Good Governance Guide

Board structure

Governance Institute of Australia

Not-for-profit sector

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.

Good Governance Guide

Conflicts of interest in not-for-profit organisations

Governance Institute of Australia

Not-for-profit sector

Directors have a duty under common law and under the Corporations Act to act in the best interests of the not-for-profit (NFP) organisation that they serve. Directors should not seek to benefit from the NFP, and should not be influenced by their wider interests when making decisions affecting the NFP.

Conflicts of interest arise when the interests of directors (or those of their families, friends or other organisations with which they are involved) are incompatible or in competition with the interests of the NFP. Such situations present a risk, real or perceived, that directors may make decisions based on these external influences, rather than the best interests of the NFP. Effective boards make good decisions by comparing the range of options available to them. If directors allow factors such as their own interests to influence their decision-making, they may make decisions that are not in the NFP's best interests or contrary to law.

Conflicts can affect the reputation of a NFP, even where no actual conflict exists. It can take a long time for a NFP organisation to build its profile and reputation as an organisation people can trust. This reputation can be destroyed very quickly despite the best intentions of the board and management, if actual or perceived conflicts of interest arise and are not properly managed.

Conflicts of interest will arise — they are part of governing an organisation. The important aspect is identifying and managing them effectively. It is considered **good governance** for a NFP to ensure appropriate mechanisms are in place for disclosing and managing conflicts of interest.

Types of conflicts

The most easily recognisable form of conflict arises when a director obtains direct financial benefit, with an indirect financial conflict also arising when a close relative of a director receives a financial benefit from the NFP. Non-financial or personal conflicts occur where directors receive no financial benefit, but continue to be influenced by external factors, for example, perhaps because they use the NFP's service themselves or care for someone who does.

Directors may also have a conflict of loyalty, that is they may have competing loyalties between the NFP to which they owe a primary duty and some other person or entity. Many funders, statutory authorities and NFPs nominate members of staff or other representatives to sit on boards as directors, or directors may be elected through a democratic process by a constituency of a NFP. A director may serve on the board of more than one NFP.

Despite the legal principle that the directors' primary obligation is to the NFP, representative directors often feel a strong loyalty to their nominating body or constituency. It is important that any representative directors receive education about their duty to act in the best interests of the NFP and not the organisation that nominated them. When fundraising, directors must maintain independence of judgment regardless of the source of funds and not allow the funder's views to distort the mission of the organisation.

A perceived conflict of interest can be as damaging to the reputation of the NFP as a real conflict.

Duty to disclose

The duty to disclose a conflict applies not only to directors and responsible persons, but also to officers of the NFP. Officers can include employees, volunteers, secretaries, receivers, managers, administrators, liquidators and trustees.

Directors are required by law to declare any interest in contracts unless excluded under S 191 of the Corporations Act. However, employees acting in their own interests may be in breach of their employment contract and subject to disciplinary action or dismissal. Volunteers may serve on the board of the NFP and be subject to directors' duties.

How to disclose?

On appointment, directors should be asked to complete a declaration of interests. This can be attached to the director's consent to act form.

Completed declarations should be returned to the secretary (or other relevant person if there is no secretary), who will be responsible for keeping the register of conflicts of interest up-to-date. The declaration of interests needs to be updated as and when changes occur, and also reviewed annually. This may be recorded on the annual board calendar document.

When a conflict of interest does arise, it is the responsibility of the director in question to declare the conflict to the board. If they fail to do so, the chair of the board or the secretary should declare the conflict if it is known in sufficient detail, such as through the register of interests. It is **good governance** to include declarations of interest as a standing agenda item at board meetings, to ensure that directors have the opportunity to disclose potential conflicts.

Effect of disclosure

Where a NFP is structured as a company limited by guarantee, and as such is a public company, there are specific disclosure requirements in the Corporations Act relating to 'material personal interests' which must be complied with.

While many incorporated NFPs and their subsidiaries are companies limited by guarantee, NFPs can also be incorporated under specific state legislation, and will be subject to other specific requirements contained in the legislation, which may include the requirement to keep a register.

Generally, individuals with a conflict of interest are prohibited from taking part in discussions and voting on matters relating to the conflict.

A specific conflict should be declared as early as possible in the discussion at a board meeting of a particular item, and recorded in the minutes, even though the general conflict may already be noted in the register. Ideally, a specific conflict should be declared prior to the meeting, with consideration given to excluding any relevant board papers from the board pack provided to the director in question. Depending upon the type of conflict declared, it may be appropriate for the director in question to leave the room during the entire discussion of and voting on the matter. They can return to the meeting once invited by the other board members. This absence from the meeting, including the time the director left and returned to the meeting and the reasons for the absence, should be recorded in the minutes. This allows the board to prevent any appearance of impropriety or perceived conflict by ensuring that the director in question:

- is not involved in the discussion and the decision
- does not obtain information from the earlier discussion that would allow them to influence the final decision.

If the board determines, with the assistance of legal advice, that the conflict of interest cannot be resolved or managed, and the director determines that they cannot discharge their duties, then the director in question should resign from the board.

Conflicts of interest policy

A comprehensive conflicts of interest policy will assist everyone in the organisation to understand types of conflicts and how they are managed.

It should:

- contain a statement noting that the management of conflicts is central to organisational integrity
- define a conflict of interest (noting that there are real and perceived conflicts) and provide examples of types of conflicts
- provide an overview of directors' duties (and note that the protection offered in s180(2) — the business judgment rule — will not apply in situations where a director acts on a material personal interest) and that s 189 is relevant to reliance on advice
- clarify to whom the policy applies
- set out the guiding principles for the disclosure of conflicts of interest
- describe the processes for the disclosure of conflicts, including the register and a standing agenda item at board meetings
- provide direction as the point at which conflicts are so material that they effectively prohibit the individual from performing in their role

- describe what is expected of a director if the conflict is significant
- include reference to how regularly the policy will be reviewed.

If the NFP is a charity, the policy should also refer to the Australian Charities and Not-for-profit Commission's (ACNC's) Governance Standard 5 (duties of responsible persons) and the duty to disclose and manage conflicts of interest.

The conflicts of interest policy should also either cover related-party transactions or refer to the related-party transactions policy. The policy should be circulated to everyone in the organisation (employees and volunteers), and confirm that the policy is a board policy applying across the organisation. The board will 'set the tone from the top' in relation to how it manages related-party transactions and conflicts of interest. The board should set a date for review of the policy.

Further information can be found in Governance Institute's *Good Governance Guide: Issues to consider when developing a policy on disclosure of and voting on matters involving a director's material personal interests* (which has been developed for public listed companies) and *Good Governance Guide: Issues to consider when developing a policy or process for managing related party transactions*.

