

FISHERIES RESEARCH & DEVELOPMENT CORPORATION
NATIONAL MANAGEMENT ADVISORY COMMITTEE
LEVEL II COURSE

VENUE: SEAFOOD INDUSTRY, VICTORIA

DATE: 25TH - 27TH MAY, 2000

CO-ORDINATOR: DR. ALISTAIR MCILGORM

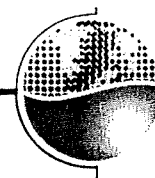
**FISHERIES
RESEARCH &
DEVELOPMENT
CORPORATION**



AMCsearch
LTD

WAY AHEAD !!

A Subsidiary of the Australian Maritime College



Australian Maritime College and the FRDC present

FISHERIES MANAGEMENT "MAC II" PROGRAM 25th -27th May, 2000.

VENUE: SEAFOOD INDUSTRY VICTORIA.

DAY 1 THURSDAY 25th May

Time	Subject	Lecturer
09.00-09.15	Welcome	
09.15 - 09.30	1. Overview of MAC II - Introduction	Dr. Alistair McIlgorm
09.30-10.00	2. Legal Principles for MACs	Dr. Alistair McIlgorm
10.00-10.15	Morning Tea	
10.15-11.00	3. Principles of Administrative Law	Marc Wilson
11.00-12.00	<i>Examples/Team Exercise/Discussion</i>	AM & MW
12.00-13.00	Lunch	
13.00-13.30	4. Policy Development	Marc Wilson
13.30-14.00	5. Managing Information	Dr. Alistair McIlgorm
14.00-14.30	6. Budget Principles	Dr. Alistair McIlgorm
14.30-15.00	<i>Discussion</i>	Marc Wilson
15.00-15.15	Afternoon Tea	
15.15-16.00	7. Costing Principles for MAC Members	Dr. Alistair McIlgorm
16.00-17.00	8. Computers and Data Management	Marc Wilson

DAY 2 FRIDAY 26th May		
08.45-09.45	9. Catch and Effect Database Information and Its Use	Marc Wilson
09.45-10.15	<i>Example - Describing Catch and Effort Data</i>	Dr. Alistair McIlgorm
10.15-10.30	Morning Tea	
10.30-11.30	10. Communication and the MAC Member - Written - Spoken	Dr. Alistair McIlgorm
11.30-12.00	11. Publicity and Media Issues	Marc Wilson
12.00-13.00	Lunch	
13.00-13.30	12. Meeting Skills and Protocol	Dr. Alistair McIlgorm
13.30-14.00	<i>Simulated Meeting</i>	AM & MW
14.00-15.00	13. Developing a MAC Position Paper	Marc Wilson
15.00-15.15	Afternoon Tea	
15.15-16.00	14. Teamwork and MAC's	Dr. Alistair McIlgorm
16.00-17.00	<i>Teamwork Exercise</i>	AM & MW
DAY 3 SATURDAY 27th May		
08.45-09.45	15. Conflict Resolution	Dr. Alistair McIlgorm
09.45-10.15	16. Conflict of Interest	Marc Wilson
10.15-10.30	Morning Tea	
10.30-11.15	17. Personal Communication	Dr. Alistair McIlgorm
11.15-12.00	18. Strategy and Goal Development	Marc Wilson
12.00-13.00	Lunch	
13.00-13.45	19. Leadership and the MAC Process	Dr. Alistair McIlgorm
13.45-14.45	<i>Exercise - Leadership in MAC Issues</i>	AM & MW
14.45-15.00	<i>Conclusion and Feedback</i>	
15.00	Depart	

1. Overview of MAC II - Introduction

OVERVIEW OF THE MAC II

ALISTAIR McILGORM

A second level course for Management Advisory Committee representatives.

Why a MAC II

- 220 people have attended the introductory MAC I Course.
- This has been a successful course and feedback suggests the need for more training.
- Representatives wish to enhance their skills.
- The MAC members recognise the need to lead the process.

What is in the MAC II?

- Three core elements:
 1. Policy making - legislation and MAC's.
 2. Managing information - tools, budgets and costings.
 3. Representative skills - communication, issues papers, meetings, conflict resolution.
- Also strategy and goal development, management and leadership.

Format and Delivery

- Presentations similar to MAC I.
- More discussions.
- Two and a half days duration.
- Developing a paper.
- Challenge you to go further.
- Be a beneficial experience for you.

Accreditation Exercises

- Accreditation calls for appraisal of your competency in key elements
- Short appraisal of key skills/points.
- We will keep records and forward paperwork after the course.
- We hope to develop a MAC III - external by correspondence - 2.5 days at the Australian Maritime College (AMC).

Welcome!

- We appreciate your support in this new initiative.
- Friday evening we will have a special dinner.
- We wish to obtain your suggestions, etc., for the course - Questionnaire Form is included with your notes.
- Enjoy your stay at the Australian Maritime College.

2. Legal Principles for MAC's

LEGAL PRINCIPLES FOR MAC'S

- BACKGROUND IN LEGAL PRINCIPLES

ALISTAIR McILGORM

The Law

- Is divided into different areas:
 - Criminal Law;
 - Civil Law;
 - CONTRACT LAW;
 - LAW OF TORT;
- Also:
 - National Law;
 - International Law.

Law of Contract

- When is a valid contract made?
- A contract has:
 - consideration (something of value);
 - an agreement:
 - offer;
 - acceptance;
 - intention to create legal relations;
 - (can be breached).

Contract Issues for a MAC

- Supply of services.
- Contractual arrangements for the MAC:
 - can it sue or be sued?
 - is it covered by the Government?
 - will developed management arrangements open more issues in this area?
 - discuss.

Law of Tort - A Civil Wrong

- Includes trespass, negligence, defamation, public of private nuisances, and liability for dangerous property or animals.
- Negligence:
 - duty of care;
 - breach of that duty (negligence);
 - loss and causation (remoteness of damage).

Care and Negligence

- Care - to whom do I owe the duty of care?
- "Reasonably foresee would damage his neighbour?"
- Negligence - a breach of that duty?. Who measures it?
- Loss and causation (remoteness of damage):
 - would have happened anyway;
 - contributory negligence;
 - remoteness of damages.

Common and Statute Law

- Contract and tort judgements are judge made law.
- Statute law under Act for offences, etc., can be either Commonwealth or State statutes.
- Most fishery law is by statute.

The Law in Everyday Life

One: liability arising under the *law of contract*

If you make a promise to do something and then decide not to do it the person to whom you made the promise, if sufficiently annoyed, may threaten to sue you. Sometimes this may only be an idle threat. At other times, however, there may be cause for concern because the promise you made may constitute a *valid contract*.

The *law of contract* has been developed to ensure that we keep our promises. However, the law is not concerned with just any kind of promise. It is concerned with the sort of promise which is in a sense a bargain—a promise for which the other person has either given something in return or promised something in return.

The getting or giving of something each person thinks is valuable is an essential part of creating a viable contract. The legal term for something of value that is given or received as part of an agreement is *valuable consideration*. A contract arises in law only if some *consideration* has been given in return for the promise.

The principle of consideration is conceptually simple. It has been defined as the *price of the promise* or as a *benefit conferred on the promisor or a detriment suffered by the promisee*. But, while the principle is simple, its application can lead to situations of bewildering complexity.

All major text books on the law of contract discuss consideration as an important element in a valid contract. However some writers have questioned the need for such a requirement. They take the view that a promise should be enforceable without consideration.

Apart from *valuable consideration*, the following must also exist in order to establish a valid contract.

- *offer*
- *acceptance*
- *intention to create legal relations*

Refer to Reading 1, an excerpt from *Anson's law of contract*, for more detailed comment on the law of contract.

Guest, A C (1984). *Anson's law of contract*. 26th edition. Oxford: Clarendon Press, pages 78-90.

While it is important to know the requirements that must be proven in order to establish a valid contract, these elements are usually not disputed in most practical business transactions.

Breach of contract on the other hand is a subject that comes up in the course of ordinary shipping business. It has also been subject to much legal discussion.

If a valid contract is breached, either by non performance or improper performance, the innocent person (*plaintiff*) has a claim against the other person (*defendant*) and can bring an action for damages.

The plaintiff may also be discharged from further performance of the contract or, in exceptional situations, the plaintiff may insist on specific performance of the contract or on an injunction preventing the defendant from acting contrary to the terms of the contract.

Clive Turner discusses breach of contract in his text on Australian commercial law. It is appropriate that you read an extract from that text at this point to assist your understanding.

Turner, Clive (1992). [selected pages from] *Australian commercial law*. 19th edition. Sydney: The Law Book Company Ltd, pages 178-183.

If you work in a shipping office, you may have been confronted with the question of the shipowner's liability for loss or damage to cargo. You may be aware of how such situations are resolved, but for your information the legal questions which finally determine the extent of the shipowner's liability are:

- Has the shipowner breached a valid contract, such as the *contract of carriage* with the shipper?
- If the shipowner has breached the contract, what are the consequences of such a breach?

The answers to these questions are determined by a variety of factors such as:

- What type of contract of carriage was breached?
- What is the law governing such a contract?
- What are the terms of the contract?
- Has there been non performance of the contract or has a specific term of the contract been breached?
- Can the liability of the shipowner be limited in some way?

These issues will be dealt with in detail in a later chapter, but for the present you need to be aware that as far as contractual liability is concerned, the person who alleges to be aggrieved, that is, the person who feels that a contract has been broken, would have to seek redress by bringing an action in court or taking the matter to arbitration, if so agreed.

An issue such as this is usually then settled in the form of damages being awarded—damages which can be assessed in terms of money.

There is usually no risk of the defendant going to jail for breach of contract. It is also worth noting that in awarding damages, the law attempts to put the aggrieved party in the same position they would have been in if the contract had been performed properly. This principle is subject to the *rules of assessment of damages*.

In commercial transactions it is important for the parties to know in advance the extent of their possible liability if things go

wrong. Theoretically, the loss arising from breach of contract could go on indefinitely. One event or loss leads to another.

Consequently, jurists have constructed many theories and produced many and varied arguments that seek to define the degree of loss for which a defendant would be liable.

Two: liability arising under the *law of tort*

The word *tort* comes from an old Norman French word meaning *wrong*. The *law of torts* is concerned with all those wrongs that are *civil* wrongs. A tort is not dealt with as a *criminal* matter, but is, instead, regarded as a matter between the person who was hurt and the person whose fault it was.

The *hurt* does not have to be physical; and, in fact, most tort cases are about financial damage which the plaintiff has suffered. Under the law of tort, the person who feels he was wronged takes the other person to court in a civil action and sues him or her for *damages*, usually money awarded as compensation for the *wrong**.

A simple example of how tort law operates is as follows: you drive at an excessive speed because you are late for work. You meet with an accident in which a pedestrian is injured. You know you are going to be in trouble, not only because your conscience may tell you that you have done something wrong, but because you know that the law, too, may say you have done something wrong. You have done wrong according to the motor traffic legislation and according to the law of tort.

Liability under the law of tort arises without the existence of any voluntary undertaking or arrangement. You do not promise pedestrians that you will not harm them or drive with care. The law of tort, however, imposes on you such an obligation or duty.

The law of tort attempts to balance conflicting interests. On the one hand there is the demand for protection against injury or loss and on the other the requirement not to be impeded in the pursuit of activities.

The law attempts to balance the magnitude of risk, the likelihood of accident and the seriousness of the possible consequences with the expense of the safeguard that could be provided or the disadvantage of not engaging in a particular activity. Thus the law of tort is concerned with recompense for losses incident to man's activities in modern society.

This raises questions as to what kind of losses are to be adjusted. What kind of interests should be protected and what kind of harm is to be compensated?

The early law gave protection against bodily injury and physical damage to property. The interests that were to be protected were later extended to cover injury to reputation, thus giving rise to the torts of libel and slander.

Personal security was always an interest protected by the law of tort and physical aggression was deemed a tort under trespass to person (which dealt with assault and battery). Physical aggression has now been extended to cover not only persons and property but their money. Thus deceit and unfair competition are activities against which the law of tort would provide a remedy.

It is not possible to outline broad general principles of tort liability as in contractual liability. One cannot say that if certain requirements are satisfied there would be a tort or that if these elements are present you have committed a tort. It appears that it is more accurate to say that there is a random collection of miscellaneous torts which have little in common with one another apart from the fact that they protect interests which if infringed must be compensated.

Thus the law deals with a number of specific obligations which require that you do not harm others. Torts include trespass, negligence, defamation, public or private nuisances and liability for dangerous property or animals. In this way, the law offers a form of redress if you assault one another, if you cause a public or private nuisance or if your premises are not safe for those who may visit them, either with or without your permission.

The tort of negligence

Although the law of tort is by its nature very much open to interpretation by judges, who generally rely on precedence to determine the outcomes of the cases they hear, there is one major tort where certain general principles can be outlined. This is the *tort of negligence*.

Negligence is the failure to do or not to do something that a reasonable person would do or not do.

To establish the tort of negligence the plaintiff (the injured or aggrieved party) must prove the following elements:

- *duty of care*
- *breach of that duty (negligence)*
- *loss and causation (remoteness of damages)*

Duty of care

The law imposes upon a person an obligation to avoid conduct involving unreasonable risk of danger to others. Your conduct must not pose a threat to any interest or give rise to any kind of harm to another.

Let us take as an illustration the case of a motorist. If you drive a car you owe a duty of care to avoid driving in such a manner that you may harm others. But the law also has to establish certain parameters or limits which define the degree of responsibility that should be accepted by the motorist.

One technique for defining responsibility is to ask the question: *to whom do you owe this duty?*

Your answer would rightly be that you owe this duty to other users of the road and to those who have property at risk on or near the road. The answer, however, has not always been so clear, particularly when the aggrieved party could not be clearly perceived or there was no direct link between the person responsible for the loss and the aggrieved person.

The first attempt to lay down a general formula to this question was in the famous case of *Donoghue v Stevenson* [1932] AC 562. The facts are worth mentioning for it is the kind of case that may remain in your memory when much of the law has faded away.

The plaintiff went into a cafe with a friend and ordered a bottle of gingerbeer. The gingerbeer came in an opaque glass bottle. She poured herself a glass and drank it. Her friend then poured the balance of the bottle into the glass to find the remains of a decomposed snail in the contents. Seeing this, the plaintiff suffered shock and was taken seriously ill. She sued the manufacturer of the gingerbeer for negligence.

Many years later, by which time the plaintiff had died (though not of shock) it was held that the manufacturer of the gingerbeer owed a duty of care to the ultimate consumer.

Lord Atkin, speaking for the House of Lords, which had decided that the woman was entitled to recover damages from the manufacturer of the drink, said:

The liability for negligence...is no doubt based upon a general public sentiment of moral wrong doing for which the offender must pay. But acts or omissions which any moral code would censure cannot in a practical world be treated so as to give a right to every person injured by them to demand relief...The rule that you are to love your neighbour becomes, in law, you must not injure your neighbour; and the lawyer's question, who is my neighbour? receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law, is my neighbour: The answer seems to be: persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.

According to Lord Atkin, the duty could arise either because of some relationship or proximity between the plaintiff and the defendant. The duty of care would thus exist if the relationship has been confirmed in a previous case or if there is a sufficient proximity or neighbourhood between the two.

The position was reviewed 50 years later in another famous case—*Anns v Merton LBC* [1978] AC 728.

A block of flats had been constructed, allegedly on a foundation shallower than that approved by the local council authority on the

basis of submitted plans. Years later when sinking resulted in substantial damage to the structure, tenants under long leases claimed damages against, among others, the council for negligently omitting to inspect the foundations or failing to discover the defect.

The case sought to extend the scope of duty of care into new grounds for the council had not created the defect. The council had at most failed to protect the lessees from the builder's fault. In confirming the existence of such a duty, Lord Wilberforce stated:

First one has to ask whether as between the alleged wrong doer and the person who has suffered damage there is a sufficient relationship of proximity or neighbourhood such that, in the reasonable contemplation of the former carelessness on his part may be likely to cause damage to the latter, in which case a prima facie duty arises. Secondly, if the first question is answered affirmatively, it is necessary to consider whether there are any considerations which ought to negate or to reduce or limit the scope of the duty or the class of person to whom it is owed or the damage to which a breach of it may give rise.

This view of defining the scope of the duty of care with foreseeability has been contested in a number of subsequent cases and a greater recognition has been given to the role of legal policy in the *determination of duty*.

Breach of the duty (negligence)

If a judge, hearing a case brought before him, determined that the defendant had a duty of care. A ***breach of the duty*** would occur if the appropriate standard of care was not met. Conduct that falls below that standard of care would amount to negligence. Negligence has thus been defined as conduct falling below the standard demanded for the protection of persons from the risk of unreasonable harm.

What is this standard? Who sets it? From whose stand point is it measured? The answer is that the standard is set by examining the sorts of behaviour we would expect of the **reasonable person of ordinary prudence**. This behaviour is the benchmark for all other members of the community.

[The reasonable person of ordinary prudence] is the embodiment of all the qualities we demand of the good citizen: and if not exactly a model of perfection, yet altogether probably a rather better citizen than any single one of us happens to be, or perhaps even aspires to be.

