



Ethics in the Boardroom

A decision-making guide for directors
October 2019

Purpose of this guide

This document has been developed as a guide to ethical decision-making in the boardroom. Rather than focus on the ethical obligations of directors, it aims to support directors as they navigate the complex ethical terrain that is encountered in every boardroom. This guide does not attempt to prescribe a set of rules for good conduct. Instead, it aims to complement and inform the good judgement that directors bring to their deliberations.

The insights that are presented in this document have been distilled from interviews and roundtable discussions with experienced directors and subject matter experts, including senior academics and board advisers.

The focus of this document is the boardroom; the ultimate source of the ethical tone that flows throughout a well-governed organisation.

This guide can be used:

- as a general resource for directors;
- to identify specific areas for strengthening a board's capacity in relation to ethics; and
- to inform conversations about the ethical dimension of complex issues encountered by individual directors or the board as a whole.

Link to additional resources

- Governing organisational culture. The AICD's practical tool to help shape the board's approach to culture. The tool can be found at **aicd.com.au/culture**.
- For directors seeking assistance with a specific ethical dilemma, The Ethics Centre offers the Ethi-call service. Ethi-call is a free, independent, national helpline available to all. It provides expert and impartial guidance in relation to ethical issues. **To book a call, visit the website at ethics.org.au/initiatives/ethi-call/**.
- Membership of The Ethics Centre's corporate program The Ethics Alliance unlocks access to The Ethics Centre's sophisticated decision-making tool FieldKit. **To learn more about the Alliance visit ethics.org.au/initiatives/the-ethics-alliance/**.

Foreword by The Ethics Centre

The ethical landscape traversed by company directors has always been complex. They are legally bound to act in the best interests of the company as a whole. That is, their duty is to protect and advance the interests of an entity that exists only in the 'abstract' realms of the human mind. On the other hand, there is a diverse range of real people whose interests are intimately linked to and affected by the corporation.

While in the ordinary course of business there is no direct, legal obligation to shareholders, the practical reality is that directors are constantly being pressed to advance the interests of shareholders, as well as employees, customers, suppliers and the wider community. It would be comforting to think that all interests can be perfectly aligned – at least in the long term. However, that is mere 'wishful thinking'. The truth is that directors are frequently required to make decisions that will annoy one group or another.

As always, the directors' touchstone must be the interests of the company as a whole – not its shareholders, not its employees, not anyone else. But how are those interests to be defined? And on what basis are directors to exercise their discretion? Are they to draw on a personal set of values and principles? Are they to attend to the standards of the communities within which they work? Is there a framework of 'absolutes' that transcend all other considerations?

The answer is that directors are bound to apply the values and principles of the company. However, unlike others, company directors have the capacity to define and amend a corporation's ethical framework. Indeed, the board of a corporation is, in effect, its mind and conscience. All that a corporation does and its effects on the world, is ultimately traced back to directors and their deliberations. Thus, the heavy ethical burden carried by directors.

Fortunately, there are tools available to directors to improve the quality and character of their decision-making. Those tools are informed by a rich tradition of thinking in which humans have sought to analyse and improve the way in which we make choices – the field of ethics.

Ethics both informs the law and goes beyond its limits. For the most part, law sets boundaries for what may or must be done. Ethics concerns what should be done – even if not required or prohibited by law. Directors will often seek legal advice about what can be done. Whether or not to approach or cross the limits of the legal 'envelope' of possibilities is an ethical question. The fact that something can be done does not mean that it should be done.

At the most basic level, boards can help individuals working within an organisation – and the organisation as a whole – to consistently make decisions that are 'good' and 'right'. They discharge that responsibility by setting the organisation's core values and principles – and by demonstrating their practical application through their own decision-making and conduct.

Acknowledging and addressing the ethical dimension of a sensitive issue can be challenging. However, boards that fail to take account of such matters are not effectively fulfilling their governance responsibilities.



Dr Simon Longstaff AO
Executive Director, The Ethics Centre

Foreword by the AICD

“Strengthening society through world-class governance” is the vision of the AICD, and core to a strong and functioning society is a strong sense of ethics.

There is a growing focus on the ethical implications of board decisions and high expectations of ethical conduct and practice from stakeholders, regulators and directors themselves in the context of sweeping structural changes in technology and community concerns with equity.

The AICD is committed to building the capability of directors and boards to tackle this challenging environment.

With this aim, we have partnered with The Ethics Centre on a guide to help directors explore the complex ethical terrain that is encountered in every boardroom.

This guide draws on the expertise of The Ethics Centre, informed by the perspectives of AICD members in focus groups and interviews, academics and subject matter experts.

It is a practical resource and applicable to all sectors. It provides insights on the ethical issues that are embedded in board decisions, as well as advice and tools for ethical decision-making.

Importantly, this is not a new statement of obligations. Directors are bound by fiduciary and statutory duties, including the duty to act in the best interests of the organisation. In many respects, ethical board decisions sit with the duty to act in the best interests of the members of the organisation as a whole, while taking into account different stakeholder perspectives.

On behalf of the AICD, we are grateful to the many people who have contributed to this guide, including our Advisory Panel. In particular, we thank The Ethics Centre for its collaboration and expertise in developing this guide.

We hope that directors and boards will find this guide useful. We look forward to your feedback.



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Executive summary

Ethics is the branch of knowledge and practice that seeks to answer the practical question 'What ought one do?' This question applies to both individuals and organisations. Ethics is the choices we make and actions we take – as informed by the values and principles we hold and the purposes we serve – as individuals, communities and societies.

Ethical issues vary in scope. Some relate to organisational matters, such as conflicts of interest. Others are of broad societal concern, such as how to respond to climate change.

This document invites directors to view ethics through four different lenses. These can be used when considering ethics generally, or applied to specific ethical issues and dilemmas arising in the boardroom.



Lens 1: General influences

The broadest lens focuses the board on issues that affect the organisation as a participant in society as a whole (e.g. modern slavery in supply chains, climate change and workforce automation).



Lens 2: The board's collective culture and character

The culture and character of the board should reflect the purpose, values and principles (the ethical framework) of the organisation.



Lens 3: Interpersonal relationships and reasoning

Every director brings an individual decision-making 'style' to the board table based on different modes of reasoning.

Personal relationships between board members also affect decisions.

Directors need to be alive to the need for diverse outlooks and how power dynamics can silence those with unconventional perspectives.

The chair has a principal role to play in maintaining coherence while making the most of diversity.



Lens 4: The individual director

The narrowest lens recognises that each person is an ethical actor.

Awareness of our own motivations, biases and ethical reasoning styles can help us understand what we bring to the board table when it comes to ethical decision-making.

Perspectives to frame board conversations

Key questions to frame board deliberations



Lens 1: General influences

What aspects of the organisation's strategic environment are relevant to the decision?

- Are there factors that lie beyond the scope of the board papers? What is the connection between this choice and the long-term prospects of the organisation?
- Whose interests deserve to be taken into account? What are their interests? To what extent are those interests aligned?
- How do we wish to position the organisation? As a leader on such matters? As a close follower? Doing the minimum required by law or regulation?



Lens 2: The board's collective culture and character

Does the board as a whole have a culture that enables and supports ethical considerations, including calling on the organisation's ethical framework?