Communication

The policy should be communicated internally and externally.

Internally, it can form part of the induction package provided to new directors and employees and also any regular training that is provided to employees on the NFP's policies.

Externally, it should be communicated to members of the NFP and the community via the NFP's website.

The policy should also refer to the NFPs' policies on:

- whistleblowing, and
- diversity — it is **good governance** to have a diverse mix of skills, backgrounds, beliefs, ethnicities on the board, which can aid in identifying and analysing potential conflicts of interest.

Good Governance Guide

Issues to consider when developing a communications policy

Governance Institute of Australia

Not-for-profit sector

It is **good governance** for a not-for-profit (NFP) organisation to have in place a documented communications policy. Such a policy could include or make reference to more detailed policies on:

- stakeholder engagement
- the use of social media
- engagement with the media, including how to manage the media in a crisis situation
- how to use systems and technology to assist with communications
- the NFP organisation's statutory obligations in regards to communications, including the annual general meeting (AGM) and the annual report
- fundraising.

A communications policy should be explicitly aligned with the stated purpose and values of the organisation and assist the NFP to liaise with a range of stakeholders to ensure that a consistent message is communicated from the organisation in order to reinforce its purpose. It should also support the risk management framework and enhance community confidence in the NFP organisation.

Stakeholder engagement policy

It is **good governance** for an NFP organisation to document a policy to:

- recognise the benefits of key stakeholder engagement
- identify the stakeholders and define their legitimate interests as they relate to the NFP organisation and its purpose
- develop an understanding of the role that stakeholders have in or with the organisation, and
- identify the stakeholders' needs.

Stakeholder engagement should link to the mission of the organisation and is part of the strategic plan. A stakeholder engagement policy should assist the NFP organisation to achieve its strategic objectives with the continuing support of stakeholders. This enables stakeholders to feel satisfied about their contribution to the objectives of the organisation.

A more detailed stakeholder engagement plan will usually underpin the policy. Guidance on this is provided on the following pages.

Social media policy

It is **good governance** for an NFP organisation to have a policy on the use and role of social media in the organisation. This may form part of the communication policy or may be a stand-alone policy. Social media refers to online tools which provide individual users and/or companies with the ability to create and share content in online communities. Social media tools include, but are not limited to, the following:

- social networking sites, such as Facebook, LinkedIn, Google+
- video/photo sharing sites, such as YouTube, Flickr
- micro-blogging sites, such as Twitter, Yahoo Buzz, Meme
- weblogs — corporate, personal or media blogs published through tools such as Wordpress and Tumblr
- forums and discussion boards, such as Whirlpool, Yahoo! Groups, Google Groups
- geo-spatial tagging, such as Foursquare
- online multiplayer gaming platforms, such as Second Life
- instant messaging, including SMS
- vod and podcasting
- online encyclopaedias, such as Wikipedia
- any other websites or devices (including mobile phones) that enable individuals to publish or distribute their own views, blogs, comments, photos, videos etc.

Social media now enables wider consultation than has occurred in the past and allows all stakeholders to provide feedback to the organisation. The NFP organisation's website and social media strategy will drive the engagement with the stakeholders. Social media can also involve a more informal style of communication.

It is important that the NFP organisation considers the risks of using social media and whether social media should be the channel for communicating certain types of information. A social media policy recognises that employees should be provided with guidance as to the NFP organisation's expectations when the employee is using social media platforms, either as part of their work responsibilities, or in a personal capacity, where the individual's social media profile is linked to their employer's profile, or in a personal capacity where the individual provides comment on the NFP organisation, its products and services, its employees, its members, its volunteers and/or other related individuals or organisations.

A social media policy can provide directions for employees as to:

- being clear about who they are representing
- who has authorisation powers and responsibility
- taking responsibility for ensuring that any references to their employing organisation or its members or volunteers are factually correct
- being accurate and not breaching confidentiality requirements, and
- showing respect for the individuals and communities with which they interact.

Dealing with the media

It is **good governance** for the NFP organisation, when appropriate, to engage with the media, including in a crisis situation. The risk of a member or volunteer or other party speaking 'on behalf' of the NFP arises if a policy is not in place addressing:

- whether public relations are managed in-house or externally — an external media adviser may be prepared to act in a pro bono capacity if the organisation cannot afford an adviser on commercial terms
- who is authorised to speak on behalf of the NFP organisation — the organisation needs to consider who is the most appropriate and credible person to speak to the media on their behalf. It may be the chair, the CEO, a board member or a high-profile executive officer
- how to manage the media in a crisis situation — this ensures that the authorised spokesperson(s) can respond appropriately to a particular situation as the policy will set out:
  - who is responsible to prepare the media release
  - who will brief the external PR consultant if one is used
  - the contact person for the media
  - how escalation of an issue will be managed.

It is important that the NFP organisation supports its media spokesperson(s), including the provision of media training where appropriate.

Occasionally the NFP organisation may be required to respond to external or internal threats that require immediate crisis management and therefore there can be real value in establishing ongoing relationships with the media in a non-crisis environment. The communication policy will provide the processes and protocols that need to be followed to deal with difficult or hostile stakeholders and clarify responsibilities. Such a policy will also ensure that any response from the organisation is perceived to be fair and scrupulous.

An NFP organisation may consider a cascading approach to the media and arrange for their patron or someone else within the organisation with a high media profile to speak on the organisation's behalf during the crisis rather than relying on the media spokespersons they use during 'business as usual'. The policy will ensure that any such protocol is clear. It is also **good governance** to link the communication policy in this regard to the business continuity and crisis management policy for the NFP organisation.

Among the key assets of an NFP organisation are its brand and reputation, which like any other asset should be carefully managed and protected. This brand and reputation can be destroyed very quickly if it is perceived to have been mishandled during a crisis.

Stakeholder engagement plan

Who are the stakeholders?

Understanding who the key stakeholders are and the process for establishing their needs will shape the strategy for engagement. Stakeholders broadly include:

- those who are the focus of the organisation's activities and services
- those directly involved with or responsible for the activity of the organisation

- those who devise, pass and enforce laws and regulations that affect the function of the organisation
- other authorities and bodies that interact, partner or collaborate with the organisation
- those with an interest in its processes or the outcome of its activities, and
- those who fund or resource their activities.

A stakeholder engagement policy should provide a basis for the key information that prioritises those stakeholders with a degree of proximity to the strategic objectives and ensures a level of success and alignment with the organisation's strategic plan.