Loss and causation (remoteness of damages)

In any case where one is seeking to establish negligence, it must be proved that the negligent behaviour of the defendant caused the loss for which one is seeking redress. This is an apparently simple proposition. However, it often causes panic among law students for it highlights the complexity of the law by bringing into play a series of cases about which judges and jurists have, with great lucidity, propounded a variety of similar, yet slightly different, opinions.

Let me try to give you some understanding of the issues involved even at the risk of over simplifying them.

The first point to ascertain is whether the defendant's negligence caused the loss or whether the loss would have occurred anyway. The following example highlights one of the tests that has been developed by the courts to ascertain why and how the loss was caused. It is referred to as the *but for test*.

A motorist hits a pedestrian who is standing on the sidewalk. In this case, the pedestrian would not have been hit *but for* the car going out of control. No blame can be assigned to the pedestrian who was, after all, standing in the correct place.

In the *but for test* the question that is asked, then, is whether the harm would have occurred '*but for* the defendant's negligence'.

Further examples include a bather who would not have drowned *but for* the absence of a lifeguard. The customer who would not have fallen *but for* the lack of a hand rail.

On the other hand the defendant's negligence would not have been a cause if the harm **would have happened in any event**. A doctor's delay in attending a patient is causally irrelevant if the patient was in any event beyond help.

In a situation where more than one set of facts appear to have caused the harm, the *but for test* would not suffice and an inquiry would have to be made to ascertain the **extent** to which the defendant's negligence contributed to the harm, for often the plaintiff can be adjudged as having contributed to the loss.

Such a situation is referred to as a case of **contributory negligence**, which often arises in the case of the collision of ships where loss would be apportioned between the parties.

Once causation has been determined the second aim is to ascertain the extent of the damages or the loss for which the defendant should be responsible. For, as in contractual liability, tort liability, too, has certain limits.

There comes a point beyond which the damages become too remote to be pinned on the defendant. This situation is referred to as **remoteness of damages**. The plaintiff only gets compensation if

he or she can show that what the defendant did caused the plaintiff to be hurt in some way. If it is difficult to see the connection between the action of the defendant and the hurt of the plaintiff, the court will not award damages to the plaintiff for the damage is too remote.*

Over the years judges have attempted to formulate a test which would cover all situations of negligence, a test they could use to determine negligence. Judges' ideas and interpretations in relation to remoteness of damages have been written down and referred to by other law-givers extensively.

Two famous cases, cases which established precedents regarding the remoteness of damages, are those of the *Re Polemis* and the *Wagon Mound*, both shipping cases.

In the case of the *Re Polemis* (1921), a careless stevedore dropped a plank into the hold of a ship in which petrol had been stored. On hitting the bottom it struck a spark which ignited petrol vapour and eventually caused the total destruction of the ship.

The defendants were held responsible for this damage despite the finding of fact that the stevedore had no reason to anticipate any fire risk. The decision was based on the reasoning that once the defendant's conduct is deemed to be negligent, because fraught with some foreseeable damage, the extent of liability is determined by what were the direct consequences of that negligent act.

The *Re Polemis* case was finally overruled in the case of the *Wagon Mound* (1961). The defendant was the charterer of the ship *Wagon Mound* which negligently spilled a quantity of oil while bunkering at the Caltex Wharf at Moreton Bay, Sydney Harbour. The slick flowed over to Sheerlegs Wharf, Balmain, where ships were undergoing repairs. Owing to its high flash point the oil was not considered a fire hazard. Yet it caught fire, probably because molten metal from oxy-welding dropped into the water and ignited some floating waste material. The fire caused extensive damage to the docks and ships.

Based on the findings of the trial judge that, on evidence, the defendant neither knew nor could reasonably be expected to know that the oil was capable of ignition, the Privy Council dismissed the claim of the dock owners. Not only did injury have to be foreseeable, but it had to be the particular injury for which the claim was raised. Fouling the dock was no doubt foreseeable, but it was wholly different in kind from damage by fire and therefore irrelevant.

The *Wagon Mound* charterer did not succeed in avoiding liability when sued by the owner of one of the ships damaged. This time, on

somewhat different evidence, the trial court found that the officers of the *Wagon Mound* had reason to regard furnace oil as very difficult though not impossible to ignite.

Various interpretations of the case have been formulated since then. Once the risk was at all foreseeable, how great had to be the odds before the defendant could be held liable? Interpretations range from possible, probable, likely, not unlikely, to real risk, which was the test opted for by the Privy Council when they decided that it was a 'real risk', one which would occur to the mind of a reasonable person in the defendant's position and which the person would not brush aside as far fetched.

Thus the *Wagon Mound* was held liable for the fire damage, whether it was viewed as a 'foreseeable' consequence of the original act of negligent bunkering or of the later failure to do anything about the spillage.

As you can see, tort liability is a dynamic area of law, constantly changing as society changes because tort cases rely on precedents and the deliberations of the judges who hear the case. Very few statutes (or legislation enacted by governments) have been passed about tort law and the outcomes to cases are not fixed, but left open to judicial interpretation.

As with liability in contract, tort liability would arise if an aggrieved person were to bring an action against the defendant in a court of law. Should the aggrieved person win the case, the consequences would be an award for damages against the defendant.

Three: liability arising from specific *statutes*

The laws relating to tort and contract are generally *judge-made* or *case laws*. They are not made by parliament or by governments in any way. Judges base their decision in each case on what other judges decided before them in similar cases. There are laws, however, that are made by parliament and these are known as *statutes*.

An example of governmental law occurs when you park on the wrong side of the road and you get a parking ticket. You would usually pay it without question. However, if you should question the validity of the ticket you would see that it has been issued by the local council in accordance with their *by-laws*, and that the *by-laws* have been issued in pursuance of the powers given to the council by some legislative enactment or regulations made under a legislative enactment. By parking on the wrong side of the road you violate a series of regulations, the culmination of which is the parking ticket.

Let us consider again the case of the negligent motorist who injured a pedestrian. Apart from committing a tort, the driver may also have infringed a traffic regulation which prescribes a maximum speed limit. He or she has breached an obligation imposed by statute. The consequences of committing this offence would be that the motorist could be prosecuted by the state and the penalty would be as specified in that particular statute. It is usually a fine, but in certain circumstances may even amount to a term of imprisonment. Statute law (referred to also as legislation) is today the largest source of national law.

In Australia, statute law is of two kinds. **Commonwealth statutes** enacted by the Commonwealth parliament would have Australia wide ambit. **Statutes enacted by the state parliament** would be binding on residents of that state, those engaged in business in that state and those filing an action in a state court.

The majority of statutes concerning shipping have been enacted by the Commonwealth parliament.

The *Navigation Act 1912* (Commonwealth) and its amendments could be classed as one of the most important statutes. It is described as *an Act relating to Navigation and Shipping* and is the equivalent of the *Merchant Shipping Act* in other parts of the world.

The *Navigation Act* is to a great extent an enabling act, in that it gives the minister in charge of shipping the power to make regulations and the Authority established under the Act the power to deal with a wide range of shipping issues.

According to section 6(1) of the Act, the Authority means the Australian Maritime Safety Authority, the AMSA, established by the *Australian Maritime Authority Act 1990* (Commonwealth). The AMSA periodically issues marine orders covering matters ranging from signing articles of agreement to collision avoidance rules.

National Law

National Law

The law operates at the following level:

- National Level

National Law

National law applies to the residents of a particular country. The law regulates between members of society and imposes a certain code of behaviour on society. It provides the framework of rights and obligations within which economic, social, and political activities are to be carried out by members of the society.

It is important to have some understanding of the main sources of this national law. In Australia, the two main sources of law are **common law** and **statute law**.

Common law

Common law is the foundation of many branches of Australian law. The *law of contract* and the *law of tort*, which you examined in the previous charter, are based on the common law. We thus come across the term common law when we study carriage of goods by sea (which involves contracts such as charter parties and bills of lading) and damage caused by a ship (a variety of torts can arise in relation to such things as salvage, collision or pilotage).

The common law found in Australia has its origin in the English common law which was received into Australia from about 1823.

Common law is developed by the courts through the decisions of the judges over a period of time. *A principle of law established in one case would be binding on a judge examining a similar case, in a court of similar standing or a lower court.* This concept, known as the **binding precedent**, promotes consistency and the continuity of a particular legal rationale.

A binding precedent is created when a judge delivers his judgement in a court case, because at the same time he delivers a judgement, he makes many statements on the law. Some of his comments will be his reflections on a particular legal point. Others will be the application of legal principles to the facts at hand. All the statements will be important contributions to the law, particularly if they come from a learned judge. However, what is binding on the next judge is the *principle of law* on which the decision in the case is based.

This principle of law is referred to as the *ratio decidendi*. This is the principle on which the case is decided, the decision and the facts material to it. Literally translated, the phrase means 'reason for decision' of the 'reason for deciding'.

The rest of the judge's interpretation of the case, his opinions upon matters not essential to the decision, and therefore not binding in relation to future decisions, is referred to as the *obiter dictum*—something that is 'said by the way'.

The courts, over the years, have used this system of basing judgements on established precedents, or of creating new precedents based on recognised principles, with a great deal of flexibility and success, distinguishing one case from another and modifying and extending legal principles to suit the particular needs of society.

However, common law develops slowly and often cannot keep pace with the needs of society. When common law is seen to be inadequate, the legislature or law making body of the country can step in and enact new legislation which may change the common law position or make provision for a situation not dealt with by the common law.

One sees this when one deals with the contract of carriage, where the common law allowed a concept known as the *freedom of contract*. This, in the past, enabled the carrier to escape liability, even for his own negligence. Eventually, laws were created that curtailed the freedom of the carrier. The carrier has to now contract according to the rights and obligations imposed by the *Carriage of Goods by Sea Act 1991* (Commonwealth).

Statute law

The majority of the laws that we comply with today are made by the legislature.

As explained in chapter 1, there are two types of *statutes* or laws in Australia—*Commonwealth statutes*, enacted by the Commonwealth parliament in Canberra and *state acts of parliament*, enacted by the respective state parliaments.

The statutes that we deal with in this course are the Commonwealth statutes. Commonwealth statutes must be made in accordance with the Commonwealth constitution, because it is the constitution that empowers the parliament to make law. Varying interpretations of the constitution by lawmakers often lead to debate over whether the Commonwealth parliament has the right to make laws on a particular matter or whether the lawmaking powers should be reserved to the state parliaments in certain cases.

This issue has come up in connection with the control of the territorial sea around Australia and in connection with the legislation and adoption of pollution prevention measures.

3. Principles of Administrative Law

Principles of Administrative Law

Processes and Powers Provided by Legislation

Administrative Law

Deals with;

- the processes that must be followed by decision makers in arriving at a decision; and
- the processes that establish remedies for persons adversely impacted upon by government action or inaction.

Basis for Decisions

- Statutes establish processes for decision making but provide for performance to be either compulsory or discretionary.
- In the case of the former the operative word is 'shall' whereas in the latter 'may' provides for discretion but does not absolve government from reaching a decision after following the process prescribed by statute.

Constraints to Discretion

Three constraints to discretion are recognised.

- Confined Discretion - the Act prescribes what factors can be used in reaching a decision.
- Structured Discretion - the Act prescribes what procedure are to be used in reaching a decision.

Constraints to Discretion

- Checked Discretion - the Act provides for the decision to be reviewed on the basis of merit ie was the decision a reasonable one.
- The Commonwealth Administrative Appeals Tribunal (AAT) is a formal merit review process.

Judicial Review

- The grounds on which the lawfulness of government decisions can be challenged are based on two common law principles; *ultra vires* and natural justice

Ultra vires **(Lat; beyond power).**

- The exercise of Authority must be within the power given and exercised properly and fairly.
- For example if an official has power to suspend a fishing licence, he or she cannot cancel it. *Ultra vires* limits the discretion of power. There are several forms recognised;

Substantive *Ultra vires*

- where the decision made was outside the powers prescribed by statute.
- Examples would be in relation to say conditions applied to a fishing license these are limited by the Act. Often older Acts do not envisage the types of conditions required today and these may fall outside the limits of the Act.

Extended *Ultra vires*

- Where the decision made lies within the powers prescribed but the decision is unwarranted on the grounds of being;
 - made in bad faith
 - made for an improper purpose
 - made on the basis of irrelevant and tainted considerations
 - manifestly unreasonable
 - too uncertain
 - based on inflexible application of policy.

The challenge is to demonstrate the decision was based on considerations outside those envisaged by the statute.

Procedural *Ultra vires*

- where the legislation prescribes a process and that process is not followed. The challenge usually revolves around what is a mandatory step and what is directionary.

Natural Justice

- Natural justice does not alter the discretionary power as such but it requires that proper procedures be followed when decisions are made which can seriously affect a person. The two principles are;
 - a fair hearing and
 - no bias

Redress

- Merit- AAT
 - Judicial - Federal or Supreme Court
 - Only persons of ***locus standi*** or standing can seek a judicial review of a government decision.
- To be of standing
- a person's private right is interfered with (eg property or income) and
 - a person has suffered special damage over and above that suffered by the general public.

Independent Scrutiny

- Ombudsman
- Crime Authority/Commission

4. Policy Development

Policy - What is it?

- Often used to represent goals, programs, decisions, laws, standards, proposals etc.
- Policy is defined as a
"standing decision characterised by behavioural consistency and repetitiveness on the part of both those that make it and those who abide by it."
- Policy is dynamic it is always developing

Public Policy Components

- Intentions - The true purposes of action
- Goals - The stated ends to be achieved
- Plans or proposals - Specified means of achieving goals
- Decisions or choices - Specific actions taken to set goals, develop plans, implement and evaluate programs
- Effects - The measureable impacts of programs (intended and unintended)

Policy Development

- The development of new or altered decisions that determine the direction and shape of the future - the strategy.

Policy Development

- The functions and responsibilities of managers, the identification of the crucial problems that affect success and the decisions that determine the direction and shape of the future

Relevance of Policy to all MAC members

- The purposes of organized effort in any undertaking are usually
 - somewhat unclear
 - apparently contradictory
 - constantly changing

Policy Development

- Cannot rely on the Moses method - policy from the executive with the flock following
- Corporate purpose must become meaningful to all stakeholders in a fishery
- Must be brought into balance with individual vs collective, individual satisfaction and noneconomic aspirations
- Must be wide spread understanding of the considerations and assessed risks on which MAC policy has been developed ie informed participation
- Stakeholders must have the capacity and awareness to participate.

Attributes required by MAC members for Policy Development

- Attitude should be generalist rather than specialist, breadth rather than depth.
- Proactive and willing to reach a position in the face of incomplete information and a preparedness to be wrong not be the scientist seeking the completed facts
- Acceptance of the priority of risk taking and problem resolution over completeness of information.
- Committed and professional manager as opposed to self-seeking contriver of deals.
- Preparedness for innovation to be freed from

Beware the Functionary

- Conflicts of functional bias lead to political stalemate
- functional bias must be subsumed by collective purpose
- the good of the whole is better than the good of a part.

A Policy Process Framework

Activities

Questions

Perception/definition	What is the problem to which this proposal is directed?
Aggregation	How many people think it is an important problem?
Organisation	How well organised are these people?
Representation	How is access to decision makers maintained?
Agenda setting	How is agenda status achieved?
Formulation	What is the proposed solution? Who developed it and how?
Legitimation	Who supports it and how is majority support maintained?
Budgeting	How much money is provided? Is it perceived as sufficient?
Implementation	Who administers it and how do they maintain methods?
Evaluation	Who judges its achievements and by what methods?
Adjustment/termination	What adjustments have been made and how did they come about?

Criteria for Evaluation

- Is the strategy stated and is it clear to stakeholders
- Does the strategy fully utilised the opportunities within the management objectives
- Is the strategy appropriate to the technical and financial resources available
- Are the policies leading to the strategy accepted by stakeholders
- Is the chosen level of risk within the bounds prescribed by law
- Is the strategy appropriate to the expectations of society
- Are there early indications of the responsiveness of the resource or fishery to the strategy

Policy Process: a framework for analysis

<i>Functional activities</i>	<i>With a potential product</i>
Perception/ definition	Problem
Aggregation	Demand
Organization	Access
Representation	Priorities
Agenda setting	
Formulation	Proposal
Legitimation	Program
Budgeting	Budget (resources)
Implementation	Varies (service, payments, facilities, controls)
Evaluation	Varies (justification, recommendation, change, solution)
Adjustment/ termination	

Working the policy process: Four perspectives

<i>Perspective</i>	<i>Characteristics</i>				
	<i>Roles</i>	<i>Values</i>	<i>Goals</i>	<i>Style</i>	<i>Criticism</i>
1. Rationalist	Policy analyst/ planner	Method	Discoverable	Comprehensive	Failure to acknowledge limits
2. Technician	Expert/ specialist	Training/ expertise	Set by others	Explicit	Narrowness
3. Incrementalist	Politician	Status quo	Set by new demands	Bargaining	Conservative
4. Reformist	Citizen lobbyist	Change	Set by substantive concerns	Activist	Unrealistic, uncompromising

5. Managing Information

MANAGING INFORMATION - ISSUES FOR MAC MEMBERS

ALISTAIR McILGORM

Why Manage Information?

- Information is power!
- Lack of information is ignorance.
- Information has to be current, relevant and accurate.
- Dis-information is spurious, irrelevant and inaccurate.
- Wisdom verifies all information!

