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Responsibilities of the Board

A community sector board should be mindful of its responsibilities. These include:

- Showing leadership by:
    - Providing organisational vision above all else
    - Understanding their role within the organisation
    - Being a trustee/owner not a volunteer/helper
    - Being results focussed: consumer result, cost result, vision outcomes

- Having the discipline to:
    - Focus on their governance role
    - Be responsible for working as a group
    - Determine what information is needed for accountability
    - Give clear and consistent instruction to the staff
    - Speak with one voice

- Fulfilling obligations to membership under the *Associations Incorporation Act 1991*, including to:
    - Maintain the register of members
    - Manage the funds
    - Appoint the auditor and commission the annual audits
    - Appoint a Public Officer
    - Convene the Annual General Meeting
    - Ensure elections are conducted as required
    - Provide reports to the Annual General Meeting
    - Lodge documentation with the Registrar General

Fiduciary and Other Duties of Board Members

There are five key duties that board members have in carrying out their responsibilities under the *Corporations Act 2001*. These are also applicable to associations incorporated under the *Associations Incorporation Act 1991*, although they are not all specified in the legislation. The common law fiduciary duty applies to all incorporated entities.

- **Fiduciary duty:** the duty to act in the best interest of the organisation.
    - Within fiduciary duty is the expectation that board members will act with a duty of care, loyalty and obedience to purpose, in keeping with the philosophy and objectives of the organisation.
    - Even if the staff and/or volunteers run the day to day affairs of the organisation, the committee or board are ultimately responsible for maintaining financial and legal responsibilities.

- **Duty to act honestly:** to apply reasonable skills, act in good faith and in the best interests of the organisation.
    - Speaks for itself - just be honest and check if unsure.

- **Duty of care and diligence:** the duty to abide by the constitution of the organisation and to know and comply with all legal requirements.
    - This includes taking all reasonable steps to minimise risk for the organisation.
    - It also includes working on a positive public perception of the organisation.
    - It also means making sure you have enough information to make decisions.

- **Duty of confidentiality:** the duty to keep confidential all organisational and Board information.
    - This includes not expressing dissent about a board decision with which you disagree - remember the board speaks as one voice. If you cannot live with a decision you need to leave the board. Once a decision is made it is a decision of the board as an entity.

- **Duty to declare any conflict of interest:** the duty to inform the governing body of any personal interest in any matter before it and to absent yourself from issues where there is the possibility of a perceived or real personal or financial interest.
    - A financial conflict of interest may be, for example, where an organisation hires a contracting firm run by a board member's partner. There is the possibility of direct financial gain to the board member. Another common cause of conflict of interest arises when board members undertake paid work for the organisation.
    - An ethical conflict of interest may be, for example, a board member's partner is applying for the Executive Officer position. There may be no issue of direct financial gain but bias, real or perceived, may be an issue.

Conflicts of Interest
As members of the board or committee of an association, each board member needs to be aware that they are acting as a "fiduciary" of the association. A "fiduciary" is a person appointed to act at all times in the best interests of the association.

As such, board members should avoid situations in which there is a real and sensible possibility of conflict arising between the board members' personal interests and the interests of the association.

Such a conflict of interest might arise when negotiating a contractual arrangement between the association and another organisation owned or managed by a board member. Under the contract the board member may be deriving income and personal profit. Hence, the board member could not be taken to be acting in the best interests of both the association and the organisation at the same time when negotiating and performing the contract as he or she would have competing loyalties to both.

In these circumstances, the board member must declare the nature of the interest to the association so that the members of the association can consider whether or not to approve the arrangement. This requirement is also supported by the *Associations*

Incorporation Act 1991.

If a board member fails to declare any such conflicts of interest, he or she will be liable to compensate the association for any profit the board member makes from the contract or for any other loss or damage caused to the association by reason of the conflict.

Following on from the rule against conflict of interest is the rule against board members misusing their position or special knowledge of the association's affairs for their own advantage without the association's fully informed consent. Failing to inform the association of the board member's action in such circumstances would require the board member to account to the association for any personal profit made, or loss or damage caused to the association, by the board member.

Making Good Decisions
Successful decision-making by a board (or management committee) is the responsibility of the President (or Chair). This doesn't mean the President has the authority to make decisions for the board, but it does mean they have to facilitate the best decisions possible. In meetings, this means:

- deciding how much discussion to devote to decisions;
- ensuring all items on the agenda are dealt with;
- ensuring all viewpoints are heard, including the minority viewpoints;
- ensuring the board has the information it needs to make timely responsible resolutions; and,
- ensuring that the Board is clear about the decisions they have to make (e.g. to approve, or not to approve, the purchase of paper clips).

