



Australian Government

Department of Families, Housing,
Community Services and Indigenous Affairs



Corporate Governance Handbook for Company Directors and Committee Members

A Reference Guide to Understanding the Serious Commitment of
being a Company Director or Committee Member

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Improving the lives of Australians

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Companies

“There is nothing in the [...Companies Code...] to suggest that the standard to be expected of a part-time non-executive director of a company not for profit is different from the standard expected of any other director of a profit-making company: both are required...to exercise a reasonable degree of care and diligence in the exercise of their powers and the discharge of their duties.”

(Justice Tadgell, Commonwealth Bank of Australia v Friedrich & Ors, 9 ACLC 946, 5 ACSR 115, Australian Company Law Cases p.947, CCH Australia Limited, 1991)

Incorporated Associations

“... an incorporated association has certain statutory obligations in relation to the rules as well as a statutory obligation to call meetings, keep accounting records and to keep a register of members.... The [...Associations Incorporation Act ...] also creates an offence where a member of the committee fails to take all reasonable steps to secure compliance with the association’s obligations under the Act...It has been said that, in relation to an association, the committee members are in the same position as a director toward a company.”

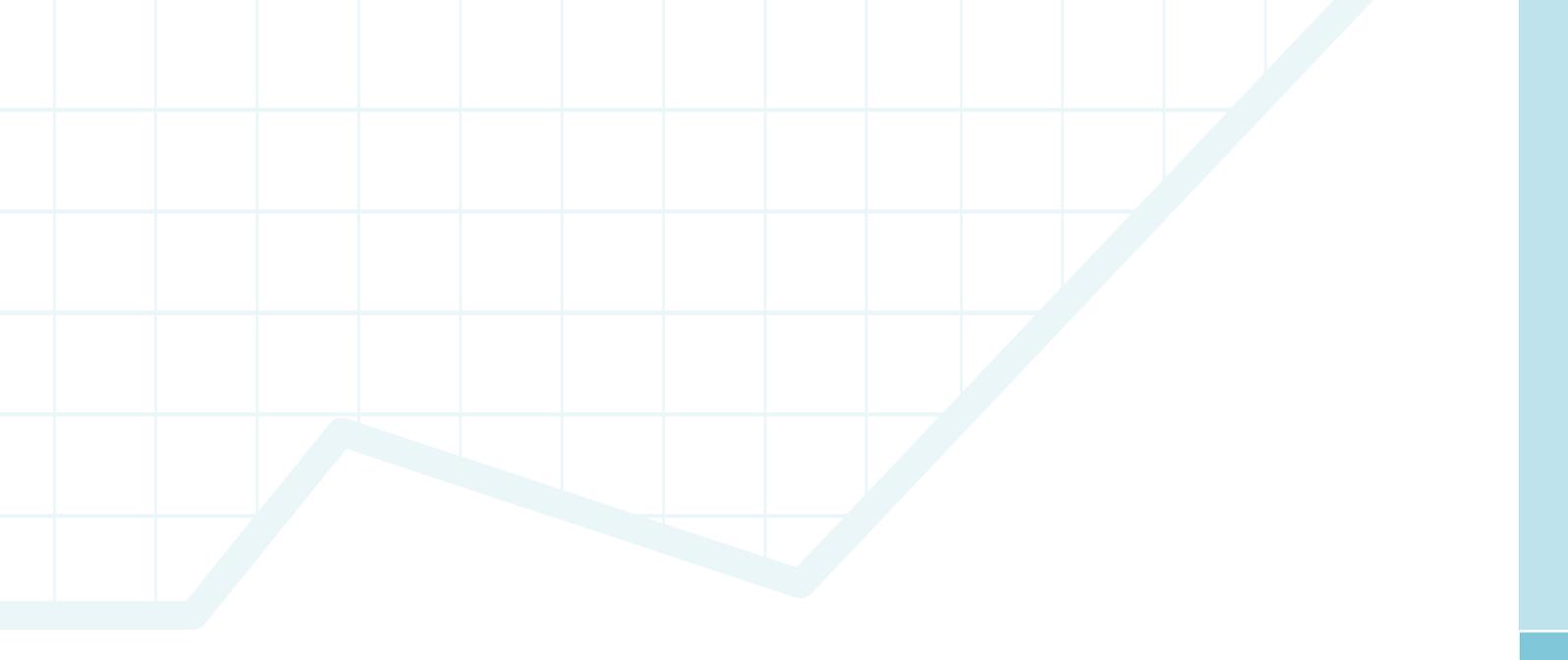
(Justice Johnson, LAI -v- TIAO [No 2][2009] WASC 22 (22 May 2009) with Australian Chinese Confucius-Mencius Saint Tao Centre Inc as Second Defendant, www.austlii.edu.au/au/cases/wa/WASC/2009/22.html paras 55 and 84.)



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1 Overview

Company Directors and Committee Members¹ need to demonstrate both educative and technical prowess and moral fibre. Individuals holding these positions require an understanding of what it means to be a Company Director or a Committee Member and the significant legal responsibilities in relation to fulfilling governance obligations on behalf of their organisation.

For the purposes of this Handbook, from time to time, the Handbook will refer collectively to the above titled positions 'Company Directors' and 'Committee Members' as the 'Board' or the Board Members or equivalent. Your organisation may use various terminologies such as the Board, Committee, and Committee of Management, Directors, Board of Directors, Governing Committee or other variations. In addition consistent with common business language the terms 'company' and 'association', may also from time to time be used interchangeably within this Handbook with the terms, 'corporation', 'entity' or 'organisation'.

Being a Company Director or Committee Member is a professional occupation, even though in many cases for funded Not-For-Profit organisations such individuals perform their roles voluntarily. Individuals who pursue this profession need to acknowledge and accept the serious nature of the responsibilities and duties that they have given an undertaking to fulfill.

Implementing and maintaining a sound corporate governance framework requires a thorough knowledge of legal requirements and better practice combined with a practical and defensible approach in order to fulfill those requirements.

1.1 Purpose of this Handbook

The purpose of this Handbook is to provide a handy reference guide, to aid readers in understanding the serious commitment of being a Company Director or Committee Member. This Handbook provides the following information:

- A broad overview of key governance legislative requirements for Board Members of companies and incorporated associations;
- An overview of features of good corporate governance practices; and
- Practical ideas and tips for Board Members to consider in fulfilling corporate governance obligations.

¹ In this context a Committee Member typically means a member of the Committee of Management or equivalent of an Association registered under the relevant State or Territory Associations Incorporation Act.

1.2 Target Audience

The focus of this Handbook is to assist Company Directors and Committee Members of organisations supported by disability service support and advocacy programs² administered by the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs. Specifically:

- Directors of companies³ incorporated under the Commonwealth *Corporations Act 2001*; and
- Committee Members of associations incorporated under the various State and Territory Associations Incorporation Acts.

Governance legal requirements apply regardless of whether or not a Board Member or another Officer performs their roles voluntarily or in a paid capacity.

Other Officers including the Chief Executive Officer or equivalent, Chief Financial Officer or equivalent, other members of senior management and other employees who support Company Directors and Committee Members may also find the Handbook helpful to assist in carrying out their duties.

A recent report⁴ by the Australian Government Productivity Commission noted the following:

“There is a push for greater accountability by NFPs⁵ from governments and the community. Business and other major donors increasingly want evidence of the effectiveness of the activities, and prefer NFPs that can provide robust business cases for the investments they seek...Most NFPs agree that significant financial support warrants accountability (such as audited accounts and business plans) and demonstrable results.”

In addition the report noted:

“Boards...need to develop their governance skills as their tasks have become more complex with delivery of government funded services and demands by donors, members and clients for greater accountability.”

1.3 Handbook Limitations

This Handbook is not intended to replace existing mechanisms used by Company Directors, Committee Members and other Officers to monitor and act on requirements set down in Statute Law, Common Law (including Equity Law) and Contract Law. Rather, it is a tool to facilitate improved understanding of corporate governance legal obligations and better practices, and present some ideas and resources to contribute to the implementation of effective corporate governance within organisations.

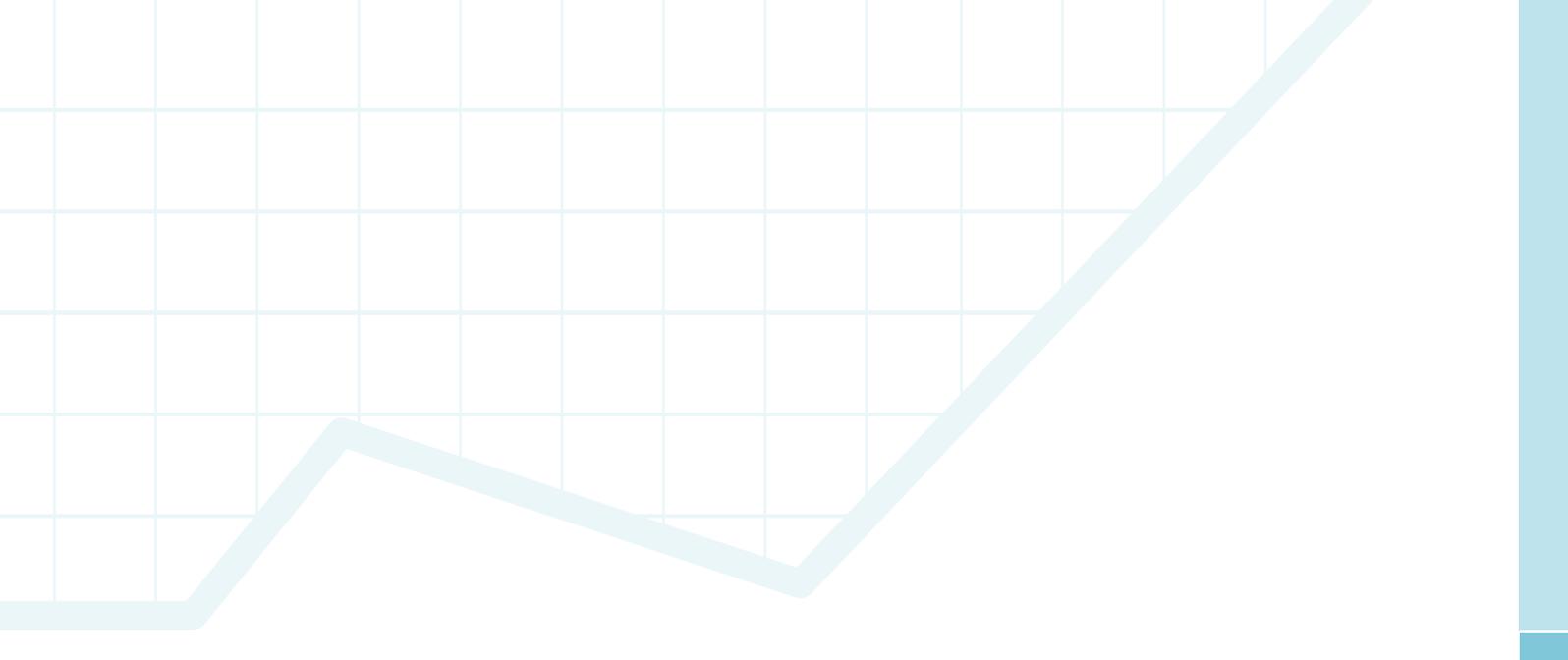
The contents of this Handbook are based on legislative requirements and relevant better practice at the time of the preparation of the Handbook.

2 At the date of this Handbook the two main disability services programs funded by the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs are Australian Disability Enterprises and the National Disability Advocacy Program.

3 Not-For-Profit entities incorporated under the *Corporations Act 2001* are registered as Companies Limited by Guarantee and therefore do not have the power to issue shares.

4 ‘Contribution of the Not-for-Profit Sector’, Research Report, Australian Government Productivity Commission, January 2010, p.xxx (roman numerals) and p.26.

5 ‘NFPs’ means Not-For-Profit organisations.



2 Concepts of Corporate Governance

2.1 What is Corporate Governance?

There are many definitions of corporate governance. Here is one example that attempts to encapsulate the spirit of corporate governance.

Corporate governance may be described as:

“...the process by which agencies are directed and controlled. It is generally understood to encompass authority, accountability, stewardship, leadership, direction and control.”⁶

2.2 Why is Corporate Governance Important?

Implementation and maintenance of good governance facilitates robust decision making and improves Strategy, Performance, Compliance and Accountability, and is characterised by ongoing monitoring and evaluation. Effective corporate governance helps an organisation to achieve its objectives and desired outcomes and fulfill its obligations through sound:

- Strategic and business planning;
- Risk management;
- Financial management and reporting;
- Human resource planning and control; and
- Compliance and accountability systems.

Good governance also helps provide a framework for establishing responsibility to the people served by the organisation – its members, clients and other stakeholders including funding bodies.

