

## **Inner City Care Corporate Governance Guidelines**

**To be updated every 2 years**

**Currently updated – June 2019**

### **Corporate Governance Overview**

“Corporate governance is the system by which companies are directed and managed. It influences how the objectives of the company are set and achieved, how risk is monitored and assessed, and how performance is optimised”<sup>1</sup>. The Australian National Audit Office (1999) adds that it “encompasses authority, accountability, stewardship, leadership, direction and control exercised in an organisation”.

The purpose of this document is to outline the responsibilities of the management committee of Inner City Care (ICC), and clarify its responsibilities for conformance with company policies and the legal and ethical frameworks within which ICC operates, and explain how it and its members are accountable for company performance, rewards and sanctions.

### **History**

ICC began operation as a child care service in May 1982. Since late 1978 a group of parents (all ABC workers) had been lobbying for the provision of childcare in the heart of the inner city to meet the special needs of the community in the area. In a four year period they organised funding, community support and patronage and a general framework for a stable and viable service in an area famous for its nomadic population. The original premises, in Bourke Street Darlinghurst, was donated by the ABC Staff Association. The building continued to be leased to ICC for nominal rent until the move to Ultimo in 1991. The service originally operated 24 hours per day, opening 6 am Monday morning and closing 6 am the following Saturday morning.

In 1987 a campaign was begun to gain funds to enable ICC to relocate from Darlinghurst to larger premises. In November 1989 the Australian Broadcasting Corporation (ABC) issued a request for tenders for the provision of childcare in its new premises in Ultimo. In 1990 ICC won that tender and contributed \$562000 towards the fit out of the Centre – relocation grant from The Department of Health, Housing and Community Services. On 15 July 1991, ICC opened at the ABC in Ultimo operating from Monday to Friday 7 am to midnight.

### **Operations**

ICC is community managed early education and care service offering long day care to all members of the local community, including the ABC. It operates from 7.30 am to 6.30 pm Monday to Friday with places for 44 children (10 x 0-2's; 12-13 x 2-3's; 22-24 x 3-5's). In October 2002 ICC entered into a 5 year agreement with the ABC whereby the ABC provides a annual grant to employ an additional Early Childhood Trained Teacher in exchange for 24 of the places to be reserved for the children of ABC staff. The current agreement between ICC and ABC will be reviewed in 2022. The only other relationship with the ABC is that of landlord, as set out in the lease documents and memoranda of understanding which stipulate the conditions of tenancy.

### **Centre Management**

ICC was incorporated as a company limited by guarantee under the Corporations Act 2001 (“the Act”) in 1987, and the members of the committee hold the responsibility as directors of the

company and the approved provider of the service.. As a company, ICC is able to enter into contracts and receive government funds directly. As a company limited by guarantee the personal financial liability of each of the directors is limited to \$2.00. This is significantly different to other models in the sector where a centre may be owned and/or managed by an outside group with parent consultation committees, or incorporated as an association under the NSW Department of Fair Trading.

1 Principles of Good Corporate Governance and Best Practice Recommendations, ASX Corporate Governance Council, March 2003

As a public company limited by guarantee, ICC must; – have its financial accounts audited every year – lodge these audited accounts with the Australian Securities and Investments Commission (ASIC) – keep separate minute books of all management committee meetings – maintain a register of company members – keep proper books of accounts and administrative records – inform ASIC of any change in company directors (members of the management committee), registered office or change to the constitution.

As a company, ICC has a constitution which is its rules of operation. It determines how the organisation operates, its goals, practices and processes. Every member of the company should be familiar with the constitution.

Directors govern companies on behalf of the shareholders who elect them and in the case of ICC, on behalf of the members of the company. All parents are eligible to become members of the company and so have the right to vote at the annual general meeting (AGM). All directors must comply with the legal requirements under the Corporations Act 2001, and some of these duties are outlined in this document in the section on the duties of the committee members. In general terms, the Corporations Act specifies four main duties for directors: – to act with all the care and diligence that a reasonable person might be expected to show in the role of director (s 180)2, including to avoid conflicts of interest, and to reveal and manage conflicts if they arise. The business judgment rule, whereby a director makes a judgment in good faith, for the best interests of the company and does not have a material interest in the judgment, applies here; – to act in good faith in the best interests of the company and for a proper purpose (s 181). This duty is one of fidelity and trust, known as a 'fiduciary duty'; – to not improperly use their position for personal gain or to the detriment to the company (s 182); – to not improperly use the information they gain in the course of their director duties for personal gain or to the detriment to the company (s 183).

