



BSB41021

**Certificate IV in Aboriginal and Torres
Strait Islander Governance**

Module 1

Learner Manual

**BSBFNG403 Participate as a board member of an Aboriginal and
Torres Strait Islander organisation**

**BSBFNG409 Comply with Aboriginal and Torres Strait Islander
organisation director obligations**

**BSBFNG401 Plan and chair Aboriginal and Torres Strait Islander
organisation board meetings**

COMMONWEALTH OF AUSTRALIA

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Contents

Introduction	5
What is an Organisation?.....	5
Legislation and Indigenous Corporations	6
What is an Aboriginal and Torres Strait Islander Community Controlled Organisation?.....	6
What is Incorporation?	6
Business structures	7
Corporations and their function.....	8
Constitution.....	9
Principles of Good Governance.....	11
Aboriginal Land Rights Act 1983.....	14
Roles and Responsibilities of the Board of Management.....	15
Funding and reporting.....	16
Conflict of Interest	17
Confidentiality	18
Roles of Board Members.....	19
The Role of a Company Director	21
Executive Director.....	22
Non-executive Director.....	22
The Responsibilities of a Company Director	22
Penalties for Non-compliance for Directors of a Company.....	24
The Role of a Director in a Co-operative	24
The Responsibilities of a Director in a Co-operative	25
Penalties for Non-compliance for Directors of a Co-operative	25
The Roles and Responsibilities of a Director of an Association.....	27
Penalties for Non-compliance for Directors of an Association	28
Incorporated Organisations as a Workplace.....	28
Overlapping roles	29
Code of Conduct.....	30
Identifying Community Needs.....	30
Board Meetings	32
Co-operatives.....	32

Companies	32
Incorporated Associations	32
Financial Reporting	33
Legal Requirements	33
State Regulators	35
Legal Requirements for Board Meetings	35
Frequency of Meetings	36
Records of Meetings	36
The agenda	36
The minutes	37
Election of Office Bearers	37
Chairperson	38
Secretary	38
Treasurer	38
Observe the Constitution	39
Decision Making Processes	39
Voting.....	39
Decision Making in Co-operatives.....	39
Aboriginal and Torres Strait Islander Community Controlled Organisations	40
Consulting with Stakeholders.....	40
Planning a Meeting	41
Health and safety	42
Transportation	42
Promotion of the meeting	42
Circulate Background Papers	43
Chairing a Meeting of the Board	43
Board Member Responsibilities	43
Identify Conflicts of Interest.....	44
Maintain Confidentiality	44

Introduction

This Learner Manual addresses the following Units of Competency:

- BSBFNG403 Participate as a board member of an Aboriginal and Torres Strait Islander organisation
- BSBFNG409 Comply with Aboriginal and Torres Strait Islander organisation director obligations
- BSBFNG401 Plan and chair Aboriginal and Torres Strait Islander organisation board meetings

The Learning Objectives are:

- Describe the incorporation requirements for a range of business structures
- Describe the role and responsibilities of the Board of an organisation
- Recognise potential conflict of interest
- Describe the cultural context of Aboriginal and Torres Strait Islander organisations
- Describe the roles and responsibilities of a company director
- Describe the roles and responsibilities of a director in a co-operative
- Describe the roles and responsibilities of a director in an association
- Summarise the legal requirements for Board meetings
- Plan and prepare for a Board meeting
- Chair a Board meeting

What is an Organisation?

An organisation is an entity formed for the purpose of carrying on an enterprise.

The most common business structures are sole trader, partnership, proprietary limited company, association and co-operative.

Terminology of Boards and Board Members

Business Structure	Name of Board Members	Name of the Board	Legislation of Incorporation
Sole Trader	N/A	N/A	N/A
Partnership	N/A	N/A	Different legislation per state
Company	Directors	Board of Directors	Corporations Act 2001
Association	Officers	Executive Committee	Different legislation per state

Co-operative	Directors	Board of Directors	Different legislation per state
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Legislation and Indigenous Corporations

What is an Aboriginal and Torres Strait Islander Community Controlled Organisation?

Colonisation has seen Aboriginal and Torres Strait Islander peoples subjected to forced removal from their lands and their children. Regulations dictated where they could live and work and whether they could or could not marry.

This denial of rights and restrictions has made self-determination a key aspiration of Aboriginal and Torres Strait Islander peoples and their communities.

Australian culture (and Western culture around the world) has largely moved on from the backward, old fashioned ideas and policies of colonial times. Governments have also evolved into modernisation; however, the legacy of colonial and other past policies have created a heavy burden to manage.

Australia's First Nations peoples are increasingly playing a major role in managing matters that affect them. Financial and other support is available to organisations working to assist their communities through public programs and initiatives. Support is also available for setting up an appropriate business structure for these organisations.

Clause 44 of the National Agreement on Closing the Gap defines Aboriginal and Torres Strait Islander community control is an act of self-determination. Under this Agreement, an Aboriginal and/or Torres Strait Islander Community-Controlled Organisation delivers services, including land and resource management that builds the strength and empowerment of Aboriginal and Torres Strait Islander communities and people and is:

- incorporated under relevant legislation and not-for-profit
- controlled and operated by Aboriginal and/or Torres Strait Islander people
- connected to the community, or communities, in which they deliver the services governed by a majority Aboriginal and/or Torres Strait Islander governing body.¹

What is Incorporation?

Incorporation gives your group its own legal identity (the group becomes a 'separate legal entity' from its members). The incorporated group can enter into contracts, sign a lease, employ people, and sue and be sued.

¹ <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/6-priority-reform-areas/two>

Incorporated groups are incorporated under law (which can be either state or federal) and report to the regulator responsible for their type of structure, for example the Australian Securities and Investments Commission (ASIC).

Incorporated groups follow a particular structure, with group rules (or constitution), members, and a governing body (often called a Board or committee).

Being incorporated has consequences for people who are going to be on the Board or committee of management of a not-for-profit group, as legal duties attach to these roles.

Business structures

Different business structures come with different advantages and disadvantages and can determine:

- the licences required
- how much tax is paid
- whether you're considered an employee, or the owner of the business
- your potential personal liability
- how much control you have over the business
- ongoing costs and volume of paperwork for the business.

The Australian Taxation Office (ATO) gives the following outlines for some commonly used business structures for organisations in Australia:

<https://www.ato.gov.au/businesses-and-organisations/starting-registering-or-closing-a-business/starting-your-own-business/business-structures-key-tax-obligations>

Some of the most common structures include:

Partnership

A partnership is a group or association of people who carry on a business and distribute income or losses between themselves. For example, if you and a friend or family member decide to set up a business together, you might operate it as a partnership. In a partnership the partners:

- share income, losses and control of the business
- may choose whether or not to have a written partnership agreement. This is not essential for a partnership to exist, but is a good idea as this can help prevent misunderstandings and disputes about what each partner brings to the partnership, and what they are entitled to receive from the income of the business
- are not employees, but the partnership might also employ other workers
- are responsible for their own superannuation arrangements. However, the partnership is required to pay superannuation for its employees.

Trust

Setting up a trust can be expensive as a formal deed is required outlining how the trust will operate and there are formal yearly administrative tasks for the trustee.

A trustee is legally responsible for the operation of the trust. The trustee can be an individual or a company. Profits from the trust go to beneficiaries.

Company

A company is a legal entity with higher set-up and administration costs. Companies also have additional (ATO) reporting requirements.

A company:

- is run by its directors and owned by its shareholders
- is owned by its shareholders and protects them from liabilities incurred by the company
- provides some asset protection, to its directors but they can be legally liable for their actions and in some cases, the debts of the company
- is regulated by the Australian Securities & Investments Commission (ASIC).

Indigenous community organisations are usually set up as a company, under an incorporation structure.

Corporations and their function

Corporations are legal entities separate from the members, shareholders, managers and/or employees who establish and/or own the organisation. As a legal entity, a corporation may legally do things in its own name such as own land, sign a lease and enter into agreements.

There are benefits of an organisation becoming a corporation. Committee members are protected against the debts and liabilities of the organisation. As a corporation, organisations gain leverage to attract funding.

