

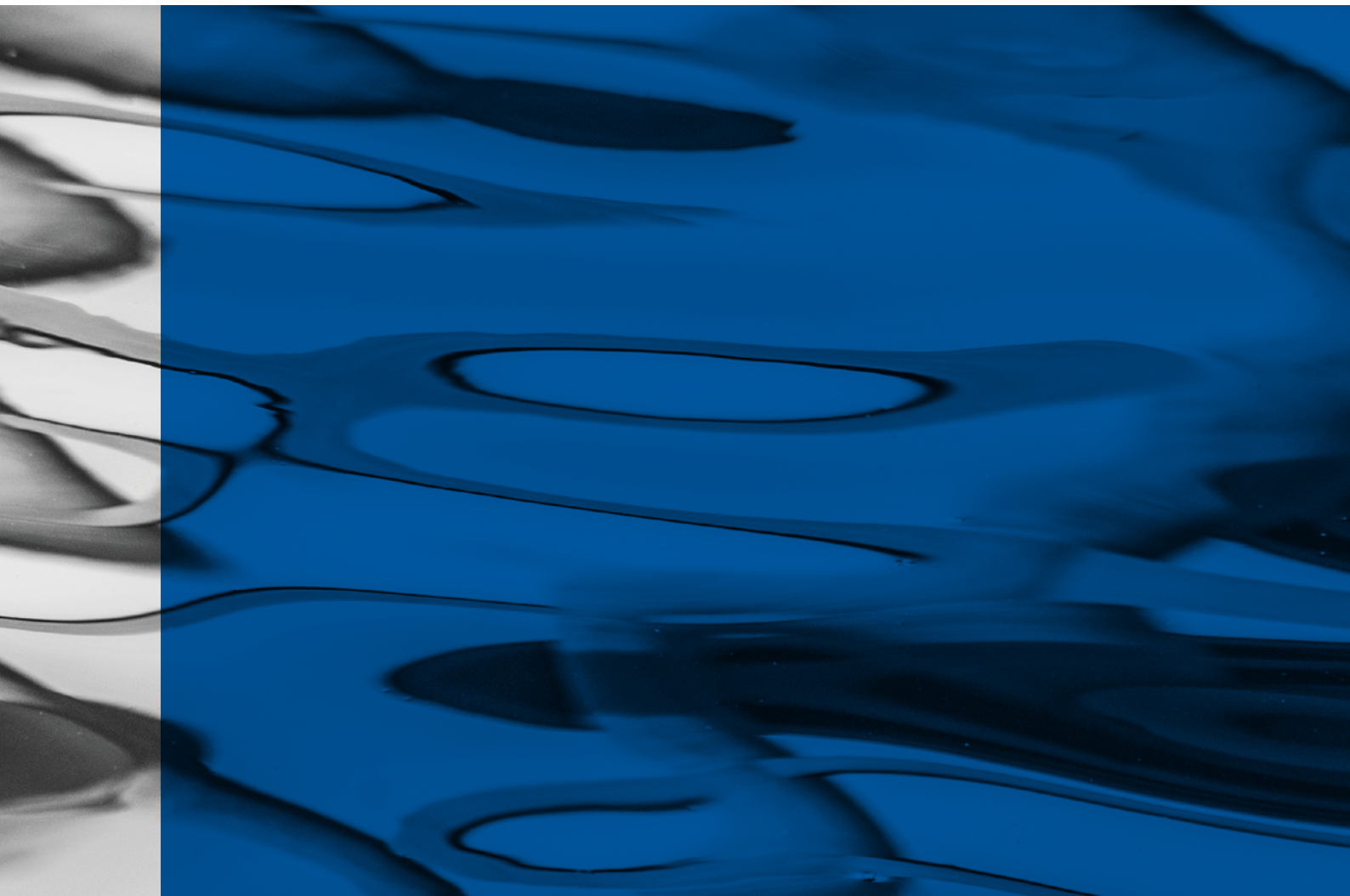


Australian Government



# Essential governance practices for arts organisations

January 2021



Australia Council for the Arts

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The Australia Council for the Arts proudly acknowledges all First Nations peoples and their rich culture of the country we now call Australia. We pay respect to Elders past and present. We acknowledge First Nations peoples as Australia's First Peoples and as the Traditional Owners and custodians of the lands and waters on which we live.

We recognise and value the ongoing contribution of First Nations peoples and communities to Australian life, and how this continuation of 75,000 years of unbroken storytelling enriches us. We embrace the spirit of reconciliation, working towards ensuring an equal voice and the equality of outcomes in all aspects of our society.

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# Overview

**“Governance is the process of providing strategic leadership to an organisation. It entails setting direction, making policy and strategic decisions, overseeing and monitoring organisational performance and ensuring overall accountability”**

Johanne Turbide<sup>1</sup>

Arts boards govern a wide range of organisations from large performing arts companies, through visual arts, interdisciplinary arts, First Nations arts, literary and smaller community-based arts organisations.