An NFP organisation's stakeholders may include:

- **Members:** An NFP organisation needs to engage with its members to ensure they support the purpose of the organisation. Members can be engaged with through the organisation's website, dedicated member communication, social media, the AGM and other general meetings, as well as other events.
- **Employees:** Engagement activities both ensure that the effort undertaken by all employees across the organisation is aligned with the strategic objectives and help employees to share ideas and concerns with senior teams to steer decisions regarding the business. An NFP organisation may consider using an intranet, instant messaging or social media applications as means of communication with employees.
- **Volunteers:** Volunteers are a key part of an NFP organisation and need to be kept apprised of the organisation's strategic objectives and progress toward achieving those objectives. It is **good governance** to establish systems and processes for communicating and engaging with volunteers. See *Good Governance Guide: Volunteer management*.
- **Service recipients:** The motivation of charities and NFP organisations is to provide support to as many people as possible in alignment with their mission. They are a valuable source of feedback which allows an NFP organisation to refine its service offering.
- **Donors:** Donors are a key stakeholder group which provides financial sustainability for many NFP organisations. Donors should be confident that their donations are being applied effectively by the NFP organisation.
- **Regulators:** A NFP organisation may have obligations to many regulators in respect of its legal structure; how it raises funds; what activities it pursues; and exemptions concessions and benefits to which it is entitled. Each NFP organisation will need to assess which regulators it has obligations to, but common examples include:
  - Australian Charities and Not-for-profits Commission (ACNC)
  - Office of the Registrar of Indigenous Corporations (ORIC)
  - the Australian Taxation Office (ATO)
  - state and territory-based tax authorities, for example, the ACT Revenue Office, the NSW Office of State Revenue and Revenue SA
  - state and territory-based incorporated association and cooperative authorities, for example, NSW Fair Trading, the NT Department of Business and the QLD Office of Fair Trading
  - state and territory-based fundraising authorities, for example, Consumer Affairs Victoria, the SA Consumer and Business Services and the WA Department of Commerce.

Regulators influence how NFP organisations can raise funds, engage with other stakeholders and employees and can provide helpful information and advice, both formally and informally. The relationship with a regulator can have a significant impact on an NFP organisation's operations. An NFP organisation needs to have a robust system of communicating with the relevant regulators, including a compliance framework to manage the relationship and timeliness of communication.

- **The government:** Government agencies can be a source of funding for the organisation, which may give rise to formal reporting requirements to acquit the funding. A strong relationship can assist in maintaining and attracting additional funding. NFP organisations need to understand the public policy framework in which they operate, and that changes in government policy can have implications for the capacity of the NFP to provide its services.
- **Professional industry associations and professional service organisations:** Recognition by professional industry associations and professional service organisations can assist NFP organisations to fulfil

their mission. Such bodies can also be sources of helpful information and advice and may provide pro bono support to the NFP organisation which may not otherwise be able to afford such services.

- **The community at large:** The community's trust and confidence in NFP organisations is the sector's most valuable asset, and its protection is enhanced by good, honest communication. The community is also a source of potential members, volunteers, service recipients and donors.
- **The media:** NFP organisations in the right circumstances can benefit from establishing relationships with the media across a variety of channels, as media representation of the NFP can have a significant impact on the organisation's reputation.

Method of communication

Once an NFP has identified the stakeholders of the organisation, it is **good governance** to understand and document in one or more stakeholder engagement plans the interest held by each stakeholder and then determine an appropriate:

- method of communication, and
- frequency of communication.

There are different levels of stakeholder engagement, ranging from active decision-making in facilitating strategic objectives to informing stakeholders of the NFP organisation's activities and undertakings or seeking support for those activities.

Fostering a two-way inclusive dialogue with key stakeholders is necessary for the sustainability of NFP organisations. It is vital that the communications strategy delivers the transparency that stakeholders expect in an engaging and enriching way. It should convey a consistent message of how the organisation is distinctive and has a compelling mission. It should also be recognised that having meaningful engagement with stakeholders is much more than communicating to them. Stakeholder engagement requires clear guidance and objectives to use resources effectively and an ability to recognise what is required in terms of time, resources and skills for a meaningful two-way dialogue and participation. Over-communicating can be as detrimental to the relationship as under-communicating.

When communicating with stakeholders, the NFP organisation will also benefit from focusing the message on outcomes achieved rather than the easier way of reporting on money spent and activity undertaken.

The NFP organisation should establish effective communication strategies to ensure that stakeholders' needs are met by choosing the most appropriate methods and technologies to inform, consult, involve, collaborate and engage with the various stakeholders in a timely manner. No single method of engaging stakeholders is suitable for all situations and often a mix of approaches, such as the use of structured and unstructured processes, is necessary. Accordingly, it is important to tailor the interaction process by considering the unique characteristics of stakeholders, including the nature and intensity of their interest, and decide which approaches are best suited to particular groups.

Different methods and channels of communication can be tailored for use with different stakeholder groups, including through either hard copy which still has a role to play, or though the use of digital forms of communication. An NFP organisation needs to consider if professional and networking events and content marketing form part of its communication — providing useful information can have a positive impact on the NFP's reputation and its interaction with stakeholders. NFP organisations also need to consider which communication channels are appropriate for their use. Consideration should be given to the following issues:

- how to ensure that the message of the organisation is presented in a consistent way which represents its values
- how to ensure its communications have a consistent look and feel — it can be helpful to develop a 'style guide' which covers all aspects of its communications, including how employees answer the phone, the tone and presentation of written communications (including email), the look and feel of marketing materials and the use of the organisation's brand
- implementing a system of checks and balances for sign-offs of communications to ensure that the appropriate message, tone and style is used for the selected communication channel.

Systems and technology

NFP organisations need to understand the value that technology can bring to engagement with stakeholders as well as the investment required to implement and maintain it. NFP organisations could also consider many free or low-cost versions of technology that enable an NFP to develop a more sophisticated communications strategy at a relatively low cost, including:

- customer relationship management (CRM) systems
- content management systems, which an NFP organisation can use to update its website
- e-communications, including email marketing software, and
- tools to manage social media, which allow for central posting and dissemination across platforms.

The objective is to generate a high level of benefits relative to costs. Technology must be tailored to the size of the organisation and must be regularly reviewed in light of organisational growth and technological developments.

Statutory obligations, including the annual general meeting

The legal obligations with which an NFP organisation is required to comply will vary according to the organisation's legal structure, size and complexity. Examples of legal obligations that an NFP organisation may need to consider are:

- the requirement to hold an AGM or other general meetings of members and present financial statements
- government grant acquittals — compliance with government funding agreements will affect eligibility for future funding and requires recipients to provide financial reports and written reports documenting activity performance and where funding was spent
- the requirement to provide for employees' superannuation
- the workplace health and safety of employees, recipients and volunteers
- requirements under the *Fair Work Act 2009*.

An NFP organisation can consider including statutory obligations in their communications strategy and treat them as an opportunity to engage with the relevant stakeholders.