There are a few different models under which an organisation can become incorporated. Many Aboriginal and Torres Strait Islander organisations become incorporated under Acts such as:

- Corporations (Aboriginal and/ or Torres Strait Islander) Act 2006 (Cth) (regulated by the Office of the Registrar of Indigenous Corporations (ORIC))
- The Co-operatives (Adoption of National Law) Act 2012 (NSW)
- Associations Incorporations Act 1984.

It is up to the organisation to choose which structure to adopt as each model comes with different requirements, responsibilities and benefits.

Although Board members are not expected to understand every detail of the legislation they need to be aware of the responsibilities under those Acts. The legislation is publicly available and may need to be referred to from time to time, especially if there are any amendments.

Each State and Territory also has laws for incorporation of non-profit organisations, known as co-operatives or associations. Aboriginal and Torres Strait Islander organisations can incorporate under laws such as:

- The Co-operatives (Adoption of National Law) Act 2012 (NSW)
- Co-operatives National Law Application Act 2013 (VIC)
- Co-operatives National Law (Tasmania) Act 2015
- Co-operatives National Law (South Australia) Act 2013
- Queensland (QLD) Associations Incorporation Act 1981

- Northern Territory (NT) *Associations Act*
- Western Australian *Companies (Co-operative) Act* (1943).

Each State or Territory has its own regulator that oversees each of these incorporated bodies.

- Visit the relevant website for each State/Territory for information about incorporating an association.

State/ Territory	Authority	Web Address
Australian Capital Territory	Access Canberra	https://www.accesscanberra.act.gov.au/business-and-work/associations-co-ops-and-charities
New South Wales	Office of Fair Trading	https://www.fairtrading.nsw.gov.au/associations-and-co-operatives
Northern Territory	Consumer and Business Affairs	https://nt.gov.au/industry/licences/incorporated-associations
Queensland	Office of Fair Trading	https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/associations-charities-and-non-for-profits/incorporated-associations
South Australia	Consumer and Business Services	www.cbs.sa.gov.au/
Tasmania	Office of Consumer Affairs & Fair Trading	https://www.cbos.tas.gov.au/topics/clubs-fundraising/incorporated-associations
Victoria	Consumer Affairs	www.consumer.vic.gov.au
Western Australia	Consumer and Employment Protection	https://www.commerce.wa.gov.au/books/inc-guide-incorporated-associations-western-australia

Constitution

Organisations that have a corporation structure have a Board of directors. These organisations function under a constitution, which may sometimes be referred to as the “Rule Book”. The rule book reflects the legislation under which the organisation has been set up and will:

- state how the association is to be structured
- detail the safeguards needed to ensure that it operates fairly on behalf of the whole community
- be a basic requirement for applying for funding (funding bodies will require the submission of the constitution to confirm that the organisation is genuine).

A Constitution sets out:

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- the principle objectives and core function of the organisation (objects) that the Board will support and oversee
- the incorporation laws relevant to the organisation
- Interpretation of terms used throughout the constitution
- the way the organisation exercises its legal powers
- amendment of the rules and how this happens
- the way an incorporated association can be dissolved
- ownership of the organisation's assets
- who is responsible for making legal decisions on behalf of the organisation
- rules, which cover membership:
 - how to qualify, apply and contribute
 - responsibilities, including procedures for suspension, expulsion, cancellation and ceasing membership
 - voting rights
 - liabilities
 - fees and fines
- rules which cover meetings:
 - Annual General Meetings (AGM)
 - Special General Meetings (SGM)
 - notices
 - business to be brought to meetings and how they should be run
 - numbers required for a quorum
 - voting procedures
- rules which cover Board directors:
 - how to qualify and retire from a Board position
 - filling a vacated position – including temporary positions
 - conditions of removal from office
 - expenses incurred
 - conflict of interest
 - duties and liabilities
- the collective responsibilities of Board and management committee members:
 - requirements for attending meetings
 - delegation of powers
 - indemnities and insurances

- selection and evaluation of the CEO
- dispute resolution procedures
- financial management and audits.

Every new member should be provided with access and/or a copy of the constitution, as they need to understand and abide by the rules it contains.

It is good practice to review the constitution from time to time. This will ensure that members are reminded of its contents and their role/s and responsibilities. Review methods may include:

- workshops for members at which the chairperson or another member who understands the constitution can facilitate discussion and answer questions
- engaging an external consultant to conduct a training session
- having a column in the organisation's newsletter in which different aspects of the constitution are discussed
- one-to-one discussions if someone is having difficulty with a particular area (or rule)
- orientation workshops for prospective new Board members before each AGM (Annual General Meeting)

If the constitution is to change, details of how this is done are set out in the constitution itself. This may mean a special meeting.

The different roles held by Board members need to know specific sections of the constitution in detail. For example, the treasurer needs to be familiar with the details of financial management, audit and financial reporting requirements.

Board members need to know the financial rules well enough to understand their obligations in reviewing financial statements but may not need to know how to appoint an auditor or write the financial reports.

Principles of Good Governance

Governance structures set out who makes decisions, who has influence, how that influence is exercised and how decision makers are held accountable.

The Council of Europe suggests the following twelve principles to good governance. The Council, founded in 1949 with the focus of promoting human rights, democracy and law in Europe.²

Although these principles were set out by the Council of Europe, and refer to international standards, the basics of these principles are relevant to governance in all organisations.

Principle 1 - Fair Conduct of Elections, Representation and Participation

- local elections are conducted freely and fairly, according to international standards and national legislation, and without any fraud
- citizens are at the centre of public activity and they are involved in clearly defined ways in public life at local level

² <https://www.coe.int/en/web/good-governance/12-principles>

- all men and women can have a voice in decision-making, either directly or through legitimate intermediate bodies that represent their interests. Such broad participation is built on the freedoms of expression, assembly and association
- all voices, including those of the less privileged and most vulnerable, are heard and taken into account in decision-making, including over the allocation of resources
- there is always an honest attempt to mediate between various legitimate interests and to reach a broad consensus on what is in the best interest of the whole community and on how this can be achieved
- decisions are taken according to the will of the many, while the rights and legitimate interests of the few are respected.

Principle 2 – Responsiveness

- objectives, rules, structures, and procedures are adapted to the legitimate expectations and needs of citizens
- public services are delivered, and requests and complaints are responded to within a reasonable timeframe.

Principle 3 - Efficiency and Effectiveness

- results meet the agreed objectives
- best possible use is made of the resources available
- performance management systems make it possible to evaluate and enhance the efficiency and effectiveness of services
- audits are carried out at regular intervals to assess and improve performance.

Principle 4 - Openness and Transparency

- decisions are taken and enforced in accordance with rules and regulations
- there is public access to all information which is not classified for well-specified reasons as provided for by law (such as the protection of privacy or ensuring the fairness of procurement procedures)
- information on decisions, implementation of policies and results is made available to the public in such a way as to enable it to effectively follow and contribute to the work of the local authority.

Principle 5 - Rule of Law

- the local authorities abide by the law and judicial decisions
- rules and regulations are adopted in accordance with procedures provided for by law and are enforced impartially.

Principle 6 - Ethical Conduct

- the public good is placed before individual interests
- there are effective measures to prevent and combat all forms of corruption
- conflicts of interest are declared in a timely manner and persons involved must abstain from taking part in relevant decisions.

Principle 7 - Competence and Capacity

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- the professional skills of those who deliver governance are continuously maintained and strengthened in order to improve their output and impact
- public officials are motivated to continuously improve their performance
- practical methods and procedures are created and used in order to transform skills into capacity and to produce better results.

Principle 8 - Innovation and Openness to Change

- new and efficient solutions to problems are sought and advantage is taken of modern methods of service provision
- there is readiness to pilot and experiment new programs and to learn from the experience of others
- a climate favourable to change is created in the interest of achieving better results.

Principle 9 - Sustainability and Long-term Orientation

- the needs of future generations are taken into account in current policies
- the sustainability of the community is constantly taken into account
- decisions strive to internalise all costs and not to transfer problems and tensions, be they environmental, structural, financial, economic or social, to future generations
- there is a broad and long-term perspective on the future of the local community along with a sense of what is needed for such development
- there is an understanding of the historical, cultural and social complexities in which this perspective is grounded

Principle 10 - Sound Financial Management

- charges do not exceed the cost of services provided and do not reduce demand excessively, particularly in the case of important public services
- prudence is observed in financial management, including in the contracting and use of loans, in the estimation of resources, revenues and reserves, and in the use of exceptional revenue
- multi-annual budget plans are prepared, with consultation of the public
- risks are properly estimated and managed, including by the publication of consolidated accounts and, in the case of public-private partnerships, by sharing the risks realistically
- the local authority takes part in arrangements for inter-municipal solidarity, fair sharing of burdens and benefits and reduction of risks (equalisation systems, inter- municipal co-operation, mutualisation of risks...).