Good governance structures encourage these organisations to create value through entrepreneurship, artistic innovation, development and exploration. They also provide accountability and control systems in keeping with the risks involved.

Ultimately the challenge for boards of arts organisations is to lead a thriving organisation by balancing bold artistic vision and programming with sound financial and general management and oversight.

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

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

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

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

While these principles were adapted with larger arts organisations in mind, they can be applied in a similar manner to smaller arts organisations. Even the boards of smaller organisations should be seeking to optimise performance and accountability in the interests of the organisation and its key stakeholders, such as government. Organisations can find further practical advice in the Australian Institute of Company Director's (AICD) *Not-for-Profit Governance Principles* on ways to evaluate and implement these principles.

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

## Good governance is essential - and starts at the top

The arts sector in Australia embraces a wide variety of organisations, ranging in size, artistic focus, and structure. But all are dedicated to delivering their own unique combination of artistic achievement and service for the arts. Whether an arts organisation is a large incorporated entity, unincorporated, a trust, an association, or a local community cooperative, to be successful and sustainable, all organisations must be well governed and effectively managed.

Importantly, all arts organisations seeking or receiving Australia Council support are required to be legally constituted: either registered under Australian law (e.g. an incorporated association or company limited by law) or created by law (e.g. a government statutory authority). They must also be able to show a record of good governance, effective management, and a diverse income stream. In all organisations, good governance starts at the top with members of the board.

Note: In this document references to:

- a. "board" and "board members" also refer to the management committee and committee members of incorporated associations and Indigenous corporations; and
- b. "executive" can also refer to artistic board member, chief executive officer, executive producer or general manager.

# Snapshot

## Principles of good arts governance

1

### Vision | Mission

#### Why the organisation exists:

Board members enthusiastically commit their time and effort to a clear and inspiring vision for the future. They ensure alignment of actions and decisions towards delivering on the organisation's mission, while demonstrating its values.

---

2

### Performance

#### Strategy:

The board contributes to the development of a sound strategic plan to deliver on the vision and identified outcomes, with the CEO. Decisions and discussion are framed around alignment with strategic priorities and risk; and working with the CEO, the strategy is revised as required. Celebrate achievements with staff and other stakeholders.

#### Clear roles and responsibilities:

Respective roles and responsibilities of the board and management are clear. Board members and executives are appointed on merit, bringing diverse and relevant skills and experience to support the organisation to deliver on its mission and strategy. Effective boards constructively challenge management and hold them to account. Succession is openly discussed.

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3

### Systems

#### Monitor and review:

The board ensures it receives the right information regularly. It critically reviews reports on activities and the financial position of the organisation to ensure it is viable, working to its strategic vision and protected against fraud and theft.

#### Remunerate fairly and responsibly:

Remuneration is fair, based on the arts sector and relevant to the organisation's size, while recognising the importance of attracting and retaining talent and motivating management and employees.



## 4

## Accountability

### Manage risk and compliance

Board decisions are informed by a sound understanding of the organisation's risk management framework that is aligned to purpose and strategy. The board articulates and role models expectations for conduct, including compliance with relevant laws, regulations and policies.

### Reporting

The board holds itself to account for its decisions and integrity of reporting, guided by a sound policy framework. Stakeholders are appropriately informed about the organisation and its performance. Board member, CEO and artistic board member benefits and related party transactions are adequately disclosed. The board ensures the organisation meets the reporting requirements of funding bodies, employment and other legislated responsibilities.

