

Questions on Notice for LPOGroup Australia Post Inquiry 27 April, 2021.

Senator KITCHING: *I think you said before that you believe the board ignored their fiduciary duties. Could you give me a list on notice of those breaches? Could you also give me your opinion on whether the corporations law should be changed so that board members' fiduciary duty does not revolve around the company but rather move it to a European view on that? And should it also include stakeholders?*

Question - You believe the board ignored their fiduciary duties. Could you give me a list on notice of those breaches?

Response.

LPOGroup's understanding of the obligations of the Australia Post Board of Directors under the Australian Corporation Act 2001 is as follows:

Fiduciary Duty.

Fiduciary duty requires board members to stay objective, unselfish, responsible, honest, trustworthy, and efficient. Board members, as stewards of public trust, must always act for the good of the organisation, rather than for the benefit of themselves.

Director requirements:

- **act** in good faith and for a proper purpose.
 - **act** with care and diligence.
 - avoid improper use of information.
 - avoid improper use of position.
- **Good faith** – This duty requires a director to act in good faith in the best interests of the company and for a proper purpose (s 181), including to avoid conflicts of interest, and to reveal and manage conflicts if they arise.
 - **Care and diligence** – This duty requires a director to act with the degree of care and diligence that a reasonable person might be expected to show in the role (s 180). A very similar duty is also imposed on directors at common law.
 - **Improper use information** – This duty requires directors to not improperly use the information they gain in the course of their director duties to gain an advantage for themselves or someone else, or to the detriment to the company (s 183).
 - **Improperly use position** – This duty requires directors to not improperly use their position to gain an advantage for themselves or someone else, or to the detriment to the company (s 182).

LPOGroup believes that the Board, in requesting Christine Holgate to step aside, then accepting an offer of resignation (although apparently not understanding that the terms of resignation had not been agreed in order to be effective) and then embarking on a recruitment process to employ a new CEO (at a cost of some \$500,000) failed to act in Good Faith and with Due Care and Diligence.

Good faith - LPOGroup firmly believes that the Board did not act in good faith when it requested the CEO to stand aside when it had no contractual ability to do so. It appears to the LPOGroup to be a clear case of a frightened knee-jerk reaction to bend to the will of the Shareholder. The Board did not consider the best interests of the Corporation at a time when the Corporation had

already entered into its peak period of processing and required continuity of management at the top level. The best interests of Australia Post would have been served by agreeing to Christine Holgate's request to commence leave for a period of two weeks and, in doing so, avoid the dubious "stand aside" issue brought about as a result of the directive from the Prime Minister during question time on 22 October 2020.

It is a nonsense to believe that by announcing that Christine Holgate had stood aside of her own volition, the Board was seeking to avoid Christine Holgate using up her own paid leave. It was her suggestion to take this leave so the interference by the Board in this request suggests that going on leave was simply not good enough for the Board and the Shareholder Ministers. To an ordinary person, the connotation of the wording of "Stood Aside" suggests wrongdoing, as the person had to be stood aside so that an investigation or enquiry could be held without any undue influence on the investigation or inquiry by the person involved.

LPOGroup firmly believes that this was a clear conflict of interest in that the Shareholder Ministers were requesting that Christine Holgate be stood aside and where the best interests of Australia Post would have been served had there been minimal disruption at a top leadership level during the immediate and ongoing peak processing periods. It has become obvious that, even with relaxed service standards in place, Australia Post did not meet these service standards and that the community was not well served as it could have been with a stable management team in place led by Christine Holgate. Additionally, LPOGroup has sought an update on the progress of the Bank@Post contract renewal arrangements put in place by Christine Holgate as we are extremely concerned that this arrangement, so vital to Licensees, particularly in rural and remote areas, will be lost due to the lack of guidance by the Management of Australia Post in the absence of Christine Holgate.