Principle 11 - Human Rights, Cultural Diversity and Social Cohesion

- within the local authority's sphere of influence, human rights are respected, protected and implemented, and discrimination on any grounds is combated
- cultural diversity is treated as an asset, and continuous efforts are made to ensure that all have a stake in the local community, identify with it and do not feel excluded
- social cohesion and the integration of disadvantaged areas are promoted

- access to essential services is preserved, in particular for the most disadvantaged sections of the population.

Principle 12 - Accountability

- all decision-makers, collective and individual, take responsibility for their decisions
- decisions are reported on, explained and can be sanctioned
- there are effective remedies against maladministration and against actions of local authorities which infringe civil rights.

The one thing that enables these principles to work is clear communication. Communication lines and protocols should be clearly defined and documented in the organisation's policies and procedures. Where this is not absolutely clear, it is your responsibility to ask questions and/or confirm how you receive and pass on information within the organisation.

Aboriginal Land Rights Act 1983

Aboriginal Land Rights

Land Rights legislation varies from jurisdiction to jurisdiction across Australia. The following link gives details for each State/Territory

<https://www.atns.net.au/land-rights-legislation-1>

Board members of Local Aboriginal Land Councils need to have an awareness of the Aboriginal Land Rights legislation that relates to their State or territory.

State/ Territory	Land Rights (or similar) Legislation	
Northern Territory	Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) https://www.legislation.gov.au/Details/C2016C00111	
Queensland	Aboriginal Land Act 1991 (Qld) and the Torres Strait Islander Land Act 1991 (Qld) http://classic.austlii.edu.au/au/legis/qld/consol_act/ala1991126/ Aboriginal and Torres Strait Islander Land (Providing Freehold) Act 2014 (Qld) Cape York Peninsula Heritage Act 2007 (Qld).	
South Australia	Aboriginal Land Trust Act 2013 (SA) https://www.legislation.sa.gov.au/LZ/C/A/Aboriginal%20Lands%20Trust%20Act%202013.aspx Pitjantjatjara Land Rights Act 1981 (SA)	

	Maralinga Tjarutja Land Rights Act 1984 (SA)	
New South Wales	Aboriginal Land Rights Act 1983 http://www.austlii.edu.au/au/legis/nsw/consol_act/alra1983201/index.html	
Victoria	The Traditional Owner Settlement Act 2010 (Vic) https://www.legislation.vic.gov.au/in-force/acts/traditional-owner-settlement-act-2010/025	
Tasmania	There is no Aboriginal land rights legislative regime in Tasmania. Grants of land are managed through: The Aboriginal Lands Act 1995 (Tas) https://www.legislation.tas.gov.au/view/html/inforce/current/act-1995-098	
Western Australia	Aboriginal Affairs Planning Authority Act 1972 (WA) https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_1_homepage.html	
Australian Capital Territory	There is no territory-wide Aboriginal land rights legislation, in the ACT however, land in Jervis Bay Territory was granted under the Aboriginal Land Grant (Jervis Bay Territory) Act 1986 (Cth). https://www.legislation.gov.au/Details/C2016C01003	

These extensive pieces of legislation may be overwhelming to some Board members even after several years of service. No one is expected to 'know' all parts of an Act but should know how to access it for reference.

It is important to understand the purpose of Land Rights legislation. The following information uses the NSW Aboriginal Land Rights Act 1983 as an example:

Section 3 of the Act describes the purpose of the Act as follows:

- a) to provide land rights for Aboriginal persons in New South Wales
- b) to provide for representative Aboriginal Land Councils in New South Wales
- c) to vest land in those Councils
- d) to provide for the acquisition of land, and the management of land and other assets and investments, by or for those Councils and the allocation of funds to and by those councils
- e) to provide for the provision of community benefit schemes by or on behalf of those Councils

Indigenous community-based organisations whether they are a Local Aboriginal Land Council or incorporated under other legislation are required to have policies and procedures relating to the behaviour of Board members, management and staff as well general members. These policies and procedures must reflect the organisation's constitution and any relevant legislation.

Roles and Responsibilities of the Board of Management

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Members of an organisation's Board (also referred to as a governing committee, Board of directors or Board of management) take on a lot of responsibility when accepting a place on the Board. Communities place their trust in the hands of their Boards and expect them to work with principles of good governance. Governance is about organising processes for:

- decision making
- implementation of agreed decisions
- gathering the necessary resources to support implementation
- reviewing processes and outcomes
- supporting processes and outcomes that achieve desired results
- adjusting processes where the desired outcomes fall short.

The Board should review its focus on a regular basis to ensure it is operating well and in the best interests of the community. This may lead to reaffirming current practices or a shift in priorities, changes to processes or meeting arrangements.

The Board should devote its attention to strategic matters, and to organisational development and improvement. The day-to-day management of the organisation is the responsibility of the Chief Executive Officer (CEO).

Being elected to the Board can be a daunting experience for some people, especially if it is the first occasion they have had the honour. Board members must become familiar with what the organisation does and how it operates. Do some research on the organisation, other similar organisations, attend an induction and ask questions.

Discussion Point:

How should newly elected members be inducted and what should be included in an induction?

Funding and reporting

The Commonwealth and State/ Territory governments, philanthropic trusts and Australian Businesses provide a wide range of special purpose grants to incorporated organisations.

There are requirements for reporting attached to these funding grants. Government funding bodies need to know that the organisation has spent the funds in the agreed manner, so they can in turn meet accountabilities to taxpayers. Philanthropic trusts must meet their own goals and be answerable to their Boards of trustees.

The organisation receiving the funds must account for the expenditure of the funds and provide reports as specified in the funding agreement. These reports may be ongoing progress reports and /or overall outcomes of the project. The Board will be responsible for ensuring that record keeping and reporting requirements are met. Terms and conditions of grants may include:

Appropriate use of Funds and Grants

Your organisation cannot decide to use the grant for any other purpose than that for which it was provided. If circumstances change or unforeseen issues arise, the organisation may ask the funding

body for a variation to the agreement. Any variation must be formally requested and if the funding body agrees to any changes they will inform the organisation in writing.

Reporting on Funding Expenditure

Some funding agreements may simply require one-off reporting on final project outcomes, whilst others may ask for progress reports at specified dates or intervals over the duration of the funding/project period.

The level and frequency of required reporting will be stated in the details of each agreement. If your organisation receives funding to purchase equipment, the treasurer may need to provide the funding agency with:

- evidence that three quotes have been received and considered by the Board
- a rationale for the decision on which quote to accept (you might not always accept the lowest quote as there will be other factors to consider)
- an acquittal sign-off that includes a copy of the invoice and evidence of payment

The final reporting will include an acquittal to demonstrate that the funds were spent for the purpose provided. This may include a statement of accounts prepared by the organisation's treasurer and endorsed by the Board.

Report on Project Performance

In addition to providing financial reports, there are usually requirements to report on the progress and outcomes of the project. These reports include evidence which demonstrates how the project met its objectives. If any project objectives were not able to be met, this must be explained also.

Internal or external evaluations of the project outcomes may also form part of the final acquittal.

Incorporated associations are also required to submit comprehensive reports annually on their financial situation in the Annual Statement of Accounts.

Conflict of Interest

A conflict of interest occurs when a person who is part of the decision-making process is considering an issue in which they or a close family member stand to benefit in some way.

Conflict of interest is about Board members being aware of actual or potential self-interests that may conflict (interfere) with putting the organisation first. It is also important to recognise perceptions (by members, funding bodies etc.) of a conflict of interest.

Regardless of what law the organisation is incorporated under, Board members (and senior management) must:

- tell the Board that there is a conflict of interest and why
- make sure this is recorded in the minutes of the meeting
- leave the room before related discussions and vote occur
- in a community where everyone is related voting processes may be more difficult. Each Board needs to find an appropriate way of dealing with this.