Information

- Life blood of systems and organisations.
- Is communicated directly and indirectly.
- Has value in determining the future and in controlling the debate.
- Transparency of information - openness and hiding.
- Timing and accurate information.

MAC's and Information

- Information is part of communication and relationships.
- Key relationships for a MAC:
 - Intra MAC;
 - MAC A - MAC B;
 - MAC to Department (Department to MAC);
 - MAC to Research (Department looks on?);
 - Intra Department;
 - Government to Government (MAC looks on).

Information and Relationships

- Relationship dictates information given.
- MAC is privy to information from?
- MAC is not privy to what information?
- Responsibility, information and control.
- Clarify information required for management:
 - Questions - who, what, where, why, how and when!

Control of Information

- Restricting circulation.
 - embargoes;
 - commercial-in-confidence;
 - confidential draft/minutes.
- Opening circulation:
 - circulation of minutes;
 - discussion papers;
 - public comment.

Information and Trust

- Establish the relationship:
 - expectations;
 - disclosure/confidentiality.
- Avoid conflict over information:
 - establish processes;
 - be careful before you jump the process;
 - avoid going to Freedom of Information (FOI), challenges with Government, etc.
 - minimise antagonism in the use of information.

6. Budget Principles

Budget Principles

**How much will it cost to
achieve the intended
outcomes**

Budget Definition

- "A financial and/or quantitative statement, prepared prior to a defined period of time, of the policy to be pursued during the period for the purpose of attaining a given objective" (Inst. Of Cost & M'ment Acc).
- Budgeting is the preparation of plans for some future time period, usually expressed in financial terms which assist to guide and control the output process

What does it mean for a MAC

- If the MAC has financial responsibility to fund the management of the fishery then the budgeting process will assist the MAC to plan and control its future activities.
- If the budgeting is part of a cost recovery process by government then the budgeting process provides the MAC with an opportunity of being part of the planning and control of the governments activities for the period to be covered by the budget.

How do budgets provide control

- They compare actual to planned performance.
- Compare past, current and planned performance.
- Require forecasting of activity/performance and required outputs
- Require inputs be related to forecast requirements

How effective is budget monitoring

- What performance is being measured ie gross category versus more specific. The finer the measureable input required to achieve outputs the easier it is to critically appraise performance.
- The greater the rigidity in cost centre allocation the less likelihood there is of creative expenditure - although spot audits verifying this policy are required.
- Monthly reports of actual against budget are a useful initial monitoring tool.

Budgeting Tactics

- Zero based budgeting - where each period is addressed from a zero base ie what research needs to be undertaken this year, what are the required outputs and measureables that meet policy and legislative requirements. What inputs are required to achieve these.
- Cost sharing budgeting - the projected organisational costs are apportioned on the basis of some % share to various outputs. Typical first up attempts by government getting into cost recovery.

Government Agency Difficulties

- Government agencies are not set up on a production basis and thus do not cost inputs as you would in a production based organisation.
- A functional unit may provide service to many industry, recreational, societal administrative etc clients. Cost apportioning and its justification has presented governments with significant challenges.
- Determining level of inputs to achieve a predetermined and measureable output/performance ie the deliverable has also proved difficult.

Project Budget

Total Costs Industry Share C'wealth

Personnel

Salaries

Oncosts

Total

Consultant/Contract Services

Analytical lab

Total

Travel/per diem

Air travel

Accommodation

Per diem

Total

Office and Storage Space Costs

Area

Office Equipment

Office Furniture

Total

Machinery and Equipment

Vehicle

Res Vessel

Total

Other Costs

Consumables

Postage

Printing and Stationary

Telephone

Utilities

Accounting and Auditing

Insurance

Advertising

Other

Total

7. Costing Principles for MAC Members

COSTING PRINCIPLES FOR MAC MEMBERS

- PRINCIPLES OF COST ACCOUNTING

ALISTAIR McILGORM

Costing

- Required for management of systems where users can be charged.
- Three key concepts in attributing costs:
 1. Apportioning - what cost centres?
 2. Allocation - how much to each centre?
 3. Absorption - absorbing into the units produced?

Costs - Variable and Fixed

- Fixed costs do not vary with activity:
e.g. wharf fee, insurance, etc.
- Variable costs vary with activity:
e.g. fuel use.
- Rule - split costs into their variable and fixed elements before distributing them.

Apportioning

- How much should go to each part?
- Say office and management costs could be apportioned to each fishery.
- Fishery A, B and C - which should bare most? Method of apportioning - fishers, boats, catch, value?
- Apportioning gives a certain percent to each fishery.

Allocation

- The total cost is allocated to each part.
- \$10K when apportioned 20%, 30% and 50% allocates to \$2K, \$3K and \$5K.

Absorption

- Means 10 fishers in A pays $\$2,000/10 = \200 each; 30 fishers in B pay \$100 each; and 20 fishers in C pay \$250 each.

Private Goods and Public Goods

- How should research and surveillance costs be apportioned (allocated and absorbed)?
- How much research and surveillance is a public good - ie not only attributable to industry, but for all the public?
- Should Government pay for public goods?
- Often we discuss marginal costing - the cost of one more unit.

The New Debate

- Outsourcing issues.
- Contestable and thin markets
- Short run and long run costs.
- Economies of scale.
- Private versus public providers.
- Goodwill.
- Transaction costs.

8. Computers and Data Management

Computing and Data Management

Storage and retrieval of Fisheries data

Data Base

- Defined as a pool of nonredundant and interrelated data readily available for use in the input to the user's application programs.

Advantages of Computer Based Data Management

- Data verification can be routinely undertaken.
- Individuals records can be summarised and matched.
- Electronic Portability ie the whole or subsets of the data can be made available to anyone in the world.
- Multiple user interface ie database can be interrogated by several people at once.
- Format provides ready linkage to off the shelf analytical software.
- Historical data can be used to analyse past trends and importantly used to test model behaviour and thus the accuracy of predictive capacity of the model

Fisheries Application

- Fishery Models are based on three basic elements
- Inputs - fishing effort
- Outputs - fish caught and landed
- the processes that link these ie the underlying biological processes and the fishing operations.

Fisheries Stock Assessment

- Inputs: Fisheries Data (+assumptions)
 - Process: Analyse Historical Data
 - Estimates of Growth and Mortality
 - Process: Predictions on yield at different levels of exploitation
 - Optimum fishing level for ES Yield
- The above is a biological approach but the economic approach differs little.

Fisheries Models

- Should be explanatory with clear statement of assumptions etc

Inputs

Derived Parameters
reflecting the interactions
between variable

Variables relating to
identified entities in
Nature

Outputs

Model Types

- Surplus Production or Biomass Dynamic Model
 - Schaefer and Fox forms
 - time series of abundance and catch measurements
 - abundance may be measured using CPUE
 - CPUE will need to be standardised

Model Types

- Age or size structured models
 - Virtual Population or cohort analysis
 - long time series of age or size structure and catch
 - time series depends on age characteristics of species
 - information intensive

Model Types

■ Dynamic Pool or Yield Per Recruit

- Original models assume steady state and knife edge recruitment
- used to determine optimal age or length at first capture
- newer versions remove the need for steady state system
- doesn't take into account spawning biomass and so cannot be used by itself.

9. Catch and Effect Database Information

Catch and Effort Data Bases

The monitoring of the catching process and its impact.

Fishing Effort and Mortality

- The number of fish killed is related to the amount of fishing effort used. Unfortunately we would like to be able to consistently and accurately measure fishing power which would be reflected in fishing mortality.
- The difficulty is in the measurement of fishing power.

Nominal Fishing Effort

- Catch returns seek to obtain accurate measures of Catch and Effort.
- Nominal Effort is measured to varying degrees of sophistication from number of boats to the volume swept by a trawl.
- Real effort which is the fishing power requires some understanding of how efficiency has grown over the period being studied.

Standardised Fishing Effort

- Standardisation is an attempt to bring the relative fishing powers of each vessel or some category of vessel in the fleet to some equivalent measure.
- Standardisation does not necessarily mean that fishing power has been measured.
- Standardised Catch and Effort data does however make the analysis of spatial and temporal distribution more meaningful.

Standardised Data

- The standardisation of annual catch data when combined with landings measurement and age data allows the annual age composition of a species to be determined and thus compared to previous years.
- Such comparison provides a valuable monitoring tool.

Catch and Effort Data

- Catch and the apportionment of effort in a mixed species is very difficult. When is fishing species or target specific.
- In fisheries with seasonal variations in abundance due to migration assessing the meaning of C and E data is complicated and long data series are required to be matched to an understanding of the migratory behaviour of the species.

Catch data in Output managed fisheries

- Effort, its relationship to fishing power and fishing mortality becomes obscured in output managed fisheries. This is due to the fact that the fisher is looking at optimising the cost of effort and the return on the quota mix held.
- In these fisheries commercial catch data needs to be augmented by research or charter vessel information.

Standardised Data

- To determine the comparative economic efficiency of various vessel configurations, size etc standardised catch and effort information is combined with revenue and cost functions.
- This type of analysis is important to assist policy developers and strategic planning to address the biological, economic and social issues faced by a fishery

10. Communication and The MAC Member

COMMUNICATION & THE MAC MEMBER

ALISTAIR McILGORM

What is Communication?

- The most distinguishing feature of human life?
- More than words:
 - actions;
 - tones;
 - feelings.
- We are taught communication skills poorly; they are self-learned?
- Involve what you feel inside and putting it across to others.

Four M's of Communication

- MOTIVE - to inform, relate, progress issues:
 - to hide, ignore, retard progress!
- MESSENGER - demonstrates interest:
 - disinterest.
- MESSAGE - improve or change, etc.:
 - hinder, retard, falsehood.
- MISSION - good currency/trust:
 - dry, division, fear, dishonesty.

Simple Model

Basics of Communication

- More than cold and technical signals.
- Sender to recipient:
 - liking the other person-friendship.
- Recipient receives.
- Learning to interpret the message.
- Reading the paperwork
- Reading skills can improve with practice.

- Key Points:
 - who is writing; (position, institute, company);
 - what is the subject:
 - Is it only to you, (must you respond)?
 - are there recommendations to be acted on?

Reading the Paperwork

- Look for summarised information:
 - 1) a summary;
 - 2) conclusions.
- Quickly read the introduction.
- Follow the key points in the body of the text.
- Read it through and come back to the conclusions and recommendations.

Speaking Skills

- To whom am I speaking?
- What are their needs?
- What is the most practical and direct way to say it?
- The most positive and encouraging way to say it?
- Keep it simple.
- Keep it personal and interesting.

Structure Your Speaking

- Structure - TELL, TELL, TELL.
- 1. Tell what you are going to talk about:
 - introduction.
- 2. Tell them:
 - body of talk.
- 3. Tell them what you told them:
 - conclusion.

More Speaking Hints

- Start with a bridge to your audience:
 - a story they can identify with.
- Have a structure to your points.
- Have a story in what you say:
 - remember it was like this; now it is like this; I propose we should make it like this.
- Ask yourself hard questions and answer them:
 - offer some hope.
- Conclude and expect results.

Writing a MAC Issues Paper

- Who is your audience:
 - fishers;
 - MAC members;
 - the department;
 - researchers, etc.
- Choose a style.
- To write with impact - keep it brief.
- Organise your thoughts.
- Use tables, charts and graphs.
- Avoid grammatical errors.
- Computer use and format.
- Keep your reader in mind.

1. *Writing a MAC Issues Paper*

- Begin where the reader is and give the background.
- State the scope of the paper - materials, time, etc.
- Collect data and report it objectively.
- Form conclusions that arise from the data.
- Recommend from the conclusions.
- Use headings and present the material in a reader-orientated order.
- Begin with the summary - these days busy people read the summary and decide from there.

2. *Writing a MAC Issues Paper*

- A paper should be:
 - persuasive;
 - decisive;
 - action centred.
- Ask a question:
 - address the question;
 - unpack the question;
 - think about why, who, how, what, where, when?
- Get the right information (references).

11. Publicity and Media Issues

PUBLICITY AND MEDIA ISSUES

MARC WILSON

Public at Large or Media Method of Communication

This method uses the electronic media such as Newspapers, magazines, radio, television or computer networks to present information, ideas or methods. A carefully prepared and well researched presentation without interruption or questions can be made.

Advantages:

- Information can be presented as planned.
- Cost in terms of people receiving the information per unit of time given to preparing the presentation is very high.
- Very wide audience.
- Quick coverage of topic.

Disadvantages:

- No direct feedback.
- No direct selection/targeting of audience.
- Poor listener response index.

Public Education Programs

There are many manuals available that describe how Public Education Programs should be designed and implemented of these several relate specifically to environmental education and are thus perhaps more relevant to the fisheries and conservation area. Wood and Wood's (1986) *How to Plan a Conservation Education Program* is a good starting point.

The type of approach that could be adopted is described below and borrows heavily from a variety of UNESCO Technical and Environmental Education Publications. As with most activities the approach should be broken down into definable steps or stages to assist in conceptualisation and planning.

Step 1: Background and definition of the issues

What are the pressing issues around which the PEP can be structured? For which of these issues can it be demonstrably show that there is a lack of public awareness and thus the area in which PEP will have the greatest impact.

The issues/problems should be clearly defined along with the related social, economic and environmental background.

Things to bear in mind:

- Prioritization based on scale and significance of the problem.
- Prioritization based on the assessed impact of PEP.
- Are there known technical solutions?

Step 2: Formulation of Objectives

Once the problems and their context are identified specific PEP content can be formulated.

Things to bear in mind:

- Is the PEP based on solid and supportable information?
- Does the PEP assist in developing community awareness and acceptance?

Step 3: Target Group Definition

The parts of the community that are impacted upon either directly or indirectly, ie stakeholders need to be defined as they will be involved in the solution to the issue/problem are the target group for the PEP. The major stakeholders need to be appraised in terms of the impact of the issue/problem, ie they need to be profiled and the PEP material designed accordingly.

Things to bear in mind:

- Who is directly affected by the issue/problem and likely solution?
- Does the social and or cultural situation reveal particular information needs or prejudices to the likely solutions?

Step 4: PEP Content - The Message

Succinct messages need to be developed for each of the programs and if necessary couched in terms appropriate to the target group. The program will have established outcomes the messages must accomplish these. The educational objectives of the PEP should revolve around improved awareness. The messages provide information and canvas possible solutions.

Things to bear in mind:

- The messages should be targeted to groups so as to optimise the likelihood of their reception.
- What messages are needed to achieve motivation and mobilisation of the target groups?

Step 5: Message Delivery Method

For each target group profiled what is the most effective communication technique.

Things to bear in mind:

- What is the major source of public communication for the target audience?
- The communication method must be acceptable, relevant, and accessible.
- What method provides greatest impact for money spent.

Step 6: Monitoring

All good media communicators evaluate and monitor the impact and success of their communications, ie messages. PEPs are expensive and performance measures need to be established and measurements against these made to determine the success or otherwise of the PEP.

Things to bear in mind:

- Was the intended message received and understood by the target audience?
- Did the message produce the anticipated response in the target group?

Media Materials

Brochures and Information Pamphlets

Provide short sharp simple messages and information sources. Technical detail is limited but sufficient to provide authority to the material. Design has to be attractive and colourful it has to have the appeal of "pick me up" in its layout and design. As they must be kept short the content should target the most commonly asked questions or the most obvious deficiency in knowledge of the target group.

TABLE 1: ADVANTAGES AND LIMITATIONS OF BROCHURES

Advantages

Useful for simple messages of broad interest and easily produced in several languages
Good for communicating rules and regulations in an easily understood format.

Distribution is relatively easy.

Audience retains the brochure and may refer to the brochure several times providing good reinforcement of the message.

Variety of design can be utilised to target specific groups.

Condensed format and simple messages increase likelihood of their retention and impact.

Limitations

Design impact is critical to the brochures being perused.

Skill required to ensure wording is appropriate to the message and audience.

Motivation is difficult to achieve from the contents of a brochure.

The amount of information and detail that can be conveyed is restricted.

The brochures date quickly and lose appeal.

School Curriculum Material

The provision of educational packs or specific lessons to schools is seen as having several advantages. Delivery is usually in the hands of an educator and students are more likely to be receptive of new ideas and thus more easily motivated and mobilised. Students also provide a means of dissipating the information in conversations in the home. Environmental topics are of interest to most young people and provided the packs are topical, stimulating and new the messages will be well received.

TABLE 2: ADVANTAGES AND LIMITATIONS OF SCHOOL MATERIAL

Advantages

Material can be designed to meet large student audience
Provide a standard message throughout a significant number of people
A long-term school based program can produce changes in social attitudes
Easy to distribute
Delivered by trained educators

Limitations

Institutional approval required concerning distribution and content
Delivery may vary according to the specific interests of the educators.

Audio-Visual Material

Slides, Film and Video add colour, sound and variety and in the case of the latter two movements all of which increase the attraction and stimulation of the presentation. Well produced AV presentations can stimulate the senses and hold the attention of the target audience. Spectacular and beautiful scenery and horrifying and terrible events can be graphically shown. Effective imagery requires few words. AV material is usually shown to an audience and can be also projected through the electronic media. Videos offer the possibility of a more targeted audience.

