



SETSCoP Governance Training

What is a Board?

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SETSCoP Governance Training

- Webinar 1 – What is a Board ?
- Webinar 2 – What is the role of a Director?
- Webinar 3 – Tone from the top – the culture and mechanics of Boards



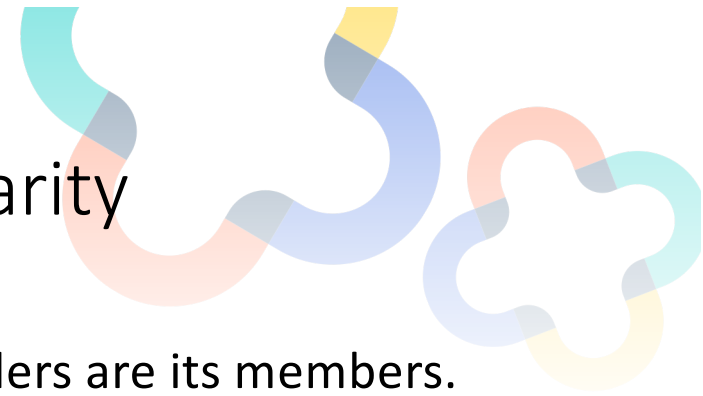
Before we begin...some clarity



We will simplify the interchangeable terms

Board and Management Committee = Board
Directors and Committee Members = Directors

We will discuss this later...some more clarity



The NFP equivalent of the commercial company's shareholders are its members.

- NFP organisations cannot be owned
- They don't have shareholders (owners)
- They have members

From a governance perspective members play the role of shareholders

What is a Board? – (specifically, in the NFP setting)

- Why do we have Boards, what is corporate governance?
- Types of organisations (incorporated vs. unincorporated)
- Regulators and governance standards
- The Constitution
- The role and functions of the Board
- The delineation between Members, Boards and Managers (governing vs. managing)



A good definition...

- *“... concerned with holding the balance between economic and social goals and between individual and communal goals... The governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim is to align as nearly as possible the interests of individuals, corporations and society”¹.*

1. Clarke T, 2007, International corporate governance: A comparative approach, Routledge, UK



Governance is about setting boundaries...



- The text book answer as to why do we have Boards:
 1. To oversee the performance of the organisation and at all times act in the best interest of the organisation (as a whole).
 2. To ensure the organisation meets the shareholder/member expectations whilst managing risk and complying with the law.
 3. To bring skills, expertise and an independent perspective to decision-making.
 4. To guide and support the CEO/Management team and hold them accountable for the performance of the organisation.

The history and evolution of governance...



The East India Trading Company 31st December 1600

- Royal Charter was granted to 'The Company of Merchants in London'. (The first company)
- Began with 218 members (The first Shareholders).
- Court of Proprietors made up of members with voting rights (The first 'Board').
- Court of Directors (The first 'Management Team').

By the early 1900s the size and complexity of companies had grown and so the role of the Board and Directors grew to where shareholders ceded more power to Boards.

This evolved to what we have today in terms of a "corporation":

1. The concept of incorporation. (The legal separation of a company from members as being recognised as a quasi-person. Businesses that incorporated are known as 'corporations').
2. The separation of ownership and control is known as the fiduciary relationship (members appoint directors to act, as boards, on their behalf).
3. Growth of the legal frameworks to protect (through regulation) owners and members. (A recent example is the regulatory changes post RC into Aged Care).

To incorporate or not...



There are two classifications of organisational structure types:

1. **Incorporated** – proprietary companies, [public companies](#), co-operatives and [incorporated associations](#)
2. **Unincorporated** – sole traders, partnerships, trusts, and [unincorporated associations](#).

The benefits (or reasons why) of being incorporated include:

- **Legal separation** between members, directors and managers. The organisation is its own legal entity.
- **Perpetual existence** – whilst members and directors may change the legal entity continues until it is closed down (wound up).
- **Limited liability** – members liability is limited to an amount stipulated in the organisation's constitution. The organisations debts and liabilities belong to the organisation (not to the members and directors)

Types of companies...