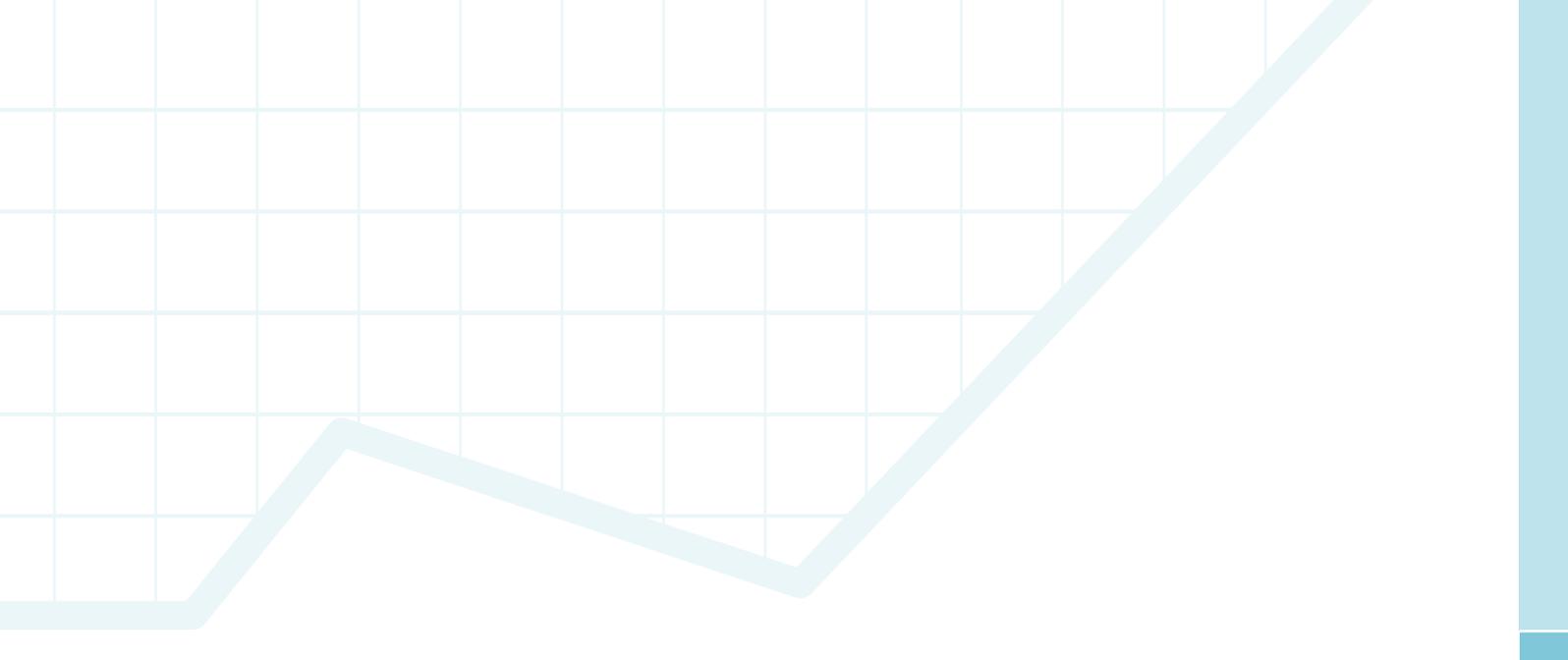
⁶ ‘Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies’, Commonwealth Department of the Prime Minister and Cabinet, 17 June 2009, p.16.

2.3 Achieving the Balance between the Pursuit of Community Service Objectives and Maintaining Financial Capacity

One of the major challenges a Not-For-Profit organisation faces is balancing the pursuit of community service objectives with business objectives. A Not-For-Profit disability service provider organisation needs to achieve commercial outcomes as well as vocational, advocacy and other support outcomes for its clients. A strong financial capacity provides the means to achieve social outcomes. These dual roles can, however, create conflict when it comes to decision making.

It is critical that the composition of a Board includes people with a direct interest in an organisation's outcomes. In many cases, but not all, this will mean the inclusion of parents of clients of the organisation. These people often provide the passion and focus for maximising the vocational, advocacy or other relevant support outcomes sought by an organisation.

The focus on vocational, advocacy and other support outcomes can sometimes be at the expense or in conflict with the business objectives of an organisation. In turn, pursuit of community service outcomes can then threaten the financial viability and sustainability of the organisation if the dual objectives are not properly balanced. Effective corporate governance can assist in achieving this balance.

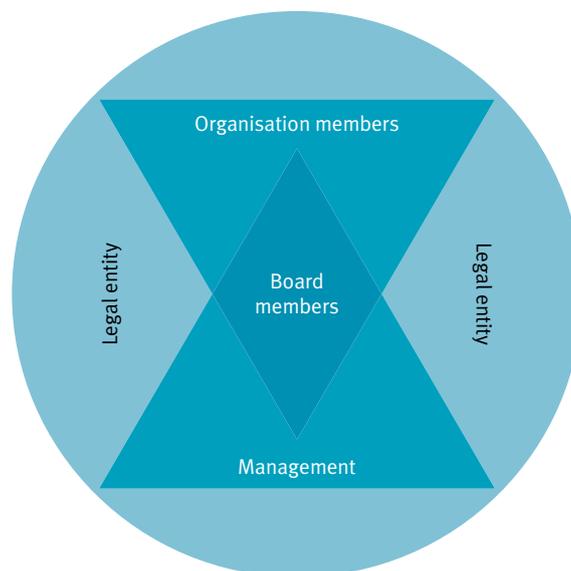


3 Roles and Responsibilities of Board Members

A Company Director or Committee Member owes a fiduciary duty of care to their organisation. Broadly, as shown in Diagram 1 an organisation is comprised of four components:

- **Legal Entity:** A legal entity is separate from its members, and has the legal capacity and powers of an individual. For instance, typically a legal entity can acquire and dispose of property, it can sue and be sued, enter into contracts, make charges for services and do other things necessary to carry out its affairs;
- **Organisation Members:** Members of an organisation have a community and personal interest in their organisation. Members are personally liable to their organisation for a financial contribution, which is limited to the respective amounts set down in the Constitution or Rules of the organisation. Typically members are required to contribute towards the payment of the debts and liabilities of the organisation (usually through an annual membership fee) and/or the costs, charges, and expenses of a winding up of the entity;
- **Management:** The organisation's management is composed of the Chief Executive Officer or equivalent, Chief Financial Officer or equivalent, other members of senior management and other staff. Collectively, management is responsible for implementing the decisions of the Board and the diligent conduct of day to day operations of the organisation with ongoing accountability to the Board; and
- **Board Members:** Board Members, comprising either Company Directors or Committee Members, individually and collectively, are responsible for the strategic direction and control of their organisation.

Diagram 1: Conceptual Representation of the Key Components of an Organisation ⁷



As a Company Director or Committee Member (or other Officer) it is important to be aware of the legal governance framework under which your organisation is registered.

Your organisation may be incorporated under the *Corporations Act 2001* or the relevant Associations Incorporation Act for each State or Territory. Therefore, the legal responsibilities and duties of a Company Director or Committee Member may differ depending on how and where your organisation is registered.

Depending on the legal governance framework applicable to your organisation, there are minimum requirements and standards in relation to responsibilities and duties of a Company Director or Committee Member (and other Officers). Defining roles and responsibilities of a Company Director or Committee Member (and other Officers and staff) contributes to a transparent environment of decision making and accountability. It also helps in developing an internal framework for efficient and effective decision making.

A high level overview of the governance responsibilities of a Company Director or Committee Member (and other Officers and employees) under the *Corporations Act 2001* (Section 3.1 of this Handbook) and the various State and Territory Associations Incorporation Acts (Section 3.2 of this Handbook) is provided below. Prima facie you will see similarities between governance responsibilities between Section 3.1 and Section 3.2 of the Handbook – this is coincidental only and does not imply that the *Corporations Act 2001* and each of the State and Territory Associations Incorporation Acts are the same. Section 3.2 of this Handbook discloses the most significant governance responsibilities distilled from across the eight State and Territory Associations Incorporation Acts.

3.1 Governance Responsibilities under the Corporations Act 2001

If your organisation is incorporated under the *Corporations Act 2001*, the following Sub-Sections within the Handbook provide a broad overview of the more significant responsibilities and duties of Company Directors, other Officers and employees under that legislation. For full details you must refer to the *Corporations Act 2001*. Section 7 of this Handbook provides information on accessing the legislation.

It is also important to note that a company's internal management is required to be governed by provisions of the *Corporations Act 2001* that apply to the company as replaceable rules, by a Constitution or by a combination of each one.

⁷ The Conceptual Representation of the Key Components of an Organisation was designed by WalterTurnbull for use in this Handbook.

In relation to responsibilities of Company Directors, other Officers and employees, and the internal management of the company, Board Members need to familiarise themselves with relevant requirements established under other laws including Common Law.

3.1.1 Care and Diligence — Directors and Other Officers – Civil Obligations

A Company Director or other Officer must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise, in the same company circumstances, if they occupied the office held by, and had the same responsibilities within the organisation as, the Company Director or Officer.

A Company Director or other Officer who makes a business judgment, will be deemed to have met the above requirements (and their equivalent duties at Common Law and in equity) in respect of the judgment if they:

- Make the judgment in good faith for a proper purpose; and
- Do not have a material personal interest in the subject matter of the judgment; and
- Inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and
- Rationally believe that the judgment is in the best interests of the organisation.

3.1.2 Good Faith — Directors and Other Officers – Civil Obligations

A Company Director or other Officer of a company must exercise their powers and discharge their duties in good faith in the best interests of the corporation and for a proper purpose.

3.1.3 Use of Position — Directors, Other Officers and Employees – Civil Obligations

A Company Director, Secretary⁸ or other Officer, and employees, must not improperly use their position to gain an advantage for themselves or someone else or cause detriment to the company.

3.1.4 Use of Information — Directors, Other Officers and Employees – Civil Obligations

A Company Director or other Officer, and employees, who obtain information because they are, or have been, a Company Director or other Officer or employee of a company must not improperly use information to gain an advantage for themselves or someone else or cause detriment to the company.

3.1.5 Good Faith, Use of Position and Use of Information — Directors and Other Officers and Employees – Criminal Offences

A Company Director, other Officers, and employees, as applicable under relevant provisions of the *Corporations Act 2001* commit an offence, where:

- A Company Director or other Officer are reckless or are intentionally dishonest; and fail to exercise their powers and discharge their duties in good faith in the best interests of the corporation or for a proper purpose;
- A Company Director or other Officer, and employees use their position:
 - Dishonestly with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the corporation; or
 - Recklessly as to whether the use may result in themselves or someone else directly or indirectly gaining an advantage, or in causing detriment to the company; or

⁸ In this context in relation to companies this position is often referred to as the Company Secretary.

- ▶ A Company Director or other Officer, and employees who obtain information because they are, or have been, a Director or other Officer or employee of a corporation and use the information:
 - Dishonestly with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the corporation; or
 - Recklessly as to whether the use may result in themselves or someone else directly or indirectly gaining an advantage, or in causing detriment to the company.

3.1.6 Reliance on Information or Advice Provided by Others

A Company Director may rely on information or professional or expert advice. Reliance on the information or advice will be taken to be reasonable unless the contrary is proved, where:

- ▶ The preparer of the information or advice is a reliable and competent employee or professional adviser or expert, another Company Director or Officer in relation to matters within the Director's or Officer's authority or a Committee of Directors⁹ on which the Company Director did not serve in relation to matters within the Committee's authority; and
- ▶ The reliance is made in good faith and after making an independent assessment of the information or advice, having regard to the Company Director's knowledge of the corporation and the complexity of the structure and operations of the corporation.

3.1.7 Responsibility for the Actions of a Delegate

Where Company Directors delegate a power a Director is responsible for the exercise of the power by the delegate as if the power had been exercised by the Board of Directors themselves. A Company Director may rely on the actions of a delegate if:

- ▶ They believed on reasonable grounds at all times that the delegate would exercise the power in conformity with the duties imposed on the Board of Directors of the company by the *Corporations Act 2001* and the company's Constitution; and
- ▶ The Company Director believed on reasonable grounds and in good faith and after making proper inquiry, if the circumstances indicated the need for inquiry, that the delegate was reliable and competent in relation to the power delegated.

3.1.8 Material Personal Interest – Director's Duty to Disclose

A Company Director has a duty to notify other Board Directors of a material personal interest, which relates to the affairs of the company, when conflict arises. It is also prudent to ensure that notification is documented in the Minutes of relevant Board Meetings. In addition, the conflict of interest should be recorded in the company's Register of Conflicts of Interest.

A Company Director of a Public company (which includes a Company Limited by Guarantee) who has a material personal interest in a matter that is being considered at a Board Meeting must not be present while the matter is being considered at the meeting, or vote on the matter, unless participation is approved in accordance with relevant provisions of the *Corporations Act 2001*.

⁹ In this context and in relation to a company, a Committee of Directors typically means a Sub-Committee of the Board of the Directors or equivalent.