TABLE 3: ADVANTAGES AND LIMITATIONS OF AUDIO-VISUAL MATERIAL

Advantages

Films and video

Can sustain audience attention convey complex information through a combination of sound and imagery.
Awareness of new topics can best be stimulated through this medium
Videos are transportable and relatively easy and inexpensive to copy

Slides

If well produced can be nearly as effective as film and video
Cheaper to produce and therefore can be more specialised to local areas

Limitations

Film and videos

Very high initial production costs if done professionally
Film requires projection equipment and viewing area
Projection equipment expensive and required skill to operate and maintain
High quality required as audience standards relate to commercial film quality

Slides

Projector and viewing area required
Organisation, quality of presentation, narration, and photography critical to impact.

Mass Media

Mass media in the form of newspapers and periodicals, radio and television are particularly effective in raising community awareness about issues. Impact can be maximised through a careful orchestration of all mass media attention on a particular issue. Complex issues can be explained and debated using eloquent written argument in the printed media as well as radio this can be further reinforced with powerful imagery through television. Mass awareness can be created in a very short time period. However, expectations are raised as a result if the position publicised cannot be sustained against public scrutiny a significant negative response can develop rapidly and beyond the control of the originator.

TABLE 4: ADVANTAGES AND LIMITATIONS MASS MEDIA

Advantages

Very large audience and area

Impact and receptivity heightened due to mass media focus

Limitations

Lack of control over aspect covered and highlighted

Facts may be lost in the interest of the story

Little community involvement.

12. Meeting Skills and Protocol

MEETINGS AND PROTOCOL

MACs and meetings

- ✓ MACs are advisory committees not businesses etc
- ✓ Meetings develop advice to the minister
- ✓ Unlikely to call on public meeting rules, but must have order and records of proceedings
- ✓ Chairmanship and duties of MAC important.

Meeting skills and protocol

- ✓ Not just a matter of knowing the rules
- ✓ Good meeting skills require an understanding of communication and influencing others
- ✓ The use of information
- ✓ Leadership and resolving conflict, particularly by the chair & leading members

Meeting Procedures

- ✓ An agenda is pre-circulated,
- ✓ Is a quorum required, declared open
- ✓ Apologies.
- ✓ Minutes read and request *move "that the minutes be taken as read"*.
- ✓ Corrections -errors etc called for.
- ✓ Any member can move or second the minutes.

Meeting Procedures

- ✓ Business arising from the minutes
- ✓ Correspondence, Finance, Reports
- ✓ General business - Notices of motion (for next meeting). General business
- ✓ Any other business -A chance to discuss other items.
- ✓ Date of next meeting and close of meeting.

13. Developing a MAC Position Paper

MAC Paper

Arguing the Case

The Purpose

- What do I want this paper to accomplish?
- After your fellow MAC members have read the paper what do you want them to know or believe?
- You want not only to convey your thoughts but you want others to gain understanding or act on it.

The Purpose

- Express your purpose and thinking in terms of verbs. Try to maintain this as your focus during the preparation of the paper.
- You may have more than one purpose but still try to isolate the few verbs that describe these.
- Try to devise a purpose statement and then work from this.
- Take into account that this statement may not be exactly the same as your intended purpose eg you may want to persuade but more diplomatically you may choose to explain.

How do you achieve your purpose?

Know your audience!

- How can you appeal to them, get them to read, digest, consider your purpose.
- Consider the readers technical background
- What will they do with the document, will they skim it, file it, read the summary, study it carefully, want to be involved in the drafting of it.

How do you achieve your purpose?

Develop a strategy!

- What information must be in, could be in maybe in.
- How difficult or contentious is the purpose
- Do you want a decision or do you want to establish a process to address and issue and hopefully produce a decision.
- Do you want to inform or do you want to add to the discussion/debate about an issue.

The General Layout

- Executive Summary or Abstract
- Recommendations
- Background/Introduction
- Analysis/Results/Review
- Additional or New Considerations
- Conclusion
- Recommendations

Executive Summary

- A one page or less executive overview of your paper.
- Provides a broad understanding of the contents and how this fits together to produce a conclusion and recommendations (if appropriate).
- Presents the salient facts, need for outcome, major analysis/argument and conclusion.
- Often the only part of a paper more than two pages that will be read.

Introduction

- Provides the reader with the basic information and orientation to understand your later analysis and more detailed presentation of information
- Identifies clearly the purpose of the paper
- Identifies the deficiencies your paper will address
- Briefly reviews the situation and context of your issue.

Analysis

- In presenting and analysis you are often comparing alternatives you may therefor compare and contrast or establish an analysis on the basis of cause and effect.
- The best way of achieving this is to establish criteria on which to compare and contrast the alternate propositions
- Often used in MAC papers as it involves reasoning forward to cause to effect. If we raise the global quota (cause) what will happen to the resource (effect)?

Causality

- The use of cause and effect reasoning seeks to answer the following questions:
 - What will be the effect(s) of X?
 - What caused X?

Examples of Communication and Convincing Verbs

- | ■ Communication Verbs | ■ Convincing Verbs |
|-----------------------|--------------------|
| ■ to explain | ■ to assess |
| ■ to inform | ■ to request |
| ■ to illustrate | ■ to propose |
| ■ to review | ■ to recommend |
| ■ to outline | ■ to forecast |
| ■ to authorize | |
| ■ to describe | |

Reasoning

- Causality requires the use of two forms of reasoning, inductive and deductive.
- Inductive where the writer states a series of facts and then draws a general conclusion. It is the foundation of modern scientific method. The argument usually relates to the proximity and relevance of the linkage from the facts to the conclusion. Tobacco is a classic case. No-one really argues that cigarette smoking is linked with cancer, heart disease etc. But they do argue the inductive step that it is harmful to the smoker ie it has been irrefutably proven.

Reasoning

- Deductive reasoning the movement is from the general to the specific.
- Rain makes the street wet.
- The streets are wet.
- It rained.
- Alternative explanations exist the fire hydrant burst, the mains water burst, the street cleaner has just passed by etc.

Reasoning

- Inductive reasoning creates the major premises used in deductive reasoning. Some would say that it is impossible ever to know anything. Indeed a few of our associates in the industry rely on this argument *ad nauseum*.
- Take care that your reasoning is based on a reasonable sample size. I'm sure none of you have been exposed to;
"the resource is stuffed Bob and John fished off the rocks last week and both caught no fish"

Reasoning

- After this, therefore, because of this.
- There must be something wrong with the new quota arrangements. Ever since its been in operation the fish prices have been bad.
- Begging the question.
- A Cummins 450A is the best engine in the market because its better than other engines.

Conclusion

- A position or technical paper needs to have clarity, accuracy, comprehensiveness, accessibility, conciseness, correctness.
- Short is better than long. Getting the beam to depth ratio correct.
- Straight roads well signposted (headings and subheadings) are better than a long and winding road.

Exercise

- Read the paper provided. Consider and respond to the following:
- Who is the intended audience?
- Do they require specialised knowledge to comprehend the paper?
- What is the authors purpose ie what does he or she seek to accomplish?
- In relation to the above do you consider the scope and organisation, vocabulary, sentence length and structure, number an types of graphic aids to be appropriate?

14. Teamwork and MAC's

TEAMWORK & MAC'S

ALISTAIR McILGORM

Reference: Baden Eunson, John Wiley

Teams - Why Have Them?

- Can be effective and ineffective:
- Solutions:
 - know when to use them;
 - know their strength and weaknesses.
- Communication is central to team effectiveness (refer Figure 1).
- When is a team more than a group?

Groups - Why Join, Why Stay?

- Five reasons:
 1. Security.
 2. Social Interaction.
 3. Exchange.
 4. Task complexity.
 5. Nearness.

"As long as benefits from belonging (prestige, friendship, support, satisfaction) exceeds costs (time, favours given) he/she will remain a member".

Hodgetts and Kuratko, 1988.

Work Group Behaviour

- Individual and group performance:
 - synergy;
 - social loafing;
 - at least three roles:
 - task; socio-emotional; destructive.
- Group pressure and enforcement of norms:
 - formal and informal norms;
 - friendship, hierarchy (love, convenience)?
 - weapons of isolation for those who deviate.

Roles People Play in Work Groups

Deviation/control in the group

- initial tolerance.
- attempt at correction.
- verbal aggression.
- physical aggression.
- rejection - "get out".
- TRUST in teams.

Identifying Norms - What is Acceptable?

- Clothing.
- Grooming.
- Language.
- Non-verbal behaviour (signs, gestures).
- High performance.
- Low performance.
- Expression of emotions.
- Level of trust.
- Giving and receiving criticism.

Cohesiveness and Conformity

- Illusion of invulnerability.
- Rationalisation.
- Inherent group morality.
- Stereotyping.
- Direct pressure.
- Self-censorship.
- Illusion of unanimity.
- Mind guards.
- Examine alternatives.
- Appoint devil's advocate.
- Increase group diversity.
- Remove physical isolation.

- Facilitate organisation graffitt.
- No them and us mentality.
- Make confronters into heros.
- Create multiple affiliations.
- Use multiple sub-groups on same problem.
- Create second chances.
- Special techniques.
- Leaders absent themselves?

Teams and Empowerment

- Style of leadership:
 - autocratic-shared - laissez faire.
- Leaders:
 - staffing;
 - planning;
 - organising;
 - reporting;
 - training;
 - motivating;
 - budgeting;
 - communicating;
 - directing;
 - coordinating;
 - delegating;
 - counselling.
- The facilitative model (Figure 3.2).

15. Conflict Resolution

CONFLICT RESOLUTION - RESOLVING DIFFERENCES WE'RE GETTING NOWHERE!

ALISTAIR McILGORM

Conflict and How To Handle It

- Conflict is part of life and MAC's.
- Be bound together by it (not divided):
 - inevitable, opportunity, evidences, involvement;
 - separate the problems and the people;
 - keep communication direct;
 - short ledgers, balance them quickly;
 - seek change and keep the atmosphere interactive;
 - leaders can invite disagreement;
 - problem, process and generate solutions.

Map the Conflict

- What is the issue?
- Who is the conflict?
- What motivates each party?
- Face anxieties and fears!

Then:

- Confront issues, but go soft on the person.
- Be honest in your beliefs and preferences.
- Be prepared to listen and change your mind!

Ways to Resolve Conflict

- Personal ways.
- Arbitration.
- Mediation.
- Negotiation.

Peacemaking

- Peace is MADE by taking steps across the lines of division.
- Letting go of the past (forgiving and trust).
- Recognise injustice.
- Attempt to restore equity.
- Clarify future intentions.
- Commit to being constructive.

Negotiation, Mediation and Arbitration

- *"Negotiation between two parties where both parties share sufficient communications and resources to reach settlement without outside help".*

Eunson.

- Mediation and arbitration involve:
 - mediation, no power to dictate outcome;
 - arbitration, some power to compel outcome.

Mediation - A Useful Technique

- Useful when you are locked up in a dispute.
- Ground rules defined:
 - don't interrupt, etc.;
 - each party has a chance to speak;
 - feedback on what they heard.
- Summarise agreements and disagreements.
- A good chairperson should do a form of this in handling meetings.

Negotiation

- Can be cheaper than outside help.
- Is confidential; no further than negotiators.
- More flexible and informal than arbitrations.
- If negotiators have shared goodwill, communication skills and an understanding of the dynamics of negotiation, it can work.
- Must both sides have equal power and resources?

Factors to Consider

- Territory:
 - my place?
 - theirs?
 - neutral?
- Communication channels:
 - meetings - formal versus informal, telephone, fax, email, etc.
- Principals.
- Other factors:
 - missing parties;
 - culture, etc.

Tactics and Bargaining

- Are they important, or do they miss the point? (refer Table 9.1 & 9.2).
- Distributive and integrative bargaining.
- Distributive - argue with the other side over a fixed pie. Negotiation becomes *positions* and *concessions*. Bottom lines.
- Integrative - try and achieve mutually beneficial outcome. Distinguish between *positions* and *interests*.

Getting to Yes!

- Participants are problem solvers.
- Separate the people from the problem.
- Focus on interests not positions.
- Invent options for mutual gain.
- Insist on objective criteria.

*Fisher, R. and W. Ury "Getting to Yes: Negotiating Agreement Without Giving In",
Hutchinson Business, London.*

MAC's are Relational

- Don't be thrown off the trail.
- You make the culture and the climate.
- Takes time for trust to develop - build bridges - "you can't put a 30 ton truck over a five ton bridge".
- You decide to make your MAC work.
- Resolve conflict sooner than later!

16. Conflict of Interest

Conflict of Interest

Transparency of Process

Role of Members

- Commercial Fisher
- Knowledge and expertise on all commercial fisheries considered by the MAC
- Represent the broader view of industry
- Develop information papers to support industry views

Requirements of Members

- demonstrated expertise and knowledge in the fishery
- demonstrated networks and linkages with participants in the fishery
- accepted credibility with industry
- ability and preparedness to participate in discussions in an objective and impartial way
- industry confidence and authority to be a MAC Member
- Act in the best interest of the fishery

Members Responsibilities

- Disclosure
 - of any financial interest
 - of any business relationship
 - of any personal relationshipDirect or indirect
- Purpose
 - to enable members to decide if participation would be in conflict with these interests.

Conflict of Interest

■ *Usually defined in the relevant establishing act.*

■ South Australia

- ① A member of a committee who has a direct or indirect pecuniary interest in a matter decided or under consideration by the committee must disclose the nature of the interest to the committee.

■ Penalty: Division 6 fine.

■ 1 year Gaol Max fine \$4 000

- ② It is a defence to a charge of an offence against subregulation (1) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.
- ③ A disclosure under this regulation must be recorded in the minutes of the committee.

Conflict of Interest

■ Commonwealth

■ Section 64a of the Fisheries Administration Act 1991 where a member:

- has a direct or indirect pecuniary interest in a matter being considered, or about to be considered by the MAC; and
- the interest could conflict with the proper performance of the member's duties in relation to the consideration of the matter.
- The member must, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the MAC.
- A disclosure made under the above clause is recorded in the minutes of the meeting.

Obligations under other Legislation

■ Commonwealth Authorities and Companies Act

- Requires members to act honestly, exercise a reasonable degree of care and diligence in the discharge of their duties and not make improper use of inside information. Information is considered to be used improperly where such use results in a MAC member gaining and advantage either directly or indirectly or where such use causes detriment to the Authority or to another person.
- This act appropriately abbreviated to the CAC Act provides for civil penalties of up to \$22,000. Importantly the balance of probability for proof is only 51% for a civil action.

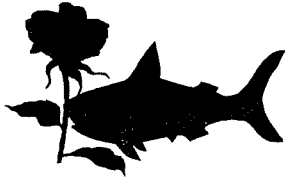
Obligations under other Legislation

■ Crimes Act

- Information provided to a MAC is usually in the public domain but on occasions members are provided access to information that is privileged and confidential and will be advised of this. Any action by a MAC member to publish (make public to one or more people) or communicate this information to any person is an offence under the Crimes Act.
- Breaches of the Crimes Act can incur penalties of up to 2 years imprisonment.

MAC Members and Company Directors

- Many of the duties of a MAC member are similar to those of a company director in relation to a conflict of interest, and a requirement to act honestly and diligently.
- A copy of a the relevant section of the Duties and Responsibilities of Directors and Officers produced by the Australian Institute of company Directors is included in your notes. It is suggested that you study these and the case summaries presented.



Wondovian Fisheries and Forests Authority
3 Fisher Place
Forestway
Wondovia

10 April 199

Chairman, LeftMAC
22 Bellyache Drive
Antacid
Wondovia

Dear Sir,

Left Claw Crab Fishery

Suggested Biological Research Program 1999/2000

It is with great pleasure that we provide your Committee with our Cost to undertake the proposed Biological Research Program for 1999/2000. Our cost is W\$135,000 to complete the work and reports as detailed. This Cost is comprised of the following:

	W\$
Personnel Costs	56,700
Travel	4,120
Office and Lab	52,000
Machinery and Equipment	12,000
Consumables	11,080
Total Cost	135,000

You will note that our costs other than those for Personnel have not changed from last years despite the rise in the CPI.

We would appreciate your early confirmation of our costs so that we can inform the Scientific Officer of her continued involvement in the Left Claw Crab Fishery.