To make the President's role easier, and meetings less stressful, the board needs to agree on its preferred decision-making method. Many NGOs seek 'consensus' decisions without fully understanding what consensus means. A textbook definition would be 'an ultimate position that represents a unified viewpoint after differences have been resolved'. A board that makes a decision without dissent has not necessarily made a consensus decision - quieter board members may secretly disagree with a decision. For this reason, the President must take pains to ensure that the decision is indeed unanimous. This might require him or her to directly ask each board member whether they agree or disagree on each decision, or ask out loud 'does anyone disagree?' and wait for a response, before the decision is minuted.

If you adopt consensus decision-making, you will still need a back-up system if the board becomes locked on an issue. In this case the President could put the resolution to a vote. To be true to the spirit of consensus, if the decision is found to be split 50/50, you can put it in your constitution, rules of association or board policy that the President does not have a casting vote and the proposal is deemed to be lost.

Some constitutions or rules of association may provide for certain important decisions of the board or management committee to be passed by special majority - i.e. by three quarters of the board/committee members present and entitled to vote at the meeting. Such decisions could relate to matters such as creating a charge over the association's property, issuing proceedings in court against another party, entering into contracts to purchase real estate, or any other matter considered important.

If the board would prefer a basic voting system, board members need to understand that if they 'lose' a vote, it does not help the organisation's interests to attempt to undermine the decision's implementation. Nor is it helpful to criticise the decision publicly or to staff - this is a symptom of a weak or divided board.

If a board member strongly disagrees with a decision, there are a number of options they can take, for example:

- ask that the reasons for their dissent from the decision be minuted;
- ask to bring a further proposal to the board suggesting another approach; or,
- insist the board monitor the effects of the decision closely and review it by a certain date.

If a board member finds that they have constant problems with the kinds of decisions the board is making, it may be time for them to consider whether they are the right 'fit' for the board. A separate interview, outside board meetings, with the President may also help in clarifying the directions the board is taking.

In the case of a company incorporated under the *Corporations Act 2001*, if members feel decisions of a corrupt or fraudulent nature are being made, they may have rights to apply to the court to have the fraudulent or corrupt behaviour stopped and also to obtain orders for compensation to be paid if they have suffered any loss or damage due to such fraud.

The member, along with others, could also seek to hold an extraordinary general meeting with the whole company membership to question the board further about certain decisions. Further advice can be sought from the Australian Securities & Investments Commission, or the Australian Institute of Company Directors.

How a Good Board Functions
The following article gives you some ideas on the proper and smooth operations of a Board.

Structure of Boards
Under the *Associations Incorporation Act 1991* the board or management committee of an incorporated association must have at least three members. The model rules for associations in the ACT provide for three ordinary members and four office-bearers. The office bearers are the President (or Chair), the Deputy President, the Treasurer and the Secretary.

However, this make-up is not necessary if it is not considered appropriate for your organisation. The only mandatory office bearer position for an association is the appointment of public officer. The public officer does not necessarily have to be a governing committee member.

The Rules of Association (or Constitution) must specify the name, composition, powers and functions of the committee or board. The rules should also specify the method of election of committee members, the length of their terms of office, how vacancies on the committee should be filled and the various procedures to be followed at committee meetings such as whom is entitled to make decisions, and how they are made.

Skilled Board Members
A skilled, communicative, functioning board is essential to an organisation's success.

A board should not be a collection of people who are friends of the staff and other board members. It should never be a bunch of "yes" people. It needs to be made up of people who have the right experience and skills, and management and financial background, to set and monitor the strategic direction of the organisation.

Staff can sometimes regard the board as simply a requirement for the organisation to satisfy its legal obligations. This is not a recipe for long-term success. As much as it may seem that because staff run day to day operations they are in the best position to make decisions, the history of failed NGOs shows that this is not always the best way to go.

Rather it is precisely because staff are involved in daily operations that they need a group of interested and dedicated people to ensure that the organisation's legal, policy and strategic requirements safely underpin operations. A good board does not constantly interfere in the staff's work; they monitor progress and offer advice when needed. Without board input, staff will find themselves increasingly making decisions without the information and strategic direction they need. Board members also need to have the courage to ask questions and sometimes challenge management.

Succession Planning
Often when a community organisation is created, it has a Board of committed, skilled and dedicated people to oversee the development of the organisation. However, some time on, these people slowly leave the organisation, and are not replaced with people with the same passion or skills, and the organisation slowly begins to atrophy and lose direction.

Succession Planning is the term used to describe the recruitment of new Board members and preparing them to take on more senior roles on the Board. This will help ensure that an organisation is continuously re-energised and secure its long-term viability.

Recruiting and developing new Board members is properly the responsibility of the Board, not staff or the CEO. Leaving Board member recruitment to staff leaves an organisation open to "staff capture": where the staff or CEO effectively appoint the Board and are no longer sufficiently accountable for their actions.

