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**ADVOCACY**   
Australia

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# GOVERNANCE PRACTICES

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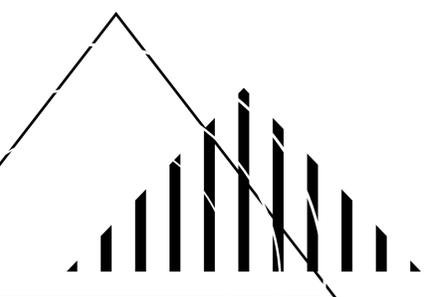
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# CONTENTS



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<b>Overview</b>	<b>2</b>
<b>Principles and recommendations</b>	
1. Lay solid foundations for management and oversight	3
2. Structure the board to add value	4
3. Act ethically and responsibly	5
4. Ensure diversity	6
5. Safeguard integrity in all reporting	6
6. Engage with stakeholders	7
7. Recognise and manage risk	7
8. Remunerate fairly and responsibly	8
<b>APPENDIX 1: Assessing the independence of board members</b>	<b>9</b>
<b>APPENDIX 2: Suggestions for the content of a diversity policy</b>	<b>10</b>



# OVERVIEW

“What distinguishes exemplary boards is that they are robust, effective social systems”

- Jeffery Sonnenfeld

Good governance structures encourage organisations to create value (through entrepreneurship, artistic innovation, development and exploration) and provide accountability and control systems commensurate with the risks involved.

Ultimately the challenge for Boards of arts companies (which are generally Not For Profit or Social Enterprises), is to lead a thriving organisation by balancing bold artistic vision and programming with sound financial and other management and oversight.

What constitutes good governance will evolve with the changing circumstances of an organisation and must be tailored to meet those circumstances. Best practice must also evolve with developments both in Australia and overseas.

Although the following best practice recommendations cannot, in themselves, prevent failure or mistakes in organisational decision making, they can provide a reference point for enhanced structures to minimise problems and optimise performance and accountability.

Ultimately good governance is essentially about people working together effectively – especially so in the arts where board members are often voluntary positions. Getting the best out of people is the way to make boards “great”.

These principles and best practice guidelines will assist boards and board members of all arts organisations to ensure they meet their legal obligations. Incorporated associations and Aboriginal corporations should also check their legislation for specific legal requirements.

Whilst these principles were adapted with larger arts organisations in mind, they can be applied in a similar manner (subject to scale) to smaller arts organisations. Even the boards of smaller organisations should be seeking to optimise performance and accountability in the interests of the organisation and its key stakeholders, such as government. Organisations can find further practical advice in AICD’s The Good Governance Principles and Guidance for Not-for-Profit Organisations [i] on ways to evaluate and implement these principles.

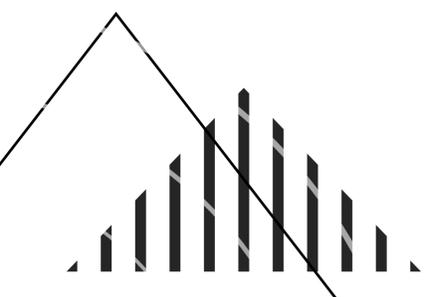
However, if the board believes that a principle or recommendation set out below has no relevance to its organisation, or cannot be reasonably applied given the size or resources of the organisation, or wishes to implement a principle in a different way, the board should agree on that departure.

Note: In this document references to:

a. “board” and “board members” also refer to the management committee and committee members of incorporated associations and Aboriginal corporations; and

b. “executive” can also refer to artistic director, chief executive officer, executive producer or general manager.