## 5

## Relationships

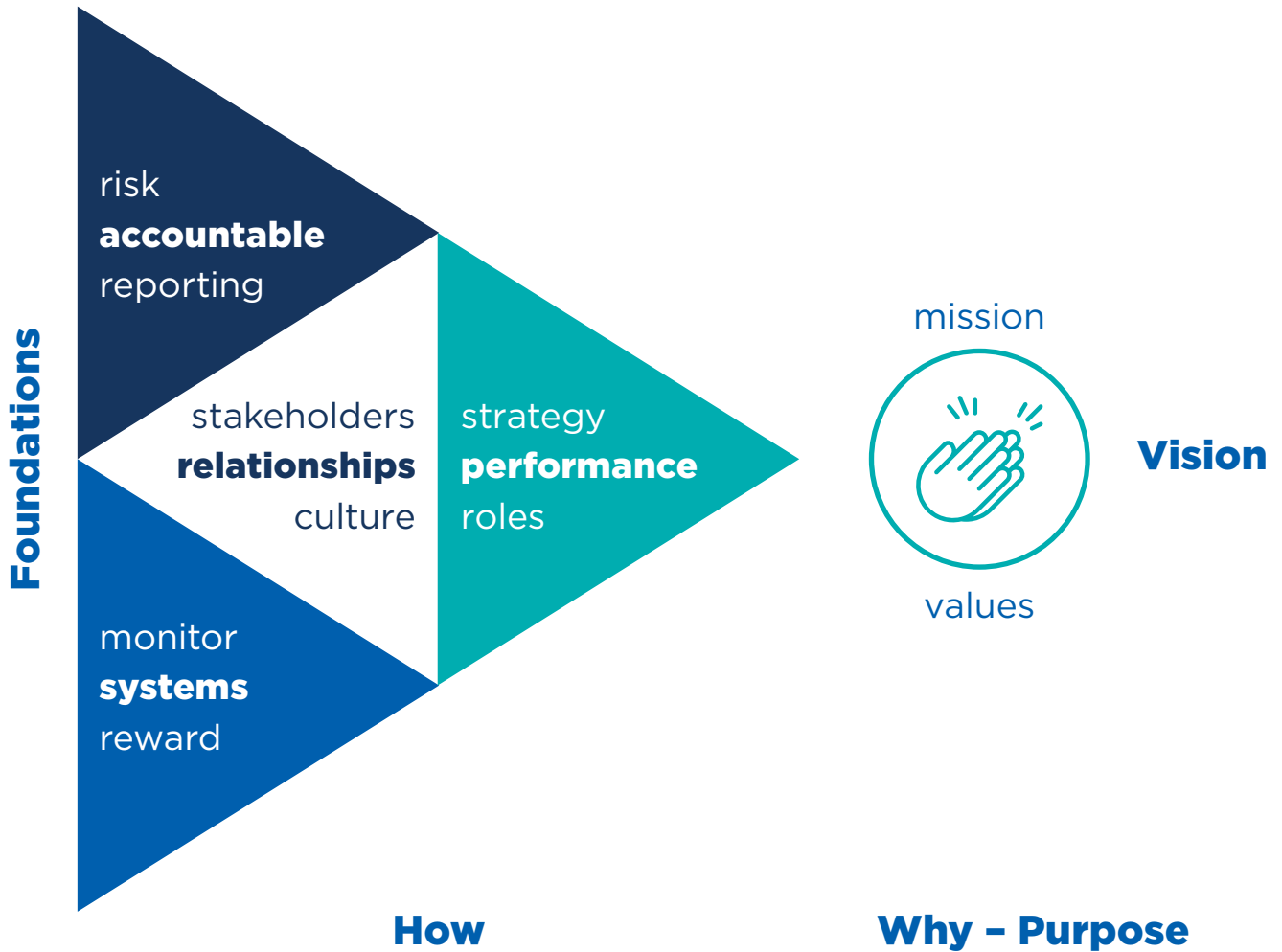
### Engage with stakeholders:

Board members recognise the varying needs and expectations of the wide range of stakeholders. The board builds and maintains relationships and ensures decisions are informed by stakeholders' best interests whilst furthering the achievement of the organisation's goals. Board members promote the organisation through their networks and support fundraising initiatives.

### Instill the right culture

The board ensures alignment of all the elements above to support the organisation's purpose and strategy. The board sets, aligns and tests the culture, ensuring they constantly role model the organisation's values and continuous improvement, regularly conducting board evaluations.

# Governance framework for the arts





# Principles and recommendations

## 1. Creating a vision | mission | values

### WHY the organisation exists:

Individually and collectively board members enthusiastically commit their time and effort to a clear and inspiring vision for the future. They ensure alignment of actions and decisions towards delivering on the organisation's mission, while role modelling its values.

*The board should:*

1. create a clear and inspiring **vision** for the future – the impact your organisation wants to have
2. demonstrate understanding of, and commitment to, the **mission** of the organisation
3. ensure **alignment** of all actions and decisions towards delivering on the organisation's mission
4. agree and demonstrate the organisation's **values** in all its decision making and actions.

### Artistic/curatorial vision, creativity and direction

The pursuit of excellence in artistic creativity and contribution to the arts is central to the collective vision, mission and purpose of Australia's arts organisations. However, the challenge for many boards is to ensure sufficient time and importance is given to their organisation's creative direction given the ever-pressing focus on financial and commercial priorities, operational risk and organisational and industry change.

A recent study of the arts in the UK observed 'a fear that the pendulum towards business and commercial skills on arts boards had swung too far with creative expertise and opinion having been sacrificed.' This in turn could limit the board's awareness of both significant risks and opportunities, a challenge compounded where the leadership role is split between the CEO and the Artistic Board member. To address this challenge, it was recommended that 'the artistic/curatorial programme be regularly and strategically discussed by the board.'<sup>2</sup>

### Governing versus managing

The distinction between the role of the board and management is fundamental to good governance, yet is often difficult to get right. However, the core principle is clear. The board of directors, collectively acting as one in decision making, govern the organisation. This includes setting the vision and strategic direction, the risk appetite and taking the longer-term perspective.