Due Care and Diligence -

LPOGroup firmly believes that the Board in requesting Christine Holgate to stand aside and then "accepting" her resignation did not act with Due Care and Diligence. LPOGroup is of the view that there was no genuine process followed during the Board meeting on 22 October 2020 that would enable it to inform itself on the question of whether it could legally request Christine Holgate to stand aside or could stand aside Christine Holgate if she chose to take some form of leave instead. LPOGroup will leave the consideration of the veracity of the opposing version of events around this issue to the Committee but believes this event and subsequent media storm directly impacted Christine Holgate's mental and physical health leading to her offer of resignation some ten days later.

LPOGroup, has heard the statements made during the Inquiry by members of the Board, that the Board wanted Christine Holgate to continue as CEO. This is at odds with the circumstances where the Board presumably had full knowledge of the stress and the health issues being experienced by Christine Holgate, informed by Sue Davies, EGM, People and Culture, Australia Post, yet chose to accept her "offer" of resignation with no direct contact with her.

The question that remains uppermost in Licensee's minds is this - If the Board wanted Christine Holgate to remain as CEO of Australia Post and, fully aware of her health situation and state of mind, why would the Board accept her resignation and embark immediately on a recruitment drive to find another CEO? We now know that process was in the vicinity of \$500,00.

Surely this is an example of an extravagant waste of taxpayers' money far in excess of the purchase of watches as a legitimate reward for work well done. LPOGroup is yet to see any confected outrage over this expense that is a blatant waste of money when the best CEO could easily have been reinstated.

It appears to LPOGroup that the Board were more than happy to see the CEO “resign” as it allowed them to move back into the shadows away from the glare of the media spotlight and where they were being called into question about their collective decision-making ability as a responsible Board.

Question - Opinion on whether the corporation’s law should be changed so that board members' fiduciary duty does not revolve around the company but rather move it to a European view on that? And should it also include stakeholders?

Response

LPOGroup understands that legislation varies across countries in Europe but notes the general theme is that the fiduciary duty of the board is to promote the values of the corporation. In fulfilling that duty, directors must exercise their business judgment in considering and reconciling the interests of various stakeholders—including shareholders, employees, customers, suppliers, the environment, and communities—and the attendant risks and opportunities for the corporation. According to an external survey, there is one clear communality - directors owe their duties to the company, they are required to act in its best interests. They do not owe their duties to shareholders (with the exception of the USA).

Additionally, the board of directors has the duty to determine the strategy of the company and to implement such strategy and the directors must attend a general meeting at least once a year unless otherwise provided by the company’s memorandum or by law. The directors must follow the principles and instructions approved by the general meeting, provided that they conform to law, the statutory provisions and the articles of association.

LPOGroup considers that it is difficult to compare Australia Post, as a Government Business Enterprise, with its only Shareholder being the Government, to other public companies either in Australia or Europe. Having said that, our opinion is that it is obvious that Stakeholders such as Licensees, Mail Contractors, Employees and Customers do not have a voice on the Australia Post Board. The Board, appointed by the Shareholder and not subject to any other selection process, takes its direction from the Shareholder and is simply not accountable for its actions as it would be if Australia Post were a public company. The Board does not appear in any general meetings and do not follow any principles or instructions from its Stakeholders, their only interest is complying with the one and only Shareholder’s directions and wishes. Clearly this is at odds with what is considered to be good governance.

LPOGroup is of the opinion that the make-up of the Board must change to include Stakeholders so that it can be better informed in its decision-making processes. The Board cannot be at the whim of the Government of the day when decisions that can heavily impact the viability of the post office network and the community at large can be made in isolation of its heavily invested Licensee and other Stakeholders. The current debate over the secret BCG report commissioned by Government, paid for by Australia Post, with a further report completed by BCG into the temporary regulatory arrangement, highlights the absurdity of the existing arrangements. It is ludicrous that decisions can be made at Board level that will decimate jobs and small business operators without any reference to the Stakeholders who will be greatly impacted by these decisions.

LPOGroup strongly urges the Committee to recommend the changes to the Australia Post Board as suggested above.