

GOVERNANCE

What is 'governance'?

Governance is about how to run a healthy organisation. It looks at the control and direction of an organisation, particularly the authority given to the Board (or Management Committee), and the accountability and leadership of the organisation.

Governance is relevant to all types of organisations including incorporated and unincorporated organisations, associations and cooperatives. It is relevant to Indigenous corporations set up under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act)* which operate many of Australia's Aboriginal and Torres Strait Island art centres.

What does governance include?

In order to assess whether your organisation has good governance, you need to consider why the organisation is there, what are its values, who are its stakeholders (including its employees), and how it does business.

Governance includes all of the following aspects of running an organisation:

- Legal responsibilities
- Financial responsibilities
- Risk management
- Strategic planning
- Human resource management
- Managing the resources
- Networking
- Evaluation
- Making sure the Board works well

This information sheet looks at the first four aspects (legal responsibilities, financial responsibilities, risk management and strategic planning).

Legal Responsibilities

Good governance requires Board or Committee members to make sure that the organisation does what is required to comply with the law. This is an important responsibility.

Constitution

The constitution of the organisation is a legally binding agreement between the members of the organisation and the Board. Board members need to be familiar with it and comfortable that all the activities of the organisation are conducted in accordance with that document.

For example, a constitution usually contains rules about:

- The purpose of the organisation – activities which are for other purposes are not permitted;
- How meetings can be conducted;
- How directors are appointed.

Contracts

The organisation must also comply with its obligations under contracts it has signed: eg leases, funding and staffing contracts. Otherwise the organisation may be exposed to risks of claims and lawsuits against it.

See Arts Law's information sheet on Contracts.

Fiduciary duties

The law imposes special responsibilities on the Board and Committee members called 'fiduciary duties or responsibilities'. Executive officers and administrators working in arts organisations also have these responsibilities. They include:

1. **Duty to be careful and diligent:** you must be hardworking and take your responsibilities seriously. You should:
 - Receive and read the Board papers in advance;
 - Receive and read regular and clear financial reports;
 - Check on the implementation of Board decisions;
 - Have defined policies in relation to areas of greatest risk, including conflict of interest; and
 - Have open and honest discussion at Board meetings.
2. **Duty of honesty and good faith:** you must be loyal to the organisation and act honestly in all your dealings with each other and the organisation. When you are making a decision on behalf of the organisation, you must act in the interest of the organisation overall rather than for your own interest or the interest of individual members.
3. **Duty of skill:** you must understand the organisation's business and activities and keep informed and up to date with what is going on. You also need to understand the finances and be able to read the financial statements (accounts) and ask questions about what is (or is not) in those statements.
4. **Duty not to make improper use of information:** – you must not use information you have obtained because you are on the Board or Committee for anything other than the business of

the organisation. You cannot use information you obtain to gain an advantage or benefit, either for yourself or any other person.

5. **Duty to avoid conflict of interests:** you must avoid actual or potential conflicts between your interests and those of the organisation. You must tell the Board if you have a personal or financial interest in anything that is being considered by the Board (eg money or business going to you or family or friends as a result of the decision). You must not vote or be present when the Board is considering any issue in which you have a personal interest.
6. **Duty to avoid insolvent trading:** you must make sure that the organisation does not incur debts if it is unable to pay them. You can be personally liable for those debts if you do.

See also the information sheet on Company Director's Obligations available from the Australian Securities and Investment Commission (ASIC) website (www.asic.gov.au/asic/asic.nsf/byheadline/Your+company+and+the+law?openDocument).

Legislation

There is also quite a lot of legislation (also called Acts or Statutes) that may affect the organisation. Good governance means making sure that the organisations is acting consistently with any legislation that is applicable.

Some of the legislation which contains requirements about establishing and running organisations includes:

- *Corporations Act 2001 (Cth)*;
- CATSI Act (for Indigenous corporations);
- Acts regulating incorporated associations such as the *Associations Incorporation Act 1987 (WA)* or the equivalent Act in other states;
- Acts regulating the operation of charities such as the *Charitable Collections Act 1946 (WA)* or the equivalent Act in other states;
- Acts regulating cooperatives such as the *Companies (Cooperative) Act 1943 (WA)* or the equivalent Act in other states; and
- taxation legislation.

Some of the Acts that affect staffing and employment include:

- industrial relations legislation such as the *Fair Work Act 2009 (Cth)*, the *Industrial Relations Act 1979 (WA)* or the equivalent Act in other states;
- *Superannuation Guarantee Act 1992 (Cth)*;
- Acts regulating occupational health and safety such as the *Occupation Safety and Health Act 1984 (WA)* or the equivalent Act in other states;
- Acts regulating workers compensation such as the *Workers Compensation and Injury Management Act 1981 (WA)* or the equivalent Act in other states;
- *Income Tax and Assessment Act (Cth)*; and
- anti-discrimination legislation including the *Sex Discrimination Act 1984 (Cth)*.