Management, on the other hand, focuses on the delivery of the strategic plan, and managing the organisation day-to-day. Board members should not be involved in day-to-day operational and management matters. Even in smaller organisations, including many in the arts sector, it is important to remain conscious of the fundamental difference between governance and management responsibilities. Should the board delegate responsibilities via a 'Delegation of Authority' to management, the board remains ultimately responsible for the decisions made.

## 2. Delivering performance

### 2.1 Strategy

The board contributes to development of a sound strategic plan to deliver identified outcomes and vision through the CEO. Decisions and discussion are framed around alignment with strategic priorities and risk; and working with the CEO the strategy is revised as required. Celebrate achievements with staff and other stakeholders as appropriate.

*The board should:*

1. guide the organisation's strategic direction by contributing to the development of a **strategic plan** to deliver identified outcomes and vision
2. account for **key stakeholder expectations**
3. determine priorities for organisational **sustainability** and **financial viability**
4. work with the CEO to **revise the strategy** as required
5. ensure **decisions** and discussion are framed around **alignment with strategic priorities** and risk. Consider a "strategy on a page" as the first page of the Board Pack to calibrate decisions against
6. **celebrate** the organisation's achievements with staff and other stakeholders.

*"The more uncertain and shifting the environment becomes, the more important it is for arts organisations to have a clear sense of purpose: to think and act strategically... That does not mean detailed and inflexible long-term plans.*

*Nor should it be a licence for navel gazing... An organisation that lacks an animating sense of purpose risks being pushed and pulled in many directions... Arts organisations operate in increasingly crowded and competitive markets, with multiple partners, with different goals and performance measures, mixing commerce and cultural creativity. In such a fluid environment, stability does not come from structure but from having an enduring sense of purpose"*

Charles Leadbeater<sup>3</sup>

**Strategic plan** – the organisation must develop, keep current, and make available for primary stakeholders a strategic plan consistent with the organisation's artistic vision and mission. Organisations seeking multi-year funding from the Australia Council are required to submit a strategic plan. This "road map" captures what you are doing, why you are doing it and how. The plan should build in flexibility to be creative and responsive to new developments. A strategic plan is different from a business plan. A strategic plan summarises "where you want to play" and "how you will succeed" and milestones along the way. A business plan provides the operational detail.

For example, start by analysing your environment, both internal (strengths and

weaknesses) and external (opportunities and threats). Based on this you can determine the best opportunities to pursue, and strengths you can leverage and must develop to deliver on your mission. Then you can create your strategic plan that should include:

- your mission and vision
- your target audiences
- your strategies and related goals and activities
- measures of success, and an evaluation framework
- a financial summary, explaining your financial model and forecasts
- your board or governance, staff and collaborators.

## 2. Delivering performance

### 2.2 Roles and responsibilities

Clarify the respective roles and responsibilities of the board and management. Board members and management are appointed on merit, bringing diverse and relevant skills and experience to support the organisation to deliver on its mission and strategy. Effective boards constructively challenge management and hold them to account. Succession is openly discussed.

*The board should:*

1. adopt a **formal charter** of the board's principal functions and responsibilities
2. recruit, support, evaluate and replace when necessary, the **CEO** and/or artistic board member
3. Create a **skills matrix** to identify diverse and relevant skills and experience needed to support the organisation to deliver on its mission and strategy, including at least one board member with financial expertise
4. appoint board members on merit through a transparent, ordered **succession** process, ensuring continuity of appropriate skills, experience, and knowledge
5. support new board members with comprehensive **induction**, including expectations of behaviour
6. clearly define and **differentiate the roles** and responsibilities of board members and management. Board members are to avoid micromanaging
7. document **delegated authority** to management and periodically review
8. understand **board member obligations** under legislation, policies and rules (see side bar)
9. consider maximum board member **tenure** (e.g. 10yrs) to ensure board refreshes for diversity of thought while retaining corporate knowledge
10. ensure key management have formal **job descriptions** describing their term of office, duties, rights and responsibilities and entitlements on termination
11. ensure board members bring **independent thinking**, question assumptions and constructively challenge management.

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### Board member obligations under legislation: fiduciary duties

A fiduciary duty exists where a person or company is required to put another person or entity's interest before their own, and include:

- acting with reasonable care and diligence
- acting honestly and fairly in the best interests of the organisation and its purposes
- not misusing their position or information they gain as a board member
- disclosing conflicts of interest
- ensuring the financial affairs of the organisation are managed responsibly
- not allowing the organisation to operate while insolvent.