[i] The Good Governance Principles and Guidance for Not-for-Profit Organisations (Principles and Guidance) Australian Institute of Company Directors 2013



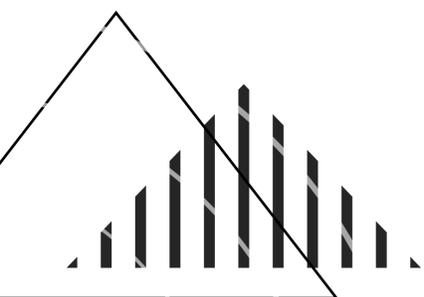
# PRINCIPLES AND RECOMMENDATIONS

## 1. Lay Solid Foundations for Management and Oversight

***Establish and disclose the respective roles and responsibilities of the board and management and how their performance is monitored and evaluated.***

***The board should:***

- adopt a formal charter that details the board's principal functions and responsibilities and monitor the effectiveness of governance practices
- provide leadership into the setting of the organisation's strategic direction, mission and vision
- validate and approve business strategy and performance objectives
- ensure that an appropriate risk management framework is in place within the risk appetite that the board expects management to operate
- receive and review regular comprehensive performance reports on all key business areas
- consider, and have final approval of the proposed performance program and budget
- give prior approval to any material capital expenditure, or any material variation from budgeted or forecast expenditure
- clearly delineate the balance of responsibility between the chair and the executive and regularly monitor and review to ensure division remains appropriate to needs of organisation
- approve a formal statement of delegated authority to management
- ensure that the organisation has adequately documented its key policies (such as artistic policy, communications, marketing, private sector support and fundraising, stakeholder community relationships, governance, decision making delegations, and financial management)
- provide an induction procedure for new board members ensuring all board members are made aware of their legal duties to act in the best interests of the organisation and the key terms and conditions relevant to that appointment
- ensure that the executive and senior management have formal job descriptions and a letters of appointment describing their term of office, duties, rights and responsibilities and entitlements on termination, if any
- appoint, monitor performance and when necessary replace, the CEO and artistic director
- have and disclose a process for periodically evaluating the performance of the executive and senior management, including the artistic director; and disclose, in the annual report whether a performance evaluation was undertaken in accordance with that process
- ensure no single individual has unfettered powers.



# PRINCIPLES AND RECOMMENDATIONS

## 2. Structure the Board to add value

***Have a board of an effective composition, size and commitment to adequately discharge its responsibilities and duties.***

A high performing, effective board is essential for the proper governance and leadership of an arts organisation. It should challenge management and hold them to account, and also represent the best interests of the members as a whole rather than those of individuals, geographical areas or communities.

Board renewal is critical to performance. Directors should be conscious of the duration of each director's tenure in succession planning.

### ***The board should:***

- have a clear division of responsibility at the head of the organisation the roles of the chair and the executive should not be exercised by the same individual.
- select a chair who can provide effective leadership of the organisation's board and the organisation overall; and efficiently conduct of the organisation board's functions.
- have specific terms for directors, subject to re-election or appointment. Reappointment should not be automatic.
- consider a maximum period of tenure for non-executive board members and a fixed period of appointment for board officeholders; and in particular assess whether any director who has served for more than 10 years has become too close to management or is no longer independent. Consider the requirement to "refresh" a board to ensure diversity of ideas and thought.
- exercise independent judgment by board members.

- ensure that individual board terms are appropriately staggered, so that there is a continuity of appropriate knowledge, skills and experience on the board, as well as continuity on organisation and board-specific issues.

- have and disclose a process for periodically evaluating the performance of the board, its committees and individual directors; and disclose, in annual report whether a performance evaluation was undertaken in accordance with that process.

- have and disclose a board skills matrix setting out the mix of skills, competencies and diversity that the board currently has or is looking to achieve in its membership.

- have and disclose a formal and transparent process for nomination, selection and appointment of board members.

- consider the optimum size of the board. Balance making decisions expediently with the benefit of a variety of perspectives and skills, and ensure that changes to the composition of the board are managed without undue disruption.

- have a majority of independent board members [i]

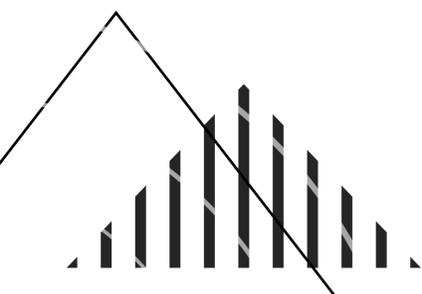
- ensure the effective contribution of all board members in meetings.