If a Board member has a conflict of interest this does not mean they have done anything wrong. It is how the Board member handles the conflict of interest that is important. It is only wrong to conceal or fail to disclose any possible conflict of interest.

To avoid or manage a conflict of interest the Board members must refer to the conflict of interest section of the constitution, which has established procedures for disclosure. Upon appointment to the Board, all Board members will sign an agreement, that states they will make themselves aware of and adhere to the organisation's constitution and policies and procedures, including those for conflict of interest issues.

Boards need to develop strategies (policies and procedures) for addressing conflicts of interest. Some strategies may include:

- seeking competitive open tenders for major purchases that do not include business interests of Board members or their families
- ensuring Board members who have an actual or potential conflict of interest stand aside from discussions and voting
- training for Board members on conflict of interest
- outsourcing specialist independent advice

Confidentiality

It is important to get information out to community members and network organisations about the organisation, the work it does, the assistance it needs and the opportunities it is looking for. In this situation information is being shared and work contact details are exchanged which is a vital part of a community organisations function. We all talk about our day to family and friends, which may include work. But there will be some information that must not be discussed with people outside of the organisation.

Both the constitution and the organisation's policies and procedures will spell out guidelines for confidentiality and privacy. It is important to have access to these kinds of documents for reference. The Board and management must be very clear about which information they can and cannot share. This confidentiality usually extends beyond employment, Board appointment or other association with an organisation as well.

Board members and organisational management have access to information about the organisation and its people. Some of this information will be considered sensitive. Sensitive information may include:

- personal details of members of the organisation (as listed below)
- information in contracts and agreements
- financial information
- legal matters

Using organisational information for personal gain, or for the advantage of friends or family is an example of a conflict of interest. Kinship responsibilities and family protocols must be carefully considered by Board members and management when performing their duties.

Some sensitive information has additional protection under *The Privacy Act 1988*. This may include personal details of members, staff and volunteers of the organisation, such as:

- contact and address details
- wages or salary
- health (including predictive genetic information)
- racial or ethnic origin
- political opinions
- membership of a political association, professional/ trade association or union
- religious beliefs or affiliations
- philosophical beliefs
- sexual orientation or practices
- criminal record
- biometric information (from identifying images etc. such as fingerprints)

Roles of Board Members

The role of a Director/Board Member is similar in all business structures but different because of different applicable legislation.

The overall role of the Board is to act in accordance with the constitution. Different Board member roles come with specific responsibilities. All Board members should know the basics of roles other than their own. This is important for occasions when they may need to fill in, in the absence of others. This will usually be a temporary situation. If a role is to change permanently, the Board must vote and formally appoint the change in role.

Some, Board members may seek additional duties such as taking on the supervision of new projects. Boards generally operate through the following roles:

Chairperson (Chair)/ President

is responsible for:

- attending meetings
- assist in appointing a CEO
- directing the proceedings of meetings
- ensuring regular Board meetings are organised
- ensuring that the rules in the constitution and policies and procedures are maintained
- ensuring that proceedings requiring a quorum are observed
- delivering a casting vote in the event of an equal vote
- preparing an agenda in consultation with the CEO or Manager
- dealing with agenda items in order of importance
- keeping discussion and decision making relevant

- suggesting appropriate procedures to deal with any difficulties in getting through agenda items if necessary, such as setting time limits for speaking
- ensuring all members have the opportunity to speak
- preserving order throughout the meeting
- signatory duties including signing the minutes of the previous meeting after they have been confirmed as a true record
- representing the organisation at all levels of the community and networks

Some organisations may appoint a deputy chairperson, to assist the chairperson with their duties or filling in as acting chair in their absence.

The Public Officer is responsible for:

- attending meetings
- assist in appointing a CEO
- being the official contact person for an incorporated organisation
- the register of the organisation's members
- notification of changes to the Constitution and other public-related matters
- providing an official annual statement.

The Secretary is responsible for:

- attending meetings
- assist in appointing a CEO
- ensuring all correspondence and official records of the organisation are up to date, accurate and in order (other than financial)
- assisting the Chair and CEO to organise Board meetings
- ensuring the minutes of the meeting are taken, either by themselves or delegated to a minute taker
- ensuring that information provided to and from the Board is dealt with in an efficient manner
- ensuring that meeting papers (agenda, correspondence and previous minutes) are distributed in a timely manner
- working with the Chair to ensure the meeting runs smoothly
- knowing the rules of the organisation and taking responsibilities for all the legal requirements of incorporation
- may be a designated signatory.

The Treasurer is responsible for:

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- attending meetings
- assist in appointing a CEO
- overseeing the financial affairs of the organisation
- keeping the Board informed about the finances in a way that Board members can understand
- reviewing the budget
- ensuring the financial records are current and in order
- providing financial and investment advice
- organising and presenting accounts and the annual balance sheet to members of the organisation at the Annual General Meeting (AGM)

Other general Board members are responsible for:

- attending meetings
- form part of the quorum for voting
- participate in decision making and consensus
- act in other roles if called to do so (e.g. secretary, chair a meeting, special projects)
- assist other Board members as requested
- assist in appointing a CEO
- adhere to the constitution

The Role of a Company Director

A company director is an office-holder, which means that they have a legal status and responsibilities.

As a director, they are legally responsible for the company's business and can be held accountable for its actions. This is why directors should have D&O liability insurance. It protects directors and officers who may be personally sued by someone aggrieved by the company's actions, whether that person is an employee, vendor, competitor, investor, customer, or another party.

Directors of companies are generally appointed to the Board following a formal process, and they are then registered with the company's office.

The minimum number of directors for most companies is two. Directors are responsible for managing the affairs of the company. To become a director, you do not need formal qualifications, but a formal qualification helps.

There are, however, some people who are ineligible to serve as directors of companies, such as auditors, bankrupts and people disqualified by court order.

An executive director and a non-executive director are treated the same legally, and their responsibilities are the same.

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A general meeting of shareholders normally appoints directors to the Board of a company.

Executive Director

Executive directors wear two hats: that of a company employee, usually a senior executive, and that of a Board member. On top of their full-time executive position, they are appointed to the Board. Through their deep understanding of the business, executive directors can make the Board aware of important issues and ensure a thorough examination of them.³

Non-executive Director

Non-executive directors are members of a company's Board of directors but are not part of the executive team, meaning they do not engage in the company's daily management. Their focus is on significant company decisions, policymaking and strategy planning.

Non-executive directors are positioned within the Board of directors to bring their individual perspectives to the decision-making processes at an organisation. They may be required to support, assist and mentor the CEO, and provide critical feedback to help the leadership analyse important decisions and ensure they're in their best interest.⁴

The Responsibilities of a Company Director

Directors are subject to a range of legal duties including those outlined below. The core duties contained in sections 180-183 of the Corporations Act largely codify the common law on directors' duties.

Act with care and diligence

Directors must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if he or she were a director in the company's circumstances and had the same responsibilities of that director.

Whether a director has exercised a reasonable degree of care and diligence is determined by balancing the foreseeable risk of harm against the potential benefits that could reasonably have been expected to flow to the company from the conduct in question.

In making decisions, directors must apply an enquiring mind, consider the overall position of the company, test information put before them by management and proactively consider what other information they require.

In practice, the duty requires each director to:

³ <https://www.aicd.com.au/content/dam/aicd/pdf/tools-resources/director-tools/individual/role-of-the-executive-director-director-tool.pdf>

⁴ <https://au.indeed.com/career-advice/finding-a-job/what-is-a-non-executive-director#:~:text=Non%2Dexecutive%20directors%20are%20members,decisions%2C%20policymaking%20and%20strategy%20planning>

- become familiar (and maintain familiarity) with the fundamentals of the business or businesses of the organisation;
- stay informed and make appropriate inquiries about the organisation's activities;
- monitor, generally, the organisation's affairs and policies;
- maintain familiarity with the organisation's financial status by appropriate means, including review of its financial statements and Board papers and make further inquiries into matters revealed by those documents where appropriate; and
- have an informed opinion of the organisation's financial capacity and solvency.

Act in good faith in the best interests of the company and for a proper purpose

Directors must exercise their powers and discharge their duties in good faith in the best interests of the corporation, and for a proper purpose. It is clear that the corporation (as a distinct legal and commercial entity) is the focus of this duty, and that it requires consideration of more than financial returns or profitability over a particular period.

