

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 considered **good governance** for a not-for-profit (NFP) organisation to structure its board to ensure achievement of its purpose while meeting its ethical, legal and financial obligations.

Board responsibilities

When determining an appropriate board structure, responsibilities should be contemplated. Reference should be made to the law under which the organisation is incorporated, and the governing rules of an organisation, such as a constitution, charter, articles or rules when determining the responsibilities of a board. These will typically include:

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

Importantly, the common law imposes fiduciary duties on directors which prevent directors 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 bona fide in the best interests of the company
- to exercise powers for a proper purpose
- to retain discretion
- to avoid conflicts of interests.

This can be summed up as the board and management managing the organisation for the benefit of its members or its cause, 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
- establishment of committees
- governance documents.

Board composition

Consideration should be given to a variety of aspects with regard to an appropriate mix of skills, gender, age, race, background, perspectives, beliefs and life experience.

It is considered **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 to be effective
- 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, put in place protocols so that they make decisions as a director, rather than as a professional services provider, including a process for managing conflicts of interest (see *Good Governance Guide: Conflicts of interest in not-for-profit organisations*)

- allow some non-members on member-based boards as a means of ensuring key skills are available to the board
- 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
- 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.

Establishment of committees

Board committees provide the opportunity for a small group of committee members to delve deeper into board issues than would otherwise be possible for the full board. They may or may not have authority to make decisions or may only make recommendations. Allowing non-board members to be involved broadens the pool of capabilities available to such committees.

Consideration should be given by boards to establishing committees that are relevant to the board's needs. Such committees may include remuneration, nominations, risk, audit, fundraising, technology and research. Care needs to be taken to avoid board committees becoming de facto operational committees that encroach on management.

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

- board charter
- statement of matters reserved for the board

- delegations of authority policy
- board policies, including conflicts of interest and related-party transactions policies
- board committee charters or terms of reference
- governance manual
- risk appetite statement.

See *Good Governance Guide: Conflicts of interest in not-for-profit organisations* and *Good Governance Guide: Issues to consider when developing a policy or process for managing related party transactions* for more information.

Other considerations

Other items that should be considered within a board structure include:

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

Board tenure

Board renewal is critical to performance. Ongoing oversight of board composition and board renewal provides the 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.

Induction programs

It is **good governance** to ensure that there is a board induction program to provide assistance to new board members of the organisation. The 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
- profile of all directors
- current strategic plans
- material business risk register
- recent public statements and media releases
- organisational chart
- individual meetings with key management
- individual meetings with committee chairs and other directors.

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
- committee chairs.

Board evaluations can assist boards in understanding their effectiveness as a combination of their competencies, structure 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 helps keep board members abreast of 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.

Secretariat support

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

Further information on the role of company secretaries, their duties, responsibilities and relationships can be found in the *Corporate Governance and the Company Secretary* publication.

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 considered **good governance** to appoint separate persons as the chief executive officer and the company secretary of the NFP organisation.

See *Good Governance Guide: Issues to consider for a chief executive officer who is also appointed as the company secretary* for more information.