Yours truly,

Pando To Te Masses
Ist Secretary

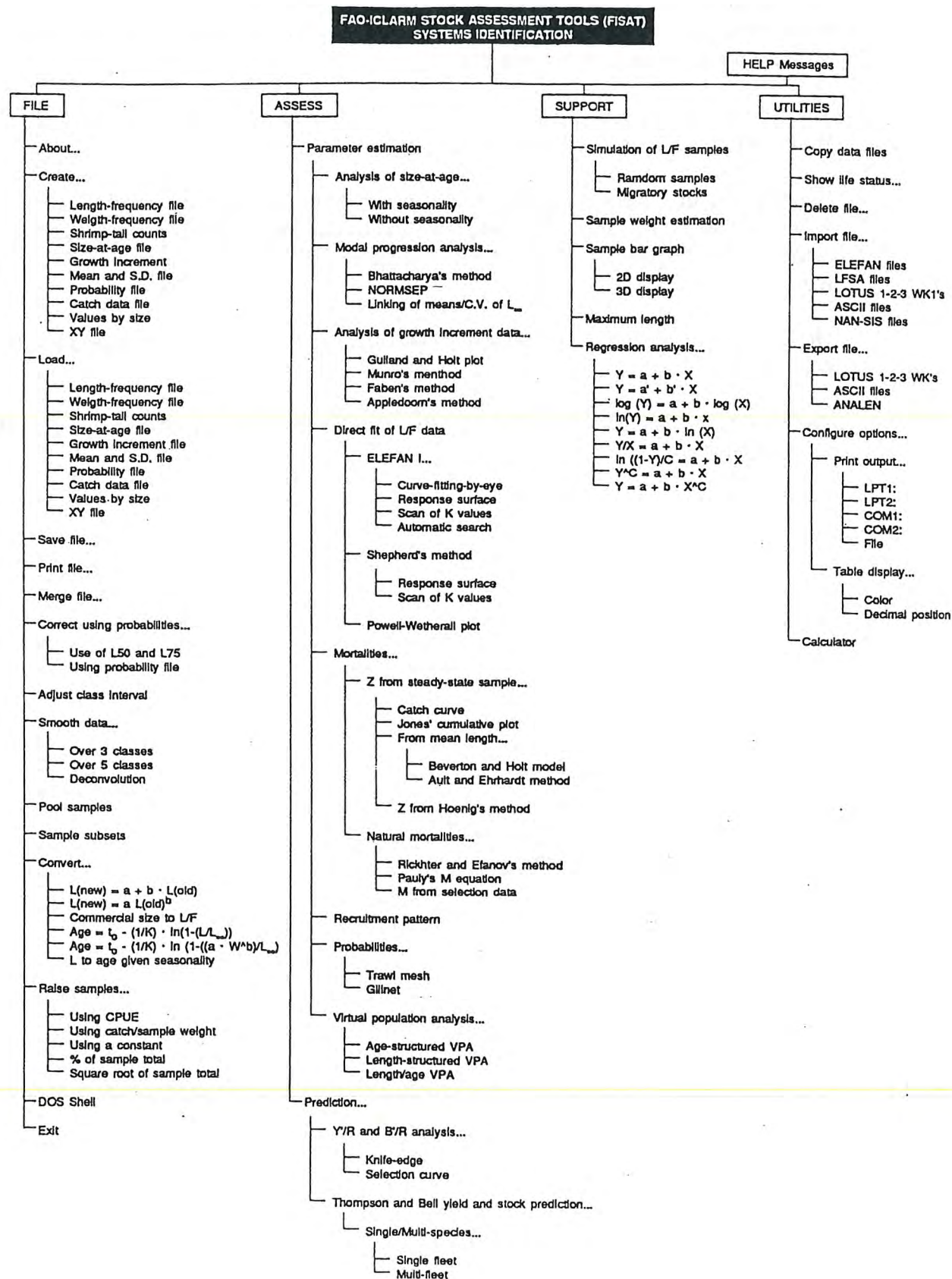


Fig. 15.3.3 Systems identification of the FISAT package

WFFA Representatives

You have a copy of the First Secretary's letter to the Left Claw Crab Fishery.

You also have a spreadsheet that details how the costs were arrived at.

Your instruction from the boss are not to give the "game" away.

Your office and other consumables costs are the same as last years - when you had a full time technician and scientist on the program.

The government has reduced WFFA's funding by 2.5% in real terms and your boss says WFFA has to get more funds coming in to replace funds lost.

Over the past three years a full time field program has been running to enable the first stock assessment of the resource to be completed and so that reasonable biological indicators could be developed. Industry cooperation has been good. The program cost \$960,000 over the three years.

The industry limited entry and became very profitable, the last license changed hands for W\$650,000.

You have to respond to the queries as best as you are able from the information provided and your imagination.

Project Budget**WFFA Costings****Total Costs****Personnel**

Salaries	45,000	Scientific Staff	
Oncosts	11700	Scientist .8 FTE	\$45,000
		On Costs based on 26% of salary	
Total	56,700		

Consultant/Contract Services

Analytical lab

Total**Travel/per diem****Air travel**

Accommodation	3000	Onight @ 150	3000
Per diem	1120	Daily @56	1120
Total	4120		

Office and Storage Space Costs

Area	40000	Building Value	2000000	2%	40000
Office Equipment	9000	Office Equipment Value	450,000	2%	9000
Office Furniture	3000	Office Furniture	\$150,000	2%	3000
Total	52000				

Machinery and Equipment

Vehicle	5000	20 trips 2 \$250	5000
Res Vessel	7000	20 trips @ \$350	7000
Total	12000		

Other Costs

Consumables	1100	Total Res Lab	55,000	2%	1100
Postage	300		15000	2%	300
Printing and Stationary	560		28000	2%	560
Telephone	900		45000	2%	900
Utilities	2400		120000	2%	2400
Accounting and Auditing	3000		150000	2%	3000
Insurance	1000		50000	2%	1000
Advertising	500		25000	2%	500
Other	200		10000	2%	200
Total	9960				

Grand Total 134,780

Say 135,000

The Left Claw Crab Fishers

You guys have contacted a mate who knows a consultant fisheries scientist, Dr Fabio Myalgia who has his own consulting firm Myecology Coy. Your mate has provided him with the above and asked him to provide a guide to the costs of him running such a program.

30 days in the field get a - tech to do this say	8K
Data entry another 30 days - tech to do this say	8K
Analyse each trip 30 days - Scientist to do this say	15K
6 meetings plus a day prep say 12 days say	6K
Managing the project, report writeup	
some extension time say another 20 days	10K
Operating costs say	10K
Total	57 K
Say	55 grand max

Over the past three years a full time field program has been running to enable the first stock assessment of the resource to be completed and so that reasonable biological indicators could be developed. Industry cooperation has been good. The program cost \$960,000 over the three years. As the Fishers who are being asked to pay the WFFA to undertake the work, determine what sort of questions you need to ask and answers you need to get.

What sort of break down of the costs is reasonable etc

Why aren't you negotiating?

Why can't Dr Fabio Myalgia do the work?

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Project Budget

Total Costs Industry Share Cwealth

Personnel

Salaries

Oncosts

Total

Consultant/Contract Services

Analytical lab

Total

Travel/per diem

Air travel

Accommodation

Per diem

Total

Office and Storage Space Costs

Area

Office Equipment

Office Furniture

Total

Machinery and Equipment

Vehicle

Res Vessel

Total

Other Costs

Consumables

Postage

Printing and Stationary

Telephone

Utilities

Accounting and Auditing

Insurance

Advertising

Other

Total

Left Claw Crab Fishery

Suggested Biological Research Program 1999/2000

Specifications

April 16, 1999

Background

The Wondovian Left Claw Crab fishery comprises 6 dedicated pot fishers (fishing approximately 300 days each per year) and approximately 25 marine coastal net fishermen (fishing for approximately 100 days each per year).

This year is the third year of a 3-year, extensive biological research project for this fishery. This project will be completed and reported on by September 1999.

Wondovian Fisheries are run on a full cost recovery basis. The fishery now requires a minor monitoring program to operate from 1999/2000.

The Wondovian Fisheries and Forests Authority has provided the industry with its price on an appropriate research program for the LeftMAC to meet its obligations under the Fisheries Act 1984 in ensuring that the fishery is managed sustainably.

The Scoping Document provided to the Wondovian Fisheries and Forests Authority follows.

Project Requirements

The research should provide assessment against agreed biological indicators for the fishery being:

- Average size of crabs in the commercial catch
- Catch rate
- Percentages of spawners in the commercial catch, and
- The number of pre-recruits in the catch.

The LeftMAC requires that these indicators be reported on annually and that quarterly reports on the progress of the project be made to the committee.

The LeftMAC also requires ad hoc reports and advice on research activities at each LeftMAC meeting.

The research project must enable the LeftMAC to meet its responsibilities under the Fisheries Act 1984 in ensuring sustainable use of the resource.

Timelines

The left claw crab fishers require an indication of an appropriate program by close of business on Thursday 10th April 1999.

Left Claw Crab Fishery

Suggested Biological Research Program 1999/2000

Background

The basic information required to meet the Fisheries Management Plan indicators is collected through the log book data.

Some time may need to be budgeted to enable these to be cross-checked with fishers to ensure accuracy.

Catch Monitoring

The Left Claw Crab pot fishers have considerable experience in taking measurements and other data during their fishing operations. This has been shown during the present 3 year research project. The majority of the monitoring will therefore be undertaken by the fishers.

The LeftMAC does require the services of a scientific officer to provide some validation of the fishers data by being on vessels for some time during the year. The results of the last three years suggests that this time would be minimal.

Each pot fishers fishes for approximately 10 months per year.

The operating budget for the program should reflect the number of days to be spent in the field by this research officer.

Project Management

Project Management for this project should be minimal and would reflect the number of research officer days required and the reporting requirements.

Advice and Reporting to LeftMAC

Quarterly reports to be provided to the LeftMAC.

Presence at and advice to each of the 6 LeftMAC meetings per year.

Stock Assessment Report

The 1998/99 current stock assessment report will reflect the significant research project that has been undertaken during the past three years. An update of this will be required based on the results of the 1999/2000 monitoring work.

The Stock Assessment Report should therefore be a minor task.

Duties to Act Honestly and to Avoid Conflict of Interest

Chapter 4

Duties To Act Honestly and To Avoid Conflict of Interest

In this section we will discuss the “pure” fiduciary duties which derive from the fact that a director stands in a fiduciary relationship to the company; the duty to act honestly, the duty to avoid a conflict of interest and the associated duty not to misuse the director’s position or information that comes to the director by virtue of that position.

It is incorrect to distinguish these duties from the duties to act with care and diligence which are also fiduciary duties, although they are seen in a somewhat different light.

Duty to act honestly

All company directors and officers should at all times act honestly in the exercise of their powers and in the discharge of their duties of office (s232(2) of the CL, parallel to the common law fiduciary duty. Of course a breach of the statutory duty carries with it the potential for a civil penalty; and in certain cases where fraud is involved, a criminal penalty may be imposed.)

The common law, as well as requiring the directors to act honestly, also requires directors to act with reasonable skill, in good faith, and in the best interests of their company. Thus the common law spreads a similar but wider net with its requirement of skill and includes the requirement that directors must use their powers for a proper purpose.

In *Whitehouse v Carlton Hotels Ltd* (1987), the High Court of Australia held that an allotment of shares by the governing director to his sons should be set aside, because his main aim in making the allotment was to prevent his wife and daughters, who were also shareholders, from gaining control of the company upon his death.

In *Advance Bank v FAI Insurance* (1987), the New South Wales Court of Appeal held that expenditure of company money by its directors, with the aim of preventing a rival panel of candidates being elected to the board, was not a proper use of such funds, although the court acknowledged that the directors had acted honestly.

There are many cases which illustrate the fact that a director may act in a way which he or she thinks is honest in the ordinary everyday usage of the term, but the courts will find that nevertheless this does not measure up to the standard that is to be expected of a person who owes fiduciary duties to the company.

One interesting illustration in recent times is *Blackwell v Moray & Anor* (1991) where the court held that a person who had been appointed to the board of directors of a joint venture company, who knew very little about the arrangements between the two major co-venturers and who acted in what he believed to be a reasonably balanced way in putting forward the interests of both the joint venturers, was nevertheless not acting honestly under the general law and the statute of that time.

Cohen J noted that while the relevant director was acting in what he believed to be an honest way, he had failed to act in the manner required of directors in both the statutory and common law sense:

"A mere general sense of honesty of purpose is not in my view sufficient to satisfy the requirement that a director act bona fide for the benefit of the company. It requires at least a consideration of views or of relevant material in order that he may act in a bona fide way.

The abandonment of any proper consideration of relevant facts, the admitted failure to exercise an independent discretion and the mere doing of what was thought the majority shareholder wanted cannot, in these circumstances have amounted to the bona fide exercise of the discretion required of a director."

The Full Federal Court in the litigation arising out of the collapse of the Claremont group of companies (*Cummings & Anor v Claremont*

Petroleum NL (1993)) has imposed what the writer would regard as a reasonable standard expected of directors, though some in the community feel that the courts may have gone a bit far.

In *Cummings & Anor v Claremont Petroleum*, the directors who controlled the Claremont company had arranged for generous service agreements for themselves and their associated companies and these contracts contained even more generous termination payments. Later the board, coming under different control, terminated the relevant service agreements and large sums were paid to the directors and to their service companies. The company was successful in its application to have these contracts set aside and for compensation to be paid to the company, because the directors had failed to act honestly.

The Full Court noted:

"The object of [s232 of the CL] is to provide a statutory restatement of [the duty arising out of the fiduciary relationship between a company and its directors] with attached [since 1992] civil and criminal responsibility and a statutory right for a company to recover compensation for loss or damage suffered as a result of that breach of duty." (edited to reflect the current law)

The court held that there was ample evidence to show that they had failed to act honestly in the exercise of their powers and the discharge of their duties of office, as well as having made improper use of their position (which often involves a breach of s232(6) of the CL).

Another recent case in which a harsh standard was imposed by the court on directors was where there was a conflict between the duty not to disclose information because of the duty of confidentiality, and the duty to disclose information because that was what the company expected. In *Fitzsimmons v R* (1997) the Western Australian Court of Criminal Appeal held that the director who failed to disclose to the second company was in breach of his duty to act honestly towards the second company.

This is seen by many as too harsh a standard where a director is faced with a very difficult decision of knowing to which company he is responsible.

[A further example of where the court has held that a director has failed to act in accordance with the standards expected is *Gemstone Corporation of Australia Ltd v Grasso* (1994), discussed in the Appendix.]

Is there a distinction between fraud and dishonesty?

It is important to note that because the CL and the common law used the word "honestly" in a sense that is different from the everyday use of the language, the law will normally require proof of something far more serious than dishonesty before criminal sanctions will be imposed on directors.

This distinction is now seen as more important because there are both civil and criminal sanctions that flow from the failure to act with honesty.

If fraud is a factor in the behaviour, then the directors may not only have a civil penalty imposed (a maximum of \$200,000 and/or disqualification), but criminal penalties may also be imposed pursuant to s1317FA.

As an example, a director who breached the duty to act honestly in an effort to prevent the company being taken over, without any expectation of personal gain (other than perhaps the continuance of a position in the company), could be held not to have acted honestly under the terms of the CL although the director believed that what he or she was doing was in the best interests of the company.

Certainly the conduct would not be held to be fraudulent, but would be held, in the context of company law principles, not to have been an action taken in good faith and in the best interests of the company.

An example of the interpretation of the provisions, especially in the context of a director trying to protect his or her family interests against a possible takeover or "intervention" from others is in the South Australian Supreme Court in *Australian Growth Resources Corporation Pty Ltd (Receivers & Managers Appointed) v Van Reesema* (1988).

Mr Van Reesema had personally taken over the business and the assets of the family company when it appeared to be failing, to protect his director sons from actions against them. Later, after the company failed, the court held all the directors to be guilty of a breach of s229(1) of the Code, now s232(4) of the CL.

The court said:

"Sub-section (1) [of s229] imposes an obligation on an officer of the company to 'at all times act honestly in the exercise of his powers and the discharge of the duties of his office'. The penalty provision distinguished between acts done with intent to deceive

or defraud the company, members, or creditors of the company or creditors or any other person or for any other fraudulent purpose' and other acts, thereby recognising that an officer may fail to act honestly, within the meaning of the section, without fraud.

The section therefore embodies a concept analogous to constructive fraud, a species of dishonesty which does not involve moral turpitude (wickedness). I have no doubt that a director who exercises his powers for a purpose which the [general law] deems to be improper, infringes this provision notwithstanding that according to his own lights he may have been acting honestly."

Two recent examples where the courts have held that there had been a failure on the part of the directors to act honestly and where some suggest that the courts may have gone further than was required are the cases of *Cummings & Anor v Claremont Petroleum NL* (1993) and the more recent decision of the Western Australian Court of Criminal Appeal in *Fitzsimmons v R* (1997).

Duty to avoid a conflict of duty and interest

A clear rule of company law (developed from the common law courts) is that directors must not allow a conflict of interest to compromise their position. The most important statement, the building block for later statements, is the 19th century case of *Aberdeen Railway Co v Blaikie Bros* (1854) where the court noted:

"A body corporate can act only by agents, and it is of course the duty of those agents so to act as best to promote the interests of the corporation whose affairs they are conducting. Such agents have duties to discharge of a fiduciary nature towards their principal. And it is a rule of universal application that no one, having such duties to discharge, shall be allowed to enter into engagements in which he has, or can have, a personal interest conflicting, or which possibly may conflict, with the interests of those whom he is bound to protect. So strictly is this principle adhered to, that no question is allowed to be raised as to the fairness or unfairness of a contract so entered into."

There are statutory rules which impose an obligation on directors not to allow a conflict of duty and interest to arise by specific reference (s231 of the CL for proprietary companies and s232A which deals with the position of directors of public companies).

Directors of proprietary companies must disclose, at the first possible meeting of

the board of directors of the company, any interests that they may hold in contracts, proposed contracts, any property that may be linked to the company, or any position that they may have that may bring them into conflict. Section 232A of the CL prohibits a director of a public company who has a material personal interest in a contract or matter being considered by the board from voting on that matter.