Added to these areas is the duty not to trade whilst insolvent (s 588G). Other significant duties and responsibilities for directors include: – maintaining adequate accounting records and the audit of financial statements; – continuous disclosure of significant information; – related party transactions; – lodgement of information with ASIC.

Other legislation, such as Work, Health and Safety and trade practices laws, imposes responsibilities on directors in addition to the Corporations Act.

ICC is managed by a parent and community management committee who are appointed as directors of the company. It is this responsibility held by the parents and the community that allow ICC to provide a level of care that ensures the focus of the service remains on the children.

The time and effort required for membership of the committee can be a big investment on the part of the parents. It is also a vehicle for direct involvement in the early childhood years which some working parents feel they miss otherwise. Parents have proven themselves capable of making the

difficult decisions that are sometimes required, have a great sensitivity to the varied needs of ICC users and community, and can be powerful advocates of children's rights, needs and limitations.

A direct benefit of this partnership between the centre's management and the centre's users is consistency between childcare and home environments.

## 2 The sections numbers are reference to the sections in the Corporations Act 2001

A professional team provides vital skills support and must acknowledge and accept parent expertise. What can then develop is "a working relationship that is characterised by a shared sense of purpose, mutual respect and the willingness to negotiate. This implies a sharing of information, responsibility, skills decision making and accountability." (Pugh, 1988). It is all the "behind the scenes" work that enables ICC to put the children first each day.

The management committee is responsible for all major legal, financial, employment, compliance, planning and policy-making decisions. Its responsibility is total. As a member of that committee you have personal obligations and liabilities on behalf of the company. The management committee, although made up of parents, is the board of directors of an incorporated public company. As a member of the management committee you are a director of a public company. The centre director is the Nominated supervisor or the person recognised as the Nominated Supervisor under the Education and Care Services National Regulations 2011. They do not have the same responsibilities for the company as a company director i.e. a member of the management committee.

The management committee is accountable to the company and the Education and Care Services National Law and Regulations 2011, including the ASIC and other stakeholders for the financial status and financial sustainability of the organisation.

### **Role and structure of the Management Committee**

The Act places certain statutory requirements on the management committee, but generally the management committee has the overall responsibility for the company including the responsibility for policy development, planning, employment, budgeting, and liaising with funding and regulatory bodies.

The committee reports to and is accountable to the members of the company. Any parent can apply to become a member of the company. Any member of the company may nominate for election to the committee, and then may be elected as an office bearer. The committee reports annually to the members at the annual general meeting (AGM) and monthly to all the parents through the centre director.

The details for the selection, appointment and retirement of the committee members and other issues are set out in the constitution. Committee members are elected at the AGM and hold office until the next AGM when they retire but are eligible for re-election. The committee must have at least four elected members and no more than 15 members and a quorum is half the number of elected committee members plus one. The office bearers are elected by the committee from the committee at its first meeting held after the AGM. The powers and duties of the committee are set out in the constitution, but an overview is provided in this document.

The AGM is held once a year specifically to elect the management committee, appoint the auditor and is the forum for reports and decision making requiring full membership votes as outlined in the constitution. Only members of the company have voting rights at the AGM.

## **Committee responsibilities**

The role of the committee is to oversee the work and activities of ICC and it has the ultimate responsibility for its operation. It must ensure that policies are developed for the company which ensure its financial health while ensuring that ICC meets the requirements of federal, state and local government laws and regulations which include Education and Care Services National Regulations and Law 2011, incorporation, insurance, industrial legislation, awards and taxation. The committee must also provide reports to relevant government departments, parents and family members.

The committee is responsible for the financial state of ICC including preparing and managing budgets, setting fees, ensuring appropriate financial records are kept and that audited financial statements are prepared and submitted to relevant government departments such as ASIC.

The committee is the legal employer and as such is responsible for hiring staff, ensuring working conditions and salaries are in accordance with relevant awards and industrial legislation, providing adequate support for staff including professional development and training, and developing and implementing appropriate policies and procedures to comply with relevant legislation such as Work, Health and Safety, disputes, grievances, dismissals, privacy etc...