In regards to the AGM, while charities are not required under the ACNC Governance Standards to hold an AGM, consideration should be given to the value an AGM brings in terms of member engagement. It is considered **good governance** for NFP organisations to have a policy that aims to maximise the opportunity for members to participate in meetings by considering such matters as date, time, place and plans made to cater for the situation that the meeting may be adjourned to a future date.

Good Governance Guide

Issues to consider for a chief executive officer who is also appointed as the company secretary

Not-for-profit sector

It is considered **good governance** for organisations to appoint separate persons as the chief executive officer (CEO) and the company secretary of the organisation. While it has been the practice in some organisations, particularly not-for-profit organisations, to appoint the CEO as the company secretary, it is good governance for another member of the management team to fulfil the secretarial role.

The separation of the roles recognises that, while both the CEO and company secretary are delegates of the board of directors of an organisation, their responsibilities to the organisation can be very different and, in some instances, in conflict with each other.

Conflicts of role and responsibility

The board of directors delegates to the CEO the power to manage the business of the company. The CEO in turn appoints members of the executive management team and delegates responsibility for particular aspects of decision-making to them. They in turn delegate operational responsibility to employees throughout the organisation. The CEO reports directly to the board on the operations of the company in relation to the fulfilment of the strategy approved by the board.

The company secretary provides advice to the directors in relation to the *Corporations Act 2001* or other relevant legislation, under which the organisation is empowered, as well as the organisation's constitution and regulatory and statutory requirements. The company secretary also advises the board and its committees on governance principles and implementation of programs. The ASX Corporate Governance Council's Corporate Governance Principles and Recommendations notes that 'The company secretary should be accountable to the board, through the chair, on all governance matters'. This recognises that the board appoints the company secretary.

It is **good governance** for an organisation to establish a policy regarding directors obtaining legal or other independent advice at the expense of the organisation. It is also important that all directors have direct access to the company secretary for independent advice on governance matters. Frequently, the company secretary acts as a confidant to the chair. In this role, the company secretary bridges the interests of the board, management and stakeholders.

The CEO's role and relationship with the board is, therefore, very different from that of the company secretary.

It is also important that the CEO be quarantined from the administrative functions of secretarial practice, particularly if a regulator should query the compliance of the organisation with its statutory and regulatory obligations. It is inappropriate to have a regulator approach a CEO with questions concerning such compliance.

Practical conflicts will also arise when a CEO holds the role of company secretary. The company secretary will attend to the administrative functions associated with a board meeting, including preparing the agenda in conjunction with the chair, and taking the minutes. The CEO will participate in board discussions, as well as report to the board on the business of the organisation. It is impractical — and difficult — for the CEO to participate effectively in discussions and also take the minutes of that discussion.

Above all, it is not sound governance to have the CEO also holding the role of company secretary. The conflicts in the two roles have the potential to hold the board hostage to management. The role of the CEO needs to be objectively at arm's length.

Who should fill the role of company secretary if this is not a dedicated position?

It is often the case that another member of the management team may be appointed as the company secretary if it is not a dedicated role. For example, the chief financial officer or finance director could also act as the company secretary. The appointment of another member of the management team, while ensuring that there is no conflict in the roles, can also represent a good opportunity to upskill middle management, by providing them with access to board deliberations and decision-making. Governance Institute's preferred view, however, is that the company secretary should remain an independent role.

An alternative, therefore, to appointing a member of the management team to the role of company secretary is to use an external company secretariat service to fulfil the functions of the role, where resources are available.

The organisation will need to balance the administrative costs of either appointing a member of the management team to the role of company secretary or utilising the services of an external provider against effective governance. Each organisation needs to be accountable to its members and show that good governance frameworks are in place to fulfil its mission.

Good Governance Guide

Governance Institute of Australia

Issues to consider when developing a policy for managing related party transactions in not-for-profit organisations

Not-for-profit sector

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’.

There are significant risks associated with related party transactions requiring identification, management and disclosure. It is **good governance** for organisations to develop policies to manage these risks effectively and for governing bodies to monitor management’s implementation of these policies.

What is a related party?

A related party is a person or organisation (for example, suppliers, contractors and their owners and staff, or a NFP beneficiary) that is related (or has connections) to the NFP organisation. The term can refer to a diverse range of people and organisations and may include pre-existing relations with directors (or responsible persons in the case of charities), key management personnel, employees, volunteers, their families, and friends.

Many NFP organisations gain special terms from suppliers or contractors because of commitments of the supplier/contractor to directors or employees or volunteers of the NFP organisation. These connections with the NFP organisation can work to benefit of the NFP. However, there is also the possibility that such connections may lead to inadequate scrutiny of any transactions arising from them, which may be detrimental to the NFP.

Purpose of a policy on related party transactions

It is **good governance** for NFP organisations to document a policy for managing related party transactions to ensure that related party transactions are managed for the benefit of the organisation and not that of an individual. Related party transactions can benefit the NFP organisation, but without a sound policy setting out how they are managed, there is a risk that the transaction will not be, or may be perceived not to be, in the best interests of the NFP organisation.

Any policy or process for managing related party transactions will identify those who are related parties of the NFP organisation. It is helpful to include examples of the people and organisations that would be considered related parties of the NFP organisation, or the organisation may consider identifying known related parties in its policy.

The purpose of a related party policy or process should be to:

- educate directors, employees and volunteers so that they can recognise potential related party transactions as they arise
- provide direction as to whom a director, employee or volunteer can consult should they be uncertain if a transaction is in fact a related party transaction
- establish a clear process for identifying, managing and disclosing transactions with related parties.

Why managing related party transactions is important

A related party transactions policy helps a NFP organisation to implement processes that reduce the risk that transactions are entered into or maintained that are not in the best interests of the NFP organisation. This can occur where the related parties are in a position to influence a decision of whether a benefit is provided to them and the terms of the provision of that benefit.

The provision of a benefit to a related party to a transaction may be to the detriment of the interests of the NFP organisation involved in the transaction or its members.

An effective policy documenting the process for managing related party transactions will assist to:

- protect the interests of the members and stakeholders of the NFP organisation
- ensure appropriate allocation of the NFP organisation’s resources and funds
- protect the NFP organisation’s reputation and engender public trust in the NFP organisation.

What is a related party transaction?

A related party transaction is one in which a related party obtains a benefit as a result of the transaction with the NFP organisation.

The circumstances in which the provision of a benefit may occur can be quite broad and include:

- providing a financial benefit indirectly, for example via other organisations
- giving a financial benefit by making an informal agreement or arrangement
- situations where no money is paid but where an advantage is provided.