3.1.9 Powers of Directors

The business of a company is to be managed by or under the direction of the Board of Directors. The Board of Directors may exercise all the powers of the company except any powers that the *Corporations Act 2001* or the company's Constitution requires the company to exercise in General Meeting. For instance, Directors of a company may be able to sign, draw, accept, endorse or otherwise execute a negotiable instrument (for example, cheques) on behalf of the company. A Company Director may also be able to enter into contracts on behalf of the company. These legal transactions and designated authority must be agreed and documented in the Minutes of relevant Board Meetings.

3.1.10 Disqualification from Managing Companies

It is important to remember that governance legal requirements apply regardless of whether or not a Company Director or another Officer perform their role voluntarily or in a paid capacity.

There are four scenarios where a person becomes disqualified from managing companies:

- ▶ Where a person is convicted under any of the following circumstances, they are disqualified from managing a company for a period of five (5) years:
 - On indictment of an offence that concerns the making, or participation in making, of decisions that affect the whole or a substantial part of the business of the corporation, or concerns an act that has the capacity to affect significantly the corporation's financial standing; or
 - As a result of an offence that is a contravention of the *Corporations Act 2001* or involves dishonesty and is punishable by imprisonment for a minimum prescribed period; or
 - As a result of an offence against the law of a foreign country that is punishable by imprisonment for a prescribed period; or
- ▶ Where a person is an undischarged bankrupt under the law of Australia, its external territories or another country. In addition, a person is disqualified from managing corporations if the person has executed a personal insolvency agreement under the *Bankruptcy Act 1966* or a similar law of an external Territory or a foreign country, and the terms of the agreement have not been fully complied with; or
- ▶ If the person is disqualified under an order made by a court of a foreign jurisdiction that is in force, from being a Director of a foreign company, or being concerned in the management of a foreign company; or
- ▶ If a person is, at the time, disqualified from managing Aboriginal and Torres Strait Islander corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*¹⁰.

3.1.11 Director's Duty to Prevent Insolvent Trading by a Company – Civil and Criminal Obligations

It is a Company Director's duty to prevent insolvent trading by a company. The failure of a Company Director to prevent insolvent trading may result in personal liability for compensation equal to the amount of that loss or damage where:

- ▶ A person is a Director of a company at the time when the company incurs a debt; and
- ▶ The company is insolvent at that time, or becomes insolvent by incurring that debt, or by incurring at that time debts including that debt; and
- ▶ At that time, there are reasonable grounds for suspecting that the company is insolvent, or would so become insolvent, as the case may be; and
- ▶ The company is, at the time the debt is incurred, or becomes at a later time, a corporation to which the relevant provisions of the *Corporations Act 2001* applies.

¹⁰ This Act is to provide for Aboriginal and Torres Strait Islander corporations, and for related purposes. The Parliament of Australia intends that the Act be a special law for the descendants of the original inhabitants of Australia.

3.1.12 Annual General Meetings

A Public Company (including a Company Limited by Guarantee) must hold an Annual General Meeting (AGM) within 18 months after its registration, and must hold an AGM at least once in each calendar year and within five (5) months after the end of its financial year.

The business of an AGM may include, for example, the consideration of the Annual Financial Report, Directors' Report and Auditor's Report, the Election of Company Directors, the appointment of the Auditor and the fixing of the Auditor's remuneration.

3.1.13 Financial Records and Annual Audited Financial Reports

A company must keep written financial records that correctly record and explain its transactions and financial position and performance, and that would enable true and fair Financial Statements to be prepared and audited. The financial records must be retained for seven (7) years after the transactions covered by the records are completed.

An Audited Financial Report and a Directors' Report must be prepared for each financial year by all Public Companies, including Companies Limited by Guarantee. The core contents of the Financial Report include:

- Financial Statements for the year, in relation to the entity reported on and that are required by the Accounting Standards¹¹, so as to provide a true and fair view¹² of the financial position and performance of the company;
- Notes to the Financial Statements, presenting information required by Regulations and Accounting Standards, and any other information necessary to give a true and fair view; and
- A Directors' Declaration about the statements and notes as to whether, in the Directors' opinion:
 - There are reasonable grounds to believe that the company, will be able to pay its debts as and when they become due and payable; and
 - The Financial Statements and notes are in accordance with the *Corporations Act 2001*, including compliance with Accounting Standards and that they provide a true and fair view.

At the date of preparation of this Handbook a range of proposed reforms to the *Corporations Act 2001* were in existence. The proposed reforms include, for instance, the introduction of a tailored financial reporting regime for Companies Limited by Guarantee, via a three tiered differential reporting framework. The proposed reforms also include, for example, the simplification of the Director's Report. Company Directors and other Officers should continue to monitor all proposed reforms to the *Corporations Act 2001*.

3.1.14 Other General Governance Responsibilities of Company Directors and Other Officers

Company Directors and other Officers should familiarise themselves with all relevant legal governance responsibilities. There are a number of other governance responsibilities of Company Directors and other Officers under the *Corporations Act 2001*. While these additional governance responsibilities are not considered in further detail within this Handbook, examples of requirements or topic areas are listed below.

- Appointment of Company Directors, including the Chairperson;
- Appointment of the Company Secretary;
- Appointment of alternate Company Directors;
- Use of a Common Seal (where applicable);
- Conduct of Board Meetings, and General and Special Meetings;
- Recording of Minutes and Resolutions, and members' access to Minutes;

¹¹ In Australia Accounting Standards are set down by the Australian Accounting Standards Board. Their Website is provided in Section 7 of this Handbook.

¹² If the Financial Statements and notes prepared in compliance with the Accounting Standards would not give a true and fair view, additional information must be disclosed in the notes to the Financial Statements.

- Delegations;
- Maintaining a Registered Office within Australia that is open and accessible to the public;
- The articulation and use of the company name including the inclusion or exclusion of the word ‘Limited’;
- Maintaining a Register of Members;
- Adoption of a Constitution, Replaceable Rules or a combination of each one;
- Related parties and financial benefits;
- Receipt, review and lodgment of an Annual Statement with the Australian Securities and Investment Commission (ASIC);
- Appointment of a Company Auditor;
- Provision of a copy of Financial Statements and Reports to members, unless a member has waived that right; and
- Lodgment of notices of changes to officeholders, the Constitution or Rules etc to ASIC.

3.2 Governance Responsibilities under the various State and Territory Associations Incorporation Acts

Each State and Territory has its own Associations Incorporation Act. Accordingly, it is important to note that Committee Member responsibilities may vary between jurisdictions.

If your organisation is incorporated under an Associations Incorporation Act, the following Sub-Sections within the Handbook provide a broad consolidated overview of the more significant responsibilities of Committee Members, other Officers and employees under the various Associations Incorporation Acts. Accordingly, please remember that the synopsis of governance responsibilities presented in the following Sub-Sections of the Handbook may not apply partly or fully in any one State or Territory jurisdiction. In addition, the expression of responsibilities and duties of Committee Members may vary between Associations Incorporation Acts. For full details you must refer to the legislation relevant to the State or Territory in which your organisation is incorporated. Section 7 of this Handbook provides information on accessing each of the State and Territory Associations Incorporation Acts.

It is also important to note that an association’s internal management will also be governed by the provisions of its Constitution or Rules. Typically, each jurisdiction may provide a Model Constitution under its respective Associations Incorporation Act for consideration for adoption by an association.

In relation to responsibilities of Committee Members, other Officers, and the internal management of an association Board Members need to familiarise themselves with relevant requirements established under other laws including Common Law.

3.2.1 Discharge of Duties – Committee Members and Other Officers

A Committee Member or other Officer of an incorporated association must not, in the exercise of their powers or the discharge of the duties of their office, commit an act with intent to deceive or defraud the association, members or creditors of the association or creditors of another person or for any fraudulent purpose.

3.2.2 Reasonable Care and Diligence

A Committee Member, other Officer or employee of an incorporated association must at all times act with reasonable care and diligence in the exercise of their powers and the discharge of the duties of their office.

3.2.3 Improper Use of Position

A Committee Member, other Officer or employee of an incorporated association must not make improper use of their position so as to gain, directly or indirectly, a pecuniary benefit or material advantage for themselves or another person or so as to cause a detriment to the association.

3.2.4 Improper Use of Information

A Committee Member, other Officer or employee of an incorporated association must not make improper use of information acquired by virtue of their position in the association so as to gain, directly or indirectly, a pecuniary benefit or material advantage for themselves or another person or so as to cause a detriment to the association.

3.2.5 Reliance on Information or Advice Provided by Others

A Committee Member may rely on information or professional or expert advice. Reliance on the information or advice will be taken to be reasonable unless otherwise proved, where:

- The preparer of the information or advice is a reliable and competent employee or professional adviser or expert, another Committee Member or Officer in relation to matters within the Committee Member's or Officer's authority or a Committee of Members¹³ on which the Committee Member did not serve in relation to matters within the Committee's authority; and
- The reliance is made in good faith and after making an independent assessment of the information or advice, having regard to the Committee Member's knowledge of the association and the complexity of the structure and operations of the association.

3.2.6 Disclosure of Committee Member Interests

A Committee Member of an incorporated association who has any direct or indirect pecuniary interest in a contract, or proposed contract, to which the association is or may be a party, must disclose the nature and extent of their interest to the Committee of Management and to the members at the next General Meeting of the association. It is also prudent to ensure that notification is documented in the Minutes of relevant Board Meetings.

A Committee Member who has an interest in a contract, or proposed contract, must not take part in making any decision with respect to the contract or proposed contract. Subject to relevant provisions of an Associations Incorporation Act, the Committee Member may be allowed to participate in deliberations on a contract or proposed contract.

3.2.7 Powers of the Committee of Management

The Committee of Management, comprising the Committee Members, subject to the relevant Associations Incorporation Act, related Regulations, Constitution or Rules, and to any Resolution passed by an association in General Meeting:

- Controls and manages the affairs of the association; and
- May exercise all functions that may be exercised by the association other than those functions that are required by the Constitution or Rules to be exercised by the association in a General Meeting; and
- Has the power to perform all acts and do all things that appear to the Committee of Management to be necessary or desirable for the proper management of the affairs of the association.

3.2.8 Disqualification from Office

It is important to remember that governance legal requirements apply regardless of whether or not a Committee Member or another Officer performs their role voluntarily or in a paid capacity.

There are two scenarios where a person becomes disqualified from managing incorporated associations:

- Where a person who has been convicted under the following circumstances they must not accept an appointment as a Public Officer¹⁴ or a Committee Member for a period of five (5) years:

¹³ In this particular context in relation to associations Committee of Members typically means a Sub-Committee of the Committee of Management or equivalent.

¹⁴ In relation to an association Public Officer is essentially equivalent to a Company Secretary.

- Convicted of an indictable offence inside or outside the jurisdiction, in relation to the promotion, formation or management of a body corporate or involving fraud or dishonesty punishable by imprisonment for a prescribed period; or
- Convicted of an indictable offence or an offence against the relevant Associations Incorporation Act or a prescribed offence; or
- Where a person who is insolvent under administration within the meaning of the *Corporations Act 2001* they must not accept an appointment or act as the Public Officer or a Committee Member of an association.

3.2.9 Offences Relating to Incurring Debts

At the time a debt was incurred a Committee Member is guilty of an offence and liable for penalty, imprisonment or both, where an incorporated association incurs a debt and:

- Immediately before the time the debt is incurred there are reasonable grounds to expect that the association will not be able to pay all its debts as and when they become due; or
- There are reasonable grounds to expect that, if the association incurs the debt, it will not be able to pay all its debts as and when they become due; and
- The association is, at the time the debt is incurred, or becomes at a later time, an association to which the relevant provisions of the respective Associations Incorporation Act applies.

It is a legal defence if the debt was incurred without the defendant's express or implied authority or consent, or that, at the time the debt was incurred, the defendant did not have reasonable cause to expect that the association would not be able to pay all its debts as and when they became due, or that, if the association incurred that debt, it would not be able to pay all its debts as and when they became due.

3.2.10 Offence Relating to Fraudulent Conduct

A person is guilty of an offence and liable to a penalty, imprisonment or both, if an incorporated association does any act (including the entering into of a contract or transaction) under the following circumstances:

- With intent to defraud creditors of the association or of any other person or for any other fraudulent purpose; and
- The association is at the time it does the act, or becomes at a later time, to which the relevant provisions of the respective Associations Incorporation Act applies, any person who was knowingly concerned in the doing of the act with that intent or for that purpose.

3.2.11 Annual General Meeting

An association must hold an Annual General Meeting (AGM) at least once in each calendar year and within five (5) months (unless otherwise stated in an Associations Incorporation Act) after the end of its financial year.

3.2.12 Accounting Records and Annual Audited Financial Statements

An association is required to keep accounting records that correctly record and explain the transactions and the financial position of the association. The accounting records must be kept in such a way that true and fair accounts¹⁵ of the association can be prepared and a Statement of the Accounts of the association can be audited. Accounting records must be retained for at least seven (7) years after the transactions to which they relate were completed.

¹⁵ 'True and fair accounts' means Financial Statements for a financial year, in relation to the entity reported on and that are required by the Accounting Standards, so as to provide a true and fair view of the financial position and performance of an organisation. In Australia Accounting Standards are set down by the Australian Accounting Standards Board. Their Website is provided in Section 7 of this Handbook.