- To what extent is the decision before the board clearly linked to the organisation's purpose, values and principles?
- What impact will the board's decision have on the culture of the organisation?
- Is the board's decision framed in language that will resonate within the organisation?
- Where are the potential 'ethical blind spots' on the board? For example, is the proposed course of action being recommended for no better reason than 'everyone does it'?



Lens 3: Interpersonal relationships and reasoning

Have you considered how group dynamics impact on board discussions, including how your own default decision-making style fits in?

- Is there too comfortable a drift towards agreement? Or is there an active effort to promote and manage diversity, and recognise and encourage differences of perspective?
- Are the opinions of some directors too easily dismissed because they are not subject matter experts? Are the opinions of some directors given too much weight because they are subject matter experts?
- Does the board identify and question the assumptions on which recommendations are based? Are directors given the time and opportunity to offer critiques of their own arguments?



Lens 4: The individual director

Is each director aware of their personal ethical position and how it might differ to that of the organisation?

- Do your personal values and principles align with those of the organisation?
- Do you understand your own motivations and biases? How would your motivations look from an external perspective?
- Do you recognise your own preferred style of decision-making? Are you open to different approaches?
- Are you able to recognise and declare when you are 'out of your depth'? If so, have you sought counsel (if appropriate)? Are you prepared for potentially difficult debate?

A practical example:

Scenario

You are one of seven directors serving on the board of NOVASTORES – a listed company that is a general retailer of food and commodities. The board has been asked to approve a policy to remove tobacco products from sale at all of its stores. This will involve some loss of profit, but the company will be exiting a market with declining sales due to the reduction in demand. The board is asked to approve the policy in general and to set a time frame for complete removal of these products. Total removal could be achieved in 12 months, or at any time thereafter.



Lens 1: General influences

There is now a universal understanding of the dangers of tobacco consumption – a product that cannot be used to any degree without causing harm. Public health campaigns are leading to a progressive decline in sales of tobacco products, especially in the developed world. Yet, despite the concern, tobacco remains a legal product and smokers may expect to find convenient outlets for the purchase of their preferred brands.



Lens 2: Collective culture and character

NOVASTORES' core values are: Choice, Convenience, Quality and Trust. The company has one core principle: 'the customer is always right'. Their logo incorporates the words, 'Your One Stop Shop'. On the other hand, the

company has invested heavily in its reputation as a 'responsible citizen', encouraging employees to build and sustain relationships within the local community, especially through the sponsorship of local sporting teams. More recently, the company's employees have been driving a strategy to increase the range of fresh foods – all with an emphasis on improved personal and community health.



Lens 3: Interpersonal relationships and reasoning

NOVASTORES was originally founded as Thompson's – a family owned company that built a retail 'empire' made up of small to medium shops located in rural and regional communities throughout the Eastern States of Australia. The company was listed three years ago, and still retains on its board three representatives of the Thompson family, including the chair. The chair is of the mind that 'if it's not broken, don't try to fix it'. You are aware that one of your fellow directors recently lost a partner to lung cancer, brought on by exposure to passive smoking. Most board discussions are cut short when the chair feels that adequate time has been devoted to the relevant item. The chair's decision often has more to do with sticking to the timing in the agenda than reaching an agreed view. Given this, the chair often simply declares that a matter has been resolved. Other members of the Thompson family rarely contribute to debate, tending to defer to the chair's opinions and judgement.



Lens 4: The individual director

You are comfortable with the company's general ethical health. It is conservative in its approach to business – an outlook that complements your own approach. You have a strong, personal commitment to the principle of

liberty and the rule of law. As such, you are reluctant to prevent people from making their own choices about how best to live their lives. Yet, you also know that tobacco products contain some of the most addictive substances on earth and that, for at least some of the store's customers, the image of free choice is an illusion.

Analysis

An analysis of the four lenses (as presented above) reveals a company that is, in fact, on something of an 'ethical precipice'. NOVASTORES' core values and principles are directed in favour of 'consumer sovereignty'. The emphasis on choice – as a core value – implies that tobacco products should continue to be made available. While it could be argued that the values of quality and trust might lead to a withdrawal of tobacco products from sale (e.g. they have a negative quality because of the danger they pose), to make the decision on this basis would be shaky. More convincing might be reference to the attitude of employees and the efforts of NOVASTORES to invest in the good health of the community. On that basis, the continued sale of tobacco might seem to be hypocritical, and damaging to employee morale and brand value.

Also, it is clear from Lens 1 that the argument about the merits of tobacco has been settled (at least in the minds of wider society). As such, it is probably just a matter of time before the product is removed from general sale.

In summary: this apparently simple decision gives rise to some challenging ethical issues, revealed clearly through the application of all four lenses.

Rather than settle the matter here, let us delve a little deeper into the background to ethics in the boardroom – returning to this case once we have some additional tools of analysis at our disposal.

Understanding ethics

What is 'ethics'?

Ethics is ultimately about the choices we make and their effect on the world. Its goal is to enable and support thoughtful decision-making that is consciously informed by core values and principles.

Some modes of ethical decision-making involve the application of 'absolutes' (e.g. theft is always wrong, turning a blind eye to corruption is always wrong). Others recognise that the hardest decisions arise in the 'grey zone' where values and principles of equal weight and merit can and do compete. In some cases, the 'least bad' option might be the best.

The frequent lack of clarity in ethics is not due to any fault of decision-makers. One can value both candour and confidentiality. Both are good, but there are times when they are in conflict.

Given this, we cannot expect ethical perfection from any person. The most we can ask for is sincerity and skill in decision-making.

Values and principles shape all decision-making – even when one is not conscious of the work they are doing. As such, ethics informs and underpins all board processes and interactions between directors.

“...ethics informs and underpins all board processes and interactions between directors.”

Indeed, it can be argued that there are no aspects of directorship that can (or should) exclude a consideration of ethics. Every board decision (including decisions about what to omit from board discussions) necessarily reflects the ethical approach of the board and has an effect on the ethical culture of the organisation.

Why is talking about ethics challenging?

Given the inescapable influence of ethics in the boardroom, why do people find it so difficult to talk about this aspect of decision-making?

One reason is that there is a tendency to think that it is sufficient to meet the requirements of the law. Some may be unable to imagine any standard other than a legal standard as having relevance; that is, “if it’s not illegal, it’s not wrong”.

However, there are also other factors that make the explicit discussion of ethics a challenge for some directors.

1. The term may **evoke anxiety about being judged** as a morally good or bad person.
2. Some people may feel that **ethics is 'self-evident'** and that people are either ethical or they are not.
3. Some might feel that **ethics is entirely subjective** – just a matter of opinion and a poor substitute for legal or economic analysis.
4. The term may evoke suspicion that it is **being used as 'window dressing'** to hide questionable conduct.
5. Ethics is a **double-edged sword** – once invoked it can be turned against you.

Taken individually or in combination, these reasons can incline directors to keep the ethics 'genie' in its 'bottle'. Yet, the failure to discuss the ethical dimension does not mean that it is inoperative. Ethics is always at work. Boards that fail to make the ethical dimension explicit merely place its dynamics beyond their control.