Generally, the duties mean that board members should act with standards of integrity and common sense.

Australian Charities and Not-for-Profit Commission (ACNC) Governance Standards

## 2. Delivering performance

### 2.2 Roles and responsibilities

#### Can board members be personally liable?

If you are acting lawfully you will not be personally liable as a board member. However, this depends on:

- the particular **action**. For example, under their fiduciary duties, board members may be personally liable for criminal or serious misconduct, including asking someone to perform a dangerous task, dismissing staff without proper authority or process, or for deliberate actions or omissions that breach the ACNC Act if they have acted dishonestly, with gross negligence or are reckless. In rare circumstances, the personal assets of board members can be seized to pay any damages, even a volunteer board member.
- **type of organisation**. For registered unincorporated associations, the obligations and liabilities are on each individual who is a director at the time. For trusts, the obligations and liabilities are imposed on the trustees. If the trustee is a body corporate (an incorporated organisation) then the obligation and liabilities are imposed on the individuals who were the directors of the company at the time.

## 3. Support systems & processes

### 3.1 Monitor and review

The board ensures it receives the right information regularly. It critically reviews reports on activities and the financial position of the organisation to ensure it is viable, working to its strategic vision and protected against fraud and theft.

*The board should:*

1. ensure it gets the **right information regularly**
2. consider and approve the organisation's proposed **arts program and budget**
3. validate, approve and review **strategic, financial, and non-financial measures** (e.g. whistleblower, social media, diversity)
4. interpret regular financial reports and **ensure expenditure aligns** with milestones, objectives and priorities
5. be vigilant to ensure sufficient financial reserves to maintain **solvency** and protect against **fraud and theft**
6. critically review reports on **activities** to ensure alignment with its strategic vision and values
7. give **prior approval** to any material capital expenditure, or any significant variation from budgeted or forecast expenditure
8. clearly **define CEO/AD** performance measures and disclose a process for periodically **evaluating their performance**.

### 3.2 Reward fairly and responsibly

Remuneration for CEO/artistic board member/senior management should be fair relative to the arts sector, while acknowledging the importance of attracting and retaining talent and motivating management and employees.

*The board should:*

1. ensure remuneration reflects appropriate and transparent **arts sector benchmarks** and reflects core performance requirements and expectations. Remuneration should account for organisational size and be designed to motivate pursuit of long-term growth and success of the organisation
2. ensure no individual is involved in deciding their **own remuneration**
3. make clear **termination** terms and payments agreed in advance, mandating no payment for **removal** for misconduct
4. disclose leadership **remuneration and benefits**.

## 3. Support systems & processes

### 3.2 Reward fairly and responsibly

#### Diversity policy

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

- Express the organisation’s commitment to diversity at all levels and in art making and arts support roles.
- Recognise that diversity not only includes gender diversity but also includes matters of age, disability, ethnicity, marital or family status, religious or cultural background, sexual orientation and gender identity.
- Articulate the benefits of diversity in attracting, retaining and motivating employees from the widest possible pool of available talent.
- Identify and implement programs that will assist in the development of a broader and more diverse pool of skilled and experienced employees and that, over time, will prepare them for senior management and board positions.
- Ensure that recruitment and selection practices at all levels (from the board downwards) are appropriately structured so that a diverse range of candidates are considered and there are no conscious or unconscious biases that might discriminate against certain candidates.
- Recognise that employees at all levels may have domestic responsibilities and adopt flexible work practices that will assist them to meet those responsibilities.
- Emphasise that discrimination, harassment of any kind, vilification and victimisation is illegal (see Appendix 1) and cannot and will not be tolerated.
- Have key performance indicators for management to measure the achievement of diversity objectives. Link part of their remuneration (either directly or as part of a “balanced scorecard” approach) to the achievement of those objectives.

## 4. Being accountable

### 4.1 Manage risk and compliance

Board decisions are informed by a sound understanding of the organisation's risk management framework that is aligned to purpose and strategy. The board articulates and role models expectations for conduct, including compliance with relevant laws, regulations and policies.

*The board should:*

1. establish, articulate, and work to an appropriate **risk management framework**. Include (but not limited to) strategic risks, operational or artistic direction risks, funding risks, reputational or brand risks, compliance risks, environmental risks, human capital risks, financial reporting risks and arts sector-related risks
2. **review the risk framework annually**
3. ensure all decisions and discussions take **risk appetite and risk tolerances** into consideration to encourage innovative thinking (within agreed parameters)
4. be open and **compliant** with all fiduciary, regulatory and legal obligations, including ensuring the organisation complies with the ACNC governance standards of a charity (see Appendix 3)
5. adopt a **conflicts of interest policy**
6. maintain a **register of interests**.

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### Whistleblower rights and protections

ASIC recommends good governance practice should include the fostering and encouraging of whistleblowing behavior by staff within an environment free from recriminations and victimisation.