The Board shall ensure that the association prepares Annual Audited Financial Statements. The Financial Statements must not be misleading and shall give a true and fair account¹⁶ of the income and expenditure of the association and the assets and liabilities of the association. The Board must take reasonable steps to ensure that the audit of the Annual Financial Statements is completed within the prescribed period before presentation at the Annual General Meeting.

In relation to the Annual Financial Statements some State and Territory Associations Incorporation Acts make reference to prescribed associations or may categorise associations into tiers, for the purposes of applying differential requirements relating, for instance, to the preparation of the Financial Statements, the audit and the qualifications of Auditors.

At each Annual General Meeting the Board must present to members:

- Audited Financial Statements for the financial year;
- The Auditor's Report; and
- A report signed by two Committee Members stating the name of each Committee Member, the principal activities of the association, any significant changes during the financial year and the Net Profit or Loss of the association for the financial year.

3.2.13 Other General Governance Responsibilities of Committee Members and Other Officers

Committee Members and other Officers should familiarise themselves with all relevant legal governance responsibilities. There are a number of other governance responsibilities of Committee Members and other Officers which may be applicable under the various State and Territory Associations Incorporation Acts. While these additional governance responsibilities are not considered in further detail within this Handbook, examples of requirements and topic areas are listed below.

- Compliance with the relevant State or Territory Associations Incorporation Act and related Regulations;
- Use of a Common Seal;
- Appointment of Committee Members, including the Chairperson or President, Deputy Chairperson(s) or Vice President(s), Secretary¹⁷, and Treasurer;
- Appointment of the Public Officer;
- Conduct of Board Meetings, and General Meetings and Special Meetings;
- Recording of Minutes and members' access to Minutes;
- Delegations, including appointment of Sub-Committees to the Committee of Management;
- Maintaining a Registered Office within the relevant Australian jurisdiction that is open and accessible to the public;
- Maintaining a Register of Members, and Committee Members and other Office Holders;
- Maintaining a Register of Conflicts of Interest;
- Adoption of a Constitution or Model Rules, and access by members to the Constitution or Model Rules;
- Assessment of requirements for Public Liability Insurance;
- Lodgment of an Annual Statement with the relevant regulatory body, together with copies of requested information. For example, Annual Audited Financial Statements, Auditor's Report, and a statement by the Committee of Management on the financial statements etc;
- Appointment of an Auditor;

¹⁶ If the Financial Statements and notes prepared in compliance with the Accounting Standards would not give a true and fair view, additional information must be disclosed in the notes to the Financial Statements.

¹⁷ In relation to an association the term 'Secretary' is usually distinct to the position of Public Officer. Committee Members should refer to the relevant Associations Incorporation Act to understand the respective roles of the 'Secretary' and the 'Public Officer'.

- Provision of a copy of the Financial Statements and Reports to members, unless a member has waived that right; and
- Lodgment of notices of changes to officeholders, the Constitution or Rules etc with the relevant State or Territory regulatory body.

3.3 Other Legal Requirements

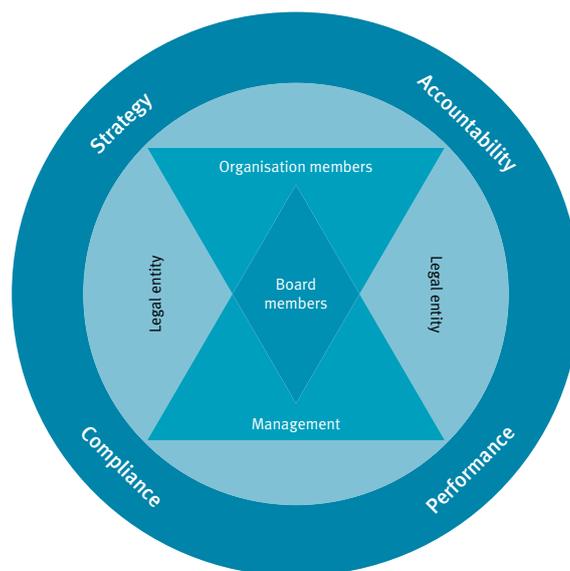
Company Director and Committee Member responsibilities, governance and non-governance related, extend beyond those articulated in the *Corporations Act 2001* and State and Territory Associations Incorporation Acts. For example, consider employment and workplace safety legislation, and contracts such as funding agreements (which typically require, for example, provision of Audited Financial Statements – also see Section 4.3.1 in this Handbook). Company Directors and Committee Members and other Officers must ensure mechanisms are in place within their organisation to understand and monitor compliance with all legal requirements.

4 Features of Good Corporate Governance

Corporate governance comprises a set of relationships between an organisation’s management, its Board comprising of Company Directors or Committee Members, its members and other stakeholders, and a structure with policies and processes through which the objectives of an organisation are established, attained and monitored.

Good corporate governance should be an all-pervading attribute within an organisation – a key enabler to aid in defensible decision making concerning the affairs of the organisation. Therefore effective implementation and maintenance of good governance facilitates continuous improvement in relation to Strategy, Performance, Compliance and Accountability, as depicted in Diagram 2 below.

Diagram 2: Conceptual Representation of the Four Categories of Good Governance Features¹⁸



¹⁸ The Conceptual Representation of the Four Categories of Good Governance Features was designed by WalterTurnbull for use in this Handbook.

The four core categories of good governance features – Strategy, Performance, Compliance and Accountability – is characterised by ongoing monitoring and evaluation and should be central to the corporate governance framework of an organisation and integrated into key governance related organisational documentation which may include, for instance:

- Strategic and business plans;
- Risk Management plans;
- Marketing and business development plans;
- Stakeholder management plans;
- Board governance manual or charter and Code of Conduct;
- Operational policy and procedure manuals, and an organisational Code of Conduct; and
- Quality Assurance manuals.

A brief overview of the key features of good governance is provided in the following Sub-Sections of the Handbook. In addition Section 5.1 of this Handbook contains a suggested better practice corporate governance checklist to assist Board Members in assessing the governance framework of their organisation.

4.1 Strategy

4.1.1 Strategy Setting and Business Planning

The implementation of clear strategy setting, planning and monitoring and adaptation to the changing business environment is a critical element of good governance. For most disability service providers, it is appropriate to combine the strategic, and vocational, advocacy and related support planning, with the business planning process. The important issue is to ensure that the overall strategy setting and planning of the organisation is clearly documented and communicated.

Some points for good planning include the following:

- The Board should establish the goals for the organisation, in conjunction with management, to provide the framework for planning;
- The plan should be ‘owned’ by the organisation;
- Active involvement of Board Members and management is critical;
- Consultation with major stakeholders including funding bodies, employees, parents, clients and key community contacts; and
- Use of a specialist facilitator to assist can have great benefits, but care must be taken that the role is kept to facilitation and that the plan does not become ‘owned’ by the facilitator.

An overview of a suggested planning process is provided in Section 5.4 of this Handbook.

The importance of good planning is that it helps the organisation clearly set the objectives, strategies, and actions, timeframes and performance indicators, for a period and provides a means to monitor performance of the organisation. The plans should be regularly reviewed and updated to allow for timely and practical adaptation of strategies in response to changing circumstances including new and emerging risks and opportunities occurring in the external operating environment.

4.1.2 Risk Management

Proactive and ongoing assessment and management of strategic and operational risks is essential to avoid or minimise the consequences of undesirable events, and take advantage of new opportunities.

Risk management is a concept that continues to gain significant publicity and is very important in the ongoing management of organisations. The Board should consider whether it has a clear Risk Management framework that covers the operations of the organisation.

Risk can be defined as the ‘...effect of uncertainty on objectives’¹⁹. That effect can be positive or negative. Risks present both internally and externally to an organisation, and from a wide range of sources, including, for example, governance, service delivery, financial management and occupational health and safety.

Effective risk management can be achieved through the implementation of relevant principles, a sound framework and a robust process for managing risks. An overview of better practice features of risk management is provided at Section 5.5 of this Handbook. In addition organisations should refer to *ISO 31000, Risk Management — Principles and Guidelines, First edition, 2009*²⁰.

The Board has a responsibility to ensure that other Officers, management and staff of the organisation have in place an appropriate risk management framework to treat risks that have been identified, and to pursue new opportunities. Equally, when Board Members are deliberating Board matters thorough consideration of risks relating to each matter should be integral to discussions, the articulation of Board decisions and documentation in the Board Minutes of the underlying rationale for those decisions.

There needs to be an ongoing process to identify risk, assess its likelihood and consequences and put in place treatment actions, together with regular monitoring and reporting on risks. There should be a reporting process to the Board by management on the emergence of new risks and the treatment of those risks, with regular integration of risk intelligence into the strategic and business planning cycle of an organisation.

If your organisation has never undertaken a formal risk assessment and prepared a Risk Management Plan relating to its operations or key aspects of its operations it would be advisable to do so.

4.1.3 Financial Planning and Budgeting

Financial viability is essential if an organisation is to meet its ongoing financial obligations, facilitate continuance of its activities and pursue its objectives. Preparation of financial planning and budgeting is essential to underpin strategic and annual business planning to ensure financial resources will be sufficient to achieve desired organisational outcomes. Consequently monitoring of achievement against financial targets can then be performed and this is discussed further in Sub-Section 4.4.1 of this Handbook.

The Board and management should ensure the preparation of operational budgets, capital management planning and capital budgets, and regular monitoring and review of financial performance. Three or sometimes up to five years is a reasonable planning timeframe, with regular revision to reflect the current operating environment, and to align to updates in strategic and business plans.

Board Members and other Officers need to ensure that they have at least a reasonable understanding of financial related matters (including Financial Statements and Financial Management) to ensure that relevant governance obligations can be fulfilled. Section 7 of this Handbook provides information on a range of resources to support professional development of Board Members and other Officers, including for example the Institute of Chartered Accountants, CPA Australia, Australian Institute of Company Directors and Government supported Business Advisory Services.

¹⁹ *ISO 31000, Risk Management — Principles and Guidelines, First edition, 2009*, p.1.
²⁰ Supersedes *AS/NZS 4360:2004 Risk Management*.

4.1.4 Stakeholder Management

Consultation with key stakeholders is an essential feature of good governance within a successful disability services organisation. It enables the stakeholders to understand the organisation's objectives and strategies and helps them to work with an organisation in achieving those objectives.

Consultation should help create an environment of mutual respect and trust if it is to be effective. By working with the stakeholders as far as practicable, it will maximise the benefits of the relationship.

Your organisation will typically be reliant on support from a range of stakeholders, which might include:

- Funding agencies, both Commonwealth and State organisations, and Government and private sector based;
- Local Government;
- The community within which an organisation operates;
- Businesses with whom an organisation deals with, for example, customers, suppliers, and businesses where clients are placed;
- People with disability who are serviced by the organisation as employees or as advocacy clients, and their families;
- Other staff members; and
- Members of the organisation.

The Board and management should develop and implement a policy on how the organisation will consult with stakeholders. This policy should:

- Include a communications strategy;
- Identify who should consult on behalf of the organisation with each stakeholder;
- Establish what Board involvement in such consultation should occur with each stakeholder;
- Identify events that should be communicated to stakeholders; and
- Establish the frequency and format of ongoing consultation and communication.

4.1.5 Strategic Human Resource Planning

Without appropriate human resource capability and capacity an organisation may struggle to achieve its objectives. Effective recruitment and retention of suitably skilled and qualified personnel is paramount and needs to be supported by strategic human resource planning for the Board, other Officers, management and other employees.

Human resource planning needs to consider a number of challenges. For example, complex employment and work safety law, competition for attracting good people to a Not-For-Profit organisation, the provision of appropriate professional development, performance management and succession planning.

At some point in the future a successor will be required to continue the management of the organisation. If possible the Chief Executive Officer or equivalent should be responsible for grooming other senior staff as potential successors. However, if an organisation does not have access to these internal human resources the Board should be aware of this risk and review it and act accordingly.

The selection of a Chief Executive Officer or equivalent, whether internally or externally, should be based on specific selection criteria to ensure that, when required, a successor is appointed based upon their qualifications, experience and suitability for the role. The Board should develop the selection criteria with the current Chief Executive Officer or equivalent, if possible.

4.2 Performance

4.2.1 Leadership and Ethics

The tone set by the Board as a whole, each Board Member and other Officers, has a major influence on the integrity, ethics and values of an organisation. Continual espousal of ethical principles by such high profile people demonstrates to staff, clients and other stakeholders that the organisation values these attributes.

It is important when setting an ethical standard for an organisation, that a Code of Conduct be established, covering the Board Members, other Officers, management and other employees. The Code of Conduct should be developed in consultation with the Board, other Officers, management and staff and cover such matters as:

- ▶ The principles underpinning the responsibilities and duties of Board Members, other Officers, management and other employees; and
- ▶ Guidance for interpreting the principles.

An example of a Board Code of Conduct is provided in Section 5.2 of this Handbook.