- effectively review and challenge the performance of management.

- ensure constructive and respectful relations between board members and between the board, the executive and management.

- provide board members professional development opportunities to update and enhance their skills and knowledge, relevant to the arts organisation and the board.

[i] Refer to Appendix One for more guidance on assessing whether a board member is independent.



# PRINCIPLES AND RECOMMENDATIONS

## 3. Act Ethically and Responsibly

***Acting ethically and responsibly goes well beyond mere compliance with legal obligations. It involves acting with honesty, integrity and in a manner that stakeholders and the broader community expect.***

### ***The board should:***

— set the ethical tone-from-the-top and standards of the organisation by creating a safe and non-discriminatory workplace; respecting the human rights of employees; dealing honestly and fairly with suppliers and customers; acting responsibly towards the environment; and only dealing with business partners who demonstrate similar ethical and responsible business practices.

— understand the legal obligations and duties of board members and management and the reasonable expectations of the organisation's stakeholders. This includes making sure that the organisation complies with the ACNC governance standards if a charity.

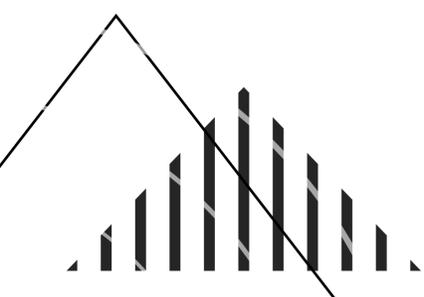
— have a code of conduct for directors, senior executives and employees; and disclose that code or a summary of it. The code of conduct should state the values and policies of the organisation, and complement the organisation's risk management practices.

— ensure senior management implement practices and exhibit behaviours consistent with the required standards.

— monitor and manage actual or potential conflicts of interest of board members, management or employees.

Organisations may find it useful to consider the following matters when formulating a diversity policy:

1. Express the organisation's commitment to diversity at all levels and in art making and arts support roles.
2. Recognise that diversity not only includes gender diversity but also includes matters of age, disability, ethnicity, marital or family status, religious or cultural background, sexual orientation and gender identity.
3. Articulate the benefits of diversity in being able to attract, retain and motivate employees from the widest possible pool of available talent.
4. Identify and implement programs that will assist in the development of a broader and more diverse pool of skilled and experienced employees and that, over time, will prepare them for senior management and board positions
5. Ensure that recruitment and selection practices at all levels (from the board downwards) are appropriately structured so that a diverse range of candidates are considered and that there are no conscious or unconscious biases that might discriminate against certain candidates.
6. Recognise that employees (female and male) at all levels may have domestic responsibilities and adopt flexible work practices that will assist them to meet those responsibilities.
7. Emphasise that in order to have a properly functioning diverse workplace, discrimination, harassment, vilification and victimisation cannot and will not be tolerated.
8. Have key performance indicators for management to measure the achievement of diversity objectives and link part of their remuneration (either directly or as part of a "balanced scorecard" approach) to the achievement of those objectives.



# PRINCIPLES AND RECOMMENDATIONS

## 4. Ensure Diversity

***Foster an organisational culture that embraces diversity.***

Diversity includes, but is not limited to, Aboriginality, gender, age, ethnicity, disability and cultural background.

***The board should:***

- Ensure that organisation has a diversity [i] policy that reflects the communities it engages with and disclose the policy or a summary of that policy.
- Establish measurable objectives for achieving diversity. [ii]
- Assess annually both the objectives and progress in achieving them.
- Ensure that the organisation discloses in each annual report the measurable objectives for achieving diversity and progress towards achieving them.

## 5. Safeguard Integrity in all Reporting

***Have formal and rigorous processes that independently verify and safeguard the integrity of all compliance [iii] and management reporting.***

***The board should:***

- have an audit committee or if it does not have an audit committee, disclose the processes it employs that independently verify and safeguard the integrity of its compliance reporting.