The terms of reference for the committee include:

- formulating and monitoring policy and strategy
- approving and monitoring budgets
- setting and reviewing fees
- appointing the centre director, nominated supervisor, educational leader, reviewing his/her performance, supporting the development of his/her skill base and recognising and rewarding effort
- monitoring staff performance
- ensuring the relationship with the community, including the ABC, is managed effectively.
- Ensuring the Educational and Care Services Regulations and Law 2011 are abided by at all times.

Under the Act the committee members are not able to delegate the accountability of the committee and its members for any activities undertaken in the name of the company. The committee delegates to the centre director the day to day operation of the business through the approval of the budget, policies and the ongoing monitoring of the activities of the centre.

This delegation includes, but is not limited to:

- the achievement of the committee's policies and objectives
- operational performance
- facilities
- risk management and disaster recovery
- human resources and staffing

– Work, Health and Safety compliance with laws, regulations, industry codes and organisational standards.

However the management committee retains responsibility for the above at all times.

### **Committee members' duties**

The company's direction, resources and culture are determined by the committee members in line with their accountabilities to the company. The members of the management committee are expected to understand their responsibilities and accountabilities as directors under the Act. In accordance with statutory requirements and in keeping with developments at common law, the members of the management committee should: – discharge their duties in good faith, honestly and in the best interests of ICC with the level of skill and care expected – use the powers of office for a proper purpose, in the best interests of ICC as a whole – act with the required care and diligence, demonstrating commercial reasonableness in their decisions – ensure disclosure of any potential conflicts of interest – ensure that members approve all related party transactions – not make improper use of information gained through their position as director – not allow any personal interests, or the interest of any associated person, to conflict with the interests of ICC – make reasonable inquiries to ensure that the entity is operating efficiently, effectively and legally towards achieving its goals – undertake diligent analysis of all proposals placed before the committee – attend at least 80% of all scheduled meetings – be familiar with all products and facilities – have a thorough understanding of the principles of corporate governance

Committee members are expected to:

- attend committee meetings and participate fully in decision making
- support and attend sub-committee meetings as necessary and as required
- understand and perform the necessary duties
- be familiar with the constitution and the policies of ICC
- represent ICC and be a spokesperson at all times in a responsible manner
- take part in fund raising activities from time to time
- support the working bee
- work co-operatively with all other committee members, staff, volunteers, parents and families
- be committed to the aims and work of ICC and be willing to take part in meetings and other committee activities

### **Key roles**

The work of the committee is split with particular functions being performed by the office bearers in addition to the duties expected of all committee members. As ICC is a public company, it has specific requirements under the Act which may be different to those in some childcare centres in NSW. The following defines the roles at ICC.

### **The president and chair**

The president has the task of making sure that the committee is working effectively and achieving its aims. At ICC the president also has the function of chairperson at committee meetings. Key responsibilities include:

- being spokesperson for ICC in the community and representing ICC in public where necessary
- making sure the monthly committee meetings are held and organised in advance
- preparing the agenda in consultation with the centre director and the secretary
- chairing the committee meetings and ensuring that the discussion is relevant and the decision making clear
- signing the minutes after they have been confirmed as a true record of the previous meeting
- making sure the meeting is being run in accordance with the Constitution
- the Chair should not move motions, but can vote in accordance with the Constitution
- making sure that each decision made at committee meetings are implemented
- ensuring that tasks assigned at each committee meeting are undertaken in the agreed timeframe
- acting as communication link between committee members and the committee and centre director.

The president needs to have a good relationship with the director to stay in touch with daily happenings

- ensuring that any document signed on behalf of the company is in accordance with ICC policy
- acting on behalf of the committee between meetings.

In the case of emergencies the president and other key members such as the secretary and the treasurer should make decisions on behalf of the committee.

### **The vice-president**

The vice-president acts for the president in his/her absence.