Put effort into recruiting the very best people you can find to your board. This may take some effort, but it helps to recruit the assistance of the whole Board. If potential Board members decline, ask if they can suggest someone they think will be suitable.

Make a list of the relevant skills that your Board needs in order to have the proper expertise and be representative of the membership. It is always handy to have a lawyer and an accountant on a Board. If you serve a particular community or population group, ensure your board has representatives of those groups. Think about factors like age, ethnicity, job background, gender and geography.

Ensure that while the person is committed to the organisation's ethos, the board's processes and its code of conduct, you are not recruiting someone who is exactly like the rest of the board. Aim for diversity not only in professional and personal backgrounds but also in personality. A good board needs people willing to question, disagree, and challenge. The board doesn't have to be best friends - but they do need to respect each other's viewpoints.

Governance and Management: Knowing the Difference
The following article gives you some information on the division of governance and management roles in an organisation.

Governance vs Management
A major obstacle in the governance of community organisations is ensuring the Governing Body and Managers are able to delineate their different responsibilities. **"Governance"** is the strategic task of setting the organisation's goals, direction, limitations and accountability frameworks. **"Management"** is the allocation of resources and overseeing the day-to-day operations of the organisation.

One way to think about this is that Governance determines the "What?" - what the organisation does and what it should become in the future. Management determines the "How?" - how the organisation will reach those goals and aspirations.

The Governing Body's Role
The Board or Committee of an organisation is the group of members elected by the membership to take responsibility for the governance and strategic direction of the organisation. It is usually also responsible for employing the Managing Director or Executive Officer.

They are responsible for all aspects of the continued or ongoing operation of the organisation. This means it has to find a way it can delegate the day-to-day business, functions and activities of the organisation to Management, and still account for its responsibilities back to the membership.

The single most important feature of good governance is a clear segregation of the responsibilities and accountabilities of the board from those of the management. The board's job is to oversee management, not to manage.

It can be difficult to separate what is and isn't the board's business. A useful rule is to always consider matters before the board in terms of the strategic direction of the organisation. Set up board meetings to ensure the board is constantly monitoring whether the goals of the strategic plan are being met, or will be met. While the board should be aware of all the organisation's operations, it needs to keep its eye on the overall strategy and big picture for the organisation.

Some useful strategies for ensuring the delineation of roles is clear include:

- Including a Duty Statement for the Board in the organisation's Governance Policy

- Implementing a Director/CEO limitations policy, articulating the limits of Management's authority
- Ensuring that Board members undergo basic training in governance to help them understand the role of the governing body

In some small organisations, some of the management duties of the organisation will remain with the Board, or an Executive or Management Committee of the Board comprising Office Bearers of the organisation. It is still important in these circumstances to clearly articulate the different roles of the Board, Management Committee and Staff, although the allocation of roles may not necessarily be along a strict division of governance and management responsibilities.

Allocating Responsibilities
Here is a list of the kinds of things you may wish to formally 'segregate' between the board and management. Areas where there may be some overlap are also shown.

Board/Management Committee	**Possible overlap**	**Executive Officer**
Setting strategic plan and monitoring it	Meeting strategic plan objectives	Implementation and driving strategic plan
Approving purchasing over an agreed limit	Purchasing limit	Purchasing below a certain agreed limit within board approved budget
Overseeing finances through financial reports to board	Keeping projects within budget	Detailed understanding of financial position and project-by-project status
Risk management	Constant assessment of risk, financial and otherwise	Reporting to board on risk, actual and potential, developing risk management plan
Making contacts for potential funding, passing on grant information	Ideas about the number and mix of grant proposals	Applying for funding, securing sufficient grant monies to run organisation
General framework for staffing matters	Staff performance issues; grievances	Staff matters such as leave, performance appraisals, conditions and detail of supervision

Board Member Code of Conduct
- Maintain and understand the ethos, values and objectives of the company or association
- Act in good faith toward the company, its members and creditors

- Be familiar with the organisation's constitution, policies and procedures, and the duties of directors as defined in the *Corporations Act 2001* or *Associations Incorporation Act 1991*(ACT)
- Make decisions in a timely, fair and efficient manner
- Prepare for, attend, and participate actively in board meetings
- Ensure decisions of the board are based on the best evidence and information available
- Develop contacts and good relations with other agencies
- Keep up to date on the environment in which the organisation is working
- Immediately report any personal conflicts of interest or serious breaches of the law to the board
- Make a minimum commitment of 12 months to your first board term
- Be available to undertake appropriate training
- Publicly represent the organisation in a positive manner
- Agree to resign from the board after 5 years' continuous service