Therefore, directors and boards should tackle ethics head on and not be fearful of discussing matters that evoke strong reactions about what is 'good' or 'bad', 'right' or 'wrong'.

As we have seen in the example of NOVASTORES, the practice of ethics can confront a director with the uncomfortable fact that personal and organisational values and principles are not always aligned. Resolving such tensions in the boardroom requires directors to expose something of their beliefs and worldviews. It requires directors to go beyond mere intuitions about 'right' and 'wrong'. It requires directors to offer and demand good reasons – to challenge, and be challenged on, the validity and applicability of their personal ethics.

Although we have focused here on possible tensions, it is worth noting that by openly addressing ethical issues, boards can broaden their thinking and reinforce their unity in a process of open exploration and conversation.

Ethical challenges identified by directors

In discussions with directors, we have identified issues that often or necessarily involve ethics. These issues may be overlapping and intertwined. Some of these may be one-off decisions and others will be ongoing challenges.

Ethical issues relating to people, relationships and perspectives

Ethics may arise in matters concerning the personal abilities, capacities, knowledge, dedication and interests of board members or employees. It may also arise in relation to relationships, including interpersonal relationships, disagreements and friendships.

Example: Conflict of interest

A long-standing supplier contract is up for reconfirmation for the first time in your tenure as a director on this board. The board has been asked to renew this large supplier contract without going out to tender. You are aware that the CEO of the supplier organisation has long standing personal ties to the chair of the board you sit on. You know the chair to be a person of integrity and the supplier to have fulfilled all previous obligations. You don't want to create a storm in a teacup, but you are uncomfortable with this conflict of interest.

Ethical issues relating to business practices and decisions

Ethics can arise with regards to how an organisation conducts its operations. This can include cultural and behavioural aspects such as workplace culture, customer and supplier practices and stakeholder relationships. It can also include the design of systems and processes such as technology and information systems, employment policies (including diversity, discrimination, and workplace health and safety) and remuneration and incentive arrangements for staff and board members. Ethics may also be involved in strategic decisions such as workforce structuring and planning, risk appetite, tax strategies and investment decisions.

Example: Stakeholder relationships

Your organisation is in the resources industry. You are trying to meet your environmental commitments by investing in renewable resource technologies, including windfarms. You have found a suitable location for a new windfarm, but there is push back from the local community. The board is weighing up the interests of those locally affected by the proposed windfarm against supporters of the windfarm who promote investment in environmentally friendly technologies.

Example: Policies on employee bonuses

Your organisation is looking to reduce expenditure. The board is presented with amendments to the bonuses policy that generate savings. The current bonus policy means employees who meet moderate targets as well as values and behaviour standards are rewarded. The proposed policy requires employees to meet higher targets and has no values or behaviour requirements. You are concerned about how this will affect the culture of your organisation.

Example: Internal business strategy

A new tax strategy has been presented to the board and opinions are mixed. The strategy is undoubtedly aggressive and would lessen the tax liability of the organisation. Your organisation's lawyers have stated that, while it may be challenged in the courts, you would likely win any litigation pursued by the Tax Office. You are unsure about the strategy due to the potential risk of litigation costs and reputational damage. But this also sits uncomfortably with you from an ethical perspective because of your belief that company tax is an important contribution to society.

Ethical issues relating to an organisation's place in society

Ethical issues may arise outside the operations of an organisation. Such issues may impact stakeholder trust, organisational reputation, and an organisation's social compact (i.e. that which mutually binds individuals, communities and organisations in the pursuit of a common good). There may be an opportunity (or pressure) to publicly state an opinion on a social or political issue. It may concern industry and supply chain integrity, human rights or environmental sustainability.

Example: Modern slavery in an organisation's supply chain

As part of Australia's Modern Slavery legislation, your organisation has been mapping its supply chains internationally to identify modern slavery risks. The management team has identified a risk that forced labour is practiced in some factories that supply your operations. Your legal obligation is to include this finding in your Modern Slavery Statement and set out the actions the entity has taken to assess and address those risks, including due diligence and remediation processes. The board is discussing what additional actions should be taken to assess and remediate any issues identified, including monetary and personnel allocations. Some board members are arguing for a minimalist approach that meets your compliance obligations and saves resources. Others are arguing for a much greater commitment.

A decision-making framework

Ethical issues do not necessarily come flagged as such. For example, there can be an ethical dimension to issues of capital allocation, new product approvals, and the development of key strategic partnerships. It is up to directors to identify and draw out the ethical issues in what appear to be 'plain vanilla' business decisions.

While the Four Lenses discussed above are useful for revealing the range of ethical issues that can be embedded in a decision that comes before the board, it is also important that directors have access to a reliable and replicable process for decision-making.

The model that follows has been developed by The Ethics Centre to meet that test.

Duties of directors paramount

The AICD reminds directors that fiduciary and statutory duties should be paramount in board decision-making. These include the duty of directors to act in good faith, for a proper purpose and in the interests of the organisation as a whole, acting with care and diligence. Directors must not misuse their position and should avoid conflicts of interest and disclose material personal interests. Directors must also comply with further directors' duties applicable to their organisation and sector.

In a number of respects, it mirrors the architecture of general decision-making tools. However, this process has a number of distinct features that are highlighted below.

The broad outline

There are five steps in this process:

- Frame
- Shape
- Evaluate
- Refine
- Act

Each stage is described in greater detail on the following page.

Phase	Purpose	Core Questions
Frame	To define and understand the precise nature of the issue to be decided.	<ul style="list-style-type: none"> What are the facts? How are these facts linked to the organisation's core values? What assumptions are being made about the world in which this issue is being decided? Are there any 'non-negotiables' (e.g. relevant laws that must be obeyed)? Whose 'voice' should be heard (i.e. who has a legitimate interest in this matter)? What is the nature of each legitimate interest? Are the interests aligned or divergent?
Shape	To develop options that could resolve the issue. Some of these options will have been developed by management, others by directors.	<ul style="list-style-type: none"> What kind of issue are we dealing with? Is it just a moral temptation (the possibility to benefit from doing something questionable)? Or is it a genuine dilemma in which competing values and principles seem to require incompatible outcomes? What are the options? This is both the most creative and difficult part of the process because nothing should be 'off the table'. Every option, including the apparently outlandish, should be considered as that is where 'inflection points' (see further the Appendix) can be found.
Evaluate	Apply a matrix of values and principles to evaluate the options.	<ul style="list-style-type: none"> Take two or three of your best options and apply the matrix (as set out in the Appendix). The matrix approach recommended in the Appendix is solid in its form but flexible in its content. The purpose of the matrix is to ensure that, as a minimum, an organisation's values and principles are used as the 'index for judgement'.
Refine	Identify and eliminate weaknesses in the proposed course of action.	<ul style="list-style-type: none"> Play the Devil's Advocate by taking up the option that has fared best in the matrix in order to identify its major areas of weakness. Adjust the proposal to eliminate the weakness without damaging the overall integrity and utility of what has been proposed. Put the proposal to some final tests, such as: how would I feel if this was done to a loved one? Would the person I admire most in the world do this?
Act	All ethical decision-making is practical – it ultimately requires that a decision be given effect.	<ul style="list-style-type: none"> Give effect to your decision. Monitor the outcome. Offer reasons for your decision, even if it's not challenged. Reflect on the decision and what can be learned from the process and applied in the future.