The NFP organisation should consider documenting in the policy examples of benefits and the circumstances in which a benefit might be provided by the NFP organisation. These can include the NFP organisation:

- **Buying goods and services, for example**
  - The local football club purchases soccer balls and netting from a member of the management committee, who runs a local sporting goods store. The owner of the sporting goods store offers the NFP organisation a significantly discounted price that makes the purchase of the sporting gear more affordable. The football club seeks quotes from two other sporting goods stores, and finds that they cannot match the discounted price offered by the store owned by the member of the management committee. This related party transaction is in the best interests of the organisation.
  - A NFP organisation issues a tender for the provision of IT services, and one of the directors, who runs an IT company, has his company put in a proposal and that proposal wins the tender. The director is a related party, but the proposal can be shown to be the best offer. This related party transaction is in the best interests of the organisation.
  - A charity which provides affordable housing to low income families decides to install roofing insulation in its existing properties in order to make them more environmentally sustainable and reduce heating and cooling costs for their tenants. The contract for installation is awarded to a company owned by the brother of one of the responsible persons of the charity. The company is newly formed and has never installed insulation before. No tender process was undertaken or quotes obtained from other providers. This related party transaction is unlikely to be in the best interest of the organisation as steps have not been taken to ensure that this is the best offer available to the organisation.
- **Lending money or providing guarantees, for example**
  - Some closely-held charities have married couples, or family members, or a few friends as the responsible persons. The responsible persons of a small closely-held charity that operates online raising money to assist children with a debilitating disease, decide to provide the responsible persons (themselves) with interest-free loans, or loans with no terms of when they are due to be paid back. The charitable funds are being used for private purposes and this related party transaction is not in the best interests of the organisation. The Australian Charities and Not-for-Profits Commission (ACNC) notes on its website that 'a significant issue for charities is that of private benefit — where the resources of the charity are used for the benefit of those close to or related to the charity, rather than for the charity's beneficiaries, and for its charitable purpose'.
- **Awarding grants and gifts, for example**
  - A NFP organisation that provides grants to filmmakers awards a grant to a director of the organisation who applied for funding to make a film. The directors have all been on the board for at least six years. Funding was provided to only two filmmakers in the financial year. The organisation may be of the view that the related party transaction is in the best interests of the organisation and should be supported over other applicants, because the track record of the grant applicant is of excellent quality, but there could be a perception that the directors have improperly awarded the grant based on a pre-existing personal relationship and that the director received a financial benefit because they were able to influence the decision. Even if the director did not vote on the matter, this related party transaction could pose a reputation risk to the NFP organisation.
  - The responsible persons of a small charity that is a religious institution provide the gift of a motor vehicle to each of the responsible persons

(themselves). The responsible persons are of the view that the motor vehicle assists them to pursue the interests of the charity, providing them with mobility to promote the religious institution and its mission. However, a gift of this size may not to be in the best interests of the organisation. It should also be noted that a similar related party transaction could occur if the responsible person was provided private use of a vehicle, even if ownership was retained by the NFP organisation.

- **Employing staff, for example**
  - A charity dedicated to assisting at-risk youth who are involved in hip-hop, by creating dance spaces and creating opportunities for them to be part of theatre shows and performances, decides to develop a website. It hires the daughter of one of the responsible persons in a new, permanent part-time role to create the new website and keep it updated, although it is unclear if she has experience in developing websites. The same charity hires the other responsible person's nephew to organise events and media, although he has just completed a science degree and has no experience in public relations. No other candidates were considered. These related party transactions are not in the best interests of the organisation.
  - A medium-sized charity is fundraising in multiple states but does not appear to be conducting significant charitable activities. It did, however, make large payments to the responsible persons. It could not show that these payments were not excessive and at arms' length. These related party transactions are not in the best interests of the organisation. Concerns about potential fraudulent activity may also be raised in relation to these transactions.
- **Leasing equipment or premises, for example**
  - A NFP organisation that owns land which it uses for operating recreational camps for disadvantaged children allows the daughter of the director, and her family, to live in one of the vacant houses on the property rent-free. No written lease is entered into and the tenants are allowed free use of electricity and gas as there is no separate meter for the house. No obligations are placed on the tenant to maintain the house or perform any caretaker services for the NFP organisation. The house was not offered for rent on the open market. This related party transaction is not in the best interests of the NFP.
- **transferring intellectual property (IP), for example**
  - The directors of an industry association transfer the copyright or patents in new IP that were developed by the association and that are specific to that industry to one or more directors, who then run a consultancy providing services utilising that IP. The industry association itself then purchases those services from the directors running the consultancy. This is unlikely to be in the best interests of the organisation, given that a valuable asset paid for by the organisation has been donated without any consideration being offered for control of the asset. Concerns about potential fraudulent activity may also be raised in relation to this transaction.

Conflicts of interest

The management of related party transactions cannot be separated from the process for managing conflicts of interest.

A conflict of interest arises when the interests of directors (or those of their families, friends or other organisations with which they involved) are incompatible or in competition with the interests of the NFP organisation. Such situations present a risk, real or perceived, that directors may make decisions based on these external influences, rather than the best interests of the NFP organisation.

Directors have a duty under common law and under the Corporations Act (and the ACNC governance standards if the organisation is a charity) to act in the best interests of the NFP organisation that they serve. Directors should not seek to benefit from the NFP organisation and should not be influenced by their wider interests when making decisions affecting the organisation. Directors have obligations not to improperly use their position, or information available to them in their position as a director to gain an advantage for themselves or someone else or to cause detriment to the NFP organisation.

Directors are obliged to disclose conflicts of interest and may not be able to be present or vote on any matter in certain circumstances. Directors also should not use their relationship with other directors to lobby for their projects. Where a NFP organisation is structured as a company limited by guarantee, there are specific requirements in the Corporations Act relating to 'material personal interests' with which directors must also comply.

A director should also consider disclosing a potential or perceived conflict of interest. These conflicts can affect the reputation of an NFP organisation even where no actual conflict exists if they are not properly managed.

A common conflict within NFP organisations is a conflict of loyalty. This is particularly the case in federated structures where directors often sit on the national board as the state or regional representative and they also sit on the state or regional board, which has decision-making powers. Directors in these situations need to be particularly aware of and sensitive to conflicts of loyalty. Often they are difficult to manage effectively without restructuring the governance framework, so that the organisation is no longer federated, with the state boards taking on an advisory role rather than a decision-making one. An alternative can be to introduce independent directors, so that the national board is not comprised solely of representative directors.

Managing related party transactions will be part of the NFP organisation's process for managing conflicts of interest. The policy relating to related party transactions may either refer to the NFP organisation's policy on conflicts of interest or be part of it.