4.2.2 Organisational Performance – Financial and Operational

It is important to establish performance goals – financial and operational²¹ – for an organisation and key individuals together with a system to monitor and report on achievement against those goals. Regular monitoring of performance against strategic and business plans, budgets and other performance indicators (including service delivery and quality assurance standards) is essential to enable the Board and management of an organisation to respond and take appropriate actions in pursuit of organisational objectives and desired outcomes.

4.2.3 Individual Performance Management

Following on from Section 4.2.2 of this Handbook Board Members, other Officers and employees need to clearly understand their respective roles and responsibilities under relevant legislation and Regulations, Common Law and Contract Law (both governance and non-governance related), the organisation's Constitution or Rules, and other policy and procedure requirements.

An organisation should develop and document policy, and where appropriate job descriptions, describing the roles and responsibilities of the Board, individual Board Members, other Officers and management and staff. The policy should be clearly communicated and understood by the Board, other Officers and management and staff. Accordingly, the expectation of their contribution may then be determined, against which assessments can be undertaken to assess if it is being achieved.

Establishment of a performance management framework and regular assessment and continuous improvement of the Board as a whole, each individual Board Member, other Officers such as the Chief Executive Officer or equivalent, other management and staff members is essential. Given that Board Members of Not-For-Profit organisations are largely volunteers, the nature of the performance measures and reporting should not be overly oppressive and onerous. Nonetheless the assessment must be robust and defensible.

4.2.4 Skills, Independence and Resources

Board Members should ensure that there is a focus by the Board, especially the Chairperson or President, on identifying the right mix of skills and experience required on the Board and that the necessary efforts are made to continually evaluate the Board and individual Board Member contributions and, if necessary, replenish the Board with Company Directors or Committee Members with the desired competencies.

²¹ Operational performance goals or indicators are often referred to as non-financial performance goals or indicators.

The Board should have the right mix of skills to manage the affairs of the organisation. These skills should cover key functional areas such as finance, fund raising, marketing, production or service management, legal, and disability vocational and advocacy support.

As an individual Board Member it is difficult to have the expertise across all of the above areas. However, each Board Member, at a minimum, should have experience and skills in at least one of these areas, and take responsibility for developing a reasonable understanding of other areas to ensure that governance obligations can be fulfilled. Section 7 of this Handbook provides information on a range of resources to support professional development of Board Members and other Officers.

Achieving the desired mix of skills and experience on a Board can be a major challenge for organisations located in remote or rural areas where the demand on people with such skills is high and the availability can be low. Accordingly, a Board may consider accessing professional people to provide advice to contribute to informed deliberation by the Board on certain matters. Indeed a Board needs to have access to adequate and appropriate resources to ensure that it can fulfill its roles and responsibilities effectively. These resources may be internal or external to the organisation.

In relation to the mix of people on the Board there should be inclusion of people who are independent of the organisation. These people should not be members (unless required by the organisation's Constitution or Rules) and should not have a direct interest in the affairs of the organisation. The reason for the inclusion of independent Board Members is to provide a balanced objective representation on Board matters, and in the best interests of the organisation. Some independent Board representation should assist in ensuring that the Board does not make decisions purely on an emotive basis. The organisation should balance the number of Board Members between those who meet the criteria of independence and those who have a keen interest in and possess a vocational and advocacy support skills background.

The appropriate mix of skills and independence may be set down in governance legislation and/or within the Constitution or Rules and/or the Board Charter or equivalent of an organisation. In the absence of direction or clarity within these corporate governance documents it is desirable to align the mix on the Board to the overall objectives of the organisation.

When Board vacancies arise a Board may wish to advertise for members. One option is to advertise on the Volunteers Australia Website. This option provides an opportunity to advertise for a range of volunteering positions and organisations are able to specify full details of the position, including relevant skills required, likely hours of involvement, etc. Another option is to advertise on the Australian Institute of Company Directors Website. The addresses for both of the abovementioned Websites are provided in Section 7 of this Handbook.

There should be an induction process for new members to the Board to ensure they are aware of their role and responsibilities, and to understand the objectives and operations of the organisation. Regular professional development should also be undertaken to assist Board Members to keep up to date with the evolving requirements under governance and non-governance related Statute, Common Law and Contract Law, and with changes in the sector in which the organisation operates.

4.3 Compliance

4.3.1 Legislation and Contractual Obligations

Board Members must ensure the implementation of a clear and unambiguous legislative, regulatory and contractual framework in relation to roles, responsibilities and accountabilities and that decision making focuses on financial viability and also sustainability in the long term.

An organisation needs to establish a process to ensure vigilant monitoring of compliance with governance and non-governance related legal responsibilities including fulfillment of contractual obligations. This process will help the organisation to respond in a timely and appropriate manner to continue to comply with existing legal requirements and emerging requirements.

Given the significant reliance by various Not-For-Profit organisations on Government funding it is also important to ensure that arrangements are in place for management to report to the Board on progress with meeting funding conditions and achieving grant outcomes.

In relation to the key funding agreements for disability programs utilised by the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), there are a number of obligations placed on grant recipient service providers. These obligations include, amongst others:

- Use all proper care;
- Carrying out the funding activity in accordance with the funding agreement;
- Keeping FaHCSIA informed of certain information as requested from time to time;
- Complying with all relevant Statutes, Regulations, and requirements of any Commonwealth, State, Territory, or local authority;
- Complying with any policies notified by FaHCSIA;
- Prevention of fraud against FaHCSIA;
- Keeping of certain records including financial transactions;
- Provision of Audited Reports for the acquittal of grant funds;
- Complying with any Codes of Ethics, Regulations or other industry standards relevant to the funded activity; and
- Notification of potential or real conflicts of interest that may impact on the funded activity.

4.3.2 Organisation Policies and Procedures including Delegations

The Board should ensure that appropriate operating policies and procedures are implemented for the organisation. Policies and procedures need to cover such matters as:

- Complaint handling;
- Delegation of authority;
- Environmental and social obligations;
- Ethical behaviour;
- Financial delegations;
- Financial management, including financial transactions and reporting;
- Tendering, contracts and procurement;
- Fraud control;
- Governance arrangements (an outline of an operational and procedures governance manual or charter is provided in Section 5.3 of this Handbook);
- Human resource management;
- Information Technology management;
- Media and public relations;
- Occupational Health and Safety;
- Risk Management; and
- Stakeholder management and relations.

4.4 Accountability

4.4.1 Financial and Operational Management and Reporting

The Board, other Officers and management must ensure implementation of fundamental business processes to provide access by the Board, other Officers, management and staff to timely, relevant and reliable financial and operational (non-financial) information.

Sound financial management embraces various disciplines including financial reporting, budgeting and asset management, and oversight of financial performance, and needs to be underpinned by robust systems and controls. Similarly operational monitoring needs to embrace equivalent business processes.

Timely financial and operational reporting is important in ensuring that the Board, other Officers and management are able to assess the performance of an organisation and to assist in decision making. Reports should incorporate not just actual achievements, but projected or budgeted targets that were aimed to have been achieved and other performance indicators including strategic and business planning actions.

Reporting needs to be comprehensive enough to ensure that Board Members are well informed, but not too complex as to confuse the key issues being reported. Use of summaries with key issues, risks and recommendations highlighted, and graphic representation can greatly assist in communication.

The Board needs to establish an agreed format for reporting to ensure that all matters that should be reported are in fact reported. There should not be different types of reports for different members of the Board based on their own personal requests of management as this leads to confusion and inefficiencies.

Consistent with better practice, the preparation of the above information should be done at least on a monthly and annual basis. Reports need to be made available to allow sufficient time to enable Board Members to properly consider them before Board Meetings. Management should also be available to present their reports at the Board Meetings.

4.4.2 Roles and Responsibilities

Board Members, other Officers, management, other employees, and members of an organisation must familiarise themselves with their roles and responsibilities as set down in governance and non-governance law and the organisation's Constitution or Rules, including accountability requirements.

Board Members with additional responsibilities, such as the Chairperson or President, need to ensure that they understand their additional duties. Very importantly a Chairperson or President provides leadership to the Board and the Chief Executive Officer or equivalent. For example, this role:

- Ensures that Board Members understand their responsibilities;
- Sets the Board Meeting Agenda and Board Calendar;
- Presides over meetings including equitable participation by Board Members;
- Promotes rigorous debate of issues and ensures clarity of decisions and resolutions (key questions for consideration by a Board Member in tackling each Board Agenda Item is provided in Section 5.6 of this Handbook);
- Should have a good working relationship with the Chief Executive Officer or equivalent including provision of mentoring; and
- Should facilitate regular performance assessment of the Board and individual Board Members.

Similarly Board Members and other appointed persons may sit on Board Sub-Committees, such as an Audit and/or Risk Committee. Each Sub-Committee must have an approved documented charter which defines its objectives and responsibilities and reporting requirements.

For larger organisations, an Audit and/or Risk Committee can be useful for considering audit and risk related issues in more depth than would normally be undertaken by the Board. However, the Audit and/or Risk Committee should not act as a barrier between the Auditor and the Board or presume to overtake the functions of the Board.

Typically the role of an Audit and/or Risk Committee is to assist the Board in fulfilling its oversight responsibilities for, the system of internal control and risk management within the organisation, the financial reporting and related audit process, and monitoring compliance with laws, regulations, contracts etc.

5 Useful Guides and Checklists

5.1 Suggested Better Practice Corporate Governance Checklist

The following suggested Checklist for better practice corporate governance has been prepared to allow an organisation to review its current corporate governance principles and practices with an aim to identifying those areas that may require action. The Checklist does not attempt to be all inclusive and should be tailored to suit the needs of each organisation.

Better Practice Characteristic	Assessment	
	Criteria Met Y/N	Actions Required to Meet Criteria
Strategy and Planning		
Do the Board and management understand the importance of achieving both business profits and social outcomes for clients?		
Does the organisation have a Strategic Plan and is it supported by a Risk Management Plan?		
Is there appropriate involvement of the Board, senior management and staff in the development of the Strategic Plan?		
Are clearly definable performance measures (operational and financial) and accountabilities incorporated into the Strategic Plan?		
Does the organisation have systems and processes in place to monitor performance against the Strategic Plan?		
Does the organisation review the Strategic Plan on a regular basis?		
Are there appropriate links between the Strategic Plan and planning at the Board, senior management and individual levels?		
Does the organisation develop an annual Business Plan which is linked to the Strategic Plan and outlines what it will be undertaking in the year ahead and which is endorsed and monitored by the Board?		
Operations of the Board and Senior Management		
Does the Board and each Board Member understand that, individually and collectively, that they are responsible for governing the organisation?		
Does each Board Member know the legal governance framework under which its organisation operates?		

Better Practice Characteristic	Assessment	
	Criteria Met Y/N	Actions Required to Meet Criteria
Does each Board Member have access to an up to date copy of the legislation under which the organisation is registered?		
Does each Board Member have an up to date version of the organisation's Constitution or Rules?		
Are the roles, responsibilities and powers of the Board, Board Members and the Chairperson or President defined in a Board Charter?		
Is there a clear identification of the powers, roles, responsibilities and accountabilities between the Board and the Chief Executive Officer or equivalent?		
Are responsibilities clearly communicated to the Board, the Chief Executive Officer or equivalent and the organisation as a whole?		
Does the Board have collectively, a mix of appropriate skills, knowledge and experience?		
Are appointments made to the Board with regard to the skill requirements of the Board?		
Have steps been taken to provide the Board, management and relevant staff with training and documentation as to their role and the roles and responsibilities of the Board?		
Are there adequate induction processes in place for new Board Members?		
Are there arrangements to support ongoing professional development for Board Members?		
Is there a sound system of procedures and financial delegations in place approved by the Board?		
Does the Chairperson or President facilitate the Board working as a team?		
Are members of the Board able to challenge the organisation and other Board Members constructively?		
Does the operation of the Board promote efficiency as well as control so that the Board is not involved in low level detail unless specifically required?		
Does the Board spend most of its time on strategic issues facing the organisation?		
Does the Board have a clear process for discussion and decision making, with the Chairperson or President encouraging views and insights from all members?		
Does the Board consult with key and/or relevant stakeholders about issues before making decisions which might affect them?		
Does the Chairperson or President ensure that the Board follows clear procedures in discussing and reaching decisions which ensures that the full implications in relation to a matter are identified and considered by the Board?		
Does the Board have adequate processes for dealing with decision deadlocks such that decisions are reached through discussion rather than vote-taking, where possible, and dissenting views are fully explored and that there is a focus on achieving the best outcome?		
Does the Board monitor the implementation of its decisions on a regular basis?		
Is there full and transparent explanation for decisions that are made by the Board which are clearly recorded in Board Minutes?		
Are there processes in place governing policy development, implementation and review, and which ensures that the Board approves new policies?		
Does the Board have an Annual Agenda or Board Calendar which balances the need to focus on future development with monitoring current performance and conformance?		