Specifically, the Australian Institute of Company Board members (AICD) warns significant personal liability can result if a board member fails to treat a whistleblower disclosure protected under the law with the strict confidentiality and anti-victimisation measures the legislation imposes.

At the same time, AICD concludes these laws present an opportunity to strengthen culture and compliance within organisations.



## 4. Being accountable

### 4.2 Reporting

The board holds itself to account for its decisions and integrity of reporting, guided by a sound policy framework. The board ensures the organisation meets the reporting requirements of funding bodies, employment, and other legislated responsibilities.

*The board should:*

1. ensure stakeholders are appropriately **informed** about the organisation and its performance
2. adequately **document governance and other policies** (such as artistic policy, board member nomination, selection and appointment, communications, marketing, private sector support and fundraising, stakeholder community relationships)
3. set up a proper process for handling **whistleblower complaints**
4. ensure the organisation has appropriate **insurances** and **provides safe work spaces** (e.g. performance, rehearsal, studios)
5. holds itself to account for **decisions** and to **meeting reporting requirements** of funding bodies, employment, and other legislated responsibilities
6. ensure board member, CEO and AD **benefits, related party transactions** and actual or potential **conflicts of interest** are identified, disclosed, and managed
7. ensure formal and rigorous processes to **independently verify the integrity** of all compliance and management reporting (e.g. an audit committee or identify an independent audit process)
8. expect management to demonstrate they have:
  - taken all reasonable steps to **prevent discrimination, harassment, sexual harassment and bullying** from occurring in their workplaces; and
  - **responded appropriately to resolve** incidents of discrimination, harassment, sexual harassment, and bullying. (see Appendix 1).

## 5. Relationships

### 5.1 Engage with stakeholders

Arts organisations often have a wide range of stakeholders with varying needs and expectations. It is important that boards constructively embrace stakeholder engagement as good governance.

*The board should:*

1. understand **expectations** of key stakeholders to inform decision making and further the achievement of the organisation's goals
2. ensure there is a **framework** for open and meaningful engagement
3. **build and maintain relationships** with key stakeholders (including lapsed and potential)
4. **promote the organisation** through their networks
5. **support fundraising** initiatives – in kind, attending events and/or financially
6. represent the **best interests** of key stakeholders as a whole rather than those of individuals, geographical areas or communities.
7. ensure an effective **communication strategy for** advising funding agencies and other key income providers about **any material changes** in the organisation's circumstances
8. mentor **senior management's culture** and providing **advocacy** for the organisation
9. role model continuous improvement and conduct **board reviews** periodically.

*“Governance in arts organisations is a complex phenomenon.”*

Johanne Turbide<sup>1</sup>

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### Manage stakeholders effectively and proactively

In many respects, non-profit and for-profit board governance are similar: notably the oversight role, decision-making power, its structural place within the organisation, and its members' fiduciary duties. However, non-profit boards' prime directive is vision/mission fulfilment (a 'public' interest), whereas for-profit boards' prime directive is to maximise financial returns for owners and shareholders. As a consequence, non-profit governance normally involves a larger and more powerful mix of stakeholders (e.g. government, benefactors, ticketholders), a more complex economic model (e.g. a dynamic blend of income including government funding agencies, ticket sales, benefactors, endowments) and differing internal and external accountability (e.g. regulators, government sponsors, the public).<sup>4</sup>

Managing stakeholder interests effectively and proactively should be viewed as good governance practice. The board should have clear policies for the organisation's relationship with significant stakeholders, including procedures to ensure timely provision of information appropriate for each stakeholder, while bearing in mind the important distinction and differing needs between government funding agencies, regulators and public interest groups. In each case, the material being communicated should be factual, and presented in a clear and balanced way (i.e. the good and the challenging).

## 5. Relationships

### 5.2 Instil the right culture

The board ensures alignment of all the elements above to support the organisation's purpose and strategy. It ensures the guiding values are clear, and regularly reviewed and role modelled by board members. Board members attend meetings, actively listen, and ensure their contributions are relevant, succinct and add value. They respect differences and value diversity, and support the chair and CEO to meet their obligations and commit to agreed decisions.

*The board should:*

1. ensure **alignment of all the elements** above to support the organisation's purpose and strategy
2. **exemplify committed behaviour**, e.g. read board papers in advance; attend meetings; actively listen; make relevant, succinct contributions that add value
3. ensure the **values are clear, regularly reviewed and reflected** in all formal and informal communications
4. adopt a **written code of ethics** and/or **code of conduct** reflecting the organisation's core values
5. along with management, **articulate and role-model** expectations for conduct, including ethical behaviour respect for diversity, and holding each other accountable
6. be informed, bring a learning mindset, and continuously develop their knowledge of the organisation, the arts sector and emerging issues that may impact the organisation
7. recognise the **chair** plays a crucial role in effective board performance – setting the tone, demonstrating effective leadership, modelling good board member practice, encouraging and developing a positive culture.