Not improperly use information or position

Directors must not improperly use their position, or information they obtain because they are or have been a director, to gain an advantage for themselves or someone else, or cause detriment to the company. These prohibitions stem from a director's fiduciary duty to prevent conflicts of interests, and the obligation to act only in the best interests of the company.

Manage conflicts of interest

Directors must avoid or appropriately manage conflicts between personal interests and the company's best interests. The first step to managing conflicts of interest is identification. Recording conflicts of interest can help to ensure appropriate oversight and transparency.

Once a conflict has been identified, the Board must decide if it can be managed, and how. For example, it may be required that the conflicted director:

- refrain from participating in any discussion about related matters;
- remove themselves from the room; or
- abstain from voting on any matter related to the conflict.

Prevent insolvent trading

Directors have a duty to ensure that a company does not trade whilst insolvent or where they suspect it might be insolvent. Directors will be personally liable for certain debts which are incurred if:

- they are a director at the time when the company incurs the debt;
- the company is insolvent at that time, or becomes insolvent by incurring that debt; and
- at that time, there are reasonable grounds for suspecting that the company is insolvent or would become insolvent.

Statutory duties in relation to financial record keeping and reporting

Directors have an obligation to take reasonable steps to ensure that their company complies with its obligations under the Corporations Act in relation to the keeping of financial records and financial

reporting. They must apply their own minds (rather than rely solely on advice) when reviewing financial statements, and they must satisfy themselves that this information is consistent with their knowledge of the company's affairs.

Provision of director information

Directors have an obligation to provide, to their organisation, certain information relating to themselves. In certain circumstances, directors of proprietary companies will have responsibilities to lodge information with the Australian Securities and Investments Commission (ASIC).⁵

Penalties for Non-compliance for Directors of a Company

The *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* commenced on 13 March 2019, strengthening existing penalties and introducing new penalties for those who breach the corporate laws of Australia.

Under the new penalty provisions:

- maximum prison penalties for the most serious offences have increased to 15 years – including breaches of director's duties, false or misleading disclosure and dishonest conduct
- maximum civil penalties for individuals and companies have significantly increased, and
- civil penalties now apply to a greater range of misconduct – including a licensee's failure to act efficiently, honestly and fairly, failure to notify about reportable situations and defective disclosure.

The new penalty provisions enable ASIC to pursue harsher civil penalties and criminal sanctions under the following ASIC-administered legislation:

- *Corporations Act 2001*
- *Australian Securities and Investments Commission Act 2001*
- *National Consumer Credit Protection Act 2009* and National Credit Code
- *Insurance Contracts Act 1984*.

The strengthened penalties apply to contraventions occurring from 13 March 2019 onwards.

Increased civil penalties for individuals and companies

Under the new penalty provisions, the maximum civil penalty for individuals is the greater of 5,000 penalty units (currently \$1.565 million) or three times the benefit obtained and detriment avoided.

The maximum civil penalty for companies is the greater of:

- 50,000 penalty units (currently \$15.65 million)
- three times the benefit obtained and detriment avoided, or
- 10% of annual turnover, capped at 2.5 million penalty units (currently \$782.5 million).

The value of a penalty unit is prescribed by the *Crimes Act 1914* and is currently \$313 for offences committed on or after 1 July 2023.⁶

The Role of a Director in a Co-operative

The Board of directors is responsible for managing the affairs of the co-operative in accordance with the legislation and the co-operative's rules.

⁵ <https://www.aicd.com.au/content/dam/aicd/pdf/tools-resources/director-tools/individual/director-tool-general-duties-of-directors.pdf>

⁶ <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/fines-and-penalties/>

The directors of smaller co-operatives are likely to have direct involvement in all aspects of the business. The directors of large co-operatives will often have a more administrative role.

The role of directors includes:

- planning long-term business and financial strategies
- determining and implementing policies
- assessing business and financial performance
- ensuring the co-operative complies with its statutory reporting and other obligations under the Co-operative National Law (CNL)
- ensuring the co-operative operates in accordance with its rules

Duties of directors and officers

The directors and officers of a co-operative have obligations and duties under the CNL and general law. These include:

- acting in good faith - must act honestly and in the best interests of the co-operative and for a proper purpose
- acting with care and diligence - directors need to keep adequately informed of the financial status and business performance of the co-operative and obtain professional advice if necessary
- not misusing position or information - directors must not improperly use their position and information to gain an advantage for themselves or someone else or to cause harm to the co-operative
- avoiding conflicts of interest - any conflict must be declared and dealt with in accordance with the CNL
- preventing insolvent trading - directors must prevent the co-operative incurring a debt whilst it is insolvent or if it will become insolvent as a result of incurring the debt.

The Responsibilities of a Director in a Co-operative

Directors are responsible for ensuring the co-operative complies with its obligations under the CNL, including:

- keeping financial records - financial records must correctly record and explain its financial transactions, financial position and performance
- notifying co-operative changes - change of directors, secretary, CEO, registered address and rule changes must be notified to Fair Trading within 28 days
- maintaining registers - ensuring specified registers are maintained and are available for inspection by members and other persons as required
- reporting to members - provide financial reports to members within 5 months of the end of the co-operative's financial year
- lodging annual returns - annual returns or reports are required to be lodged with Fair Trading within 5 months of the end of the co-operative's financial year
- complying with rules - ensuring the co-operative operates in accordance with its rules.⁷

Penalties for Non-compliance for Directors of a Co-operative

⁷ <https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/co-operatives/running-a-co-operative#:~:text=The%20role%20of%20directors%20includes,assessing%20business%20and%20financial%20performance>

Directors' legal duties

The directors, other officers and employees are required to be honest and act in good faith, and:

- not to use information acquired in their duties, nor to use their position, recklessly or with intent for personal gain or for personal or indirect advantage or to the detriment of the cooperative
- to declare the nature and extent of any interest in proposed or current contracts
- to exercise a reasonable degree of care and diligence
- to make every business judgement in good faith for a proper purpose, without a material personal interest, having informed themselves to an extent they feel is appropriate, and for what they believe to be the best interests of the co-operative.

Criminal penalties of up to \$200,000 or five years in prison, or both, may apply for serious breaches of duties.

Persons not permitted to be directors

People who are not permitted to be directors include:

- the auditor of the co-operative and any employer, employee or partner of the auditor
- undischarged bankrupts
- a person who has been convicted of a criminal offence
- a person disqualified from managing corporations under the Corporations Act 2001
- a person disqualified from managing co-operatives under co-operatives law during the first five years after the conviction or release from prison.

Penalties of up to \$24,000 or two years' imprisonment, or both, may apply.

Concealment, destruction, mutilation or falsification

Any current or former officer, employee or member who engages in conduct that results in the concealment, destruction, mutilation or falsification of any securities of, or belonging to, the cooperative, or any books affecting or relating to affairs of the co-operative, or any record required to be sent, kept or delivered under Co-operatives National Law is guilty of an offence and may be penalised \$10,000 or imprisoned for two years, or both.

Falsification and failure to record

Similar penalties apply to any current or former officer, employee or member who is guilty of falsification of books or computerised records, when the person knows they will be false or misleading, or who fails to record or store information when they have a duty to, with the intent to falsify an entry or render false or misleading information affecting or relating to affairs of a co-operative. It is a defence if the person proves that they acted honestly.

Fraud or misappropriation

A person may not, by false representation or imposition, obtain possession of property of a cooperative or, if property of a co-operative is in his possession, withhold or misapply it or wilfully apply part of it to purposes not authorised by the rules or Law. A penalty of up to \$6,000 applies.

Offering or paying commission

A person must not offer or pay commission, fee or reward to an officer of a co-operative in relation to a transaction or proposed transaction between the person and the co-operative. The officer must not accept such a commission, fee or reward. A penalty of up to \$6,000 or 6 months imprisonment, or

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both, applies. An officer found guilty is also liable to pay the co-operative double the value or amount of the commission, fee or reward.

False or misleading statements

False or misleading statements in relation to an application, request, or demand for money made to or from a co-operative can attract a penalty of up to \$6,000 or 6 months imprisonment, or both. A person must not knowingly give false or misleading information or statements in a material particular, or provide information or statements by another person knowing it to be false or misleading in a material particular, to a co-operative or its officer, employee or agent.