This five-phase process offers a clear and simple basis for addressing the ethical dimension of any decision. As with all processes, it is not a substitute for judgement. In The Ethics Centre's view, if rigorously applied, it will ensure that decisions made in the boardroom are ethically defensible – even if they are controversial in the eyes of certain stakeholders.

It is the combination of the Four Lenses and the Five Phases that ensures that directors are well-equipped when it comes to managing ethical complexity. In light of this, let's revisit, in greater detail, the Four Lenses.

LENS 1:

General influences



Organisations are participants in society. They are subject to a number of external factors, most of which they cannot control. These factors include: the transformative effects of new technologies, shifts in the geopolitical environment, alterations in the natural environment, and changes in community standards and expectations.

Most (if not all) of these external factors have profound ethical implications for organisations. For example, will new technologies like AI and robotics significantly reduce the need to employ human beings? If so, how will the transition be given effect? Will the transition be just and orderly, or unfair and chaotic? Is this a matter that an organisation can decide for itself, or is it bound to engage in public advocacy to shape public policy in a supportive direction? Is doing the right thing by employees compatible with the economic sustainability of the enterprise?

It is important to identify the ethical dimensions of the strategic environment and their relevance to the decisions at hand.

What aspects of the organisation's strategic environment are relevant to the decision?

- Are there factors that lie beyond the scope of the board papers? What is the connection between this choice and the long-term prospects of the organisation?
- Whose interests deserve to be taken into account? What are their interests? To what extent are those interests aligned?
- How do we wish to position the organisation? As a leader on such matters? As close follower? Doing the minimum required by law or regulation?

Seek broader frames of reference

There is value in seeking out information beyond the board papers to gain further insights about your organisation and the ethical implications of its strategic environment.

A board is only as good as the information it interrogates.

- **A new perspective may reveal new challenges and opportunities.** Management may be affected by the very human tendency to present information that supports its recommendations. As such, there is a risk that selection bias will shape the way in which critical facts are presented. Directors can temper this tendency by requiring that board papers link the selection of facts, in support of a recommendation, to the purpose, values and principles of the organisation. Directors can identify and test underlying assumptions about how the world is (or might be) and the implications of this for the decision that is to be made.
- **Know your organisation from different angles.** It is important to identify patterns in past decision-making. Is there a default way of resolving tensions, making trade-offs and relieving pressure points? Is there a risk that the board will not recognise the emergence of novel situations requiring novel solutions?
- **Engage with internal and external stakeholders.** It is important that the board identify, where possible, all those with a legitimate interest in a matter that is before it. A board may need to seek out views beyond those readily available in the form of shareholders and powerful stakeholders. It is surprising how often a voice from the margins can present a perspective that unlocks a solution to an apparently intractable problem.

Example: Seeking out different voices and perspectives

In an organisation which was hung up on process and had an air of defensiveness regarding the relationship with management, it was difficult for the board to receive and trust the information being presented by management. The board tried to solve this 'climate of fear' by trying a new approach. They asked junior employees to present to the board about their projects. This was viewed as a development opportunity for junior employees, which they enjoyed. It also helped board members grasp what was happening from a different perspective and took away the 'us and them' mentality.

Strive for organisational ethical leadership

Every organisation, no matter how small or large, has an impact on the world and shapes the present and the future.

- Directors perform multiple roles in society. All are citizens. All have family relationships of one kind or another. The decisions that directors make within the confines of the boardroom impinge on these wider roles – through the conduct of the organisation on whose behalf they deliberate. It is important for directors to recognise that organisations are ethical actors that cannot be divorced from the norms of the wider societies in which they operate. In The Ethics Centre's view, perhaps most importantly, many owners of corporations enjoy the legal privilege of limited liability. Like incorporation, the maintenance of limited liability depends on the continued agreement of society. Corporations that behave with indifference to the interests of society risk causing society to review and revoke essential privileges.
- This extends to engaging with systemic and global issues that the organisation indirectly navigates and for which there is no individual 'owner'. Examples of such issues include climate change or injustice in supply and distribution chains.
- Directors and the organisations they direct are not required merely to follow community opinion or expectations. Instead, directors should be encouraged to develop their own view of what ethical leadership looks like, having regard to the organisation's ethical framework – its purpose, values and principles. A strong ethical framework can provide a board with the basis for defining the organisation's place in the world – as a matter of choice rather than in conformance with the wishes of others (whether they be shareholders, employees, governments or community activists).

Example: When organisations take a stance on a social issue

In discussions with AICD directors, an example raised was the fact that well-known organisations took public stances to support same sex marriage. Directors indicated that this was an ethical decision, and may have been risky given that it could have impacted organisational reputation positively or negatively. Considerations about whether this public support was appropriate included:

- The views of, and impacts on, employees and customers. Should it matter whether the majority of staff and customers agree with the stance? Is there a need to be representative?
- Given organisations have a different voice and power from civil society and government, is there a duty to bring that perspective to the table?
- Is it possible to separate the personal views and interests of board members from the stance taken by the organisation? When is this 'pushing one's own barrow'? Is that a conflict of interest? Or is it legitimately bringing values and leadership to the table?
- Is there a line demarcating issues that organisations should take a view on? For example, is advocating for tax reform acceptable, whereas taking a stand on certain social or political issues is not?
- What linkages to operations need to be made before organisations can engage on issues of public interest such as environmental or human rights issues? ESG (environmental, social and governance) matters are increasingly of interest to institutional investors, and the boundaries between what is and is not a business interest are shifting.

LENS 2:

The board's collective culture and character

Every organisation and board is unique, and the culture and character of the board should reflect the purpose, values and principles (the ethical framework) of the organisation. However, other dynamics (for example, membership and history) and structures (for example, committees) also play a role. All these factors give rise to particular ethical challenges.

Does the board as a whole have a culture that enables and supports ethical considerations, including calling on the organisation's ethical framework?

- To what extent is the decision before the board clearly linked to the organisation's purpose, values and principles?
- What impact will the board's decision have on the culture of the organisation?
- Is the board's decision framed in language that will resonate within the organisation?
- Where are the potential 'ethical blind spots' on the board? For example, is the proposed course of action being recommended for no better reason than that 'everyone does it'?

Know the purpose, values, principles and lived culture of the organisation

Boards should use their organisation's purpose, values and principles (the ethical framework) as an explicit basis for good decision-making.

- **Consider establishing a formal protocol** for assessing decisions against the organisation's purpose, values and principles. Boards can encourage management to address the ethical dimension of decisions in board papers, where appropriate. Such considerations should not be reserved for a narrow class of ethical issues. Ethical considerations are as much an issue when making capital allocations as they are for customer-facing matters. For example, a board's decision to withhold investment in appropriate IT systems can lead to sub-optimal outcomes for customers, employees and the company as a whole.
- **Cultivate the capacity to look at decisions through the lens of culture** and not just outcomes. It is important for boards to identify what signals might be sent by the policies they adopt. For example, if a company claims to value trust but puts in place a compliance program based on radical transparency (surveillance), employees may conclude that trust is not truly a core value.