It is **good governance** for a policy on conflicts of interest for a NFP organisation to:

- define a conflict of interest
- describe what is expected of a director in identifying and disclosing a conflict
- provide for disclosure of conflicts, including the maintenance of a conflicts register and including declarations of interest as a standing agenda item at board meetings
- describe what is expected of a director if the conflict is significant
- describe how the board will vote on matters involving a director's interest, and consider whether the director should be present and able to vote
- enable a NFP organisation, that is a company limited by guarantee, to comply with its statutory obligations relating to a 'material personal interest' of a director. Not-for-profit organisations that are incorporated associations may also need to consider their obligations under state-based legislation.

See *Good Governance Guide: Conflicts of interest in not-for-profit organisations* which sets out more detail on conflicts of interest and how to manage them.

Process for managing related party transactions

The process requiring directors to disclose conflicts of interest assists governing bodies in determining whether transactions being contemplated or being entered into are in fact related party transactions.

It is **good governance** for a policy on managing related party transactions to cover the following:

- related party transactions are disclosed to the board by directors and employees
- clarification of when related parties can or cannot take part in discussions or decisions relating to those transactions, and in particular, whether directors should leave board meetings for the duration of discussions and not vote on the related party transaction
- employees who make decisions or directors who vote on related party transactions act in the best interests of the NFP organisation
- board minutes reflect discussions of any related party transactions and the conflicts register is updated with regard to the individual and nature of the conflict.

It is **good governance** for the NFP organisation's policy to contain guidance to assist directors, managers, employees and volunteers on how they can act in the best interests of the NFP organisation when dealing with related party transactions, to ensure that the transaction benefits the organisation. When considering a related party transaction, directors of a NFP organisation can ask themselves the following questions:

- Has there been an independent process for selecting the most appropriate party (who may in fact be a related party) to provide the goods or services that are the subject of the transaction?
- Have quotes been obtained from other providers who are independent of the organisation?
- Are the terms comparable with similar transactions with non-related parties?
- Does the related party have the proven capacity to provide the goods or services that are the subject of the transaction?
- Was the employment role appropriately advertised and were other candidates considered?
- Has the related party been offered an employment position on their merits?

- Is the remuneration proposed for the role reasonable?
- Should independent expert advice be sought and, if so, has it been received on the transaction and acted on accordingly?
- Has there been a proper bargaining process concerning the transaction?
- Was the interested director/responsible person excluded from negotiating the related party transaction on behalf of the NFP organisation?
- Has there been a genuine attempt to identify and consider alternative transactions with non-related parties?
- Have transactions with related parties been considered where they are in the best interests of the organisation, and not just excluded?
- Has consideration been given to the likely response by stakeholders to news that the specific related party transaction has been entered into?
- Do the minutes show adequate explanation of the process and items for consideration relating to related party transactions?
- Are there effective mechanisms in place for identifying, considering and disclosing potential related party transactions?

Managing related party transactions is important, regardless of the size of the NFP organisation.

Public company limited by guarantee

A NFP organisation that is a public company limited by guarantee must satisfy the Corporations Act requirements concerning related party transactions and may be required to obtain member approval of the transaction unless certain exemptions apply. A related party transactions policy for this type of NFP organisation will need to:

- establish a clear process for obtaining approval that a potential related party transaction falls within the exemptions
- ensure that related party transactions that require member approval are put before members
- ensure that the NFP organisation meets its legal and regulatory obligations.

Incorporated associations may also need to consider their obligations under state-based legislation.

See *Good Governance Guide: Issues to consider when developing a policy or process for managing related party transactions* for more detail.

Reporting related party transactions

Some NFP organisations will be required to prepare financial statements in accordance with accounting standards and may be required to disclose related party transactions as part of their reporting requirements. All NFP organisations are strongly encouraged to disclose related party transactions to their members even if they do not prepare financial statements. Such disclosure could be made as part of their communications to members keeping them apprised of the NFP organisation's activities and outcomes.

See

- *Good Governance Guide: Conflicts of interest in not-for-profit organisations*
- *Good Governance Guide: Issues to consider when developing a policy or process for managing related party transactions*
- *Good Governance Guide: Issues to consider when developing a policy on disclosure of and voting on matters involving a director's material personal interests*
- *ACNC: Managing charity money — a guide for board members on managing finances and meeting ACNC duties*
- *ASIC Regulatory guide 76: Related party transactions*
- *Accounting standard AASB 124 Related party disclosures*

Good Governance Guide

Risk management policy

Not-for-profit sector

It is considered **good governance** that a not-for-profit organisation have in place a risk management policy, which is to be subject, where relevant, to the terms of reference of the board audit and/or risk management.

The policy could include the following:

- a mission statement on risk, including a definition of risk such as ‘anything that hinders the sustainable achievement of objectives and results, including the failure to exploit opportunities’
- the purpose of the policy, which is to formalise and communicate the organisation’s approach to the management of risk
- the scope of the policy
- the organisation’s risk tolerance level
- the roles and responsibilities of :
  - the board
  - the board audit and/or risk management committee
  - management
  - the risk manager or other officer who assumes this duty
- other risk activities of the various groups within the organisation
- external audit responsibility
- the risk assessment, measuring and reporting process
- the risk identification and profile continuous monitoring.

After approval by the board, the policy should be signed and dated by the chief executive and circulated as appropriate within the organisation.

The policy should be reviewed on a regular basis, for example, a year after the first implementation, and then every three years.

Refer to Good Governance Guide: *Risk management overview* for more information.

Good Governance Guide

Separation of authority between board and management

Not-for-profit sector

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 have clear guidelines determining the boundaries between the duties of the board and the managers of day-to-day activities of the organisation.

It is good practice for an organisation to adopt two documents to provide clarity regarding the delineation of board and management activities: a 'statement of matters reserved for the board' and a 'delegation of authority' policy. An organisation following **good governance** practice will also have a board charter or terms of reference accompanying these two documents.

When drafting these documents, consideration needs to be given to the governing rules of the organisation, which may be referred to as the 'constitution', 'charter', 'articles' or 'rules.'

Statement of matters reserved for the board

The statement of matters reserved for the board identifies those decisions which are to be made by the board and not delegated to management. This 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
- appointing and removing the CEO
- overseeing day-to-day management
- reviewing performance against strategic plans
- approving any significant changes in accounting policies
- approving annual budgets
- approving any material unbudgeted capital or operational expenditures
- approving any major capital projects
- determining the objectives of the CEO
- determining remuneration for all key executives
- periodically reviewing the governing documents
- formal reporting to members
- approving the appointment of principal professional advisers.

See *Good Governance Guide: Statement of matters reserved for the board* for more information.

Delegation of authority policy

The 'delegation 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. It is important for the board to understand that, while it can delegate authority to make decisions, it cannot delegate its responsibility.