See also Arts Law's information sheets on Superannuation and contract for services and Employee or contractor.

Financial Responsibilities

Good governance means that the members of the Board or Management Committee are responsible for the finances of the organisation. Board and Committee members should:

- monitor the solvency of the organisation by making sure it can pay its debts;
- make sure that a realistic budget is developed early enough so that all the Board can be involved;
- get accurate income and expenditure statements, balance sheets and cash-flow projections before Board meetings;
- put financial policies and procedures in place;
- check that filings such as employee withholding taxes, superannuation, insurance premiums and similar things are paid when due;
- consider whether the organisation needs a finance committee and, if so, establish one; and
- make sure that financial information is included in the strategic planning for the organisation.

Risk Management

Good governance means understanding and evaluating the business risks facing the organisations and taking action to deal with them. Risk management is making sure you identify the potential liabilities (dangers) that may affect the organisation and the impact they would have on the organisation if they occurred. The Board must plan how to manage that risk either by:

- taking action to prevent the risk occurring – for example by avoiding serious injury to employees by instituting safe workplace practices;
- providing funds to cover the liability if it occurs – for example by setting aside money to pay for long service leave of employees which is due;
- purchasing insurance – for example, to cover the loss of stock in the event of fire.

Risks which could create liabilities include physical risks (fire or theft), financial risks (a recession) and those arising from moral and ethical issues.

See also The Arts Insurance Handbook available from the Arts Law website.

Strategic Planning

Good governance means the Board has a strategic plan for the organisation. Strategic planning is a good opportunity for the Board, the CEO and staff to get together and work out the direction and purpose of the organisation. It can also bring out any problems that need to be resolved. A good strategic plan can convince funders and the community that the organisation knows what it is doing and where it is going.

What is a strategic plan?

The strategic plan is an important working document of the organisation. The CEO should report to the Board against the plan on a regular basis and the plan should be reviewed annually. The following components can be included in the plan:

- *Vision* – the world you wish to create – how will the organisation look in 5–10 years time;
- *Mission* – the purpose of the organisation – why it exists;
- *Values* – the principles that inform the way the organisation works;
- *Aims or Goals* – top-level statements for activities and services;
- *Performance Indicators* – how you will measure progress towards the goals;
- *Objectives /Strategies* – how you will fulfil goals;
- *Action Programs* – practical steps to implement the strategies; and
- *Risk Management* – the strategic plan is a good place for identifying the potential risks and managing the impact they might have on the organisation.

Further Information

The Office of the Registrar of Indigenous Corporations (**ORIC**) runs workshops on good governance for officers and directors of Indigenous corporations. For more information see the ORIC website (www.orac.gov.au) or telephone 1800 622 431.

Messenger, Naomi, *Business Structures and Governance: A Practical Guide to the Arts*, 2008, available from the Arts Law website.

The Australia Council website has a useful guide Fishel, David, *On Board: serving on the board of an arts organisation* (www.australiacouncil.gov.au/research/arts_sector/reports_and_publications/on_board_serving_on_the_board_of_an_arts_organisation2)

The Council of Social Service of New South Wales (NCOSS) website (www.ncoss.org.au/msu) provides a range of resources designed to enhance the organisational capacity of the non government sector in areas such as human resources, good governance and efficient 'back office' operations

A number of useful guides are also available on the Australian Securities and Investments Commission (ASIC) website (www.asic.gov.au)

Need more help?

Contact Arts Law if you have questions about any of the topics discussed above

Telephone: (02) 9356 2566 or toll-free outside Sydney 1800 221 457

Also visit the Arts Law website (www.artslaw.com.au) for more articles and information sheets

Disclaimer

The information in this information sheet is general. It does not constitute, and should be not relied on as, legal advice. The Arts Law Centre of Australia (**Arts Law**) recommends seeking advice from a qualified lawyer on the legal issues affecting you before acting on any legal matter.

While Arts Law tries to ensure that the content of this information sheet is accurate, adequate or complete, it does not represent or warrant its accuracy, adequacy or completeness. Arts Law is not responsible for any loss suffered as a result of or in relation to the use of this information sheet. To the extent permitted by law, Arts Law excludes any liability, including any liability for negligence, for any loss, including indirect or consequential damages arising from or in relation to the use of this information sheet.

© Arts Law Centre of Australia 2010

You may photocopy this information sheet for a non-profit purpose, provided you copy all of it, and you do not alter it in any way. Check you have the most recent version by contacting us on (02) 9356 2566 or toll-free outside Sydney on 1800 221 457.

Artists in the Black is a specialised Indigenous program run by the Arts Law Centre of Australia.

Artists in the Black receives financial support from the Australian Government, Department of the Prime Minister and Cabinet, Office for the Arts through its National Arts and Crafts Industry Support (NACIS) program.



Australian Government

National Arts and Crafts Industry Support