- **Frame decisions – and the reasons behind them – in explicit ethical terms.** There is no single, uniform ‘language of ethics’ used by all people. Some people judge the ethics of a course of action according to the outcomes it produces. Some look at whether or not certain duties have been fulfilled. Others are deeply concerned about the way in which decisions leave an indelible mark on the character of the organisation. Directors need to manage multiple ethical ‘languages’, and embed them in reasons, so that they speak to all relevant stakeholders and not just those literate in the preferred language of directors (whatever it might be).

Example: Practising ethics leads to benefits for the organisation

A board, which did not have a practice of overtly considering ethics, was revising the organisation’s investment strategy. The board was discussing whether the organisation should invest in organisations manufacturing bullets and organisations contributing to deforestation. Although those investments were legal, the board decided against them.

The discussion about ethics, trade-offs and grey areas led the board to think about other matters, like workplace health and safety and how ethical standards could be set above what was required by law.

The more the board considered ethics, the more issues they found had ethical dimensions. The more the board required ethical considerations to be presented, the more management deliberated on these questions also. Over time, this practice of ethics affected both the board’s culture and the culture of the organisation.

Consider the character traits of the board

Boards have differing histories, dynamics and driving forces which affect their character traits.

The character of the board affects the way directors raise, discuss and resolve issues.

Understanding the character of the board can help you understand **patterns of behaviour** that both positively and negatively shape board decisions. Once you understand this, you will be better placed to challenge potential ethical ‘blind spots’. **Ethical blind spots** arise out of being conditioned by experience to see the world in a particular way. For example, an experienced lawyer runs the risk of seeing all issues in exclusively legal terms. Of course, this risk is not always realised. However, the best protection against conditioned blindness (a species of group think) is to be aware of the risk. Otherwise, boards can quite inadvertently miss seeing issues that give rise to ethical risk.

“Understanding the character of the board can help you understand patterns of behaviour that both positively and negatively shape board decisions.”

Does your board incorporate diverse ethical perspectives?

Issue	Relevant considerations	Example
Form over substance	<p>In the final report of the Financial Services Royal Commission, Commissioner Hayne argued that while the law sets the standard for formal accountability, the law itself should be in accordance with what he called ‘fundamental principles’, being:</p> <ul style="list-style-type: none"> · Obey the law; · Do not mislead or deceive; · Act fairly; · Provide services that are fit for purpose; · Deliver services with reasonable care and skill; and · When acting for another, act in the best interest of that other. <p>In turn, he argued that any reasonable person should understand and apply those principles rather than push the limits of the law.</p> <p>Directors need to be conscious of the risk that they adopt too narrow an ethical perspective. For example, if all directors think that issues should be determined in terms of their consequences, they may miss cases where the key risk lies in, say, managing relationships.</p>	<p>A mining company has offshore operations in a country with laws that impose only minimal safety standards. A number of competitors take advantage of the limited legal protections to reduce their operating costs. Management calculates that the company could substantially increase profits by adopting a standard lower than that which applies in Australia. Should the board approve a standard of safety that complies with local laws or insist on standards that exceed the minimum required?</p>
Passion over reason	<p>A strong sense of purpose can be a positive source of value through, for example, motivating employees and aligning stakeholder interests. However, a passion for purpose can be detrimental to good governance if it is used as a mechanism for silencing dissent or to deny practical realities that affect the interests of the organisation: for example, if a founder stifles innovations that challenge their original vision.</p>	<p>A company is led by a CEO who believes that its products will change the world for the better, while generating a healthy profit. The sales team is incentivised to adopt high pressure sales techniques in the belief that this is not only good for the company but also the consumers. The CEO sits on the board and shuts down any questioning of the sales tactics by suggesting that critics do not understand the noble purpose of the company and the good that it is doing.</p>



Issue	Relevant considerations	Example
The need to be right	<p>Directors rightly prize their ability and duty to provide oversight and guidance by asking tough questions and having frank and fearless conversations. Indeed, questioning facts and assumptions is an essential aspect of ethical decision-making.</p> <p>However, questioning needs to be constructive. Directors should not feel compelled to win every argument – if this is at the expense of other directors feeling comfortable to express a different point of view. There is a difference between robust debate and ‘brow-beating’ of a kind that closes down debate.</p>	<p>Some directors are brilliant at spotting the fatal flaw in a plan or board paper. The ability to spot weaknesses is a critical skill. However, some directors take this ability to a point of destruction, always finding fault but never proposing a positive plan for resolving the problem.</p>
Collegiality vs Concurrence	<p>It is important that directors on a board enjoy positive relationships that foster collaboration and the honest exchange of diverse opinions. However, there are risks when the expectations of collegiality give way to an expectation of concurrence. Good boards encourage evidence based, principled disagreement and cease to perform their proper function if a concern for collegiality gives way to ‘group-think’.</p>	<p>Would you be comfortable calling out a potential conflict of interest of your good friend who is also on the board?</p> <p>Would you be comfortable questioning the insights of a recent strategy proposal developed by a well-liked CEO?</p>
Legacy	<p>Long-lived organisations with a well-known history can reap the rewards of a compelling narrative. However, fear for an organisation’s legacy can also make it slow to adopt new ideas and practices.</p> <p>Skilled directors navigate both sides of legacy – with an eye to preserving what is valuable in the past but not at the expense of innovation. The most dangerous words to be heard around any board table are, ‘we’ve always done it that way’ or ‘that’s just the way we do things around here’.</p>	<p>Kodak was proud of its heritage and was correspondingly slow to adapt to the age of digital photography. Others anticipated the changes and their effects. What was it about the composition and culture of Kodak’s board that led it to not reposition for the future?</p>

LENS 3:

Interpersonal relationships and reasoning



Boards are collections of individuals who bring their own individual decision-making style to the board table. Power dynamics exist in any group, with each person influencing and being influenced by others. Some of your fellow directors may often share your perspectives, but there will be others with whom you frequently disagree. Ethics for boards, rather than for individual directors, is the practice of group decision-making. As such, care is needed so that interpersonal relationships between board members do not distort the ethical judgement of the board as a whole.

“Ethics for boards, rather than for individual directors, is the practice of group decision-making.”

Have you considered how group dynamics impact board discussions, including how your own default decision-making style fits in?

- Is there too comfortable a drift towards agreement? Or is there an active effort to promote and manage diversity, and recognise and encourage differences of perspective?
- Are the opinions of some directors too easily dismissed because they are not subject matter experts? Are the opinions of some directors given too much weight because they are subject matter experts?
- Does the board identify and question the assumptions on which recommendations are based? Are directors given the time and opportunity to offer critiques of their own arguments?

Ethics and diversity

The quality of discussion is enhanced by a diversity of directors and differences of perspective.