The director should not be present at the board meeting at which the matter is discussed unless the board has specifically resolved that it is appropriate for the director to be present. Any board resolution dealing with these matters must state that the directors are satisfied the particular material interest held by the director in a position of conflict should not disqualify the director from voting on that matter.

Apart from the common law obligations, there may be a breach of the CL involved in which case maximum civil penalties may be imposed. If fraud is evident, a gaol sentence may be imposed. The company may seek to recover from the relevant director any damages that may have been sustained by the company as a result of the relevant contract being pursued and any gains that may have accrued to the director, may also be ordered to be paid back.

Today there is continued debate as to how far directors must go where they are involved in contracts with their company. Is it sufficient for disclosure to take place and then the board to vote on it, or should directors completely disassociate themselves from the particular matter?

A recent South Australian Full Court decision illustrates the kind of problems that can occur in a proprietary company.

In *Centofanti v Eekimitor Pty Ltd* (1995) the Full South Australian Supreme Court held that a director who found himself having to vote on a matter which impacted on interests of his family company was bound to do no more than to disclose the fact that he had an interest in the particular transaction and then abstained from voting. It was not necessary for him to detail to the board of the relevant company the risks that were involved in the transaction, even though the failure of the company to understand the transaction might have indirectly advantaged his own company.

The court endorsed the language of a judge in an earlier New South Wales decision, *Woolworths Ltd v Kelly* (1991) where Samuels J held that the requirement for disclosure was not intended to:

“... protect the company against bad bargains or the consequences of arrangements into which [the company may] enter ... but simply to ensure that the honesty and integrity which should inform corporate dealings [are] scrupulously observed.”

Disclosure may not be sufficient action. In some instances resignation may be required as it may be impossible to resolve the conflict. The position is particularly difficult in the situation of a joint venture arrangement, where the joint venturers may suddenly find their common interests are in opposition.

A common cause of potential conflict is where two companies with common ownership have an interlocking relationship in the same fields of business. For example, a company may occupy the premises of, and pay rent to, another company, the shareholders and directors of both companies being identical. If the shareholding is the same, the conflict is manageable except if one or the other company suffers insolvency. But if the shareholding is even slightly different, the conflict is immediate. How do the directors set the level of the rental? This is a very simplified example of the type of conflict overlooked by directors every day and which lead to great personal difficulties at times of dispute or financial difficulty.

Another type of conflict, which involved a director's fee being tied to the sale of company assets, was illustrated in *Guinness plc v Sanders & Anor* (1990). In this case the House of Lords applied the principles in *Aberdeen Railway Co v Blaikie Bros*.

Statutory duty not to misuse the position of director

Linked to the common law duty imposed on directors not to allow a conflict of duty and interest to arise is the statutory duty contained in s232(6) of the CL which prohibits the improper use of the position of a director or officer of a company to gain an advantage or to cause detriment to the company. A breach of this provision carries a maximum civil penalty of \$200,000 and/or disqualification. If fraud or dishonesty accompanies the behaviour, then criminal sanctions may also be sought.

Although there have been a number of important cases dealing with these provisions, we will discuss only *R v Byrnes*. *Chew v R* (1991), is discussed in the appendix. Directors should also note that the *Marcus Clark* case (*State Bank of South Australia v Marcus Clark* (1996)) also deals with this statutory provision.

The High Court in *R v Byrnes* (1995) confirmed the tough line on directors in such circumstances that had been enunciated in *Chew v R*.

On 13 December 1988 an offer of convertible notes was dispatched by a company (Jeffcott) to its shareholders. An agreement was signed between Magnacrete and another company to cement a sub-underwriting of the offer and on 15 or 16 December 1988 Magnacrete undertook to guarantee a loan of \$1.7 million. The relevant agreements (under which Magnacrete was to receive a fee of \$40,000 for the guarantee) were executed under Magnacrete's common seal and were signed by one of Byrnes and Hopgood and countersigned by the other as directors. The other directors of Magnacrete had no knowledge of these agreements. The trial judge, before whom the charges were heard, stated that Byrnes and Hopgood "[could not risk] putting the scheme before the Magnacrete board for approval because of the likelihood that Douglas-Hill (another director who was owed money by Jeffcott) would challenge the proposal".

In that situation they took the risk that the transaction could be completed and the benefits enjoyed by Magnacrete before the rest of the board knew about the particular transaction. Later, Byrnes and Hopgood affixed the seal of Magnacrete to a Deed of Guarantee to the Commonwealth Bank. They countersigned the deed as directors of Magnacrete. They also signed other documents relating to the arrangements.

Eventually the transaction came to the attention of Douglas-Hill and others. The matter was investigated and Byrnes and Hopgood were charged inter alia with an offence under s229(4) of the Companies (South Australia) Code, with similar provisions to s232(6) of the CL.

Both directors were convicted of the charges. But on appeal the South Australian Court of Criminal Appeal reversed the findings and quashed the convictions. The main basis for the conclusion that the charges could not be sustained was that there was no wrongful intent, as Byrnes and Hopgood believed that it was beneficial for both Jeffcott and Magnacrete for the transaction to proceed.

After reviewing a number of cases in which the expression "improper use" had been interpreted in the context of the section and generally (including *Chew's* case), the majority of the High Court put their views in these terms:

"Impropriety does not depend on an alleged offender's consciousness of impropriety. Impropriety consists of a breach of the standards of conduct that would be expected of a person in the position of the alleged offender by reasonable persons with knowledge of the duties, powers and authority of the position and the circumstances of the case.

When impropriety is said to consist of an abuse of power, the state of mind of the alleged offender is important: the alleged offender's knowledge or means of knowledge of the circumstances in which the power is exercised and his purpose or intention in exercising the power are important factors in determining the question of whether the power has been abused. But impropriety is not restricted to abuse of power. It may consist in the doing of an act which a director or officer knows or ought to know that he has no authority to do."

In the view of the majority, had the directors made full disclosure and followed the procedures then they may have been excused. As the court noted:

"The respondents in this case failed to disclose their interest in Jeffcott which stood principally to gain the benefit of the [relevant joint venture]. Nor did Byrnes abstain from voting at the [relevant board meeting] ... Both Byrnes and Hopgood exercised their powers as directors with respect to the affixing of the Magnacrete seal to the instruments specified in the particulars and they attested its affixation as directors without having any authority to do so. Even if their actions in executing the instruments could have been authorised by a resolution passed by the other members of the board of Magnacrete, they did not seek such an authorisation."

The High Court's tough line was followed by Perry J in the recent decision of *State Bank of South Australia v Marcus Clark* (1996) (discussed in the Appendix).

Duty not to abuse a corporate opportunity

The director is not allowed to take advantage of a business opportunity at the expense of the company. If, for example, a director learns of a contract that may be won by the company, and decides to divert that contract to another company, or to other interests associated with that director, there will be a breach of the statutory duty to act honestly and, furthermore, a

breach of the common law duty to act honestly. The result is that the shareholders can sue the director and force him or her to pay back any profits made from the particular investment opportunity or contract.

In many cases, a company will be unable to take up a corporate opportunity that comes its way, as in *Queensland Mines Ltd v Hudson* (1978), where the company was unable to pursue certain mining licences in Tasmania because it did not have the resources.

Hudson and his partner, Stanley Korman, were the directors and shareholders (at that time a public company needed to have only two directors). The company rejected the opportunity to take up certain mining leases. Hudson, who had been instrumental in winning these opportunities for the company, then took them up in his own name and made substantial profits. In the meantime, the ownership of Queensland Mines changed and the new owners sued Hudson for the profits he had made.

The case eventually went to the Privy Council which held that, as Hudson had consulted the only other shareholder in that unlisted public company, Korman, and as the company had approved his particular course of conduct and had not, in effect, denied him the opportunity to pursue these licenses, he would not be obliged to pay back the substantial profits that he had made.

The Privy Council, and other courts in earlier cases, indicated that there is a very fine line to be drawn in this type of dispute and each case must be looked at on its own facts.

The ability of a general meeting of shareholders to ratify what otherwise would be a breach of duty by a director is examined later. But it should be stated here, in the context of corporate opportunity, that a very clear principle that can be followed in each case, is that the director should fully disclose the course of action he or she proposes to follow to a general meeting of the company and seek its approval. The director should not vote on the matter.

There have been some cases where the courts have penalised directors (either by fining them and/or making them pay back their profits) when they have failed to inform all shareholders of relevant information to enable them to reach a balanced decision on the particular matter. Even where the shareholding is confined to the directors, the formality of disclosure to a general meeting, and approval by it, must be followed if an attack such as in *Queensland Mines* is to be avoided.

The courts sometimes do recognise that, where there is no fraud and directors do expend a considerable amount of time and energy on a transaction that results in a benefit to the company, whilst they are not allowed to keep the fruits of their labour (because of the general law), they may at least have their expenses reimbursed. In appropriate cases directors may be rewarded for the time that they have spent on the matter. Hill J in the Federal Court recently recognised this as a suitable approach in *Natural Extracts Pty Ltd & Anor v Stotter & Ors* (1997) where the directors did pursue a course of conduct on behalf of companies which they thought were not going to be able to take up the relevant opportunity to develop a project when this in fact turned out to be untrue. The company sued the directors for the fruits of their labour (they had set up an alternative company to pursue the particular project). The directors were forced to disgorge the benefits received on the basis that they had gained a profit at the expense of the company.

Hill J summed up the position which he thought was reasonable in the context of the time and effort spent by the directors in these words:

"The very fact that a business acquired in breach of fiduciary duty expands, perhaps even as a result of the skill and endeavours of the fiduciary, provides no defence [to the orders that the directors disgorge the benefits]. It is perhaps a truism that businesses have an inherent capacity to expand or contract ... But each case must depend upon its own facts and the order of the court moulded to deal with those facts. Particularly, just allowances will be made for the time, energy and skill contributed by the fiduciary as well as for the assets contributed to the business."

Two other cases on similar issues, *Paul Davies Pty Ltd (in liquidation) v Davies & Anor* (1983) and *Pacifica Shipping Co v Anderson* (1985) are discussed in the Appendix.

Duty not to make improper use of information

An important additional statutory duty which needs to be considered at this time is s232(5), which prevents a director and officer from making improper use of information acquired by virtue of the exercise of a position as a director to gain, directly or indirectly, an advantage for the director (or for any other person linked to the director) or to cause detriment to the company. This section can apply in many situations.

A director is not allowed, for example, to use special knowledge which he may have gained by virtue of his contact with, say, a stockbroker, to buy shares for himself which could have been bought on behalf of the company.

Furthermore, a director is not allowed to obtain information to pass on to, say, a brother who is setting up a business in competition to the director's company. The effects of passing information to the brother might not lead to any gain on the part of the director, but he or she will be liable just the same.

As with the breach of s232(6), maximum penalties of \$200,000 and/or disqualification may apply as well as the possibility of a gaol sentence in appropriate circumstances.

Duty to act with care and diligence

This is an area where again we see a combination of common law and statutory duties. The common law, as a result of the famous decision in *Re City Equitable Fire Insurance Ltd* (1925) laid down a standard set of duties that were expected of directors which included the duty to act with reasonable care and diligence.

In analysing that duty, the court held that the directors were expected to provide reasonable attention to the affairs of the company although they could delegate their duties to appropriate officers of the company; that is, to management.

In addition, the court held in that case that it was not necessary for directors to attend every meeting, although that particular view has now been clearly criticised as a result of more recent cases. While directors may not have to attend every meeting, a failure to attend meetings on a regular basis may prove dangerous.

A statutory duty of care has existed in Australian law since 1958. Section 232(4), the current provision, was amended in 1993 to provide that directors exercise at all times "a reasonable degree of care and diligence in the exercise of their powers in the discharge of their duties". That particular duty has now been the subject of a number of important cases and a much higher standard has recently been stated to exist for directors as a result of criticism of a fairly "laid back" attitude taken by courts in earlier years until most recent times.

The legislation as yet contains no guidelines as to what is reasonable care and on many occasions the parliament has been asked (through the lobbying

process) to introduce a legislated business judgement rule, or a safe harbour, to protect directors. The US business judgment rule operates to excuse directors of any liability if they have acted sensibly, even though they may have taken risks. The courts in recent cases have again stated that they expect directors to take risks in appropriate cases and are expected, in some cases to be, entrepreneurial. The courts have, however, been a bit uneven in their approach to these issues. As a result there has been a steady push, led by the AICD, for the introduction of a statutory business judgment rule. On 20 October 1997 the Federal Treasurer released a discussion paper on *Directors Duties and Corporate Governance*. In this he proposes that a statutory business judgment rule will be introduced into the CL to clarify the position of company directors who have acted honestly, with appropriate care and who have not gained as a result of the conflict of interest. It is intended that the statutory business judgment rule will act as a major presumption against liability on the part of directors. However, the proposal also contains proposals for a statutory derivative action (discussed on page 80) which will still enable shareholders to challenge directors on behalf of their company in appropriate circumstances. The presumption, however, will be that directors will be excused of liability in cases such as those described above. More details of this rule, as it is developed, will be noted in the *Company Director*.

Some of the earlier cases had adopted a rather "permissive" attitude towards the role expected of directors, especially non-executive directors. Even in cases of where quite careless behaviour was involved (a failure to value property purchased by a company) this was excused (for example the English decision of *Daniels v Daniels* (1979)). One of the classic decisions of the New South Wales Court of Appeal, which was cited as an example of the permissive attitude of the courts, was *Darvall v North Sydney Brick & Tile Co Ltd* (No 2) (1977) is discussed in the appendix.

Kirby P who dissented in the *Darvall* case opted for a tougher line which has been endorsed in a number of more recent decisions, some of which relate to the operation of the insolvent trading provisions of the CL. The ability of directors simply to do nothing because they are not involved in the day-to-day affairs of the company, has been criticised in a series of insolvent trading cases.

In *Statewide Tobacco Services Ltd v Morley* (decided initially in 1990 and under appeal in 1992) Mrs Morley, a mother and housewife and "paper" director of the family company (or a "dummy director" as an American court recently described it),

was held personally liable for substantial debts incurred by her son who had managed the company for ten years since her husband had died. The fact that Mrs Morley had never participated in the management of the company and had no idea of the role of a director was not sufficient to excuse her.

The Morley decision marked a stiffening of the law and the decision was upheld by the Full Court of the Victorian Supreme Court (*Morley v Statewide Tobacco Services Ltd* (1992)) and the approach endorsed by the South Australian Full Court in *Group Four Pty Ltd v Brosnan* (1992).

In *Commonwealth Bank of Australia v Friedrich & Ors* (1991), Max Eise, chairman of the National Safety Council (Victorian Division), was held liable for \$97 million owed to the Commonwealth Bank in the wake of the Friedrich affair. He had signed the annual accounts of the Council, stating that the organisation was solvent, without examining them closely enough or taking into account the auditor's qualifications. The fact that he was deceived by Friedrich, the chief executive, did not save him.

Responsibilities of executive and non-executive directors (AWA case)

Rogers CJ in *AWA Ltd v Daniels & Ors* (trading as Deloitte Haskins & Sells) (two cases in 1992) gave an important judgment in which he made some distinction between the responsibility of executive and non-executive directors and expressed some views about the community expectations in the behaviour and duties of directors.

Until recently there has been little distinction made in treating the duties and responsibilities of different types of directors. In particular, the rules have tended to treat executive, non-executive, paid or unpaid directors as still owing the same obligations to the company. However, at the same time, the courts have tended to recognise that directors cannot be responsible for all the things that go on, on behalf of the company, and have tended to limit the liability of directors if something went wrong.

As the community has become more anxious about the performance of companies and the fact that some high profile companies have failed, the courts have started to impose a higher standard and expectation on directors. This in turn led to a plea by directors that both the CL and the general law should recognise that a distinction be drawn between what are known as executive – those who have management responsibilities,

and non-executive – those who are regarded as independent directors who provide assistance to the company by looking at things from a different perspective.

That pressure led to suggestions that there should be a differentiation between the liability of executive and non-executive directors. The views of Kirby P, argued in previous cases, came to the fore in the AWA case.

AWA was a large public company which employed a foreign exchange manager to run its foreign exchange trading operations. A general policy for the operation of the business, laid down by the board, was to limit exposure of the company. However, it was alleged that management of AWA had not put into place adequate internal controls or established proper books of account and records to deal with such foreign exchange operations.

The auditors of the company had carried out two audits in the relevant time. On neither occasion did the auditors bring to the board's notice the full extent of the operations of the foreign exchange activities or the deficiencies in the control mechanisms. Some defects were pointed out to management, but these were not followed up in later reviews. Significant losses were suffered by the company, which sued the auditors for negligence. The auditors claimed that they were under no duty to report on the continued problem since they had alerted management to the particular issues.

The court held that the auditors were liable in negligence but that they could sue the company for contributory negligence. The auditors were also able to succeed in an action against the chief executive of the company, who was also the chairman, for his alleged negligence. The court excused the non-executive directors, all of whom had served on the boards of a number of prominent companies.

Rogers CJ held that it was not possible for directors of a large public company to have a hands-on approach to all the affairs of the company. He noted that the directors should have a general understanding of the business of the company and that the complexities of modern commercial life had intensified community expectations of directors.

Rogers CJ held that the board's function was fourfold, to:

- set the goals for the company;
- appoint the company's chief executive;

- oversee the plans of managers for the acquisition and organisation of financial and human resources towards attainment of the company's goals; and
- review at reasonable intervals the company's progress towards attaining its goals.