	Proprietary	Public	Public Limited by Guarantee	Incorporated Association	Unincorporated Association
Post Designation	Pty Limited	Limited	Limited	Inc	None
Purpose	Private commercial companies	Public commercial companies	Larger NFPs that wish to operate across state borders (nationally)	NFPs that are state based	Very small NFP or for a specific purpose
Regulator	ASIC	ASIC	ASIC/ACNC	Relevant state authority'/ACNC	Relevant state authority'/ACNC
Shareholding	Private shareholders	Public shareholders (ASX listed)	None	None	None
Liability	Limited to unpaid shareholding (if any)	Limited to unpaid shareholding (if any)	Members limited to nominal amount within the constitution.	Members limited to nominal amount within the model rules	Resides equally across the members (no legal separation)

The regulators...(and there are a few)



There are a number of regulatory bodies that NFP Boards needs to be cognizant of:

- **Australian Securities and Investment Commission (ASIC)** administers the Corporations Act 2001 (Cth). Applicable for NFP companies (and their directors) limited by guarantee.
- **Australian Charities and Not-for-profit Commission (ACNC)** - the independent regulator of charities.
- **Australian Prudential Regulation Authority (APRA)** – regulates insurance, superannuation, deposit taking, credit providing.
- **Australian Taxation Office (ATO)**– for NFPs applicable for Business Activity Statements (GST, PAYG etc), DGR etc.
- **Various state/territory regulators** – for Associations
- Others include – the ACCC, EPA etc

Many of these will dictate various reporting requirements and standards

Governance standards for charities and NFPs (ACNC)



1. Purposes and not-for-profit nature - charities must be NFP and work towards their charitable purpose. They must provide information about their social purpose to the public.

2. Accountability to members - charities that have members must take reasonable steps to be accountable to their members and provide them with adequate opportunity to raise concerns about how the NFP is governed.

3. Compliance with Australian laws – charities/NFPs must not commit a serious offence (such as fraud) under any Australian law or breach a law that may result in a penalty of 60 penalty units (currently \$10,200) or more.

4. Suitability of responsible persons – charities/NFPs must take reasonable steps to:

- be satisfied that their responsible persons (such as board) are not disqualified from managing a corporation under the Corporations Act 2001(Cth) or disqualified from being a responsible person of a registered charity by the ACNC Commissioner; and
- remove any responsible person who does not meet these requirements.

5. Duties of responsible persons – charities/NFPs must take reasonable steps to ensure that responsible persons are subject to, understand and carry out the duties set out in this standard

ACNC requirements

- Comply with the ACNC governance standards
- Comply with ACNC external conduct standards
- Notify ACNC of any changes
- Keep records
- Report information annually, as follows:

Size	Information statement	Financial Statement	AGM
Small revenue < \$250K	Operations, programs & basic financials	Optional	Only if stipulated in the model rules
Medium revenue >250K to \$1M	Operations, programs & basic financials	Must submit a reviewed or audited financial statement	Only if stipulated in the model rules/constitution*
Large revenue >\$1M	Operations, programs & basic financials	Must submit an <u>audited</u> financial statement	Only if stipulated in the model rules/constitution*

