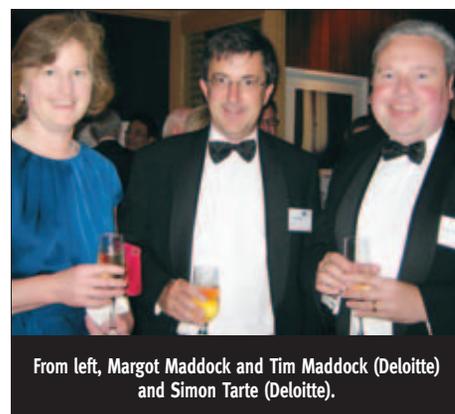
FELLOWS GET-TOGETHER WELL SUPPORTED



From left, Geoff Butler and Sue Buckland FAICD (Glenorchy City Council), Adriana Taylor FAICD (Mayor, Glenorchy City Council), Heather Butler FAICD (Tasmanian Parliamentary Secretary) and Beres Taylor.



Chris Banks and Ron Banks AM FAICD (Life Member).



From left, Margot Maddock and Tim Maddock (Deloitte) and Simon Tarte (Deloitte).

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DIRECTORS' DIARY

DECEMBER

Christmas Member Networking Evening

Date: Thursday, December 17
Venue: Phenomena Factory
Queen Victoria Museum and Art Gallery, Launceston
Time: 5.30pm-7.30pm

JANUARY

Company Directors Course

Date: Wednesday, January 13-Tuesday, January 19
Venue: Hadleys Hotel, Hobart
Time: 8.15am for 8.30am

FEBRUARY

Lunch

Date: Friday, February 19
Venue: Hobart Function Centre
Time: 12.30-2.30pm

Member Networking Evening

Date: Tuesday, February 23
Venue: Kings Meadows Golf Club, Launceston
Time: 5.30pm-7.30pm

MARCH

Governance for New Directors

Date: Thursday, March 4
Venue: University of Tasmania, Hobart
Time: 8.15am for 8.30am

Briefing with John Harte

Date: Thursday, March 11
Venue: Devonport Entertainment & Convention Centre
Time: 5.30pm-7.30pm

CDC Promotion Evening

Date: Wednesday, March 17
Venue: Launceston (TBC)

The Chairman Course

Date: Thursday, March 18
Venue: Tailrace Centre, Launceston
Time: 8.15am for 8.30am

Member Networking Evening

Date: Thursday, March 25
Venue: Royal Yacht Club Tasmania, Sandy Bay
Time: 5.30pm-7.30pm

For further information on the above events contact
AICD Tasmania Division office on 6224 0559.

FROM YOUR STATE MANAGER



Cathie Goss

SUCCESSION planning should be considered by all organisations, regardless of their size, to ensure there is a smooth transition of business leadership when the time comes for a change. By not undertaking this critical function, organisations place themselves at risk and leave their future to chance.

Succession planning is closely connected to the process of selection, appointment and evaluation of directors and executives. While it is usually discussed in terms of CEOs and senior executives, succession planning is equally beneficial for boards of directors. The goal, of course, is to have the best candidates to fill vacancies when they come up.

Succession planning has become strategically important to Australian boards due to a rising average age of directors and a decline in average tenure. Governance trends, such as board performance appraisals and transparency of selection policies and processes, reinforce the idea that an organisation must have the optimal mix of people, skills and knowledge to ensure its continued success.

There is consensus among commentators, directors and the ASX Corporate Governance Council that succession planning should be on board agendas. In larger companies, succession planning is normally handled by a nominations committee.

Having a firm succession plan in place helps prevent a costly delay from one leader to the next and ensures that the successor is well

qualified to handle the responsibilities of running the organisation. In addition to this, board succession planning allows directors to match new appointments to the organisation's future needs.

Considering who will own, as well as run the business going forward also presents the opportunity to examine whether it is an appropriate time to bring in a formal board of directors (if this has not already occurred).

Many organisations have benefitted from the guidance of a board and independent directors when changing their structure as part of a succession plan. Engaging in thought and discussion about succession options can also assist in the medium term, particularly with identifying growth opportunities.

The board should maintain a list of potential candidates and monitor it regularly. The availability of highly sought-after directors will vary so directors should keep in touch with all potential candidates. Larger organisations might have ongoing relationships with executive search firms to assist in this process.

AICD's In-Focus programs, *The Chairman* and *The Board and the CEO* explore the issue of succession planning in more detail.

For further information about these courses which are being run by AICD Tasmania during 2010, please contact Polly Venning on 6224 0559.

Also refer to the Succession Planning FAQ, which is available under the Policy Advocacy section of the website at: www.companydirectors.com.au.

With my team. I would also like to take this opportunity to wish all members and their families a happy and safe festive season.

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WE all know what it feels like to be full of energy after a good workout.

Our adrenaline is pumping, our hearts are racing, and we feel energised.

This gives us the motivation and the appetite to work hard and play hard. Conversely, when we don't exercise we feel sluggish and tired and unmotivated.

The amount of effort you put into the exercise determines the outcome.

Consider your AICD membership in the same light as a good exercise program and the benefits to you will be obvious.

Attending courses, events and networking opportunities will keep your aspirations as a director healthy and in good shape.

It will also help you get to the next step in your professional journey.



So why not start your personal 'directorise' program today?

Contact AICD for the latest program updates and to start exercising your directorship. It's a win/win situation.

Besides, where else can you work and play at the same time, except at an AICD event?