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### Governing organisational culture

What leaders do and say set the tone for the rest of the organisation and how they influence the organisation's overall culture. Effective governance identifies culture as an important lever to create value. It unites all the principles discussed above.

To effectively govern culture, it is important for the board to consider its own function across three dimensions:

- The board needs to **set** clear cultural direction and expectations around behaviours and decision making. These expectations serve to create a link between the organisation's purpose (why it exists) and its strategic goals by expressing the behaviours it expects from its people.
- The board needs to **align** the levers at its disposal to reinforce these expectations. Expectations are reinforced if they are embedded in the organisation's policies, systems, and processes and carried out in the behaviours and decisions of employees. Strong cultures exist where there is clear alignment between expectations and the structures used to reinforce them.
- The board needs to regularly **test** that these expectations are being met, through both reported metrics (formal) and observed enacted behaviours (informal).<sup>5</sup>

# Appendix 1

## Australian live performance industry

### Code of Practice to Prevent Workplace Discrimination, Harassment, Sexual Harassment and Bullying

#### Key points

- All workers have the legal right not to be discriminated against, harassed, sexually harassed or bullied in the workplace. Workplaces should be non-threatening, respectful, safe and free from all forms of harassment.
- The code of practice is a best practice guide for employers in the live performance industry. It is a voluntary industry code of practice. However, compliance is mandatory for Live Performance Australia (LPA) Members.
- In addition to the obligations contained in legislation addressing discrimination, harassment, sexual harassment and bullying, under Work Health and Safety (WHS) laws, all employers and boards have a duty to protect the health (both physical and psychological), safety and welfare of all workers at work and of other people who might be affected by the work. WHS laws require a proactive and preventative approach to managing health and safety risks in the workplace.
- Employers and boards, no matter how big or small, can be held legally responsible (i.e. vicariously liable) for acts of discrimination, harassment, sexual harassment or bullying that occur in the workplace or in connection with a person's employment.
- To minimise the risk of liability, employers need to demonstrate that they have:
  - taken all reasonable steps to prevent discrimination, harassment, sexual harassment and bullying from occurring in their workplaces; and
  - responded appropriately to resolve incidents of discrimination, harassment, sexual harassment and bullying.
- What constitutes reasonable steps will be different for each organisation, with factors such as the size and resources of an organisation, the work performed, and the culture of the workplace taken into account.
- Reasonable steps to effectively prevent and respond to workplace discrimination, harassment, sexual harassment, and bullying may include, but are not limited to:
  - developing clear workplace policies and procedures on discrimination, harassment, sexual harassment and bullying, including a complaint handling and investigation procedure and making workers aware of these policies and procedures;
  - regularly promoting, communicating and reviewing relevant workplace policies; and
  - taking a proactive approach to creating and maintaining a positive, inclusive, and respectful workplace culture that does not accept any form of discrimination, harassment, sexual harassment or bullying.

# Appendix 2

## Assessing the independence of board members

An independent board member is a non-executive board member who is not a member of management and who is free of any business or other relationship that could materially interfere with – or could reasonably be perceived to materially interfere with – the independent exercise of their judgement. Family or community ties and cross-board memberships may be relevant in considering interests and relationships which may affect independence. These should be disclosed by board members to the board.

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

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

1. is, or has been, employed, in an executive capacity by the organisation or another group member, and there has not been a period of at least three years between ceasing such employment and serving on the board
2. receives performance-based remuneration from, or participates in an employee incentive scheme of the organisation
3. is, or has been within the last three years, in a material business relationship (e.g. supplier, professional adviser, consultant or customer) with the organisation, or is an officer of, or otherwise associated with, someone with such a relationship
4. has close personal ties with any person who falls within any of the categories described above; or
5. has a material contractual relationship with the organisation or another group member other than as a board member of the organisation; or
6. been a board member of the organisation for such a period that their independence from management may be compromised.

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

Adapted from the ASX Corporate Governance Council 2019, *Corporate Governance Principles and Recommendations*, 4<sup>th</sup> edition.

### How to identify conflicts of interest – the impartial observer test

Conflicts of interest are often inevitable, particularly for arts organisations where members of the board really care about the organisation and the art. If there is a potential conflict of interest, ask: "Would an impartial observer think that you are likely to, or may be likely to, be improperly affected by these personal interests?" If the answer is yes, then it is likely you have a conflict of interest.

### How to minimise or prevent the impact of conflicts of interest

1. Adopt a conflicts of interest policy
2. Maintain a register of interest
3. Promote a culture of disclosure
4. Manage any conflict of interest appropriately.