Good directors are wary of group think. They also learn how to productively use diverse perspectives. This requires a high level of self-awareness and the ability to tune into the thinking of others. Some techniques to leverage diverse experiences, insights and opinions include:

- **Be cautious of uniformity.** The enemy of diversity is not necessarily a dislike of difference but, rather, an unconscious bias in favour of those who are like us or who confirm our own beliefs. Good boards are built on relationships of trust. It is generally easier to trust ‘people like us’, than those who are different. Yet it is this latter group who can add great value to a board’s ethical deliberations. Trust based on mere familiarity or sameness is of low grade. Far better is that which emerges out of diversity.
- **Be conscious of unwarranted assumptions.** It is easy to make ethical mistakes due to reliance on false assumptions. This error extends to any form of stereotype, especially when used as a shortcut to avoid spending time understanding the truth about a situation or person.
- **Aim for effective communication.** Directors should be aware of differences in communication styles – in terms of how people both send and receive information. These differences may be influenced by traits such as age, gender, seniority, ethnicity, background, skill set and even mood. Important ethical insights can be missed in cases where, say, a quietly spoken director is waiting to be invited to speak while others are quick to volunteer their opinions. It is important that all of the relevant voices in the conversation be heard – something that may require active management by the chair.

Insights from an experienced non-executive director on gender

“There is a view that women bring something different to the board table because they are women. This is true to an extent. Women have a common experience of overcoming hurdles that men have not had to encounter. But I don’t think that women have different behaviour or character traits (e.g. more compassionate, inclusive, or care about soft issues). Gender driven assumptions about who is going to care are not constructive. Sometimes as a woman I self-edit. I won’t raise a point because then I’ll be ‘the woman’ asking the question. Then I have to double correct and ask it anyway.”

“Good directors are wary of group think. They also learn how to productively use diverse perspectives.”

Group ethical decision-making involves negotiating different ethical styles

The 'group struggle stage' in decision-making is valuable. It is not a sign of indecisiveness or an unhealthy lack of consensus. Time should be allowed for the process to unfold.

Ethics is the practice of making decisions based on a conscious application of core values and principles. It draws in all who have a legitimate voice in the conversation, including those whose interests might diverge. It is important that multiple forms of ethical reasoning are considered in the course of decision-making. All of this takes time.

Some common pitfalls are:

- **Rushing straight to the (quantitative) result.** Some people may favour decision-making based on numbers, as it seems objective and efficient. Numerically-backed arguments can appear simpler and more rational than arguments that do not invoke quantification. However, it can reduce ethical discussion to a simple trade-off of known costs against known benefits (including social or environmental costs and benefits). This can result in missing important perspectives that are not reducible to numbers, or for which numbers do not yet exist.
- **Ignoring flow-on effects.** Some people may focus on first-order effects. These effects are generally clearer and more controllable than second-order and flow-on effects. However, questioning what the flow-on effects of a decision may be can avoid unintended consequences.
- **Failing to question intuition.** People often approach ethical issues from an 'ethical intuition' perspective; firstly, judging what is good and what is right based on a gut feel (e.g. we all know right from wrong), and then using cognitive reasoning to explain their ethical intuitions. Often, our intuition can lead us astray. For example, inexperienced drivers will 'intuitively' apply the brakes if their car enters into a skid, but with adequate training a driver can learn to accelerate gently out of a skid; that is, the intuitive response is reprogrammed by knowledge and experience. The same is true of 'ethical intuitions', which may be a reflection of the particular cultural values we have been socialised with. Alternatively, our intuition may be the product of confirmation bias, the tendency to interpret new information as confirmation of one's existing perspective. In any case, we need to be careful to avoid intuition being the expression of mere prejudice.
- **Time pressure.** This is a real and practical impediment, and sensitivity to it can aid discussion.

Be sensitive to power dynamics

Boardroom ethics can be strengthened by greater reflection on the way power is exercised – in the boardroom and, more broadly, in the director community.

Things to note include:

- Boards are collectives but there is increasing focus on the individual accountability of directors. There is a risk that some directors may judge every matter in terms of personal risk, allowing the instinct for self-preservation to frame and influence decisions.
- There often are unwritten board protocols that directors consciously or unconsciously follow. It is useful for directors to understand the way that protocols and power dynamics are influencing their thoughts and conduct.
- Less-senior directors, who are building their portfolio of directorship experience, may feel they need to conform with the views and practices of more experienced peers.
- Senior directors and chairs can assist by taking positive steps to draw out the views of their less experienced peers and thereby improve the depth and quality of ethical debate.
- ‘Out of session’ discussions by directors are a reality for many boards. Floating ideas and seeking to understand the perspectives of other directors can be useful, as it can consolidate options and opinions and save time. On the other hand, it can undermine collegiality, trust and transparency amongst board members. External ‘caucusing’ can also undermine the value of genuine debate among the board as a whole.
- Conflicts of ideas and perspectives are natural. It is important to approach conflicts with emotional intelligence and patience. Conflicts, if dealt with appropriately, are a learning opportunity to discover and engage with new perspectives. If a conflict does occur, sensitivity to power dynamics can shed light on the manner in which the conflict has played out.

The role of the chair

The chair can help each director to be empowered to question the ethical implications of issues and decisions.

This will give the board the best chance of being ethically thorough. A good chair will:

- use their authority to draw out relevant ethical issues and perspectives;
- notice and manage the personalities in the room, so all voices are heard and opinions considered; and
- curb inappropriate boardroom behaviour. An agreed board Code of Conduct can provide a useful point of reference.

Insights on the role of chairs from an experienced chair

The chair is a facilitator (referred to in some AICD contexts as a ‘conductor’). As a chair, it’s important to:

- have a learning mindset, as there is always opportunity for growth and improvement;
- deal with problems, and not let them remain beneath the surface;
- bring new blood to the board and draw out the new perspectives that this will reveal; and
- be aware of board culture and have strong interpersonal skills. Chairs have a responsibility to help directors (including new directors) feel comfortable when sharing their views.

LENS 4:

The individual director

Each person draws on a personal framework of values and principles. In some cases, the framework is consciously held in mind. In other cases, there are unconscious determinants at work. The ability to negotiate ethical differences with others begins with self-awareness.

Is each director aware of their personal ethical position and how it might differ to that of the organisation?

- Do your personal values and principles align with those of the organisation?
- Do you understand your own motivations and biases? How would your motivations look from an external perspective?
- Do you recognise your own preferred style of decision-making? Are you open to different approaches?
- Are you able to recognise and declare when you are 'out of your depth'? If so, have you sought counsel (if appropriate)? Are you prepared for potentially difficult debate?

Acknowledge yourself as an ethical actor

Ethics is rarely a dedicated skillset of any one director. Instead, it is typically an area of general experience amongst directors.

Directors must be free to comment on:

- the decision at hand (an issue of ethical content); and
- how the board or broader organisation makes decisions or behaves (an issue of ethical process).

It is important to remember that your wisdom and ethical opinions are valid and useful perspectives, and that the ethical opinions of other directors are also valid and useful.

However, directors' personal values and principles are always subordinate to those of the organisation.

Understand motivations and biases

Motivations affect our ability to make unbiased decisions.

Directors have various motivations for being on boards, including ideological alignment, personal growth, ego, societal contribution, skills development and career advancement. Sometimes our motivations work unconsciously to make us read situations and apply judgements that suit our individual interests.