* Companies Limited by guarantee must hold an AGM within 5 months of the EOFY



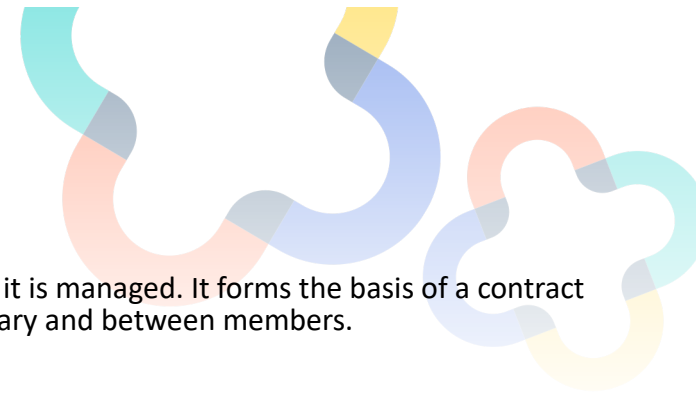
Deductible Gift Recipient status



- THE ACNC regulates charities.
- Not all NFP are/can be charities (only about 10% of NFP are recognised charities).
- DGR registration and endorsement allows a NFP to validly accept donations so that donors can claim a tax deduction.
- Being a NFP organisation registered with ACNC, does not automatically allow the organisations to accept gifts (donations).
- The NFP when applying, **must demonstrate their charitable purpose**.
- The NFP must apply with the ACNC for what is known as DGR registration.
- The ATO, once registered, decides on DGR endorsement.
- The DGR system was reformed in 2017 and there are some recent changes.

The constitution (model rules)...

- The Constitution sets out the organisation's name, its objectives (purpose) and details around how it is managed. It forms the basis of a contract between the incorporated association or company and its members, directors, the company secretary and between members.
- The Constitution deals with matters such as:
 - **Company/association name** - defines the legal name of the organisation
 - **Objects of the organisation** – sets out the social purpose (objects), which may also include its charitable purpose, of the organisation and how the organisation will go about achieving those objectives. It is important that time be spent to define the social purpose.
 - **Membership** – defines the type of members (e.g. founding, ordinary, life, corporate) voting rights, notice to members, resignation and termination of memberships, register of members.
 - **Members liability** – in the case of companies limited by guarantee, it defines the limit of members liability
 - **Financial record keeping**- details the financial record keeping parameters, such as the financial year start and end date, how financial statements are distributed to members, compliance with relevant legislation.
 - **Audit** - it deals with the appointment of the external auditors.
 - **AGM** – outlines the rules and proceedings around the annual general meeting (AGM.) and general meetings. This includes meeting notices, who can attend, how the meetings are conducted, the role of the chair, the required quorum, adjourning. Postponing, cancelling, voting, special meetings, voting rights, proxies and so on.
 - **Directors** -defines the minimum and maximum number of directors, the appointment and removal of directors, elections, the powers of the Board.
 - **Proceedings of Board** – details how Board meetings are conducted, the appointment and role of the Chair, delegations, validity of acts, voting, minutes resolutions, powers of the Board, contracting with the company
 - **Gift funds** – if the organisation is to be a registered charity the Constitution will stipulate how these funds are managed.
 - **Notices** – outlines how notices can be served
 - **Dispute resolution** – clarifies how disputes, whether these between directors, members, are handled.
 - **Indemnity and insurance** – define the level of insurance and indemnities for directors, company officers and employees.
 - **Winding up** – defines if members must contribute the guarantee amount in the event the organisation is wound up. It also expresses the guarantee amount (which is usually nominal)