### **The secretary**

The secretary is responsible for keeping the records (other than financial) for ICC. Key responsibilities include:

- making sure the monthly committee meetings are held and organised in advance and that proper notice is given and a quorum of members is present at each meeting
- draw up the agenda for the meetings in consultation with the president and with regard to the minutes of the preceding meeting
- ensure that the minutes of the preceding meeting and any other relevant documents are distributed to the committee members 2 weeks before each meeting
- receive apologies from committee members unable to attend meetings
- receive requests for items to be included on the agenda

- taking the minutes at each meeting, writing them up and distributing them to the members
- noting motions to be decided on and the precise wording of resolutions and decisions
- ensuring the appropriate reporting is made to relevant government bodies such as ASIC

### **The treasurer**

The treasurer is responsible for overseeing the financial management of ICC and keeping the committee informed of its financial state. Key responsibilities include:

- preparing the budget in consultation with the centre director
- monitoring income and expenditure and reporting on this to the committee
- ensuring a proper record of all income and expenditure is kept and supervising the administration staff to ensure it is
- presenting financial reports at committee meetings
- organising and preparing the necessary information for the annual audit

### **Statutory Requirements and compliance**

Child care is a heavily regulated sector and so there are many compliance issues which the management committee need to be aware of. The Education and Care Directorate Early Childhood are the primary regulators of the physical requirements of a child care centre in NSW. ACECQA is the National body for ensuring that National Law and Regulations are being upheld to a high quality. They both are the only bodies that can legally authorise the opening of a service, determine its size, the staffing required and the age breakdown of the children attending. It has a further role in monitoring ICC's provision of a safe developmentally appropriate program of educational experiences.

It is the responsibility of the management committee to ensure ICC complies with regulatory requirements including:

- giving 4 weeks notice if there are any changes to the Constitution
- reporting when a management committee member/company director resigns
- reporting if there is a change in the "licensee's capacity to provide the service" and also if the licensee's contact information changes
- reporting in advance in the event of ceasing to offer child care
- reporting before an application of a DA is lodged for any building, renovation or demolish
- reporting in writing if the approved provider, management committee member or staff member is charged with a "notifiable offence"
- ensuring effective and efficient management of the service

- ensuring that proper records are maintained
- ensuring appropriate insurance is maintained
- reporting any new nominated supervisor when the Nominated Supervisor leaves
- forwarding copies of staff qualifications to DEC, as appropriate
- advising DEC, in writing, if any member of staff is charged with, or convicted of, a criminal offence.

The management committee is the Approved Provider under ACECQA and the NSW Children and Young Persons (Care and Protection) Act 1998 ("the Childcare Act"), and is responsible for the employment of a Nominated supervisor (the centre director) in accordance with the requirements in the regulations.

As the Approved Provider, the management committee must:

- be aware of the statutory requirements of the Childcare Act
- ensure that the conditions and requirements of the Childcare Act and the Education and Care Services National Law and the Education and Care Services National Regulations 2011 are met at all times
- delegate to the nominated supervisor the day-to-day operation of the programs and supervision of staff
- employ suitable staff to meet the needs of ICC
- ensure that staff-to-child ratios are met at all times
- provide adequate office space, staff facilities and facilities for storage of materials and equipment
- arrange for the cleaning and maintenance of the premises
- ensure that fire extinguishers are maintained and checked regularly and that staff are knowledgeable about fire drills and evacuation procedures
- ensure that the grounds, buildings, equipment and amenities comply with licensing standards

There are many more and it is the responsibility of management committee members to check the law and regulations for the rest.

The committee also has responsibilities under legislation, including Work, Health and Safety legislation. Its responsibilities under this legislation include:

- providing leadership in, contributing to, applying due diligence and facilitating the establishment, documentation, promotion and maintenance of ICC WHS management system including an adequate record keeping system
- regularly assessing individual and service safety performance and communicating the results to all relevant persons
- collecting and having available all relevant information relating to identifying hazards and undertaking risk assessments, for example, relevant, Codes of Practice, Australian Standards, government health and safety authority guidelines etc.



Ensuring that, in the event of an emergency, appropriate procedures are in place for:

- the safe and rapid evacuation of all those in the service at the time
- the appointment and training of person(s) responsible for overseeing any evacuation and/or using fire fighting equipment if required to do so
- emergency communications
- appropriate medical treatment where required, and, that
- details of evacuation procedures are prominently displayed throughout the service.
- safeguarding the health, safety and welfare of all employees and others in or near the ICC environment by ensuring that the workplace environment (including access to and exit from the premises, walkways etc.), safe working procedures and any plant or substance provided for use by the employees, are safe, without risk to health and appropriately maintained
- ensuring employees fulfil their obligations under duty of care to themselves, their colleagues and all other persons at or near inner city care
- undertaking not to discriminate against, threaten or dismiss an employee who notifies them of a workplace hazard, or is an WHS representative
- ensuring serious and notifiable accidents or incidents are communicated to the relevant government health and safety authority promptly