- have at least one director member who with financial expertise (as demonstrated by relevant qualifications and financial management experience at senior management level in the public or private sector).
- before it approves the entity's financial statements for a financial period, receive from its CEO and CFO (or person responsible for financial management) a declaration that, in their opinion, the financial records of the entity have been properly maintained and that the financial statements comply with the appropriate accounting standards and give a true and fair view of the financial position and performance of the entity and that the opinion has been formed on the basis of a sound system of risk management and internal control which is operating effectively.
- have audit committee members who are financially literate. If there is no audit committee, the board should have processes in place that raise issues that would otherwise be considered by an audit committee.
- have and disclose a formal charter for its audit committee and be of sufficient size, independence and technical expertise to discharge its functions effectively.
- appoint a qualified firm or individual to conduct an annual audit of the organisation's financial statements that is consistent with Australian accounting standards. Although not always legally required for small organisations, a properly conducted audit of the year's finances assists the board in their forward planning, gives valuable information to potential income sources (philanthropic foundations, private donors, sponsors, funding bodies) and generally lends credibility to the organisation.
- review on a regular basis and consider the independence, competence and effectiveness of the external auditors and the implications for succession that may arise from that consideration.

[i] Refer to Appendix Two for more guidance on developing a diversity policy.

[ii] This document broadens scope of diversity beyond ASX requirements which focus on gender diversity

[iii] Compliance reporting includes reports to regulatory and funding bodies and other key stakeholders.

# PRINCIPLES AND RECOMMENDATIONS

## 6. Engage with Stakeholders

***Respect and observe legal and other obligations, including the rights of all relevant stakeholders.***

***The board should:***

- ensure that organisation provides information about itself and its governance to stakeholders via its website.
- ensure the organisation's legal obligations to government funding agencies are met. The organisation's board should establish procedures to ensure timely provision of the required information, which includes the organisation's financial situation, its performance and its governance. The material should be factual, and presented in a clear and balanced way, i.e., disclosing both positive and negative information.
- ensure the organisation has an effective communication strategy for advising government funding agencies and other key income providers about any material changes in the organisation's circumstances. Communications should be designed to enhance the precision of the funding agencies', or other potential fund raising targets, decision making processes.
- establish procedures to guide compliance with legal obligations (e.g., OH&S) and other stakeholder obligations such as to employees, clients/customers, governments and the community as a whole.

## 7. Recognise and Manage Risk

***Establish a sound risk management framework and periodically review the effectiveness of that framework that ensures the organisation will deliver on its purpose.***

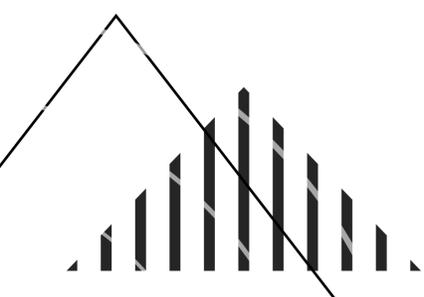
The organisation should address risks that could have a material impact on its performance and business model. These may include, but are not limited to, strategic risks, operational or artistic direction risks, funding risks, reputational or brand risks, compliance risks, environmental risks, human capital risks, financial reporting risks and arts sector-related risks, for example.

Business risk is about uncertainty. Paradoxically artistic risk is not generally a business risk because the outcome can often be predicted.

The board is ultimately responsible for deciding the nature and extent of the risks it is prepared to take to meet its goals.

***The board should:***

- Ensure the organisation's policies on risk oversight and management are satisfactory. The policies should cover oversight, risk profiling and assessment, risk management practices, compliance and control mechanisms and systems. Risk management policies should take into account legal obligations and stakeholder expectations.
- have a committee to oversee risk. If it does not then clearly determine the roles and accountabilities for risk management across the board and management.
- Review the organisation's risk management framework at least annually to satisfy itself that it continues to be sound.
- Recognise the inherent potential conflict between the chief executive officer / executive, or equivalent, and artistic director, or equivalent, in managing day-to-day issues, establishing an appropriate system for controlling and managing risks and ultimately providing adequate management assurance on material risks, including financial reporting risks
- disclose whether it has any material exposure to economic, environmental and social sustainability risks and, if it does, how it manages or intends to manage those risks.