- **It is useful for each director to examine her/his own motivations.** Some questions to ask are:
 - Is my thinking here at its independent best and free from the subtle influence of self-interest?
 - Am I giving priority to information or perspectives that confirm what I already believe? Confirmation bias can lead us to ignore valid alternative perspectives.
 - Am I keen to agree with a perspective because other people hold this view? Conformity bias can lead us to fail to engage in critical evaluation.
 - Am I relying too heavily on the first piece of evidence to come to hand? Anchoring bias can make us tend to cut short discussion or expectations.
- **Consider the motivations of other directors.** This must be done without judgement. Rather, it is a way to understand others' perspectives and where their strongly held views may stem from.

- Strongly held personal values should not be the only motivation and frame for debate. Personal values must be balanced with organisational and societal values. There are specific risks in not-for-profit organisations, where directors are typically not paid and may have a very strong ideological reason for being associated with the organisation.
- Sometimes your 'personal conscience test' can lead you astray. Some directors can be tempted to think that the proactive and open disclosure of potential conflicts of interest are subject to a form of 'personal conscience test'. They may mistakenly think that if one's conscience is clear, there is no risk of a conflict of interest and there is no need for disclosure. This is faulty logic and needs to be challenged.

Example: Notable points about conflicts of interest from 'Conflicts of Interest and Disclosure' prepared for the Financial Services Royal Commission¹

- Research has found that conflicts of interest lead to significantly more bias in advice.
- Susceptibility to self-serving bias occurs at a subconscious and unintentional level, rather than deliberate corruption. This leads to rationalisation of self-serving behaviour.
- Even when educated about bias, people tend to drastically underestimate the extent of their bias, and see themselves as immune from the effects of conflicts of interest. The greater self-control people feel, the more likely they are to place themselves in situations of temptation and the more likely they are to lapse.
- Policies to prevent conflicts of interest are more effective than policies to manage them.

Acknowledge vulnerability

Are you able to recognise and declare when you are 'out of your depth'? If so, have you sought counsel (if appropriate)? Are you prepared for potentially difficult debate?

Given the intersection between personal values and principles and those of the organisation, addressing ethical issues can often create a sense of vulnerability in directors, especially if there is a clash of ethical frameworks. As such, ethics in the boardroom requires honesty, authenticity and a high degree of trust.

- **Take off your armour.** If directors approach the boardroom wearing impenetrable armour, there will be the strong temptation to avoid ethical deliberations. The best boards leave their armour at the door, something that is only possible where work has been done to build and reinforce trust amongst fellow board members.
- **Be reflective.** While it is the board's job to reach decisions, it is also important to be reflective. Changing your mind may make you feel vulnerable, but it's a legitimate outcome of true reflection.
- **Be sensitive.** Engaging in ethical discussions in the boardroom means being sensitive to others' vulnerability.
- **Be respectful.** Directors need to distinguish between robust questioning and debate and destructive behaviour that fails to show adequate respect to others.

Example: Seeking guidance and support

It is important that directors seek guidance and support from other directors, the chair, trusted confidants and mentors. Of course, this must be done within the bounds of directors' duties and confidentiality.

Seeking support can help you stay grounded and also lift you up. By expressing your doubts, you can find confidence. By seeking another opinion, you can firm up your own thinking. 'Downloading' with other directors can put things into perspective and release the emotional charge from an issue.

¹ Suita Sah (2018) 'Conflicts of Interest and Disclosure Research Paper' for the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry accessed 2 July 2019 at <https://financialservices.royalcommission.gov.au/publications/Documents/research-paper-conflicts-interest-disclosure.pdf>

Conclusion

There is a growing awareness that the gap between financial and non-financial risks is often illusory. Ethical failure consistently destroys value, especially in companies where significant value is in intangible assets such as goodwill. Attempts to prevent ethical failures by relying on increasingly comprehensive systems of regulation, surveillance and internal compliance are insufficient. This was predictable, as the compliance 'cure' might address symptoms, but not the underlying causes.

Company directors can address the ethical foundations of corporations and the markets within which they operate. The decisions they make will shape both government and community responses. No longer is it prudent to look merely to the law for guidance. Directors should become more adept at managing ethical complexity – recognising that the decisions they make ultimately shape the character of organisations and their impact on the world.

This guide does not attempt to provide an answer to the many specific ethical questions that directors will need to answer. However, it is a guide to how one might usefully go about that process. The methods it proposes and the considerations it recommends will not 'stick' immediately. The skill of ethical decision-making is only refined with practice, leading to an improvement in both speed and accuracy.

We recommend that boards engage in that practice, both at the level of individual directors and as a whole. It is useful to take a spin on the equivalent of an ethical 'skid pad' – testing judgements and improving processes. Individual directors can also seek to understand their own default decision-making style, thus enabling them to move from a certain position, especially when navigating complex terrain in the company of others with a different outlook on life.

None of this is easy.
All of it is possible.

Acknowledgments

This guide is based on the insights of The Ethics Centre and draws on the experience of AICD members, and other subject matter experts, who participated in interviews and roundtable conversations. We thank them for generously sharing their knowledge, experience and reflections.

We would also like to thank the members of our Advisory Panel: Lynn Ralph FAICD (Chair), Melinda Conrad FAICD, Bruce Cowley FAICD and Dr Sally Pitkin FAICD. We are grateful for their guidance.



APPENDIX

The decision-making framework and matrix

The model that follows has been developed by The Ethics Centre to provide a reliable and replicable process for decision-making.

In a number of respects, it mirrors the architecture of general decision-making tools. However, this process has a number of distinct features that are highlighted below.

Duties of directors paramount

The AICD reminds directors that fiduciary and statutory duties should be paramount when making decisions for their organisations. These include the duty of directors to act in good faith, for a proper purpose and in the interests of the organisation as a whole, acting with care and diligence. Directors must not misuse their position and should avoid conflicts of interest and disclose material personal interests. Directors must also comply with further directors' duties applicable to their organisation and sector.

The broad outline

There are five steps in this process:

- Frame
- Shape
- Evaluate
- Refine
- Act

Each stage is described in greater detail on the following page.

Phase	Purpose	Core Questions
Frame	To define and understand the precise nature of the issue to be decided.	<ul style="list-style-type: none"> · What are the facts? · How are these facts linked to the organisation's core values? · What assumptions are being made about the world in which this issue is being decided? · Are there any 'non-negotiables' (e.g. relevant laws that must be obeyed)? · Whose 'voice' should be heard (i.e. who has a legitimate interest in this matter)? · What is the nature of each legitimate interest? Are the interests aligned or divergent?
Shape	To develop options that could resolve the issue. Some of these options will have been developed by management, others by directors.	<ul style="list-style-type: none"> · What kind of issue are we dealing with? Is it just a moral temptation (the possibility to benefit from doing something questionable)? Or is it a genuine dilemma in which competing values and principles seem to require incompatible outcomes? · What are the options? This is both the most creative and difficult part of the process because nothing should be 'off the table'. Every option, including the apparently 'outlandish', should be considered as that is where 'inflection points' can be found (see further page 32)
Evaluate	Apply a matrix of values and principles to evaluate the options.	<ul style="list-style-type: none"> · Take two or three of your best options and apply the matrix (as set out below). · The matrix approach recommended below is solid in its form but flexible in its content. The purpose of the matrix is to ensure that, as a minimum, an organisation's values and principles are used as the 'index for judgement'.
Refine	Identify and eliminate weaknesses in the proposed course of action.	<ul style="list-style-type: none"> · Play the 'Devil's Advocate' by taking up the option that has fared best in the matrix in order to identify its major areas of weakness. · Adjust the proposal to eliminate the weakness without damaging the overall integrity and utility of what has been proposed. · Put the proposal to some final tests, such as: how would I feel if this was done to a loved one? Would the person I admire most in the world do this?
Act	All ethical decision-making is practical – it ultimately requires that a decision be given effect.	<ul style="list-style-type: none"> · Give effect to your decision. · Monitor the outcome. · Offer reasons for your decision, even if it's not challenged. · Reflect on the decision and what can be learned from the process and applied in the future.