Better Practice Characteristic	Assessment	
	Criteria Met Y/N	Actions Required to Meet Criteria
Is the Annual General Meeting (AGM) on the Board Calendar?		
Are Board papers and Minutes circulated in sufficient time for Board Members to consider and review them before Board Meetings?		
Does the Board meet regularly?		
Do all Board Members attend and participate in the majority of Board Meetings?		
Do Board Members demonstrate an interest in the business of the organisation outside Board Meetings to facilitate their knowledge and understanding of the business affairs of the organisation?		
Does the Board assess its performance against agreed criteria at least once a year?		
Where the Board has identified areas for improving its operations, does it develop and monitor an action plan for their implementation?		
Does the Chairperson or President provide mentoring and support to the Chief Executive Officer or equivalent?		
Does the Chief Executive Officer or equivalent and other key managers attend Board Meetings to inform Board decision making and share information freely with the Board?		
Where the Chief Executive Officer or equivalent is an Executive Director, is time allowed on the agenda of Board Meetings for discussion which excludes the Chief Executive Officer or equivalent?		
Does the organisation have an Executive Management Group or equivalent, comprising its senior managers, which meets on a regular basis?		
Has the Chief Executive Officer or equivalent, or the Board established appropriate internal management committees or equivalent to develop strategies and policies in relation to such things as financial management and reporting, human resource management etc?		
Do established Board Sub-Committees and internal management committees or equivalent have documented terms of reference which clearly define their roles, responsibilities and accountabilities?		
Has the Board established an Audit and/or Risk Board Sub-Committee?		
Do the Chief Executive Officer or equivalent and/or the Board monitor and review the performance and value of Board Sub-Committees and internal management committees or equivalent?		
Does the organisation have regular staff meetings to ensure that employees are aware of current issues facing the organisation and to encourage feedback to management?		
Statutory and Contractual Compliance		
Is the Board aware of the relevant statutory reporting requirements and does it have processes in place to monitor compliance?		
Is the Board aware of its legislative compliance obligations and does it have processes in place to monitor compliance?		
Has the Board approved an appropriate contract management framework for the organisation which has been developed with appropriate legal advice?		
Is the Board aware of its contractual compliance obligations and are processes in place to monitor compliance?		

Better Practice Characteristic	Assessment	
	Criteria Met Y/N	Actions Required to Meet Criteria
Organisation Policies and Procedures		
Has the Board agreed the operating policies and procedures for the organisation, covering such matters as: Complaint handling; Delegation of authority; Environmental and social obligations; Ethical behaviour; Financial delegations; Financial management, including financial transactions and reporting; Tendering, contracts and procurement; Fraud control; Governance arrangements; Human resource management; Information Technology management; Media and public relations; Occupational Health and Safety; Risk Management; and Stakeholder management and relations?		
Ethical Environment		
Is there a Code of Conduct outlining standards of personal behaviour and the requirements for ethical conduct on the part of all Board Members, other Officers, management and staff and which outlines the processes for dealing with these issues?		
Are mechanisms in place to gain assurance that decision making processes are not subject to prejudice or bias?		
Is there a mechanism that requires Board Members, other Officers, management and staff to declare any conflict of interest in all decision making processes?		
Does the organisation maintain a Register of Conflicts of Interest?		
Risk Management		
Does the organisation have risk management policies and procedures and a framework to ensure risk is considered at all levels of the organisation – strategic, operational, project and single issue levels?		
Does the organisation have a Risk Management Plan linked to its Strategic and Business Plans?		
Does the Board regularly assess whether the risk management strategies are working effectively?		
Is the Risk Management Plan reviewed regularly to ensure new and emerging risks and opportunities are identified and risk management strategies are put into place?		
Are there Disaster Recovery and Business Continuity Plans in place?		
Does the organisation have in place the required levels of insurance including Public Liability and Directors' and Officers' Liability Insurance?		

Better Practice Characteristic	Assessment	
	Criteria Met Y/N	Actions Required to Meet Criteria
Does the organisation have appropriate plans in place to protect the physical security of its people, information and assets?		
Program Reporting and Monitoring Framework		
Has the Board established appropriate mechanisms and processes for ensuring that the organisation can meet obligations under funded programs including the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs on aspects such as financial and performance reporting?		
Are there arrangements in place for management to report to the Board on progress with meeting funding conditions and achieving grant outcomes for all funding agreements?		
Financial Management and Reporting		
Has the Chief Executive Officer or equivalent, or the Board established appropriate mechanisms and processes for budget development and financial planning for the organisation?		
Does budgeting documentation include operational and capital budgets for the medium to long term, and do these budgets link to the Strategic and Business Plans?		
Are there appropriate performance measures, financial and operational (non-financial), which enable the efficiency, effectiveness and economy of the organisation to be assessed?		
Does the Board receive timely financial reports on a regular basis?		
Do the financial reports presented to the Board communicate relevant financial data and information efficiently and effectively?		
Are the financial reports accrual based?		
Do financial reports show, at a minimum, a comparison between year to date, budget, last year to date, and full year data and provide information on the cash position of the organisation?		
Are financial reports supported by explanations of significant variances between budget targets and actual results?		
Are financial reports supported with appropriate financial and operational analysis – ratios, service delivery benchmarks and other performance indicators?		
Are accounting policies, procedures and systems in place to ensure that accounting records and derived financial statements present a true and fair view of the financial position and performance of the organisation?		
Are financial reports derived directly from the underlying accounting systems and is there a quality assurance process over the compilation of the reports?		
Do adequate accounting systems and records support financial reports?		
Are financial reports provided to the Board in sufficient time to enable review before meetings?		
Is each member of the Board made aware of their financial responsibilities as a Company Director or Committee Member?		
Do members of the management team provide the Board with an appropriate briefing with the tabling of financial reports?		
Do the Board and management teams each include a person with appropriate financial management qualifications, expertise and experience?		
Does the Chief Financial Officer or equivalent have a direct reporting line to the Chief Executive Officer or equivalent?		

Better Practice Characteristic	Assessment	
	Criteria Met Y/N	Actions Required to Meet Criteria
Are the roles and responsibilities of the Chief Financial Officer or equivalent, relative to other managers, clearly defined to avoid overlap of accountabilities and responsibilities?		
Is the Chief Executive Officer or equivalent responsible for the strategic and operational aspects of financial planning, management, record-keeping and financial reporting?		
Are there appropriate controls in place to effectively manage payments made by the organisation?		
Has the Board appointed an independent, appropriately qualified external Auditor?		
Have arrangements been made for the conduct of the audit of the Annual Financial Statements?		
Human Resource Management		
Does the Board receive timely reports on human resource management issues on a monthly basis covering such matters as: Recruitment; Departures; Training and development; Occupational Health and Safety; Equal Employment Opportunity; Staff complaints and harassment; and Succession planning?		
Is there an appropriate performance management system in place for the Board, Board Members, other Officers, management and other employees that is aligned to the organisation's Strategic Plan and includes a formal review of the performance of the Chief Executive Officer or equivalent by the Board?		
Is there appropriate succession planning in place for the Board, Chief Executive Officer or equivalent, management and other employees?		
Does the organisation have appropriate policies in place relating to the recruitment, retention and disengagement of staff?		
Are there adequate induction processes in place for new management and staff members?		
Does the organisation have a strategy for ensuring that its employees have and maintain the necessary skills to achieve its key business objectives and meet its responsibilities for program delivery?		
Information Technology and Systems Management		
Does the organisation have an appropriate Information Technology infrastructure to enable it to support its business needs and deliver key program outcomes?		
Does the organisation have in place appropriate policies, strategies and mechanisms for ensuring that its Information Technology facilities and systems are secure?		
Information and Knowledge Management		
Does the organisation have in place appropriate policies and procedures for the keeping, accessing and disposal of records and their security?		

Better Practice Characteristic	Assessment	
	Criteria Met Y/N	Actions Required to Meet Criteria
Does the organisation make available key information about its operations through a Website and other appropriate mechanisms – for example, Strategic and Business Plans, Annual Reports, policies and other relevant information?		
Asset Management		
Does the organisation have an Asset Management Plan?		
Stakeholder Management		
Has the organisation identified its stakeholders (for example, parents, clients, funding bodies and community organisations), their needs and the associated business risks?		
Has the organisation established clear channels of communication with its clients and other stakeholders?		
Has the organisation implemented appropriate mechanisms and processes to ensure that stakeholders are consulted and engaged in the development and implementation of policies and programs, as appropriate?		
Fraud Control		
Does the organisation include fraud risks as part of its Risk Management Plan?		
Does the organisation have in place appropriate fraud prevention, detection, investigation, reporting and data collection procedures?		
Project Management		
Does the organisation have an agreed project management framework in place?		
Are all relevant projects being undertaken in accordance with the mandated project management framework?		
Do the Board and management monitor project planning and implementation on a regular basis?		
Does the organisation provide project management training and support to its staff?		

5.2 Sample Code of Conduct for a Board

The following sample Code of Conduct may be a useful base to tailor for an organisation, and is adapted from the Code of Conduct for members of the Australian Institute of Company Directors²². Other useful sources include, for example, *AS 8000:2003 Corporate Governance Standards* and the *ASX Corporate Governance Principles and Recommendations, 2nd edition 2007*. To access the Websites for these three documents refer to Section 7 of this Handbook.

Code of Conduct

1. A Board Member must act honestly, in good faith and in the best interests of the organisation as a whole.
2. A Board Member has a duty to use due care and diligence in fulfilling the functions of their office and exercising powers attached to that office.
3. A Board Member must use the powers of their office for a proper purpose, in the best interests of the organisation as a whole.
4. A Board Member must recognise that the primary responsibility is to the organisation as a whole but should, where appropriate, have regard to the interests of all stakeholders in the organisation.
5. A Board Member must not make improper use of information acquired as a Board member.

²² As approved by the Board of the Australian Institute of Company Directors, September 2005.

6. A Board Member must not take advantage of being in the position of a Board member.
7. A Board Member must not allow personal interests, or the interest of any associated person, to conflict with the interest of the organisation.
8. A Board Member has an obligation to be independent in judgment and actions and to take all reasonable steps to be satisfied as to the soundness of all decisions taken by the Board.
9. Confidential information received as a Board Member in the course of exercising those duties remains the property of the organisation from which it was obtained and it is improper to disclose it, or allow it to be disclosed, unless that disclosure has been authorised by that organisation, or the person from whom the information is provided, or is required by law.
10. A Board Member should not engage in conduct likely to bring discredit to the organisation.
11. A Board Member has an obligation, at all times, to comply with the spirit, as well as the letter, of the law.

5.3 Outline of an Operational Policies and Procedures Governance Manual or Charter

Appropriate governance related documentation should include an Operational Policies and Procedures Governance Manual or Charter. This manual or charter needs to align with relevant governance legislation and an organisation's Constitution or Rules. The contents of the manual or charter should be reviewed and updated regularly to reflect changes in the organisation and the Board. The manual or charter should cover, at a minimum, the following items:

1. Governance Policy

- Define the role and functions of the Board and Board Members.
- Define the role and functions of Board positions with additional responsibilities, such as the Chairperson.
- Code of Conduct.

2. Board Structure

- Specifications for the role of each Board Member.
- Board composition, addressing such aspects as relevant areas of skills and experience and independence.
- Selection criteria for Board Members.
- Charters for Board Sub-Committees, for example the Audit and/or Risk Committee.

3. Board Meetings

- The Board Calendar.
- For each Board Meeting Agenda the format and for each agenda item the responsible Board Member and allocated timing for presentation and Board debate.
- Reporting and delegation protocols.
- Reporting process for Board Sub-Committees.
- Board issues including deadlocks.
- Conflict of interest, and Register of Conflicts of Interest.