A person must not make or authorise the making of a statement in a document for the purposes of Co-operatives National Law or filed with the Registrar knowing it to be false or misleading in a material particular, or omit, or authorise the omission of, anything knowing that the omission makes the document false or misleading in a material particular.

Notice of conviction for an offence

If a co-operative or officer is convicted of an offence against the Co-operatives National Law or corresponding law, the co-operative must give each member notice of the conviction, the penalty imposed and the nature of the offence within 28 days of the conviction.⁸

The Roles and Responsibilities of a Director of an Association

When considering whether or not the duties for officer-bearers of an incorporated association or a company differ, the duties under general law are uncertain. There is minimal case law on this issue. However, it is generally suggested that committee members who are office-bearers owe the same duties as company directors.

Two arguments have been formulated in support. The first is that as both committee members and company directors are acting in an analogous fiduciary relationship to a corporate body, they should have the same obligations. This assumes that the relationship between a company director and a for-profit company is analogous to that of a committee member and a non-profit association.

The second argument is that the courts may equate the general law position for committee members with that for company directors. However, the fact that not all jurisdictions have codified the duties of committee members, and that those that have codified, each enacted a different group of duties, only means that no uniform view exists under the varied Associations Incorporation Acts.

There are statutory duties for committee members that mirror the duties for company directors. For example, committee members must disclose to the committee any direct or indirect pecuniary interest that they have in a contract that the committee is a party to. Committee members should not take part in any decision-making where they have such an interest. This is analogous to the director's duty to disclose and manage a conflict of interest.

Considering the lack of reported cases dealing with the duties of committee member at general law, it would be prudent and sensible for committee members of an incorporated association to hold themselves to the same standard as a company director.

⁸ <https://fed.coop/co-operatives-in-australia-a-manual/part-three-running-a-co-operative/offences-and-penalties/>

As with a company director, committee members and the public officer are primarily responsible for ensuring an incorporated association complies with its statutory and reporting obligations. Failure to comply with these obligations may lead to the issue of a penalty notice, prosecution, or in some instances, cancellation of the association's incorporation.⁹

Penalties for Non-compliance for Directors of an Association

In NSW, The Associations Incorporation Act 2009 provides that an authorised officer may issue a penalty notice on a person if it appears to the officer that the person has committed a penalty notice offence under the Act (section 93).

The offences for which a penalty notice may be issued and the amount of the penalty are prescribed in Schedule 4 of the Associations Incorporation Regulation 2016. The amount of the penalty ranges from \$50-\$200.¹⁰

Incorporated Organisations as a Workplace

If an incorporated association employs people to run the organisation, the way the roles and responsibilities of the Board are exercised will depend on who is employed and the size of the workforce. In a small organisation, Board members may play an active part in setting conditions of work and monitoring the work of the employees (apart from recruitment). Board members are responsible for the wellbeing and working conditions of the staff and volunteers. There will usually be a manager employed to take care of the day-to-day operations of the organisation and staffing.

As an employer the organisation has to comply with a number of commonwealth laws which protect the rights of employees, including:

- Disability Discrimination Act 1992
- Human Rights and Equal Opportunity Commission Act 1986
- Racial Discrimination Act 1975
- Sex Discrimination Act 1984
- Superannuation Guarantee Charge Act 1992
- Workplace Relations Act 1996
- Privacy Act 1988
- Work Health and Safety Regulation 2011
- Workers Compensation Act 1987

Each State/ Territory also has relevant legislation, additional to the federal legislation.

⁹ <https://shglawyers.com.au/what-are-my-duties-as-an-officer-of-an-incorporated-association/>

¹⁰ https://www.fairtrading.nsw.gov.au/_data/assets/pdf_file/0004/370543/Issue-of-penalty-notices-under-the-Associations-Incorporation-Act-2009-policy.pdf

Overlapping roles

There will often be some overlap between the roles and responsibilities of the Board and of management (CEO and other managers). This can create problems unless there is good communication and clear delegation of tasks between and shared by them.

In community organisations the Board looks after the strategic direction and governance and big decisions that will affect the community and the organisation, such as:

- ensuring that an organisation abides by its mission
- long term vision of an organisation
- final approval for major expenditure
- community consultation
- communicating decisions to community members
- funds acquisition
- selecting and appointing a CEO
- amendments to an organisation's constitution
- manage conflicts of interest

Management takes care of the operational tasks for running the organisation and is answerable to the Board. Management tasks include:

- planning, organising structures and systems of work
- ensuring that the day-to-day work is completed properly
- staffing
- records management
- maintaining networks
- operational motivation and leadership
- community consultation
- act as a communication/ information channel between Board and operations
- understanding and managing the different parts of the organisation and how these different parts interact and influence each other

There may also be some overlap between the roles of organisational management and operations.

Operational tasks may include:

- community consultation
- ensuring that the day-to-day work is completed properly
- IT issues
- records management
- maintaining networks
- working with community members/ clients.

You can see that there are some items that appear on each of the task lists above. There may be different stages of these tasks that are done by each group or pitched in by all. Each organisation will have its own arrangements for how overlapping roles are arranged and carried out.

Code of Conduct

All organisations will have a documented code of conduct amongst their policies and procedures. A code of conduct generally includes:

- generally acceptable behaviour
- maintaining good order and the reputation of the organisation
- treating others with respect
- reference to legislation for privacy, anti-discrimination, duty of care, etc.
- honesty
- support for the official activities of the organisation
- prohibition of the use of alcohol and other drugs in the workplace or whilst conducting official business of the organisation.

A code of conduct is a guide for all people in an organisation to follow. This includes the Board, the CEO or other management through to employees and volunteers.

A code of conduct may also indicate the disciplinary action to be taken for those who are in breach of the code conduct.

Identifying Community Needs

Organisations are generally set up to respond to community needs or issues with an intention to develop and implement solutions. Finding solutions requires getting the right information. The Board can use its formal and informal communication networks to source this information from the community, from within the organisation and through networks.

The people who know the community best are the people who live in the community. This is where the bulk of information will come from. Elders and other respected individuals will be able to shed light on historical events and how particular issues first arose. Community members are likely to know who is involved in issues, alliances and disparities and who needs to be consulted.

Facts and figures can be gathered to assess how many people are affected by certain issues. Associated organisations may have information to share on how your organisation is viewed by others. Local clinics will have figures on numbers of people with diabetes. Schools will have general literacy levels for their students and an estimate on the literacy levels amongst parents. Other businesses may have information on the cost of food or level of value that community members place on items, events or attitudes.

Working out what communities need may come from consultation but it can also come from monitoring community trends. Reviewing previous records can often give insight into future needs. Being observant can also help to prepare for upcoming needs or filling in gaps where things have not been identified by the community.

This information must be sourced with full consideration of people's privacy and the requirements for organisational confidentiality.

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Other methods of gathering community information may include:

- researching organisation records, including complaints registers
- questionnaires/ surveys completed by community members
- organising workshops, forums or community meetings
- being observant, looking at what is happening in the community
- listening to the concerns of community members
- having a casual yarn to people you know
- speaking directly to people about issues, face to face or over the telephone
- talk back radio
- social media
- web searches.

In order to ensure that organisations are in tune with the needs of their community, the respective Boards must work out the difference between what is “needed” and what is “wanted”.

Basically, needs are things that are necessary for the community’s welfare. On the other hand, something that is wanted may simply be desirable but may not be necessary for the betterment of the community. For example, a community may *need* a better access road to deal with flooding during the wet season whereas it may *want* a new billiard table for the social club.

Each organisation will have its own procedures for evaluating and responding to information and feedback from community members and other stakeholders. Either way this information is critically important to maintaining the organisation’s relevance and ensuring that it is driven by the best interests of the people that it works for – the community.

Policy

Community feedback must be considered as an integral part of policy development.

Draft policies need to be explained to the community, along with the possible effects they may have. Community members should be given time to consider the proposed policy and respond with questions and feedback.

The operations of an organisation can span decades, so a large number of people can affect the running of an organisation over its lifespan. It is important that the organisation’s vision is maintained to ensure it will continue to be steered in an appropriate direction.

New policies will be developed and old ones updated to reflect changes and development within the community. This could include changes made in law such as new or amended Acts. Changes can also occur within communities as different needs are made known.

