Good Governance Guide

Authority and delegation of decision-making in not-for-profit organisations

Governance Institute of Australia

For the purposes of this guide, we refer to the governing body of an organisation as the 'board'. However, it may have another name, such as 'council', 'management committee', or 'synod'.

It is **good governance** for a charity or not-for-profit (NFP) organisation to structure its board or governing body so it can ensure it can pursue achievement of its purpose while also meeting its ethical, legal and financial obligations. It is also **good governance** for a NFP to have clear guidelines determining the boundaries between the duties of the board and the managers of the day-to-day activities of the organisation.

Board responsibilities

When determining an appropriate board structure, responsibilities should be considered and identified. Reference should be made to the law under which the organisation is incorporated, be it state or federal, and the governing rules of an organisation, such as a constitution, charter, articles or rules, including the organisation's objects, when determining the responsibilities of a board.

These will typically include:

- accountability — ensuring the organisation meets its obligations and purpose
- strategy — approving the strategic direction of the organisation and setting its appetite for risk
- monitoring — ensuring adequate reporting is provided by management to the board
- policies — determining appropriate organisational policies are developed by management and presented to the board to support the achievement of purpose, and
- communication — representing the organisation to staff, members and external stakeholders, and resourcing — working to ensure funding and personnel to support the activities of the organisation are in place.

Importantly, the common law imposes fiduciary duties (that is, obligations to stakeholders) on directors which prevent them from using their position to obtain personal advantage. Directors must act in good faith and in the best interests of the organisation and for a proper purpose. These fiduciary duties overlap with the statutory duties imposed on directors under the *Corporations Act*, state or territory associations incorporation acts if the organisation is incorporated, or the Australian Charities and Not-for-profits Commission Act if the organisation is a registered charity. They can be classified under four headings:

- to act in good faith (bona fide) in the best interests of the organisation
- to exercise powers for a proper purpose (determined by the objects or the organisation)
- to retain discretion, and
- to avoid conflicts of interests.

This can be summed up as the board and management managing the organisation for the benefit of its purpose in accordance with its objects, depending on the nature of the organisation, while taking reasonable account of the interests of other legitimate stakeholders. The board and management should not be managing the organisation for their personal benefit.

Structural elements

When considering an appropriate board structure, taking into consideration the size and complexity of the organisation, the following elements deserve attention:

- board composition – mix of expertise in appropriate areas, diversity and commitment to the organisation and its cause
- establishment of committees – spreading the expertise of the board to assist it in key areas, and
- governance documents such as the constitution or relevant charters.

Board composition

Consideration should be given to a variety of aspects regarding an appropriate mix of professional or acquired skills, gender, age, race, cultural or national background, perspectives, beliefs, and life experience as well as any requirements about the size of the board set out in the constitution, charter, articles or rules.

It is **good governance** for the board to:

- have a size large enough to incorporate a variety of perspectives and skills to meet its obligations without being too large and therefore losing effectiveness. A board skills matrix can help the board identify any gaps in its collective skills that can be addressed by professional development or taking on new directors. It can also assist in succession planning
- have a majority of non-executive board members, who do not maintain another role within the organisation, and do not have a material business relationship with the organisation. If board members are affiliated with an organisation that provides professional services to the NFP organisation, boards must put in place protocols so that they make decisions as a director, rather than as a professional services provider to the organisation, including a process for managing conflicts of interest (see *Good Governance Guide: Conflicts of interest in not-for-profit organisations)* which in some cases may mean exclusion from discussion and decisions or resignation
- in appropriate circumstances, allowing some non-members on member-based boards to ensure key skills are available
- ensure separation of key roles, such as the role of the chair and the chief executive, and the roles of company secretary and chief executive to ensure transparency and minimise potential conflicts of interest.
- have a skills-focused board where individual board members have not just an understanding of the industry or sector in which the NFP organisation operates but complement that with a range of skills, expertise and experience across a range of categories, which may include accounting, technology, fundraising, marketing, legal, governance and capabilities peculiar to the organisation at the particular point of time.

See *Good Governance Guide: Creating and disclosing a board skills matrix* for more information.

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Establishment of committees

Board committees provide an opportunity for a small group of committee members to delve deeper into board issues than would otherwise be practical for the full board. They may or may not have authority to make decisions and frequently only make recommendations to the board and should generally be chaired by a director to ensure there is a clear reporting line to the board. Allowing appropriate non-board members to be involved broadens the pool of capabilities available to such committees.

Consideration should be given by boards to establishing governance committees that are relevant to the board's needs and guiding the organisation's operations. Such committees may include remuneration, nominations, risk, audit, strategy, fundraising, technology and research. Care needs to be taken to avoid board committees becoming de facto operational committees that encroach on management. A committee should have a clear charter or terms of reference setting out its role and conferring any powers necessary to perform its role.

See *Good Governance Guide: What a board committee charter should address* and *Good Governance Guide: Who should sit on board committees* for more information.

Governance documents

It is **good governance** for a NFP organisation to rely not just on the governing rules (constitution) but also to clearly articulate governance issues in a series of documents including:

- board charter – sets out the respective roles, responsibilities and authorities of the board (both individually and collectively) and management in setting the direction, the management and the control of the organisation
- statement of matters reserved for the board - identifies those decisions which must be made by the board and not delegated to management
- delegations of authority policy - describes those matters delegated by the board to management, including the specific role those matters are delegated to, as well as any limits on that delegation
- board policies, including conflicts of interest and related-party transactions policies
- board committee charters or terms of reference
- governance manual, and
- risk appetite statement.