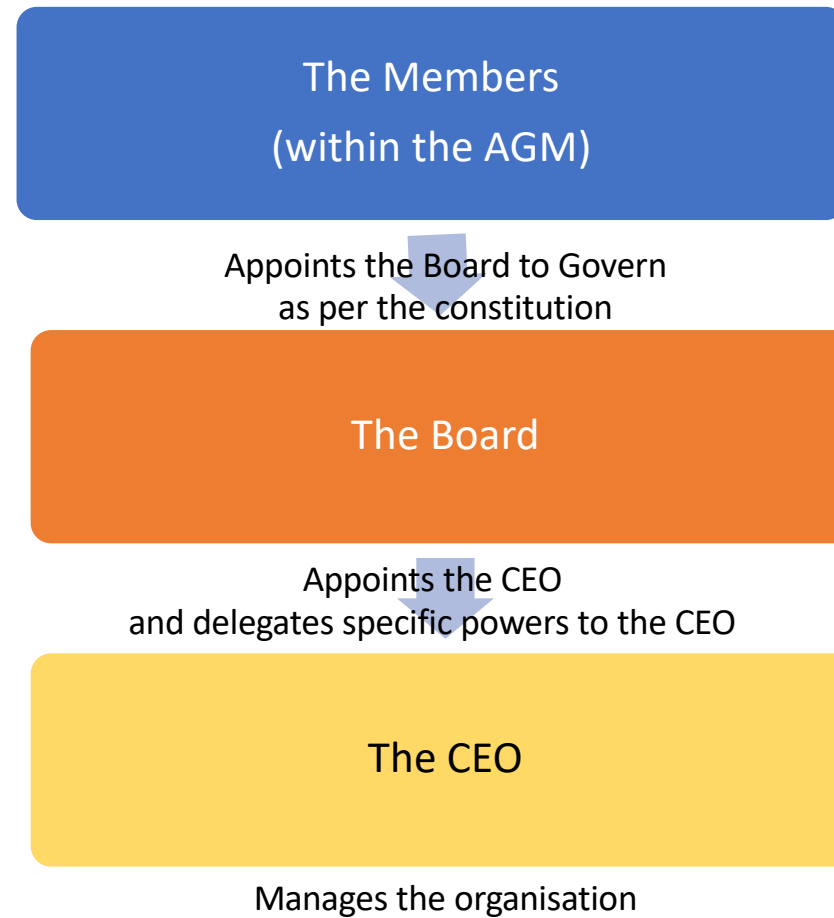


Role of the Board...



- **Strategic direction** – works with management to set the strategic direction, measure the strategy's performance against the organisation's and community's expectation.
- **Resources** – ensure management is provided with the resources to achieve the strategy.
- **Performance** – monitoring the organisation's performance against the strategy and its goals.
- **Compliance** – ensures adequate processes are in place to ensure compliance with legal, accounting, regulatory and environmental requirements.
- **Risk** – set the risk appetite and ensures risks are identified and managed appropriately.
- **Accountability** – report progress to the members.

Delineation of roles



Governing vs. managing

Governance

- Delegate decisions and powers
- Set the risk appetite
- Appoint, evaluate and support the CEO
- Work with the CEO & management to develop the high-level strategic plan
- Oversee organisational performance
- Member and stakeholder management
- Succession planning of the CEO
- Set the tone from the top, culture and ethics

Most problems arise when this line becomes blurred

Management

- Manage the organisation in an ethical manner in line with the direction of the board
- Keep the board informed and provide recommendations
- Present the board with timely and accurate information
- Frame decisions in the context of the strategy and purpose, present well documented options for consideration
- Be transparent
- Be responsive for requests for information
- Mobilise the board to use their connections to support the organisation
- Recommend goals and policies



Which leads us nicely to the next webinar...



What is the role of the director?

Amongst other things, we will discuss the director dilemma...

A Director has the collective authority as part of the Board only
but...

The carries duty, responsibility, accountability, and liability as an individual

Further information...

Australian Institute of Company Directors (AICD)

www.aicd.companydirectors.com.au

Governance Institute of Australia

www.governanceinstitute.com.au

SETSCoP Business Guides Governance Series

<https://setscop.org.au/resource-type/governance-of-not-for-profits/>

Australian Charities and Not-for-profit Commission (ACNC)

www.acnc.gov.au

Your local state government office

- Victoria – Consumer Affairs Victoria
- Queensland – Office of Fair Trading
- New South Wales – NSW Fair Trading
- South Australia – Family and Community
- Tasmania – Consumer Building and Occupational Services
- West Australia – Consumer Protection
- Australian Capital Territory – Access Canberra
- Northern Territory – Licensing NT



Questions?