Reviewing policy may include discussing whether the policy:

- reflects the vision of the organisation
- is achieving its objective
- includes relevant issues
- makes sense

- is easy for others to read and understand
- aligns with other policies, funding conditions and the constitution of the organisation
- reflects current community needs
- is culturally appropriate.

Board Meetings

Co-operatives

Board meetings must be held at least once every 3 months using any technology agreed by the Board.

General meetings must have 14 days' notice and that time frame is required for the Annual General Meeting (AGM) or a Special General Meeting (SGM). If a special resolution is to be considered, 21 days' notice is required.

The quorum for a SGM or AGM is as specified in the co-operative's rules.

The minutes must be entered in the minute books within 28 days of the meeting and signed within a reasonable time by the chairperson of the meeting or chairperson of the following meeting.

An Annual General Meeting (AGM) for a co-operative must be held within 18 months of registration. Subsequent AGMs must be held at least once in each calendar year and within 5 months after the end of the co-operative's financial year as set out in the co-operative's rules.

Companies

The Corporations Act and the ASX Listing Rules do not prescribe a minimum number of Board meetings to be held by private or public companies per year. However, it is common for a company's constitution or shareholders' agreement to specify a minimum number of annual Board meetings.¹¹

Incorporated Associations

In NSW, committee meetings must be held in accordance with the incorporated association's rules.

The rules may specify that the committee must meet a certain number of times per year or that they can hold additional (special) meetings as required.

For example, if your incorporated association has adopted the model rules, your committee will need to meet at least three times in a 12-month period and may also hold special committee meetings and urgent committee meetings where required.

The legal requirements for frequency of meetings varies depending on the relevant law in each state.¹²

¹¹ <https://www.lexology.com/library/detail.aspx?g=395542d8-a197-4261-85e6-e0e6dbf1c6a1#:~:text=The%20Corporations%20Act%20and%20the,number%20of%20annual%20Board%20meetings.>

¹² <https://www.nfplaw.org.au/free-resources/how-to-run-the-organisation/holding-meetings>

Financial Reporting

One of the reasons for incorporating an organisation is to create a legal entity that can own property and raise money to conduct business.

Once an organisation holds funds raised from either its members or any other source it is responsible, through the Board for keeping financial records and reporting on expenditure. Sources of funds for which a Board may be responsible include:

- Public donations
- Subscriptions
- Sales of goods
- Grants from State and Commonwealth government
- Philanthropic foundations and trusts
- Loans from banks and other financial organisations

There are particular requirements for accountability attached to grants provided to the organisation by governments and philanthropic trusts.

Governments need to know that the organisation has spent the funds provided in the agreed manner, so the government can in turn meet its accountabilities to taxpayers. Philanthropic trusts have Boards of trustees who ensure that use of trust funds meets the goals of the trust and that organisations that receive funds use them appropriately.

Incorporated associations are also required to report annually on their financial situation. This requirement is for a comprehensive reporting of all financial dealings on an annual basis and is called the Annual Statement of Accounts.

Legal Requirements

Associations and co-operatives must comply with any relevant State and Commonwealth laws that apply to its operations, in particular the co-operatives National Law applies to cooperatives in all states while each state has its own legislation for the incorporation of co-operatives

In NSW, the directors and officers of a co-operative have obligations and duties under the Co-operatives National Law (CNL) and general law. These include:

- acting in good faith - must act honestly and in the best interests of the co-operative and for a proper purpose
- acting with care and diligence - directors need to keep adequately informed of the financial status and business performance of the co-operative and obtain professional advice if necessary
- not misusing position or information - directors must not improperly use their position and information to gain an advantage for themselves or someone else or to cause harm to the co-operative
- avoiding conflicts of interest - any conflict must be declared and dealt with in accordance with the CNL

- preventing insolvent trading - directors must prevent the co-operative incurring a debt whilst it is insolvent or if it will become insolvent as a result of incurring the debt.

Directors are responsible for ensuring the co-operative complies with its obligations under the CNL, including:

- keeping financial records - financial records must correctly record and explain its financial transactions, financial position and performance
- notifying co-operative changes - change of directors, secretary, CEO, registered address and rule changes must be notified to Fair Trading within 28 days
- maintaining registers - ensuring specified registers are maintained and are available for inspection by members and other persons as required
- reporting to members - provide financial reports to members within 5 months of the end of the co-operative's financial year
- lodging annual returns - annual returns or reports are required to be lodged with Fair Trading within 5 months of the end of the co-operative's financial year
- complying with rules - ensuring the co-operative operates in accordance with its rules.

Directors must ensure the co-operative keeps a:

- register of directors
- register of members (including their shareholding, if any)
- register of:
 - loans to, securities given by, debentures issued by and deposits received by the co-operative and
 - the names of people who have given loans or deposits to, or hold securities or debentures given or issued by the co-operative
 - register of loans made or guaranteed by the co-operative, and any securities taken by the co-operative
 - register of Co-operative capital units (CCUS) issued by the co-operative and their holders
 - register of memberships cancelled due to inactivity
 - register of notifiable interests
 - register of fixed assets
 - register of subordinated debt.

The registers must be kept in NSW at:

- the co-operative's registered office
- principal place of business
- an office where the work involved in maintaining the register is done, or
- another place approved by the Registrar

The registers must be kept in either written or electronic form and contain the particulars specified in Schedule 2 of the Co-operatives National Regulations (the Regulations).

The co-operative must notify the Registrar within 28 days if the registers are not kept at the registered office or are moved from one office to another.¹³

State Regulators

Each State or Territory has its own regulator that oversees co-operatives and associations.

State/ Territory	Authority	Web Address
Australian Capital Territory	Access Canberra	https://www.accesscanberra.act.gov.au/s/article/incorporated-associations-tab-overview
New South Wales	Office of Fair Trading	www.fairtrading.nsw.gov.au/associations-and-co-operatives/associations
Northern Territory	Department of Industry, Tourism and Trade	https://nt.gov.au/industry/licences/incorporated-associations
Queensland	Office of Fair Trading	https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/associations-charities-and-non-for-profits/incorporated-associations
South Australia	Consumer and Business Services	www.cbs.sa.gov.au/
Tasmania	Consumer Building and Occupational Services	https://www.cbos.tas.gov.au/topics/clubs-fundraising/incorporated-associations
Victoria	Consumer Affairs	www.consumer.vic.gov.au
Western Australia	Consumer Protection Division of the Department of Mines, Industry Regulation and Safety	https://www.commerce.wa.gov.au/books/inc-guide-incorporated-associations-western-australia

Legal Requirements for Board Meetings

The main function of a Board member is to take part in Board meetings. All major decisions are made at the ordinary meetings so it is impossible to be an effective member if you are not a regular attendee.

The structures and styles of meetings differ from Board to Board. They may be formal or informal, open or closed, short or long.

¹³ <https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/co-operatives/running-a-co-operative>

Whatever their structure, the best meetings are those that flow logically, keep all members engaged and energised, elicit a range of useful ideas and information and leave members feeling they have made a valuable and valued contribution.¹⁴

Frequency of Meetings

Co-operatives

Board meetings for co-operatives must be held at least once every 3 months using any technology agreed by the Board.

Fourteen (14) days' notice is required for the AGM or a special general meeting (SGM). If a special resolution is to be considered 21 days' notice is required. The quorum (i.e. the number of members who must be present) for a SGM or AGM is as specified in the co-operative's rules.

A co-operative must hold its first AGM within 18 months of registration. Subsequent AGMs must be held at least once in each calendar year and within 5 months after the end of the co-operative's financial year as set out in the co-operative's rules.¹⁵

Companies

The Corporations Act and the ASX Listing Rules do not prescribe a minimum number of Board meetings to be held by private or public companies per year. However, it is common for a company's constitution or shareholders' agreement to specify a minimum number of annual Board meetings.¹⁶

Incorporated Associations

In NSW, committee meetings must be held in accordance with the incorporated association's rules. The rules may specify that the committee must meet a certain number of times per year or that they can hold additional (special) meetings as required.

For example, if your incorporated association has adopted the model rules, your committee will need to meet at least three times in a 12-month period, and may also hold special committee meetings and urgent committee meetings where required.

The legal requirements for frequency of meetings varies depending on the relevant law in each state.¹⁷

Records of Meetings

The agenda

The agenda is the list of things that will be discussed during the meeting. It is usually sent to Board members well in advance of the meeting to ensure everyone has a chance to read and digest it before the meeting starts.