# Appendix 3

## Australian Charities and Not-for-Profits Commission (ACNC)

### Governance standards

To be and remain registered with the ACNC, all charities (except basic religious charities) must comply with its five governance standards. These are a set of core, minimum requirements for the governance of charities.

*The five governance standards are:*

#### **Standard 1: Purposes and not-for-profit nature**

Charities must be not-for-profit and work towards their charitable purpose. They must be able to demonstrate this and provide information about their purposes to the public.

#### **Standard 2: Accountability to members**

Charities that have members must take reasonable steps to be accountable to their members and provide them with adequate opportunity to raise concerns about how the charity is governed.

#### **Standard 3: Compliance with Australian laws**

Charities must not commit a serious offence (such as fraud) under any Australian law or breach a law that may result in a penalty of 60 penalty units (equivalent to \$12,600 as at December 18) or more.

#### **Standard 4: Suitability of board members ('responsible persons')**

Charities must take reasonable steps to ensure that their board members are not disqualified from managing a corporation (under the Corporations Act) or currently disqualified from being a board member of a registered charity by the ACNC Commissioner.

Charities must remove any board member who does not meet these requirements.

#### **Standard 5: Duties of board members ('responsible persons')**

Charities to take reasonable steps to make sure that board members:

- act with reasonable care and diligence
- act honestly and fairly in the best interests of the charity and for its charitable purposes
- do not to misuse their position or information they gain as a responsible person
- disclose conflicts of interest
- ensure that the financial affairs of the charity are managed responsibly, and
- do not to allow the charity to operate while it is insolvent.

Generally, the duties mean that responsible persons should act with standards of integrity and common sense.

# Appendix 4

## Arts governance in a time of crisis

During a crisis such as the COVID pandemic, boards and CEOs have a unique and significant opportunity to positively impact their organisations and the communities they serve.

Boards and CEOs need to firstly prioritise creating an environment where **decisions** are made calmly and based on facts and wise counsel. Make sure decisions reflect on the organisation's mission, reveal the decision-making process, and have a clear set of guiding principles.

Next, given the high level on ongoing uncertainty, leaders need to continuously **stay updated** with real-time information from both within the organisation and from outside (government, sponsors, audiences, community, donors, media, etc) to inform decisions.

Finally, boards and the CEO need to encourage an **experimental mindset** to reimagine, adapt, 'pivot,' innovate, and/or put actions into play as quickly as possible. Test some of the plans that you may have had in the bottom drawer – and learn from the responses even if they are just 'toes in the water.' Positively recognise valiant attempts to try new approaches, even if they fail, so long as they are within the parameters set by the board and CEO.

**Appoint leaders** who can be responsible across different stages – resilience, recovery and reimagining. The CEO will need to trust the leader and hold them accountable within the parameters agreed to by the CEO and/or board. These leaders should report directly to the CEO and may be different to preexisting reporting lines. Have regular updates together and share learnings. Most importantly, all leaders must be selected based on their capability and their commitment to the organisation's overarching purpose and values. And this commitment must be role modelled by the CEO and board in words and actions.

### Navigating the crisis – select leaders to be responsible for each phase:

- 1. Resilience:** How will the organisation be affected by and need to keep people safe and respond to the economic impact immediately and over time
- 2. Recovery:** Preparing for fluctuating demand (audiences) and supply (creatives/venues/funding) to scale up as the crisis wanes
- 3. Reimagine:** Based on the "natural experiments", adapt quickly and with agility, focusing on new opportunities. Remix human and digital assets. Use the lessons learned to change the relationship with key stakeholders and stay close to them to measure their responses.

Dr Judith MacCormick, Managing Partner, BoardFocus, May 12, 2020.



# Appendix 5

## References and resources

### Endnotes

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## Other resources

### Australia Council

This document may be read in conjunction with other resources on the Australia Council for the Arts website. <https://www.australiacouncil.gov.au/>

#### Other valuable websites include:

### Australian Charities and Not for profits Commission (ACNC)

*Governance for Good: the ACNC's guide for charity board members* (2018) explains charity governance and the role of board members. <https://www.acnc.gov.au/for-charities/manage-your-charity/governance-hub/governance-standards>

### Australian Institute of Company Directors (AICD)

*The Not-for-Profit Governance Principles* (2019). A practical framework to help not-for-profits understand and achieve good governance. <https://aicd.companydirectors.com.au/resources/not-for-profit-resources>

### Live Performance Australia

*Industry Code of Practice to Prevent Workplace Discrimination, Harassment, Sexual Harassment and Bullying*  
<https://liveperformance.com.au/wp-content/uploads/2019/02/LPA-Code-of-Practice-To-Prevent-Discrimination-Harassment-Sexual-Harassment-and-Bullying-Parts-A-B.pdf>





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