The Matrix – (to be used in the 'Evaluate' stage in the decision-making framework)

With few exceptions, management will present directors with recommendations for how an organisation should act. These recommendations will often be in accordance with the highest ethical standards. However, there will be times when ethical issues are at risk of being overlooked or where the complexity is such that no clear answer can be recommended.

These moments are often of pivotal importance as they represent times when a non-financial risk can be 'crystallised' to the point of representing financial risk. In these moments, it is important to apply a comprehensive framework for assessing the options before the board.

The matrix approach recommended below is solid in its form but flexible in its content. The purpose of the matrix is to ensure that, as a minimum, an organisation's values and principles are used as the 'index for judgement'.

The simple form of the matrix is as shown:

Options	Value or principle								
	V1	V2	V3	V4	V5	P1	P2	P3	P4
A									
B									
C									

Once the matrix is populated, then it is a relatively simple matter to determine which options best accord with the nominated values and principles. In the example below, Option B satisfies the greatest number of values and principles.

In using the matrix, organisations will need to determine which values and principles have greater priority, or 'weight', in comparison to others. For example, priority should always be given to those values and principles explicitly adopted by the organisation over those that its stakeholders, in general, might apply. Within that list of explicitly adopted values and principles, priority ought to be given to those that most closely align with purpose or that have a particular link to strategic risk. For example, mining companies will typically prioritise the value of safety over that of efficiency. Both values are of importance – but safety is of prime significance given the level of risk encountered in most mine sites. However, values can shift in terms of their relative priority. For example, it will be interesting to see if this prioritisation changes in line with the automation of mining operations – with humans playing a decreasing role at 'the coal face'.

Options	Value or principle								
	V1	V2	V3	V4	V5	P1	P2	P3	P4
A	✓		✓	✓		✓			
B	✓	✓	✓		✓	✓	✓	✓	✓
C		✓		✓	✓	✓		✓	✓

A practical example

The content of the matrix is – as a minimum – the values and principles of the organisation. So, in the case of NOVASTORES (refer page 8), its matrix would be as shown below. To recall:

You are one of seven directors serving on the board of NOVASTORES – a listed company that is a general retailer of food and commodities. The board has been asked to approve a policy to remove tobacco products from sale at all of its stores. This will involve some loss of profit, but the company will be exiting a market with declining sales due to the reduction in demand. The board is asked to approve the policy in general and to set a time frame for complete removal of these products. Total removal could be achieved in 12 months – or at any time thereafter.

Options	Value or principle				
	Choice	Convenience	Quality	Trust	Customer is always right
Stop selling					
Continue selling					

Other considerations: Extending the matrix

As noted above, there is no set content with which a matrix must be populated. It is largely a matter of determining the ethical framework of the organisation. However, it is also possible to extend the matrix to take into account a wider set of ethical considerations that would typically be drawn on in wider society.

We have produced below a list of core principles that are of that kind:

- **Would I have this done to me?** This is derived from the established principle of ‘do unto others as you would have them do unto you’. In one form or another, this principle of reciprocity occurs in many cultures across the world.
 - **Will this produce the best outcome?** There is a long tradition of deciding matters according to their consequences. A key related question for a director becomes, ‘what then counts as a good outcome?’ This question drives back to the issue of an organisation’s values (which define what is ‘good’). It also invites directors to consider how outcomes for the organisation should be balanced against those for its stakeholders - including wider society.
 - **Would this make a good rule for all?** This question tends to focus on issues of rules and duties – some arising from actions like promise-making, others embedded in legislation and regulation, and others being the product of reason. Directors answering this question are required to look behind the rules to see what issue of substance they are attempting to address.
 - **Would I be proud to see this fully disclosed?** This is a version of the famous ‘sunlight test’ that champions the corrective effects of transparency. It is important to note that this question does not seek to determine what would be popular in the eyes of others. Rather, it calls on directors to decide if they would be proud to stand by their decision in the ‘full light of day’.
 - **Does this respect fundamental human rights?** The United Nations has affirmed that there is a set of fundamental human rights that each person and organisation must respect – whether or not bound by formal laws to do so. Human rights are being invoked with increasing frequency – for example in objections to modern slavery.
 - **Does this show a proper care and regard for others?** This question seeks to look beyond issues of formal reasoning to invoke a notion of care for others. As much as anything else, this draws on an intuitive sense of how others might be affected by a decision – in terms of basic well-being and welfare.
 - **How will this decision shape the character and culture of the organisation?** This is an often neglected question – but may be one of the most important of all for directors. Every decision by a board helps to shape the ethical environment of an organisation. Even apparently mundane matters of policy can be rich in their symbolism – conveying messages about what is truly valued within the organisation.
- None of these questions is required to be asked. They are not necessary components in any matrix. However, boards may find them a useful complement to their decision-making.

A note about 'inflection points'

As noted above, the really tough decisions are those in which equally valid values and principles require opposed courses of action. This is, of course, the source of the evocative image of being 'caught on the horns of a dilemma'.

While it is common for boards to be frustrated by the apparent impossibility of deciding every issue in clear terms, it is frequently the case that an apparent dilemma can be resolved by discovering or creating an 'inflection point' – the point at which the underlying terms of a dilemma can be revisited and new possibilities explored.

Inflection points most often arise at the second phase of the decision-making process outlined above – when one is shaping the options. This is when the process is most creative and when apparently 'foolish' considerations can be most effective (with some modification). In other words, the seeds of a brilliant solution can often be found in the ground of an outlandish idea. Also, the shaping phase allows a director to take into account perspectives that were gained in the first phase – especially from those whose legitimate interests might otherwise have been overlooked because of their relatively marginal status.

Insights on the role of chairs from an experienced chair

A construction company had built its reputation for integrity over a thirty-year period during which it honestly and accurately estimated the time and cost to complete projects. However, in recent times, it was losing market share to competitors who would offer unrealistic estimates of time and cost simply in order to win work – which would neither be finished on time or on budget. The good reputation of the honest builder could not compete with the cut-throat tactics of its competitors. The honest builder was going out of business. So, should the builder stick with its builder principles and risk ruin or join the 'rats in the pack' by forfeiting its good name?

The solution lay in the honest builder's key strength being combined with an apparently foolish suggestion: 'why not put your money where your mouth is and offer prospective clients a bond (10% of the contract price) that you are willing to forfeit if you overrun on time or price'? The key to the inflection point was this: having offered the bond, prospective clients should be invited to act in their own interest by requiring the same of all competitors. Such a requirement would restore a level playing field and enhance competition - with there being no advantage afforded to those offering unrealistic estimates of cost or time.

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