4. Board Performance and Development

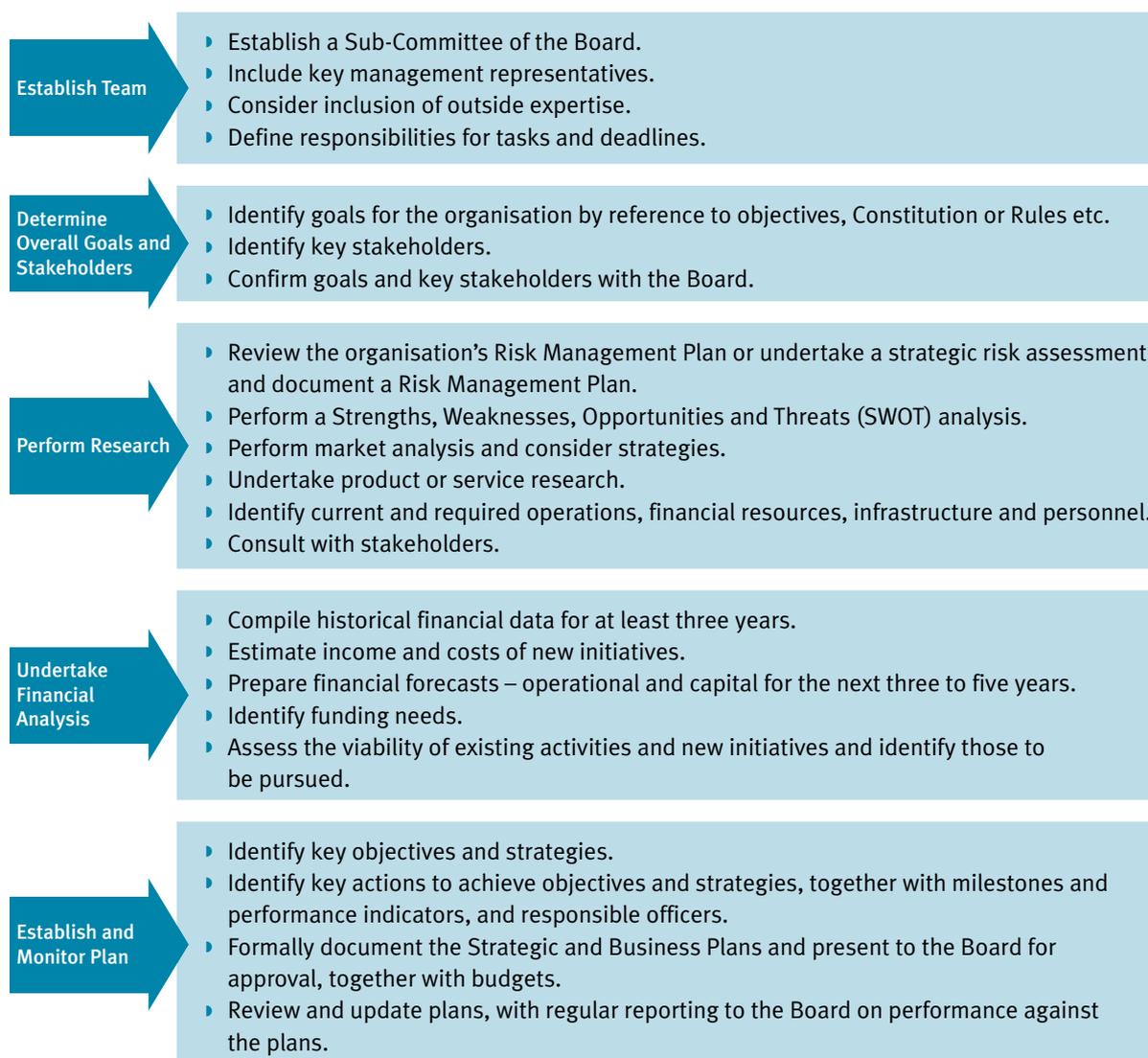
- Board induction processes.
- Ongoing professional development.
- Board (as a whole) evaluation processes.
- Individual Board Member evaluation processes.

5.4 Strategic and Business Planning Processes

The strategic and business planning cycle is a perpetual process with regular integration of up to date risk intelligence. Accordingly, the preparation of Strategic and Business Plans needs to be supported by a Risk Management Plan, thereby achieving credible planning complete with objectives, strategies, actions, milestones and performance indicators.

Consultation is a critical feature of the strategic and business planning process to ensure robust consideration of issues and ownership by the Board, other Officers, management, other employees and relevant stakeholders. Diagram 3 below provides an overview of a suggested strategic and business planning process.

Diagram 3: Overview of a Suggested Business Planning Process²³



5.5 Risk Management

Effective risk management for an organisation can be achieved through the implementation of relevant principles, a sound framework and a robust process for managing risks. An overview of better practice features of risk management is provided below and is broadly based on *ISO 31000, Risk Management – Principles and Guidelines, First edition, 2009*²⁴. Section 7 of this Handbook outlines where to obtain a copy of the Risk Management Standard.

Risk management should incorporate the establishment of documented risk principles, a formalised framework to facilitate integration of risk management into the fabric of an organisation and everyday decision making by the Board, Chief Executive Officer or equivalent, other management and staff, and a process for the assessment and treatment of risks.

In relation to the process for the assessment and treatment of risks it is designed to be used at any level of an organisation – strategic, operational, project and single issue levels. Diagram 4 below shows the key steps for assessing risks.

²³ The Overview of a Suggested Business Planning Process was designed by WalterTurnbull for use in this Handbook.

²⁴ Supersedes AS/NZS 4360:2004 Risk Management.

Diagram 4: Key Steps for the Assessment of Risks²⁵



5.6 Key Questions to Consider in Tackling each Board Agenda Item

As a backdrop to this Section consider the following:

‘What does the law expect of you personally?’

As a director, you must:

- *be honest and careful in your dealings at all times know what your company is doing*
- *take extra care if your company is operating a business because you may be handling other people’s money*
- *make sure that your company can pay its debts on time*
- *see that your company keeps proper financial records*
- *act in the company’s best interests..., and*
- *use any information you get through your position properly and in the best interests of the company...*

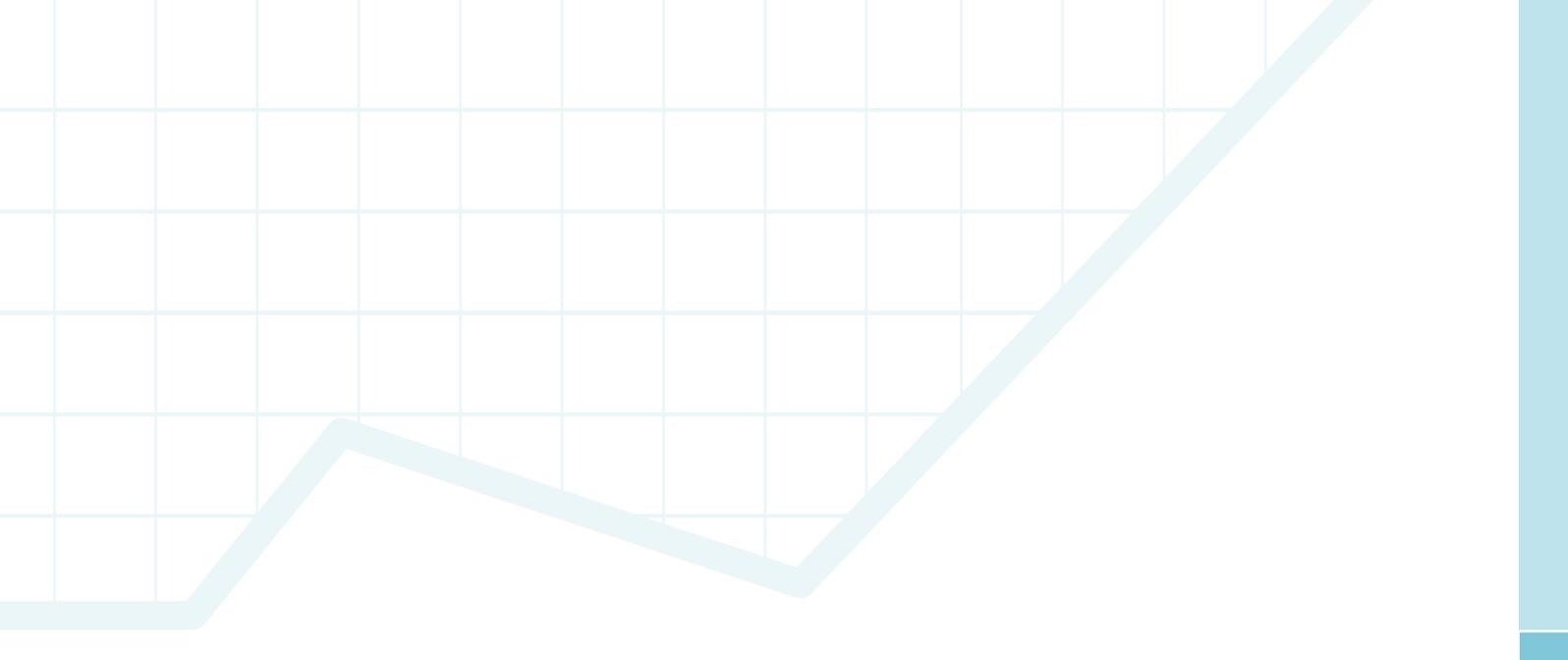
If you have personal interests that might conflict with your duty as a director, you must generally disclose these at a directors’ meeting.’²⁶

²⁵ The Keys Steps for the Assessment of Risks were adapted by WalterTurnbull from *ISO 31000, Risk Management — Principles and Guidelines, First edition, 2009* for use in this Handbook.

²⁶ Website disclosure under ‘Officeholder Duties’, Australian Securities and Investments Commission, printed 28 April 2010.

Consequently, it is prudent for a Board Member to challenge their thinking when dealing with each Board agenda matter. Set out below are some suggested core questions to consider in reaching a feeling of satisfaction on the participation in a Board agenda item.

- ▶ Do I need to disclose any potential or real conflicts of interest?
- ▶ Is the information presented credible, relevant and sufficient to understand and form an opinion on the matter?
- ▶ Do I need access to expert advice to aid me in my deliberation of the matter?
- ▶ What are the key risks associated with the matter, and how are the risks proposed to be managed?
- ▶ What is the likely reaction, if the matter were to become known to the public, and is the organisation prepared to respond to any public reaction?
- ▶ Am I comfortable that the Board deliberations and decision is in the best interests of the organisation?



6 Glossary of Key Terms

This glossary contains key terms considered relevant to aiding Company Directors and Committee Members, other Officers, management and other employees in understanding some of the common terminology that arises in governance and is referred to in this Handbook. The terms included in the table below are sourced from experience and common knowledge, relevant legislation, other authoritative sources or some combination of the above.

The glossary does not attempt to be all inclusive and Board Members and other interested people should consult relevant legislation and other applicable information sources to obtain a full understanding of relevant key terms and their interpretation, as they apply to the fulfillment of their responsibilities.

Association	<p>An entity incorporated under the relevant State or Territory Associations Incorporation Act.</p> <p>Also refer to the term 'Corporation' within this glossary.</p>
Board of Directors or Committee of Management	<p>The body which governs the affairs of an organisation.</p> <p>The terms 'Board of Directors' and 'Committee of Management' may also be referred to as 'Board Members', 'Governing Committee', 'Board', 'Committee', 'Directors', or other variations.</p>
Business Judgment	<p>In accordance with the <i>Corporations Act 2001</i>, means any decision to take or not take action in respect of a matter relevant to the business operations of the corporation.</p>
Chief Executive Officer or equivalent	<p>Means the most senior person in an organisation who, through the management team of the organisation, has overall responsibility for ensuring the implementation of the decisions of the Board and the diligent conduct of day to day operations of the organisation with ongoing accountability to the Board.</p> <p>The Chief Executive Officer may also be referred to as the Managing Director or other variation.</p>
Common Law	<p>The unwritten law based on court decisions and custom, as distinct from Statute Law.</p>
Company	<p>Means a company registered under the <i>Corporations Act 2001</i>.</p> <p>Also refer to the term 'Corporation' within this glossary.</p>

Company Director or equivalent	In relation to a company a person appointed to the position of a Company Director or appointed to the position of an alternate Company Director and acting in that capacity. The term is commonly used interchangeably with the term ‘Director’.
Company Limited by Guarantee	Means a Public Company formed on the principle of having the liability of its members limited to the respective amounts set down in the Constitution or Rules that the members are required to contribute towards the payment of the debts and liabilities of the company (usually through an annual membership fee) and/or the costs, charges, and expenses of a winding up of the entity.
Company Secretary or Public Officer of an Association	The key contact person who typically is responsible, for example, for supporting a Board on governance matters and lodging documents and advising changes to officeholders, the Constitution or Rules etc with the relevant regulatory body. Board Members should refer to the legislation under which their organisation is registered and the organisation’s Constitution or Rules for the exact obligations applicable to the Company Secretary or the Public Officer of an association. The responsibilities of a Company Secretary or Public Officer may be undertaken by another key organisation position, such as by the Chief Executive Officer or equivalent. In addition a Company Director or a Committee Member may also consent to taking on the role of a Company Secretary or Public Officer respectively.
Constitution	Means an organisation’s Constitution or Rules which sets out the directives governing the principal activities, powers, roles and responsibilities, and key protocols for the organisation, the Board and Board Members and organisation members. The Constitution or Rules constitute the terms of a contract between its members and the organisation. Typically an organisation may write their own Constitution or adopt or adapt a model Constitution or Rules, as long as there is compliance with the overarching legislation applicable to the organisation – <i>Corporations Act 2001</i> or the relevant State or Territory Associations Incorporation Act. For some organisations the ‘Constitution’ may also be known as the collective term for the combination of the Articles of Association and the Memorandum of Association, where these latter two documents previously existed.
Contract Law	A body of law arising from contracts.
Corporation	Generally a legal entity separate from its members, and has the legal capacity and powers of an individual. For instance, typically a legal entity can acquire and dispose of property, it can sue and be sued, enter into contracts, make charges for services and do other things necessary to carry out its affairs. Consistent with common business language the terms ‘company’ and ‘association’, may be used interchangeably with the terms, ‘corporation’, ‘entity’ or ‘organisation’.
Equity Law	A body of law developed to supply the deficiencies of Common Law.
Executive Director or equivalent	Means a Board Member who is also employed by the organisation. For instance it is quite common for a Chief Executive Officer or equivalent to be appointed to a Board. Also refer to the term ‘Independent’ within this glossary.
Fiduciary Duty of Care	Defined by the High Court of Australia as the “duty to act with fidelity and trust to another”, that is, the directors must act honestly, in good faith, and to the best of their ability in the interests of the company. ²⁷

²⁷ ‘Duties and Responsibilities of Directors and Officers’, 19th Edition, Professor Bob Baxt, Australian Institute of Company Directors, 2009, p.37.

