

# Not-for-Profit Officers, Directors and the Board

## Course outline

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# Course Outline

The Not-for-Profit (NFP) sector is large and diverse and operates within a complex legal and regulatory framework. The duties of officers, directors and boards of NFP organisations are many and varied, depending on the entity type/legal structure, the jurisdiction (ie Commonwealth, state or territory) and the internal governance framework of the specific NFP organisation, as stipulated in its rules/constitution. Other regulatory factors such as registration as a charity and taxation concessions and exemptions from the ATO also impact the compliance obligations of NFP organisations and therefore the duties of officers and directors.

To identify the legal and regulatory environment within which an NFP organisation operates, it is useful to consider whether the organisation:

- is incorporated, and if so, whether it is incorporated under state, territory or Commonwealth legislation
- is registered as a charity with the Australian Charities and Not-for-profits Commission (ACNC)
- operates in one state or territory of Australia, or multiple states or territories
- is eligible for Australian Taxation Office (ATO) tax exemptions or concessions
- engages in fundraising or charitable collections
- operates in a regulated service area such as education, health or aged care.

The governing framework of an organisation also refers to the internal governance that is adopted by the organisation. Consideration should be given to questions such as whether the organisation has:

- a written constitution or has adopted the model rules from regulators or government agencies
- developed and published written internal governance policies.

It is presumed that participants undertaking this course have a basic understanding of modern governance practice and procedures in Australia. If not, participants are encouraged to consider attending Governance Institute's *Governance Essentials* course. The legislative and regulatory framework is examined in more detail in the Governance Institute course *Not-for-profit Regulatory Compliance* and the specific compliance obligations in relation to financial management are examined in *Not-for-profit Financial Management*.

The aim of this course is to discuss the role and responsibilities of NFP boards or management committees and to examine the common law, equity and statutory duties of officers and directors of NFP organisations.

The key objectives are to:

- outline the role of the governance framework in defining duties and responsibilities of officers, directors and the board of NFP organisations
- review the role and responsibilities of the board or management committee and recognise the different structures and composition of boards of NFP organisations
- examine the common law, equity and statutory duties that apply to officers and directors of NFP organisations
- appreciate the importance of the role and responsibilities of the board secretary in an NFP organisation
- provide an insight into the statutory duties of NFP organisations in relation to membership, meetings and minutes
- discuss topical issues affecting NFP boards such as the management of risk and conflicts of interests, strategic planning, and ethics and communication.

# Course Content

## 1 Introduction

- 1.1 Background to this course
- 1.2 What is the aim of this course?

## 2 Governance

- 2.1 What is governance?
- 2.2 Ethics and governance

## 3 The board or management committee

- 3.1 Constituting a board or management committee
- 3.2 Appointment or dismissal from a board or management committee
- 3.3 The role and responsibilities of the board
- 3.4 The work of the board — a framework
- 3.5 Board structure
- 3.6 Board committees
- 3.7 Board composition
- 3.8 Board performance assessment
- 3.9 Board (directors') meetings
- 3.10 The board's responsibility for communication

## 4 Duties of officers and directors

- 4.1 Sources of duties
- 4.2 Who is an 'officer'? Who is a 'director'?
- 4.3 Duties of officers and directors — common law, equity and Corporations Act
- 4.4 Duties of officers and directors under the ACNC Act
- 4.5 ATO obligations
- 4.6 Fundraising
- 4.7 Insolvent trading
- 4.8 Financial reporting
- 4.9 'General purpose' versus 'special purpose' accounting
- 4.10 Grant and other funding reports
- 4.11 Accounts and disclosures
- 4.12 External reporting to members and the public
- 4.13 Other statutory duties
- 4.14 Legal protection for officers and directors
- 4.15 Risks associated with volunteers

## **5 Duties of the secretary**

- 5.1 Who is a 'company secretary'?
- 5.2 Role of the company secretary
- 5.3 Duties of the company secretary
- 5.4 Responsibilities of the company secretary
- 5.5 Appointment and termination of the company secretary

## **6 Organisational and sector restructure**

- 6.1 Structuring for the future
- 6.2 Membership categories
- 6.3 Eligibility requirements
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- 6.5 Membership schemes
- 6.6 Meetings of members

## **7 Conclusion**

## **8 Resources**

- 8.1 Legislation and regulators
- 8.2 Standards and guidelines
- 8.3 Governance Institute resources
- 8.4 Reference books
- 8.5 Reports and journal articles
- 8.6 Other resources

## **Appendices**

## **Readings**