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

See *Good Governance Guide: Issues to consider when developing a policy on delegations of authority* for more information.

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
- authority to 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
- approval of media releases.

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

See *Good Governance Guide: Issues to consider when developing a policy on delegations of authority* for more information.

Interaction between the board and management

Guidelines should be developed to ensure that the organisation considers:

- defining the role of the chief executive (general manager/executive officer) in a job description
- ensuring that key performance indicators (KPIs) are in place to measure the performance of the board, chief executive and management team (recognising that for NFPs determining the right KPIs can be challenging)
- ensuring that regular financial reports are prepared and reviewed by the board including:
  - statement of income and expenditure
  - statement of assets and liabilities
  - statement of cash flows
- ensuring an adequate internal control framework and risk management system is in place
- ensuring that succession plans exist for senior executives within the organisation
- ensuring that to the extent possible within the requirements of the constitution, succession plans are developed for board members.

It can also be useful to ensure that the board has contact with the next layer of management, which can be helpful in assessing performance. The contact can be facilitated by requesting the chief executive to not attend that portion of the meeting.

In some NFP organisations, board members may be involved as volunteers in operational matters. In such circumstances, board members need to be aware of which 'hat' they are wearing and consider their responsibilities accordingly. In such circumstances, careful consideration should be given as to how they report to the board, which is best done through management.

Good Governance Guide

Stewardship

Governance Institute of Australia

Not-for-profit sector

Governance encompasses not only the system by which organisations are controlled, but the mechanisms by which organisations and those who comprise them are held to account. The concept of stewardship recognises the responsibility of those who control not-for-profit (NFP) organisations to develop and maintain an enterprise-wide recognition that the organisation is managed for the benefit of the purpose for which it has been established (which often is for its members), taking reasonable account of the interests of other legitimate stakeholders.

It is **good governance** for a NFP organisation to understand and document:

- the identities and roles of key stakeholders (for example, board of directors, members, executive management and in some cases service recipients)
- the powers vested in each stakeholder and the basis on which such powers rest (for example, do the powers arise from legislation, the constitution or other authorising documents?). The organisation needs to check that the constitution is up-to-date.
- the reporting responsibilities of each stakeholder and the identity of the stakeholder to whom the reporting obligations are owed (for example, the CEO reports to the board, the board reports to members and may also report to the community in which it operates or it may have reporting obligations to a regulator)
- the extent of board, member and executive management's decision-making powers respectively.

Governing body

It is **good governance** for the governing body (which could be called a 'board', 'council', 'synod' or a 'management committee') to:

- establish a mission and values statement detailing the objectives of the organisation (remembering that these must reflect the objects within the constitution)
- ensure that the mission and values are embedded in the culture of the organisation by inclusion in:
  - a code of conduct — see *Good Governance Guide: Corporate code of conduct*
  - the employee and volunteer induction program
  - policies governing employee and volunteer activities, including employees acting as volunteers for other organisations
  - the risk management policy
  - policies governing stakeholder engagement.

A board of directors is responsible for the governance of the organisation: they cannot abdicate that responsibility. There will usually be a clause in the organisation's constitution that allows the directors broad ability to delegate their collective powers, but not their responsibility, to others.

The board should also undertake a regular assessment of the board's role and performance against the mission and values statement. Regular assessment of fulfilment of the organisation's mission will guard against the risk of 'mission drift' (not an uncommon risk when boards and managers change rapidly or frequently).

Culture

An organisation's culture is the sum of its shared values and behaviours. Culture is a key determinant in the performance of an organisation and its capability to achieve its objectives. It goes to the heart of the openness and transparency needed for effective stewardship and informed decision-making.

The board defines and sets the culture of the organisation. Management implements the values and behaviours as defined and set by the board as appropriate for the culture of the organisation.

Tools for effective governance

The governing body needs to develop:

- a board charter that sets out how the board operates, the responsibilities of the board and the matters reserved to the board. Matters reserved for the board of directors will vary greatly, depending on the size of the organisation and the composition of the board — see *Good Governance Guide: Separation of authority between board and management*

- a board skills matrix that identifies the skills, capabilities and perspectives desired of a board to enable it to meet both the current and future challenges of the organisation — see *Good Governance Guide: Creating and disclosing a board skills matrix*
- a policy on delegations of authority — see *Good Governance Guide: Issues to consider when developing a policy on delegations of authority*
- a policy on diversity, both on the board and within the organisation as a whole — see *Good Governance Guide: Issues to consider in developing or reviewing a policy on diversity*
- proper fundraising policies and ensure that pro formas are in place to meet federal and state legislative requirements
- a policy on conflicts of interest and related party transactions. Since the interests of stakeholders in NFP organisations are often more diffuse than the interests of, say, shareholders in companies, there is considerable scope for a perceived or actual conflict of interest to manifest itself — see *Good Governance Guide: Issues to consider when developing a policy on disclosure of and voting on matters involving a director's material personal interests* and *Good Governance Guide: Issues to consider when developing a policy or process for managing related party transactions*.

Conflicts of interest arise when the interests of directors (or those of their families, friends or other organisations with which they are involved) are incompatible or in competition with the interests of the NFP. Such situations present a risk, real or perceived, that directors may make decisions based on these external influences, rather than the best interests of the NFP organisation. Conflicts of interest can manifest as direct or indirect financial benefits, or conflicts of loyalty. Directors may have competing loyalties between the NFP to which they owe a primary duty and some other person or entity. This is particularly common in relation to local authority or funder representatives on boards, or where a director serves on the board of more than one NFP organisation. The law relating to how some of these conflicts must be managed may vary depending on how the NFP organisation is incorporated.

Among the key assets of a NFP organisation are its brand and reputation, which like any other asset should be carefully managed and protected. It can take a long time for a NFP organisation to build its profile and reputation as an organisation people can trust. This reputation can be destroyed very quickly despite the best intentions of the board and management, if actual or perceived conflicts of interest arise and are not properly managed.

Committees

Board committees assist the board in discharging its responsibilities and dealing with the core functions of the organisation, such as audit and risk, or other functions of relevance to the organisation, such as public relations, medical advisory, social responsibility etc. They should be established with clear charters or terms of reference — see *Good Governance Guide: What a board committee charter should address*.

Risk management

A risk management policy is central to good stewardship. Directors have a fiduciary duty to act in the best interests of the organisation. In order to discharge their duties, directors need to know, and properly assess, the nature and magnitude of risks faced by the organisation.

Boards take responsibility for the governance of risk and delegate to senior management the responsibility to establish a sound system of risk management and internal control, and the requirement to report regularly to the board on the effectiveness of that system. The board tests the effectiveness of that risk management system from time to time through assurance providers such as internal and external audit.