These documents must be reviewed thoroughly by the board at appropriate intervals to ensure they remain relevant and fit for purpose, particularly when board membership changes.

See *Good Governance Guide: Conflicts of interest in not-for-profit organisations* and *Good Governance Guide: Managing related party transactions* for more information.

Statement of matters reserved for the board

The statement of matters reserved for the board may include:

- holding responsibility for the overall leadership of the organisation and setting the direction, culture and values
- setting the risk appetite for the organisation
- approving strategic aims and objectives of the organisation as a whole and reviewing performance against strategic plans
- appointing and removing the CEO and determining their objectives and overseeing day-to-day management
- approving any significant changes in accounting policies, annual budgets, any material unbudgeted capital or operational expenditures or any major capital projects, previously budgeted or not
- determining remuneration for all key executives and the remuneration strategy
- periodically reviewing the governing documents
- formal reporting to members, and
- approving the appointment of principal professional advisers.

Delegation of authority policy

It is important for the board to understand that, while it can delegate authority to make decisions, it can never delegate its responsibility.

Policies generally can be stated in either of two ways; specifying what the delegate can do, or specifying what the delegate cannot do. It is **good governance** to clarify what can be done and setting out the delegation of authority in a table is often a good approach to keep it simple and easy to understand.

A delegation of authority policy may include the following matters, depending on the size and complexity of the organisation:

- financial delegations
- authority to enter into material contracts
- approval of policies
- approval to purchase and dispose of property
- approval of hiring employees and to negotiate relevant Industrial Agreements within parameters and to terminate senior employees' employment
- authority to borrow and invest funds
- establishment and maintenance of insurances
- authority to open and close bank accounts
- entitlements to accept gifts or bequests
- authority to take action to ensure security of physical property, intellectual capital and information assets
- approval of leave requests for all employees
- approval of marketing and fundraising campaigns, and
- approval of media releases.

Setting out a delegation of authority policy is a fundamental component of a risk management framework.

Other considerations

Other items that should be considered in relation to board structure include:

- board tenure and term limits
- induction programs for new board members
- board assessments
- ongoing training, and
- secretariat support.

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Board tenure

Board renewal is critical to performance. Ongoing oversight of board composition and board renewal, led by the chair, provides an opportunity for the board to reflect on how it is constituted currently and how it believes it should best be constituted in the future to align with the strategic objectives of the organisation. Directors should consider tenure as part of board renewal. Including guides or requirements in the constitution can simplify this process. A three-year term with a maximum of three terms generally provides ongoing corporate knowledge while refreshing perspectives for many organisations. It is important to avoid turnover of many or all directors simultaneously to avoid the loss of corporate memory.

Induction programs

It is **good governance** to ensure that there is a board induction program to provide assistance to new board members. A board induction program may cover:

- the governance documents of the organisation
- the role of the organisation and its purpose
- the organisation's code of conduct and code of ethics
- recent financial reports
- recent minutes of board meetings
- profiles and contact details of all directors
- current strategic plans
- details about directors' and officers' and other insurances
- material business risk register
- key legal agreements
- recent public statements and media releases
- organisational chart
- individual meetings with key management
- individual meetings with committee chairs and other directors, and
- deed of access facilitating access to board papers, if necessary, after the director's term has expired.

It is also **good governance** to provide new board members with a letter of appointment, which clarifies expectations, for example, expected attendance at board meetings. It also provides an opportunity to seek consent from the director to act in the role.

See *Good Governance Guide: Director induction packs: content* and *Good Governance Guide: Issues to consider when developing director induction processes* for more information.

Board evaluations

It is **good governance** for a board to regularly assess its performance. Company secretaries are ideally placed to provide assistance to boards considering implementing a board evaluation program for the first time.

Board evaluations may be conducted internally, or by way of external facilitation by engaging the professional services of a governance practitioner.

Board performance evaluations may focus on different areas of governance, such as:

- the board as a whole
- individual board members
- the chair of the board
- committees
- committee members,
- information provided to the board and
- committee chairs.

Board evaluations can assist boards to understand their effectiveness as a combination of their competencies, structure, performance and behaviours within their environment of the legal framework, their governing rules, purpose and strategy.

See *Good Governance Guide: Issues to consider in board evaluations* for more information.

Ongoing training

Regular training for boards serves two purposes. It keeps board members up-to-date with relevant developments which improves their decision-making capacity and it can provide a personal enhancement for the individual who in most cases is not paid a fee for their services. It also provides the board with the opportunity to demonstrate leadership in setting a culture of compliance and good governance within the organisation.

Secretariat support

Qualified company secretaries provide invaluable support to boards through governance advice, secretariat services, the effective administration of board processes and output, facilitation of reviews, director inductions and ensuring effective information flows between the board and management.

Boards invariably gain substantial benefits from having a senior, experienced, qualified executive appointed to the role of company secretary/public officer to service the board and statutory requirements of the organisation.

Members of Governance Institute of Australia are required to complete a rigorous education program and maintain an ongoing commitment to excellence through continual professional development.

It is **good governance** to appoint separate individuals as the chief executive officer and the company secretary of the NFP organisation, reflecting the fundamental differences in their roles.