Rogers CJ considered found that non-executive directors would not be expected to pay continuous attention to the day-to-day affairs of the company and were excused from liability, while the chairman/chief executive officer was found to be in breach of his duty to act with appropriate care and diligence. Rogers CJ added:

"In contrast to the managing director, non-executive directors are not bound to give continuous attention to the affairs of a corporation. Their duties are of an intermittent nature to be performed at periodic board meetings and at meetings of any committee of the board upon which the director happens to be placed. Notwithstanding a small number of professional company directors there is no objective standard of a reasonably competent company director to which they may aspire. The very diversity of companies and the variety of business endeavours do not allow of a uniform standard."

The decision by Rogers CJ was welcomed as a breath of fresh air. Indeed it was cited by the Attorney-General of the day, Michael Duffy, in support of the proposition that the Australian statute did not have to be changed to introduce a business judgment rule, because the courts would adopt a common sense approach in dealing with allegations of negligence that might be brought against directors.

A number of Western Australian cases embraced the approach taken by Rogers CJ and cleared a number of directors in cases where mistakes had been made in the carrying on of the activities of the company. The cases include *Australian Securities Commission v Gallagher* (1993), *Hurley v National Companies & Securities Commission* (1993 and confirmed on appeal in 1995), *Vrisakis v Australian Securities Commission* (1993) and *Biala Pty Ltd v Mallina Holdings (No 2)* (1993) and affirmed on appeal by the Full Western Australian Supreme Court in 1994. Tasmanian case *McQuestin v Australian Securities Commission* (1993) reflected the WA precedents.

In *Vrisakis v ASC* Ipp J, on behalf of the Full Western Australian Supreme Court, in overturning a conviction against Vrisakis for failing to exercise

appropriate care in trying to rescue the collapsed Rothwell merchant banking company, held that Vrisakis, as a non-executive director, was expected to attend to his responsibilities in an appropriate fashion as he was a person who was:

"... experienced in commercial matters, with a specialised knowledge, skill and ability necessary to influence the affairs of the company which had previously been conducted in a way which many regarded as being entirely inappropriate ...".

Ipp J expected Vrisakis to adopt a more intense evaluation of the affairs of the company than, perhaps, others. Despite this, however, he was prepared to excuse Vrisakis from any liability, because not to do so would be to discourage the entrepreneurship one would expect from non-executive directors like Vrisakis.

The following passage from his judgment is one that has been seen as a high water mark alongside the statements made by Rogers CJ in the AWA case.

"[T]he mere fact that a director participates in conduct that carries with it a foreseeable risk of harm to the interests of the company will not necessarily mean that he has failed to exercise a reasonable degree of care and diligence in the discharge of his duties. The management and direction of companies involve taking decisions and embarking upon actions which may promise much, on the one hand, but which are, at the same time, fraught with risk on the other. That is inherent in the life of industry and commerce.

The legislature undoubtedly did not intend by s229(2) [s232(4) of the CL] to dampen business enterprise and penalise legitimate but unsuccessful entrepreneurial activity. Accordingly, the question whether a director has exercised a reasonable degree of care and diligence can only be answered by balancing the foreseeable risk of harm against the potential benefits that could reasonably have been expected to accrue to the company from the conduct in question." (emphasis added)

In many ways, a more dramatic decision was that of the Full Western Australian Supreme Court in *Biala* which excused Rakich of any breach of duty when he had failed to check statements and other activities undertaken by the person, Mr Dempster, who was involved in a joint venture in the relevant company. The Full Court took the view that even though Rakich was foolish, he was entitled to rely on the statements of Dempster who had been:

"... [a] person in charge of the [relevant operation] ... notwithstanding the consequences, and especially so in the context of the case when the [relevant company's] main objective is mining, [because] the project in question was at that stage no more than a project with good possibilities for the future where the company was handsomely compensated for its endeavours to that date".

Rakich's failure, together with the failure of the other directors to double check the enthusiastic comments of Dempster, was excused.

A similar decision of the Queensland Supreme Court in *Re Property Force Consultants Pty Ltd* (1995), continued the trend of relieving directors who relied on other directors in the company of any liability where to expect them to check the actions of their co-directors was seen by the courts as raising the standard expected of these non-executive directors (and even executive directors in the *Biala* case) too high.

Since the *Property Force* case (or at about the same time) and despite a number of other decisions, the New South Wales Court of Appeal, in a majority judgment in the *AWA* case, has raised considerable concerns for directors.

Duty of care and common law negligence (AWA appeal)

The issues on appeal in the *AWA* case (*Daniels & Ors* (formerly practising as *Deloitte Haskins & Sells*) v *AWA Ltd* (1995)) included: questions of whether the management of *AWA* had kept necessary accounting records and controls to deal with the foreign exchange transactions; whether the auditors were guilty of negligence in reviewing those controls; to what extent the directors (both Hooke, the chief executive officer, and the non-executive directors) were liable for breaches of duty and also common law negligence; and to what extent could the auditors seek contribution from the company in respect of any damages that might be awarded against it because of the damage sustained by the company.

Two separate judgments were delivered. In a lengthy judgment Clarke and Sheller JJA, while upholding most of the legal holdings of Rogers CJ, disagreed with him on his assessment of damages and the apportionment of liability between the company and the auditors. They also excused Hooke, the chief executive officer, of any financial liability even though they confirmed his finding that he was negligent in carrying out his obligations.

Powell JA, the third member of the court, disagreed with their findings on the negligence of Hooke and their evaluation of the way in which the law should assess the duties of directors. It is in relation to the assessment of directors' duties that the appeal judgment is in many respects most unsatisfactory.

Common law negligence

Clarke and Sheller JJA went on to note the following: canvassed at length the question of whether directors should not only be liable, in a case of this kind, for breaches of duty arising out of the statute – the duty to act with care and diligence under s232(4) or the equivalent provision in the NSW Companies Act – but also whether they should be held liable for what is known as **common law negligence**.

While they agreed that there had been a resistance on the part of courts to recognise that directors could be liable for common law negligence, they felt this unjustified and confirmed a view put forward by Rogers CJ in the *AWA* case, (although this was not a factor in the final decision) and by the Western Australian Full Supreme Court in *Permanent Building Society v Wheeler* (1994).

Clarke and Sheller JJA in the *AWA* appeal held that company directors were expected to act in a way quite different from trustees. They were expected to make hard decisions which placed them almost in the role of risk takers. In that context they were encouraged to act as "entrepreneurs". They then went on to note the following:

"Any entrepreneur will rely upon a variety of talents in deciding whether to invest in a business venture. These may include legitimate, but ephemeral, political insights, a feel for future economic trends, trust in the capacity of other human beings. Great risks may be taken in the hope of commensurate rewards. If such ventures fail, how is the undertaking of it to be judged against an allegation of negligence by the entrepreneur? In our opinion the concept of negligence which depends ultimately 'upon a general public sentiment of moral wrongdoing for which the offender must pay' ... can adapt to the measure appropriately in the given case where the acts or omissions of an entrepreneur are negligent. Indeed, were a company not involved, an investor whose property or money had been lost can call the entrepreneur to account for a breach of duty of care owed in the circumstances to the investor. We are not impressed by this

perceived barrier against imposing on directors a duty of care at common law. Nor do we think that the fact that directors come to the task with different backgrounds in terms of training and experience presents any problem."

In the *Vrisakis* case, Ipp J had identified directors as entrepreneurs. Clarke and Sheller JJA, after noting the entrepreneurial nature of directors, added that they could be held liable for common law negligence. The following passage has again caused much concern amongst the community of directors:

"We are of opinion that a director owes to the company a duty to take reasonable care in the performance of the office. As the law of negligence is developed no satisfactory policy grounds survive for excluding directors from the general requirement that they exercise reasonable care in the performance of their office. A director's fiduciary obligations do not preclude the common law duty of care. Modern statutory company law points to the existence of the duty. In some circumstances the duty will require action. The concept of a sleeping or passive director has not survived and is not consistent with the requirements of current [legislation]."

Regrettably, in evaluating the duties of non-executive directors, Clarke and Sheller JJA made no real distinction between the position of executive and non-executive directors. In doing this, they relied heavily on a number of US cases which also made little distinction in the role of directors. Their comments on the duties of directors generally to ensure that they are aware of the issues that they face, but recognising that they can delegate, does not cause a problem.

"In our opinion the responsibilities of directors require that they take reasonable steps to place themselves in a position to guide and monitor the management of the company. The board of AWA met only once a month for half a day. But to our mind the board should meet as often as it deems necessary to carry out its functions properly. The question is what in the particular case are the duties and responsibilities of the directors and then what time is required of them as a board to carry out these duties and responsibilities. It is not a matter of tailoring the extent of the duty or function to pre-fixed intervals between board meetings. To be balanced against calls that the modern public company director has acquired and now asserts a professional status together with the professional skills (which should carry a requirement that

the director conform to professional standards and the imposition of an objective standard of care which would not yield to considerations such as lack of knowledge or lack of experience) are the difficulties deriving from the variety of businesses with which companies may be concerned and from the highly diversified activities of a large a complex company. In such circumstances it would be unreasonable to expect every director to have equal knowledge and experience of every aspect of the company's activities."

It was their unwillingness to recognise a distinction noted by Rogers CJ that I take issue with and which I believe needs to be reassessed.

After reviewing the US cases, they concluded their summary with the following evaluation of the duties of directors which, as a general principle, again is one that can be accepted by directors as long as the courts are prepared to recognise that there should be a different standard applied to the amount of attention to detail that directors have to bring to their tasks, especially in large companies. They concluded their evaluation of the duties of directors in this landmark decision with the following comments:

"A person who accepts the office of director of a particular company undertakes the responsibility of ensuring that he or she understands the nature of the duty a director is called upon to perform. That duty will vary according to the size and business of a particular company and the experience or skills that the director held himself or herself out to have in support of appointment to the office. None of this is novel. It turns upon the natural expectations and reliance placed by shareholders on the experience and skill of a particular director.

The duty is a common law duty to take care owed severally by persons who are fiduciary agents bound not to exercise the powers conferred upon them for private purposes or for any purpose foreign to the power and placed ... at the apex of the structure of direction and management."

Another interesting recent case which highlighted the problems facing directors, especially where they fail to act with appropriate care, is that of *Marcus Clark* (discussed in the Appendix).

Duty of care in conflict situations

There has been a shift in the view on the duty of care in conflict situations indicated by the decisions of the Western Australian Full Supreme Court in *Permanent Building Society (in liquidation) v Hamilton & Ors*

(decided at first instance in 1993 and confirmed on appeal in 1994) and the New South Wales Court of Appeal decision in the *AWA* appeal case.

In the *Permanent Building Society* case the relevant question (for our purposes) was whether Mr Hamilton, managing director and chief executive of the building society, could be excused of any breach of duty in failing to participate in the decision-making process involving a major property investment, because he was also director of the property investment company.

The trial judge held that Hamilton was obliged to take a more active role in the decision-making process of the company – simply doing nothing was not enough – the approach taken by the majority of the New South Wales Court of Appeal in the *Darvall* case.

When the case went to the Western Australian Full Supreme Court, apart from confirming the decision of Anderson J, the court also added an important gloss on the duties expected of directors; it held, in support of some general remarks made by Rogers CJ in the *AWA* case, that a director could be liable for common law negligence in carrying out his or her obligations.

Ipp J, who was also the major judge in the *Vrisakis* case, commenced his review of the *Permanent Building Society* case by asking whether the director had exercised a reasonable degree of care and diligence in the balancing of the reasonable risk of harm to the company against the potential benefits that might have been enjoyed from the relevant transaction.

Ipp J asked himself whether Hamilton, by doing nothing in this case other than declaring that he had a conflict of interest, satisfied his common law duty of care and the statutory duty contained in what is now s232(4) of the CL. Ipp J noted:

“In my opinion [his duty] was not affected by the fact that Hamilton believed that he had a conflict of interest and accordingly did not vote when the resolutions in question were taken. It was manifest that the transaction was capable of causing [the building society] serious harm. In those circumstances, in my opinion, Hamilton could not avoid his duties as chief executive and managing director by asserting his perceived conflict of interest. It may be that, because of conflict, he should not have spoken or voted in favour of the resolution.

But as chief executive and managing director there was a respon-

sibility on him to ensure that the other directors appreciated the potential harm inherent in the transaction, and to point out steps that could be taken to reduce the possibility of that harm. Hamilton could not avoid that duty by, metaphorically speaking, burying his head in the sand while his co-directors discussed whether [the building society] should enter into such a potentially detrimental transaction.”

Reviewing the facts in this case Ipp J held that the relevant duty:

“could not be delegated either to subordinate officers of [the building society] or even to individual directors. Hamilton either failed to make enquiries which he should have made or was satisfied with superficial and inadequate answers in circumstances requiring further investigation. Applying the test [in the *ASC v Gallagher* case], an ordinary person with the knowledge and experience of Hamilton would be expected to have made the enquiries to which I have referred, if he was acting on his own behalf. Accordingly, I am satisfied that Hamilton breached his duty to exercise skill and care as a director of [the building society].”

(While the liquidator won the case in theory, he was unable to recover any damages because he could not show that the loss sustained by the company was linked to Hamilton's negligence.)

The *Marcus Clark* case (*State Bank of South Australia v Marcus Clark* (1996)) discussed in the appendix, is another interesting guide to the tough line being taken by judges in recent cases.

17. Personal Communication

PERSONAL COMMUNICATION

ALISTAIR McILGORM

Basics of Communication

- More than cold and technical.
- Sender to recipient:
 - liking the other person-friendship.
- Recipient receives.
- Learning to interpret the message.

Receiving The Message

- Hearing the message:
 - psychological - hearing blocks.
- Attending:
 - psychological (hears all-nothing goes in!).
- Understanding:
 - don't understand seek information.
- Remembering:
 - can you recall what was said?

Interpreting The Message - Like Visiting a Different Land

- Understand different views.
- Understand the difference and bridge the gap.
- Remove your prejudices and decide to appreciate it.
- Change your customs and culture to fit.

Skills

- Non-verbal behaviour.
- Listening.
- Speaking.
- Writing.
- Putting it together.

Non-Verbal Behaviour - Does Your Body Talk?

- Non-verbal messages.
- Eyes.
- Facial expressions.
- Posture.
- Gestures - positioning of arms and legs.
- Styles of dress.
- Distance from other person.
- Kinetics:
 - use of bodies, head, arms, etc.
- Proxemics:
 - personal space.
- Paralanguage:
 - voice;
 - rate;
 - pitch;
 - loudness;
 - inflection.
- Chronemics:
 - timing verbal exchanges.

Verbal versus Non-Verbal

- Verbal versus non-verbal - non-verbal is believed
- *What* was said versus *way* it was said.
- *Answers:*
 - make verbal and non-verbal message agree.
 - Voice: emphasis; variety; voice quality; and articulation.

Listening

- Good listening - key to personal communication.
- "A good listener is engaged in selecting, interpreting, remembering, making guesses, and trying to confirm them, coming to conclusions and playing conclusions back to the speaker".
- The goal is to understand the others point of view.
- Respect for others is listening to them.

Barriers to Listening

- Selective perception - only hear what we want and filter the rest.
- Making assumptions - we feel we know already - don't assume, ask!
- Giving advice - don't give advice, unless it is required.
- Being judgmental - we distance ourselves from the speaker.
- Being defensive - if view is threatening we tend to defend our views.

How To Improve Listening Skills

- Don't interrupt.
- Don't do all the talking yourself.
- Wait for an answer.
- Don't change the topic.
- Listen for the whole message.
- Use eye contact.
- Use minimal encouragers - nodding, smiling, etc.
- Check your understanding - rephrasing.
- Ask questions.

Speaking Skills - Person-to-Person

- Acknowledgement - restating what has been said.
- Minimal encouragers - I see, go on, etc.
- Pausing - a key skill:
 - when do you pause, how long, with what effect? Pauses with eye contact, train yourself to wait.
- Open and closed questions.
- Avoid premature diagnosis.
- Neutral questions - seeing more, gaps and help.

Putting It All Together

- Theory and practice.
- Sense making - information as communication.
- Intention - people have choice and goals.
- Manipulation versus genuineness.
- Practice speaking and writing.
- Integrate your skills.

18. Strategy and Goal Development

Strategy and Goal Development

The planning process

Planning

“I can do nothing about yesterday
almost nothing about today
but at least a little more about tomorrow
more about next week
and plenty about next year”

Peter Drucker

A Strategic Plan

Will answer the following

1. Where are we now?
2. Where can we go?
3. Where do we want to go?
4. Where should we go?
5. How do we get there?

The Planning Cycle

- Questions 1 and 2 can be answered through a SWOT analysis.
- Questions 3 and 4 need to be addressed through the development of goals and objectives.
- Question 5 needs to be addressed through the development of strategy to achieve these.

Goals

- Are broad statements of purpose or value based on the MACs legal mandate, political framework, wishes of stakeholders, practical realities of resources and the views of the MAC members.