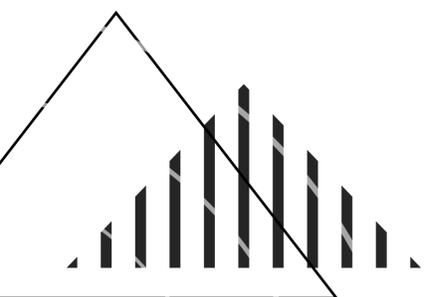


## 8. Remunerate Fairly and Responsibly

***Ensure that the level and composition of remuneration is sufficient and reasonable and that its relationship to organisation and individual performance is defined.***

***The board should:***

- adopt remuneration policies that attract and retain talented and motivated management and employees
- clearly establish the structure of non-executive board members' remuneration, where applicable for non-volunteer board members, from that of management remuneration
- approve remuneration levels for the executive, or equivalent, the artistic director, or equivalent, and any executive reports whose responsibilities materially influence the organisation's artistic direction, strategy, operations and financial performance. Remuneration levels should be fairly based on arts sector and organisational size references and designed motivate management and employees to pursue long term growth and success of the organisation. Remuneration levels should reflect core performance requirements and expectations.
- ensure that no individual, either board members, if remunerated, or management, be directly involved in deciding their own remuneration
- ensure that termination payments for leadership staff are agreed in advance and clearly address what will happen in the case of early termination. There should be no payment for removal for misconduct.



# APPENDIX ONE

## ASSESSING THE INDEPENDENCE OF BOARD MEMBERS <sup>[i]</sup>

An independent director is a non-executive director who is not a member of management and who is free of any business or other relationship that could materially interfere with - or could reasonably be perceived to materially interfere with - the independent exercise of their judgement.

Family or community ties and cross-directorships may be relevant in considering interests and relationships which may affect independence, and should be disclosed by directors to the board.

Office bearers (such as the board chair, audit committee chair or treasurer) should be independent board members.

*When determining the independent status of a board member, the board should consider whether the board member:*

1. is employed, or has previously been employed in an executive capacity by the organisation or another group member, and there has not been a period of at least three years between ceasing such employment and serving on the board;
2. has within the last three years been a principal of a material professional adviser or a material consultant to the organisation or another group member, or an employee materially associated with the service provided;
3. is a material supplier or customer of the organisation or other group member, or an officer of or otherwise associated directly or indirectly with a material supplier or customer;

4. has a material contractual relationship with the organisation or another group member other than as a board member of the organisation; or

5. is a substantial shareholder of the organisation or an officer of, or otherwise associated directly with, a substantial shareholder of the organisation.

The board should regularly assess whether each non-executive director is independent. Each non-executive director should provide to the board all information that may be relevant to this assessment. If a director's independent status changes, this should be disclosed in a timely manner to stakeholders.

[i] From the 2nd edition of the Good Corporate Governance Principles and Recommendations with 2010 Amendments, ASX Corporate Governance Council 2010

# APPENDIX TWO

## SUGGESTIONS FOR DIVERSITY POLICY CONTENT <sup>[i]</sup>

*Organisations may find it useful to consider the following matters when formulating a diversity policy:*

1. Express the organisation's commitment to diversity at all levels and in art making and arts support roles.
2. Recognise that diversity not only includes gender diversity but also includes matters of age, disability, ethnicity, marital or family status, religious or cultural background, sexual orientation and gender identity.
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5. Ensure that recruitment and selection practices at all levels (from the board downwards) are appropriately structured so that a diverse range of candidates are considered and that there are no conscious or unconscious biases that might discriminate against certain candidates.
6. Recognise that employees (female and male) at all levels may have domestic responsibilities and adopt flexible work practices that will assist them to meet those responsibilities.
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