The board is ultimately responsible for deciding the nature and extent of the risks it is prepared to take to meet objectives. Setting the risk appetite explicitly articulates the attitudes to and boundaries of risk that the board expects senior management to take.

The board needs to be particularly sensitive to strategic risk; the risk that the way in which the organisation is pursuing its objectives is not the most effective and efficient way to achieve those objectives.

Stakeholder engagement

It is **good governance** for a NFP organisation to:

- recognise the benefits of stakeholder engagement
- define the interests of all stakeholders, and
- develop an understanding of the role that stakeholders have in or with the organisation.

Stakeholder engagement should link to the mission of the organisation.

Stakeholders broadly include:

- those who are the focus of the organisation's activities and services
- those directly involved with or responsible for the activity of the organisation
- those who devise, pass, and enforce laws and regulations that affect the function of the organisation
- other authorities that interact, partner or collaborate with the organisation, and
- those with an interest in its processes or the outcome of its activities.

The organisation should establish effective communication strategies to ensure that stakeholders' needs are met by choosing the most appropriate methods and technologies to inform, consult, involve, collaborate with and engage the various stakeholders in a timely manner. This can include information on the organisation's website or in the annual report as well as the use of social media and other evolving forms of engagement. It is important to tailor the interaction process by considering the unique characteristics of stakeholders, including the nature and intensity of their interest, and decide which approaches are best suited to particular groups.

Fostering a two-way, inclusive dialogue with stakeholders is necessary for the sustainability of NFP organisations. Therefore, it is vital that the communication strategy delivers the transparency that stakeholders demand in an engaging, enriching way. It should also be recognised that having meaningful engagement with stakeholders is much more than communicating to them. Stakeholder engagement requires clear guidance and objectives to use resources effectively and an ability to recognise what is required in terms of time, resources and skills for meaningful two-way dialogue and participation.

It is important that the board ensures that a fully informative annual report of the organisation's operations is prepared and presented to members and made available to the community in which it operates. Typically, this means going beyond the minimum statutory reporting obligations of the particular organisation.

Stakeholder engagement can include:

- developing a clearly documented stakeholder engagement plan
- developing a communication policy, that may include a media policy, or it may be separate from it
- evaluating the success or otherwise of the strategic engagement plan for stakeholder management.

Good Governance Guide

Volunteer management

Governance Institute of Australia

Not-for-profit sector

As many not-for-profit (NFP) organisations operate with the assistance of volunteers, it is considered **good governance** to have clear policies and guidelines in place for the management of volunteers.

A useful definition of volunteering has been developed by Volunteering Australia[1], stating that volunteering 'is time willingly given for the common good without financial gain'. It notes that it includes activism and recognises corporate volunteering by an entity — companies that organise employee volunteers. The definition includes formal volunteering that takes place within organisations (including institutions and agencies) in a structured way and informal volunteering — acts that take place outside the context of a formal organisation.

Governance

It is **good governance** for the board to develop an appropriate set of policies governing volunteer management, which could include:

- a policy on the reimbursement of expenses
- a policy on the receipt of gifts and hospitality
- a policy on the use of motor vehicles, including the position with insurance
- a code of conduct — it needs to extend to volunteers as well as the board and employees
- the directors' capacity to access professional advice and consultants where a board is comprised of volunteer non-executive directors.

The board needs to have oversight of:

- the insurance coverage for volunteers. Volunteers may be covered under the existing NFP insurance scheme or separate cover may need to be purchased. Where the board is comprised of volunteer non-executive directors, the board charter or other relevant document should clarify the extent of D&O insurance coverage. Personal civil liability legislation in all Australian jurisdictions may also provide immunity from civil liability in some circumstances.
- the workplace health and safety of volunteers, who are workers under the workplace health and safety legislation (and their safety needs to be ensured).

Application to become a volunteer

It is **good governance** to ensure that a volunteer interview program is established and conducted by an experienced person. This would include:

- an application form
- whether it is appropriate to contact referees
- whether approval is required to conduct a police check (this will be necessary where volunteers are dealing with children).

If accepted, the organisation should provide a letter of acceptance by the volunteer for signing. This should include a statement that the organisation reserves the right to terminate the volunteer's service if the volunteer proves to be unsuitable.

Induction

It is **good governance** to prepare an induction manual for volunteers. This could include:

- a letter of welcome from the chair or chief executive
- a copy of the mission and values statement
- a plan of the organisation's structure
- a physical plan of the building
- a brief history of the organisation
- a statement of the principles of volunteering
- a statement of the volunteer's rights and responsibilities
- a statement of expectations of volunteers, including confidentiality in respect of the organisation's information, respect of clients' privacy and respect of clients in all client involvement
- access to relevant policies
- details of training

1 http://www.volunteeringaustralia.org/policy-and-best-practise/definition-of-volunteering/

- reporting lines
- information on the review/appraisal program
- protection in case of disclosure/whistleblowing.

Communication

It is **good governance** to establish systems and processes for communicating and engaging with volunteers. This could include:

- suitable initial and ongoing training sessions
- a buddy/mentor system
- a regular volunteers' get-together, such as a lunch or afternoon tea, in order to encourage teamwork and good feeling, and to allow the board and/or the chief executive an opportunity to recognise the contribution of volunteers to the organisation.

For volunteer non-executive directors, it is good practice to consider providing access to a board development program, to allow directors to keep up-to-date on their duties and responsibilities as directors and also any changes in an evolving NFP landscape. Reference can be made to the websites of organisations such as Governance Institute and the Australian Charities and Not-for-Profits Commission.

Risks to be wary of

While most contributions by volunteers are usually constructive and productive, there are risks in using volunteers that need to be managed such as:

- poor or misleading advice given to clients — this can be particularly a problem in health organisations where individuals with a particular complaint give advice on the complaint
- wasteful practices — particularly related to some fundraising activities where the supervisory costs or the risks to reputation exceed the return.

There are also particular risks with some traditional voluntary committee/director jobs where payments of fees are made to those directors/committee members:

- loss of protections from civil liability under the civil liability acts of the Commonwealth and of each state and territory
- loss of rights related to the use/non-use of 'Limited' in the name of companies limited by guarantee registered with the Australian Charities and Not-for-profits Commission under s 150 of the *Corporations Act 2001*
- requirements for ministerial approval under s 48 of the *Charitable Fundraising Act 1991*
- prohibition on paying directors under s 83C of the *Education Act 1990*.

Review and recognition

It is **good governance** to establish:

- a review/appraisal program for volunteers at the close of an agreed probation period. This should include the right of the volunteer to air any grievances
- an annual review/appraisal of a volunteer's performance
- a recognition program, to ensure that volunteers continue to feel engaged and that their contribution is valued.