Goal Development

- Two types Internal (operational) and External
- Internal - divided into three areas:
 - Management - the wise and efficient use of resources
 - Adaptive - efforts to relate or adapt to environmental change
 - Positional - efforts to strengthen the organisations acceptance and support by stakeholders.
- External - the stated outcomes the MAC wishes to achieve

Goals are difficult to kick

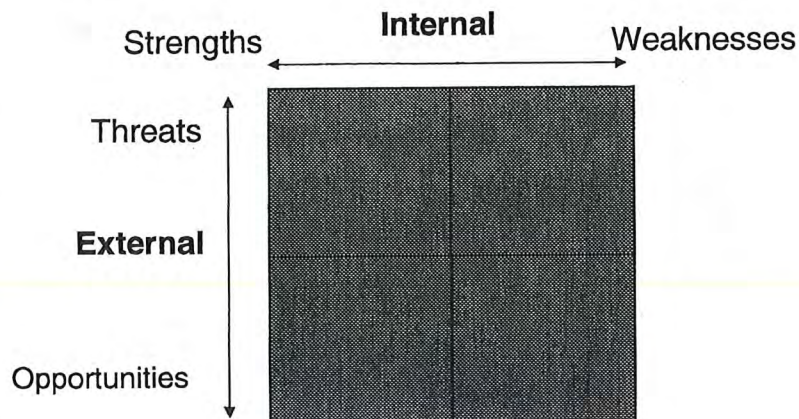
- Goals express intentions or values as such they are difficult to achieve.
- Objectives are statements of intent that are achievable, specific in nature and measureable

Strategic Analysis

- Economic, Biological and Sociological Environment of the fishery
- the essential characteristics of the fishery
- trends and future opportunities and risks
- strengths and weaknesses of the fishery
- capacity to alter and or adapt to changing circumstances
- policy is reaching a decision that balances these with your stated objectives. This is the intellectual ask, the thinking, the conjecturing
- hello anybody home?
- Policy is considering the alternatives and reaching a decision

A SWOT Analysis

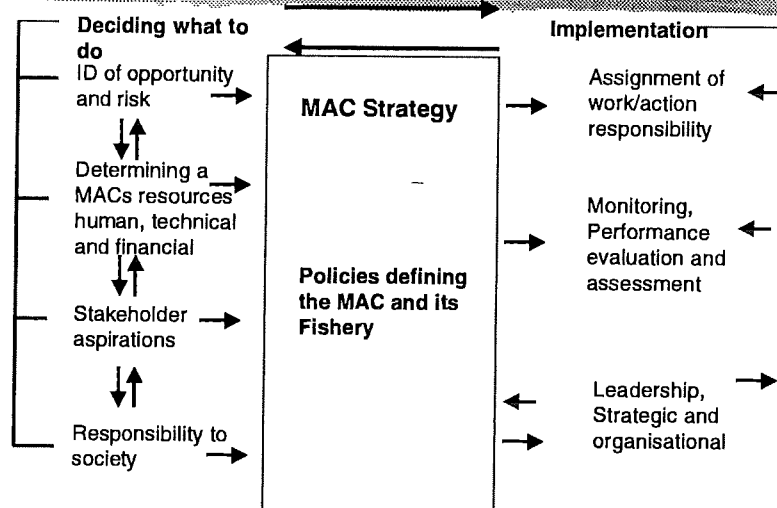
- A Strengths, Weaknesses, Opportunities and Threats analysis can assist the planning as it baselines the organisation



A MACs Corporate Strategy

- the pattern of decisions that
- determines, shapes and reveals its objectives, purposes or goals
- produces the the policies and plans for achieving these
- defines the activities the MAC will be involved in

The Decision Process to Developing Strategy and Establishing Policy



Summary

- Objectives deal with what is to be achieved, strategy with how this can be done

Group Exercise

- The Group will divide into two subgroups A and B:

Group A

- Will undertake a SWOT analysis of the Southern Bluefin Tuna MAC

Group B

- Will undertake a SWOT analysis of the NPF MAC

Conditions

- 20 Minutes
- Scribed on Butcher's Paper
- Groups Spokesman to present SWOT

19. Leadership and the MAC Process

LEADERSHIP AND THE MAC PROCESS

- YOU ARE A LEADER

ALISTAIR McILGORM

Management Skills and MAC's

- Technical skills.
- Human skills:
 - peers;
 - leadership;
 - conflict resolution.
- Conceptual skills:
 - information;
 - decision making;
 - resource allocation;
 - entrepreneurial skills;
 - skill of introspection.
- MAC's - a place to use management skills.
- Collective management.

Leadership

- People like being led well.
- People generally dislike leaders who don't do what they advocate.
- Leadership is not just a position - it comes in many forms and levels.
- Leaders should have followers.

Developing Leadership

- Taking responsibility.
- Is developed, not discovered.
- Leaders:
 - are born;
 - have seen it modelled;
 - learned it through training;
 - have self-discipline;
 - is about character.

Features of Leaders

- Common characteristics:
 - longer term thinkers;
 - curious how things work;
 - emphasise vision, values and motivation;
 - have political skills;
 - don't accept the status quo;
 - implement change.

Leading Through Problems and Change

- Poor people skills:
 - personal problems;
 - passing the buck;
 - poorly organised;
 - inflexible to change;
 - poor team spirit.
- CHANGE:
 - fear of failure;
 - of the unknown;
 - pain versus gain.
- But change is how the future enters your life!
- MANAGE IT THROUGH LEADERSHIP.

Solutions

- Develop trust with people.
- Change yourself; then ask others (lead by personal example).
- Understand influencing others communications, informal, updating, etc.
- Be accountable - not credit seeking.

How Can You Lead In Your MAC?

- Poor to good member leadership?
 - be concerned with your own issues only;
 - shown interest in other sectors problems;
 - equal interest in problems of all sectors;
 - interest in the perspectives and problems of all parties in the process;
 - hold your credibility.

Building Leadership in Others

- Mentoring others - inside and outside the MAC.

Producing Leadership in Others

- Get the leadership basics right.
- Recognise your role to produce leaders.
- The way you lead communicates.
- Four tips from coach Wooden (*UCLA, NBA*):
 - appreciate them for who they are;
 - believe they will do their best;
 - praise their accomplishments;
 - accept your personal responsibility to them as leader.

The Right Attributes

- Positiveness.
- Serving others - following.
- Growth potential.
- Follow through.
- Loyalty.
- Resilience.
- Integrity.
- Big picture mindset.
- Discipline.
- Gratitude.

Climate Change

- Place emphasis on production, not position.
- Provide growth opportunities.
- Lead (don't manage) with vision.
- Do big things (*Churchill*).
- Spend time on the farm team - not the free agents (Character versus Gifting).
- Pay the personal price to attract leaders.

Qualities To Look For

- Character.
- Influence.
- Positive attitude.
- Excellent people skills.
- Evident gifts.
- Proven track record.
- Confidence.
- Self-discipline.
- Effective communicator.
- Discontent with the status quo.

Nurturing Potential Leaders

- Clarify your leadership model.
- Mentor others.
- Build trust.
- Show transparency.
- Offer time.
- Believe in people.
- Give encouragement.
- Exhibit consistency.
- Hold hope high.
- Add significance.
- Provide security.
- Reward production.
- Establish a support system.
- Personalise the potential leader's journey.

MAC Members as Leaders

- You are making a contribution.
- Personal vision and a balanced perspective.
- Build what you can and be constructive.
- Leave it better than you found it.
- Respect the process, if it is deficient, change it!



A Subsidiary of the Australian Maritime College

NATIONAL MAC II COURSE QUESTIONNAIRE

2nd - 4th September, 1999

Please circle the appropriate answer...

Thursday 2nd September	Subject Matter/Content			
Legal Principles for MAC's	Too Much	About Right	Not Enough	
<i>Lecturer: Alistair McIlgorm</i>	Poor	Fair	Good	Excellent
Comments:				

Principles of Administrative Law	Too Much	About Right	Not Enough	
<i>Lecturer: Marc Wilson</i>	Poor	Fair	Good	Excellent
Comments:				

Policy Development	Too Much	About Right	Not Enough	
<i>Lecturer: Marc Wilson</i>	Poor	Fair	Good	Excellent
Comments:				

Managing Information	Too Much	About Right	Not Enough	
<i>Lecturer: Alistair McIlgorm</i>	Poor	Fair	Good	Excellent
Comments:				

Budget Principles	Too Much	About Right	Not Enough	
<i>Lecturer: Alistair McIlgorm</i>	Poor	Fair	Good	Excellent
Comments:				

Costing Principles for MAC Members	Too Much	About Right	Not Enough	
<i>Lecturer: Alistair McIlgorm</i>	Poor	Fair	Good	Excellent
Comments:				

Computers & Data Management	Too Much	About Right	Not Enough	
<i>Lecturer: Marc Wilson</i>	Poor	Fair	Good	Excellent
Comments:				

Friday 3rd September	Subject Matter/Content			
Catch and Effect Database Information and its use	Too Much	About Right	Not Enough	
<i>Lecturer: Marc Wilson</i>	Poor	Fair	Good	Excellent
Comments:				

Communication and the MAC Member	Too Much	About Right	Not Enough	
<i>Lecturer: Alistair McIlgorm</i>	Poor	Fair	Good	Excellent
Comments:				

Publicity and Media Issues	Too Much	About Right	Not Enough	
<i>Lecturer: Marc Wilson</i>	Poor	Fair	Good	Excellent
Comments:				

Meeting Skills and Protocol	Too Much	About Right	Not Enough	
<i>Lecturer: Alistair McIlgorm</i>	Poor	Fair	Good	Excellent
Comments:				

Developing a MAC Position Paper	Too Much	About Right	Not Enough	
<i>Lecturer: Marc Wilson</i>	Poor	Fair	Good	Excellent
Comments:				

Teamwork and MAC's	Too Much	About Right	Not Enough	
<i>Lecturer: Alistair McIlgorm</i>	Poor	Fair	Good	Excellent
Comments:				

Saturday 4th September	Subject Matter/Content			
Conflict Resolution	Too Much	About Right	Not Enough	
<i>Lecturer: Dr. Alistair McIlgorm</i>	Poor	Fair	Good	Excellent
Comments:				

Conflict of Interest	Too Much	About Right	Not Enough	
<i>Lecturer: Marc Wilson</i>	Poor	Fair	Good	Excellent
Comments:				

Personal Communication	Too Much	About Right	Not Enough	
<i>Lecturer: Alistair McIlgorm</i>	Poor	Fair	Good	Excellent
Comments:				

Strategy and Goal Development	Too Much	About Right	Not Enough	
<i>Lecturer: Marc Wilson</i>	Poor	Fair	Good	Excellent
Comments:				

Leadership and the MAC Process	Too Much	About Right	Not Enough	
<i>Lecturer: Dr. Alistair McIlgorm</i>	Poor	Fair	Good	Excellent
Comments:				

Enforcement & Compliance I - the role of compliance; detection of fisheries offences	Too Much	About Right	Not Enough	
<i>Lecturer: Bill Anderson (AFMA)</i>	Poor	Fair	Good	Excellent
Comments:				

Thursday 24th June	Subject Matter/Content			
Enforcement & Compliance II - ITQ's, detection, etc.	Too Much	About Right	Not Enough	
<i>Lecturer: Bill Anderson (AFMA)</i>	Poor	Fair	Good	Excellent
Comments:				

International Environmental Instruments	Too Much	About Right	Not Enough	
<i>Lecturer: Dr. Alistair McIlgorm</i>	Poor	Fair	Good	Excellent
Comments:				

Environment & Fisheries Management	Too Much	About Right	Not Enough	
<i>Lecturer: Jane Holden/Glen Sant (TRAFFIC)</i>	Poor	Fair	Good	Excellent
Comments:				

Recreational Fishing - management of recreational fishing; conflict with commercial fishing	Too Much	About Right	Not Enough	
<i>Lecturer: Dr. Julian Pepperell</i>	Poor	Fair	Good	Excellent
Comments:				

Course Content - Overall Response

Please circle the appropriate answer ...

SUBJECT MATTER/CONTENT: *Too Much* *About Right* *Not Enough*

Comments:

LECTURERS: *Too Much* *About Right* *Not Enough*

Comments:

Course Organisation

Please comment on the following:

Arrival/Transport, etc.:

Venue/Study Room/Accommodation/Food/Special Dinners, etc.

General Comments on Organisation - Suggestions for Improvements

Thank you for your assistance in this survey. It will be of use to us in our future short courses.

Dr. Alistair McIlgorm - Course Co-ordinator.



NATIONAL MAC II COURSE QUESTIONNAIRE

2nd - 4th September, 1999

Please circle the appropriate answer...

Thursday 2nd September	Subject Matter/Content			
Legal Principles for MAC's	Too Much	About Right	Not Enough	
<i>Lecturer: Alistair McIlgorm</i>	Poor	Fair	Good	Excellent
Comments:				

Principles of Administrative Law	Too Much	About Right	Not Enough	
<i>Lecturer: Marc Wilson</i>	Poor	Fair	Good	Excellent
Comments:				

Policy Development	Too Much	About Right	Not Enough	
<i>Lecturer: Marc Wilson</i>	Poor	Fair	Good	Excellent
Comments:				

Managing Information	Too Much	About Right	Not Enough	
<i>Lecturer: Alistair McIlgorm</i>	Poor	Fair	Good	Excellent
Comments:				

Budget Principles	Too Much	About Right	Not Enough	
<i>Lecturer: Alistair McIlgorm</i>	Poor	Fair	Good	Excellent
Comments:				

Costing Principles for MAC Members	Too Much	About Right	Not Enough	
<i>Lecturer: Alistair McIlgorm</i>	Poor	Fair	Good	Excellent
Comments:				

Computers & Data Management	Too Much	About Right	Not Enough	
<i>Lecturer: Marc Wilson</i>	Poor	Fair	Good	Excellent
Comments:				

Friday 3rd September	Subject Matter/Content			
Catch and Effect Database Information and its use	Too Much	About Right	Not Enough	
<i>Lecturer: Marc Wilson</i>	Poor	Fair	Good	Excellent
Comments:				

Communication and the MAC Member	Too Much	About Right	Not Enough	
<i>Lecturer: Alistair McIlgorm</i>	Poor	Fair	Good	Excellent
Comments:				

Publicity and Media Issues	Too Much	About Right	Not Enough	
<i>Lecturer: Marc Wilson</i>	Poor	Fair	Good	Excellent
Comments:				

Meeting Skills and Protocol	Too Much	About Right	Not Enough	
<i>Lecturer: Alistair McIlgorm</i>	Poor	Fair	Good	Excellent
Comments:				

Developing a MAC Position Paper	Too Much	About Right	Not Enough	
<i>Lecturer: Marc Wilson</i>	Poor	Fair	Good	Excellent
Comments:				

Teamwork and MAC's	Too Much	About Right	Not Enough	
<i>Lecturer: Alistair McIlgorm</i>	Poor	Fair	Good	Excellent
Comments:				

Saturday 4th September	Subject Matter/Content			
Conflict Resolution	Too Much	About Right	Not Enough	
<i>Lecturer: Dr. Alistair McIlgorm</i>	Poor	Fair	Good	Excellent
Comments:				

Conflict of Interest	Too Much	About Right	Not Enough	
<i>Lecturer: Marc Wilson</i>	Poor	Fair	Good	Excellent
Comments:				

Personal Communication	Too Much	About Right	Not Enough	
<i>Lecturer: Alistair McIlgorm</i>	Poor	Fair	Good	Excellent
Comments:				

Strategy and Goal Development	Too Much	About Right	Not Enough	
<i>Lecturer: Marc Wilson</i>	Poor	Fair	Good	Excellent
Comments:				

Leadership and the MAC Process	Too Much	About Right	Not Enough	
<i>Lecturer: Dr. Alistair McIlgorm</i>	Poor	Fair	Good	Excellent
Comments:				

Enforcement & Compliance I - the role of compliance; detection of fisheries offences	Too Much	About Right	Not Enough	
<i>Lecturer: Bill Anderson (AFMA)</i>	Poor	Fair	Good	Excellent
Comments:				

Enforcement & Compliance II - ITQ's, detection, etc.	Too Much	About Right	Not Enough	
<i>Lecturer: Bill Anderson (AFMA)</i>	Poor	Fair	Good	Excellent
Comments:				

International Environmental Instruments	Too Much	About Right	Not Enough	
<i>Lecturer: Dr. Alistair McIlgorm</i>	Poor	Fair	Good	Excellent
Comments:				

Environment & Fisheries Management	Too Much	About Right	Not Enough	
<i>Lecturer: Jane Holden/Glen Sant (TRAFFIC)</i>	Poor	Fair	Good	Excellent
Comments:				

Recreational Fishing - management of recreational fishing; conflict with commercial fishing	Too Much	About Right	Not Enough	
<i>Lecturer: Dr. Julian Pepperell</i>	Poor	Fair	Good	Excellent
Comments:				

Course Content - Overall Response

Please circle the appropriate answer ...

SUBJECT MATTER/CONTENT: *Too Much* *About Right* *Not Enough*

Comments:

LECTURERS: *Too Much* *About Right* *Not Enough*

Comments:

Course Organisation

Please comment on the following:

Arrival/Transport, etc.:

Venue/Study Room/Accommodation/Food/Special Dinners, etc.

General Comments on Organisation - Suggestions for Improvements

Thank you for your assistance in this survey. It will be of use to us in our future short courses.

Dr. Alistair McIlgorm - Course Co-ordinator.