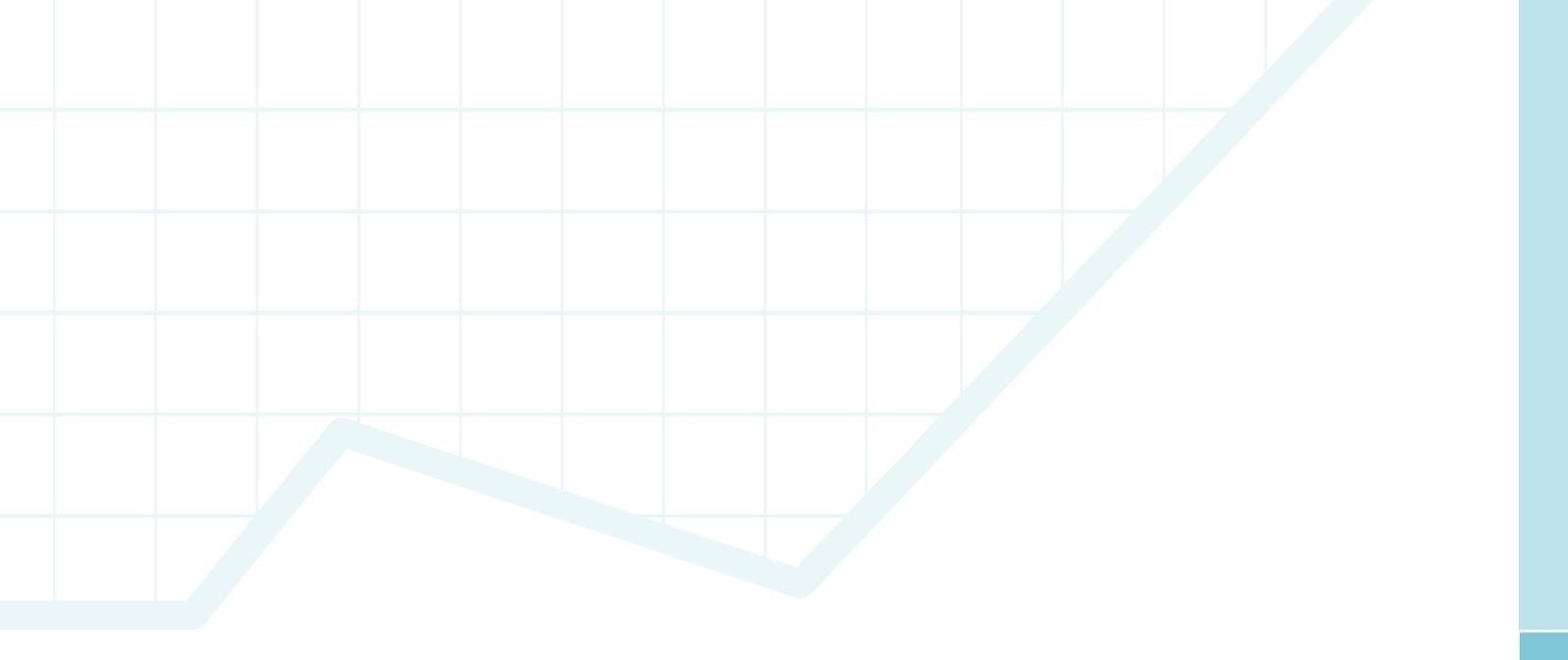
Incorporation	Means the establishment of a legal entity separate from its individual members. Also refer to the term ‘Corporation’ within this glossary.
Independent or Independence	An independent Board Member means a Non-Executive Director or Committee Member who “...is free of any business or other relationship that could materially interfere with – or could reasonably be perceived to materially interfere with – the independent exercise of judgment.” ²⁸ Also refer to the term ‘Non-Executive Director’ within this glossary.
Limited Liability	For a company or an incorporated association limited liability has a similar meaning as noted above for the term ‘Company Limited by Guarantee’.
Member	Means membership of an organisation, whether as an individual or as a body corporate.
Non-Executive Director or equivalent	Means a Board Member who is appointed from outside of the organisation. Also refer to the term ‘Independent’ within this glossary.
Officer of a Company	In accordance with the <i>Corporations Act 2001</i> means: <ul style="list-style-type: none"> ▸ A director or secretary of the corporation; or ▸ A person: <ul style="list-style-type: none"> – Who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or – Who has the capacity to affect significantly the corporation’s financial standing; or – In accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person’s professional capacity or their business relationship with the directors or the corporation).
Officer of an Incorporated Association	Typically means: <ul style="list-style-type: none"> ▸ A Member of the Committee of the association, including the Chairperson or President, Deputy Chairperson(s) or Vice President(s), Secretary and Treasurer; or ▸ The Public Officer, Chief Executive Officer or equivalent, or Chief Financial Officer or equivalent of the association, the holder of any other office of the association or a person occupying any of the abovementioned offices, whether validly appointed or not; or ▸ Any other person who is concerned in or takes part in the management of the association’s affairs, but does not include a patron or the holder of another honorary office of the association if the office does not give its incumbent a right to participate in the management of the association’s affairs.
Reasonable Person	In relation to the interpretation of Section 180 of the <i>Corporations Act 2001</i> , Justice Santow stated the following in <i>ASIC v Adler & Ors</i> (2002) – “in determining whether a director has exercised reasonable care and diligence one must ask what an ordinary person, with knowledge and experience of the defendant might be expected to have done in the circumstances if he or she was acting on their own behalf...” ²⁹

²⁸ *ASX Corporate Governance Principles and Recommendations, 2nd edition 2007*, p.16.

²⁹ ‘Duties and Responsibilities of Directors and Officers’, 19th Edition, Professor Bob Baxt, Australian Institute of Company Directors, 2009, p.76.

Risk	Risk can be defined as the ‘...effect of uncertainty on objectives’. ³⁰ That effect can be positive or negative. The concept of risk has two elements, the likelihood of something happening and the consequences if it happens.
Risk Management	The systematic application of management policies, a framework, and procedures and practices to the tasks of identifying, analysing, evaluating, treating and monitoring risk.
Stakeholders	A person or entity that has an interest in the operations of an organisation. Stakeholders include, for example, funding bodies, creditors, parents and clients, and the community at large.
Statute Law	A body of law created by legislation, as distinct from the Common Law.

³⁰ ISO 31000, *Risk Management – Principles and Guidelines, First edition, 2009*, p.1.



7 Useful Resources

This Section of the Handbook provides details of some suggested resources available for further information, and includes, in alphabetical order, the following:

- Australian Accounting Standards Board;
- Australian Institute of Company Directors;
- Australian Law;
- Australian Securities and Investments Commission;
- Australian Securities Exchange;
- Commonwealth and State and Territory Small Business Services;
- Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs;
- *Corporations Act 2001* Administration;
- National Disability Services;
- Standards Australia;
- State and Territory Incorporated Association Administration;
- Institute of Chartered Accountants and CPA Australia; and
- Volunteering Australia.

Australian Accounting Standards Board (AASB)

www.aasb.gov.au

The Australian Accounting Standards Board (AASB) is an independent accounting standard-setter and is responsible for developing, issuing and maintaining Accounting Standards and related pronouncements.

Australian Institute of Company Directors (AICD)

www.companydirectors.com.au

The Australian Institute of Company Directors (AICD) is the leading representative body for Company Directors and Officers. The AICD provides access to information and relevant publications, training and events.

Australian Law

www.comlaw.gov.au

This Website provides access to Commonwealth legislation, including the *Corporations Act 2001*.

www.austlii.edu.au

This Website provides access to Commonwealth of Australia Consolidated Acts including State and Territory consolidated Acts.

Australian Securities and Investments Commission (ASIC)

www.asic.gov.au

The Australian Securities and Investments Commission is Australia's corporate, markets and financial services regulator. ASIC is an independent Commonwealth Government body, operating under and administering the Australian Securities and Investments Commission Act 2001, for which it carries out most of its work under the *Corporations Act 2001*.

The Website provides detailed information for Company Directors about all aspects of running a company including access to standard forms required to be lodged with ASIC. In addition there is also some high level information on operating an incorporated association.

Australian Securities Exchange (ASX)

www.asx.com.au

The Australian Securities Exchange (ASX) plays an important role in sustaining the health of the Australian economy. While the ASX is focused on listed companies their Website provides access to information, such as the ASX Corporate Governance Principles and Recommendations, 2nd edition 2007, which may be useful to any organisation aspiring to achieve good governance.

Commonwealth and State and Territory Small Business Services

There are a range of small business support services providing useful information and access to assistance on planning, starting, running and growing a small business. Some key examples of small business resources are outlined in the table below. These business resources vary in what they provide, but may include access to a range of business information and publications, templates and forms, contact information to seek advice, and details of upcoming events.

Jurisdiction	Example Business Advisory Services	Websites
Commonwealth	Business	www.business.gov.au
Australian Capital Territory	Business Gateway	
	Canberra BusinessPoint	www.canberrabusinesspoint.com.au
New South Wales (NSW)	NSW Department of Ageing, Disability and Homecare (including 'Its Your Business' Manual)	www.dadhc.nsw.gov.au
	Department of Industry & Investment – Small Business NSW	www.smallbiz.nsw.gov.au

Jurisdiction	Example Business Advisory Services	Websites
Northern Territory	Department of Business and Employment	www.nt.gov.au/dbe/business
Queensland	Department of Employment, Economic Development and Innovation – Business Development	www.fairtrading.qld.gov.au
	North Queensland Small Business Development Centre	www.nqsmallbusiness.com
South Australia	Office of Consumer and Business Affairs	www.ocba.sa.gov.au
	Business SA	www.business-sa.com
	South Australia Biz	www.southaustralia.biz
Tasmania	Department of Economic Development, Tourism and the Arts	www.development.tas.gov.au
Victoria	Business Victoria	www.business.vic.gov.au
Western Australia	Small Business Development Corporation	www.smallbusiness.wa.gov.au

Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)

www.fahcsia.gov.au

This Website provides information about the Department and its funding programs, and includes template funding agreements, publications and other information on a variety of family and community related topics.

Corporations Act 2001 Administration

www.treasury.gov.au

www.ag.gov.au

The *Corporations Act 2001* is administered predominantly by the Commonwealth Department of the Treasury, with a small element of administration also undertaken by the Commonwealth Attorney-General's Department.

National Disability Services (NDS)

www.nds.org.au

National Disability Services (NDS) is the Australian peak body for non-government disability services. Through the provision of information, representation and policy advice, NDS promotes and advances services which support people with all forms of disability to participate in all domains of life.

Institute of Chartered Accountants and CPA Australia

www.charteredaccountants.com.au

www.cpaaustralia.com.au

The Institute of Chartered Accountants and CPA Australia are two key accounting bodies in Australia providing a range of services to their members. Non-members can also benefit, particularly through access to publications, education and training.

Standards Australia

www.standards.org.au

Standards Australia is recognised as Australia's peak Standards body. It coordinates standardisation activities, develops internationally aligned Australian Standards, and facilitates the accreditation of other Standards Development Organisations.

Examples of key Standards include:

- *AS/NZS ISO 31000:2009 Risk Management – Principles and Guidelines (and supersedes AS/NZS 4360:2004 Risk Management)*;
- *AS 8000:2003 Corporate Governance Standards*; and
- *AS 3806:2006 Compliance Programs*.

State and Territory Incorporated Association Administration

The following table outlines for each State and Territory the administering department for the Associations Incorporation Act within each jurisdiction. The disclosed Websites provide a range of information, such as summaries of legislative requirements, on-line practice manuals, bulletins and forms.

Jurisdiction	Administering Department	Administering Department Website
Australian Capital Territory	Office of Regulatory Services	www.ors.act.gov.au
New South Wales	Department of Fair Trading	www.fairtrading.nsw.gov.au Note: At the date of this Handbook a new Associations Incorporation Act 2009 is in existence, however, it is not yet effective. Accordingly, the original Associations Incorporation Act 1984 remains in place.
Northern Territory	Department of Justice	www.nt.gov.au/justice
Queensland	Department of Employment, Economic Development and Innovation	www.deedi.qld.gov.au
South Australia	Office of Consumer and Business Affairs	www.ocba.sa.gov.au
Tasmania	Consumer Affairs and Trading	www.consumer.tas.gov.au
Victoria	Consumer Affairs Victoria	www.consumer.vic.gov.au
Western Australia	Department of Commerce	www.docep.wa.gov.au

Volunteering Australia

www.govolunteer.com.au

Volunteering Australia is the national peak body working to advance volunteering in the Australian community. The organisation provides free advertising for Not-For-Profit community organisations looking for volunteers.