¹⁴ <https://communitydirectors.com.au/help-sheets/overview-of-Board-meetings>

¹⁵ <https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/co-operatives/running-a-co-operative>

¹⁶ <https://www.lexology.com/library/detail.aspx?g=395542d8-a197-4261-85e6-e0e6dbf1c6a1#:~:text=The%20Corporations%20Act%20and%20the,number%20of%20annual%20Board%20meetings.>

¹⁷ <https://www.nfplaw.org.au/free-resources/how-to-run-the-organisation/holding-meetings>

Some more sophisticated agendas go further than a simple list, also providing supporting information (explanations, related documents, etc.), as well as details about who will address each item, recommendations for action and how much time each item is expected to take up.

The minutes

The minutes are the official record of the actions and decisions of the Board. They are taken every meeting and approved the next time the Board meets. Generally, meeting minutes will include:

- The date and time of the meeting (including start and finishing times).
- Attendees (including absences and apologies – and noting when people have left and re-entered the meeting).
- A summary of the main points made during the discussion of each item.
- The result of each item discussed (decisions made or deferred, sometimes also including the number of votes for and against).

The minutes are sometimes approved without much thought, or even having not been read by Board members. This is a dangerous practice indeed. The minutes show who voted for what and what action the Board has committed itself to – and they may be referred to as the official record days and weeks and even years after a decision has been made. They should therefore not be treated lightly.¹⁸

Minutes of each general meeting, Board meeting and committee meeting must:

- be kept in the English language
- entered in the appropriate books within 28 days after the meeting
- be signed within a reasonable time after the meeting by the chairperson of the meeting or the chairperson of the next meeting.¹⁹

It is good governance for the draft minutes to be circulated within a reasonable time of the meeting, as this will assist in meeting the one-month deadline for entering the minutes in the minute book.²⁰

Election of Office Bearers

It is important to have a diverse Board of directors, so include people of different ages, skills, genders and personal values. The Board should respond to the needs and wants of members, keep the members informed, allow members to participate in the co-operative's affairs, and make members feel that their participation is meaningful.

A nomination for appointment or election of a director must provide details of the person's qualifications and experience. Members should elect directors who reflect the membership and are prepared to undergo training.

Avoid excluding members who would make good directors by organising meeting dates and times which don't conflict with a potential director's work or family commitments, and at places which are

¹⁸ <https://communitydirectors.com.au/help-sheets/overview-of-Board-meetings>

¹⁹ <https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/co-operatives/running-a-co-operative>

²⁰

https://www.governanceinstitute.com.au/media/882808/ggg_issues_consider_recording_circulating_minutes_directors_meetings.pdf

accessible. Encourage experienced directors to remain on the Board, but also support new people to be elected to give the Board a change in outlook and skills.

Depending on the size of the organisation and its rules, there may be three directors on the Board, or many more. At least two directors must be ordinarily resident in Australia and all must be aged 18 or older. The majority of directors must be member directors, but an employee or another non-member who has special skills in management or other technical expertise may also be a director of a co-operative (independent director).

There are people who are not permitted to be directors, including:

- The auditor of the co-operative and any employer, employee or partner of the auditor
- Undischarged bankrupts
- A person who has been convicted of a criminal offence
- A person disqualified from managing corporations under the Corporations Act 2001
- A person disqualified from managing co-operatives under co-operatives law during the first five years after the conviction or release from prison²¹

Chairperson

The Chairperson acts as an important link between the Board and the organisation's management via the CEO. Subject to the terms of the organisation's constitution, the Chair is appointed by the Board from amongst its members and maintains their position until they are removed from office by the Board, resign from office or are no longer a Board member.

In the absence of the Chair, the Deputy Chair (if there is one appointed by the Board) or the senior or lead independent director, should assume the role of the chair.

Secretary

The Board must appoint a Secretary who is an adult person who ordinarily resides in Australia. The Secretary's role is to support and advise the Board of directors concerning their duties and responsibilities as Board members. The Secretary serves as the returning officer for postal ballots if another person is not appointed. The role of the secretary has elements of both compliance and performance.

Treasurer

The Treasurer is typically appointed at the annual meeting and tasked with ensuring the financial position of the organisation remains 'healthy' so the organisation can effectively achieve its mission.

²¹ <https://fed.coop/co-operatives-in-australia-a-manual/part-three-running-a-co-operative/staying-on-track-the-directors/#:~:text=If%20a%20director%20holds%20an,deliberates%20on%20the%20relevant%20matter.>

Observe the Constitution

A Constitution is a legal set of rules by which organisations operate. Board members exercise powers in accordance with the corporation's constitution. The Constitution is sometimes referred to as the Rule Book.

The constitution lays down the rules and objectives of the organisation. The rules that come under the provisions of the Act of incorporation include:

- requirements to become a member of the organisation
- how the Board of Management should operate
- dispute settlement
- the purpose and functions of the organisation
- meeting procedures and policies including voting
- financial management and audits
- how the rules and objects (aims of the organisation) may be changed
- how an incorporated association can be dissolved

Decision Making Processes

The Board of directors is responsible for managing the affairs of a co-operative and should engage in responsible decision-making.

Quorum

The word "quorum" refers to the minimum number of Board members who have to be present for the Board to legally transact business. Your organisation's constitution should spell out what numbers are required for meetings to take place.²²

Motions and resolutions

A "motion" is a proposal for action. "Moving" a motion merely means putting the proposal forward to be voted on. Sometimes motions are amended or reworded before being put to the vote. If the motion is approved by the Board, it is referred to as a "resolution" (i.e. the Board's decision), which can be legally binding.²³

Voting

Check your incorporated association's rules and policies about voting methods carefully. There are different ways in which votes can be taken at a committee meeting. The most common methods are voting by show of hands or by poll (that is, a vote in writing).²⁴

Decision Making in Co-operatives

Certain decisions are made by members passing either an ordinary or special resolution.

Ordinary resolution:

²² <https://communitydirectors.com.au/help-sheets/overview-of-Board-meetings>

²³ <https://communitydirectors.com.au/help-sheets/overview-of-Board-meetings>

²⁴ https://content.nfplaw.org.au/wp-content/uploads/2022/07/Calling-and-holding-meetings-NSW.pdf?_ga=2.150433589.2000763780.1691718567-735124464.1691718567

This is a resolution that is passed by a simple majority vote (50 percent or more vote yes) of members at a general meeting of the co-operative or, if the rules permit, by postal ballot.

Special resolution:

The Co-operatives National Law (the CNL) requires certain decisions to be made by a special resolution. This is a resolution passed by:

- a two-thirds majority of members at a general meeting of the co-operative
- a two-thirds majority of members in a postal ballot (other than a special postal ballot),
or
- a three-quarters majority in a special postal ballot.

A co-operative's rules can require that a majority of more than two-thirds or three-quarters is needed to pass a special resolution.²⁵

Aboriginal and Torres Strait Islander Community Controlled Organisations

Aboriginal and Torres Strait Islander community-controlled organisations are answerable to their community. They are governed by a majority Aboriginal and/or Torres Strait Islander governing body. They are incorporated under relevant legislation and they are not-for-profit. This supports the underlying theme of self-determination; that Aboriginal peoples should have a say in what happens in their own community.

These organisations must have processes that enable free-flowing communication and ongoing consultation, to address the needs and aspirations of their community. These consultation processes give community members the opportunity to voice their opinion and vote on decisions and issues. Community members may also seek employment and other opportunities, through their community organisations.

Good governance is important to the effectiveness of any organisation. Aboriginal community organisations are now urging their Board and other interested community members to seek governance training. Having a clear understanding of best practice in business governance, gives community organisations a greater opportunity to make the law and their lore, work together for the benefit of the whole community.

Consulting with Stakeholders

If the agenda is one which will impact upon the community as a whole, Indigenous and non-Indigenous community members and other stakeholders could be engaged to help in the planning and conducting of the meeting.

Other parties who may join in the planning as partners may have:

- access to or provide expertise on the focus of the meeting e.g. housing, health, education and employment
- resources which could contribute to the success of the meeting e.g. finance, expertise and material

²⁵ <https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/co-operatives/running-a-co-operative/making-decisions-in-a-co-operative>

An agenda for corporation's meeting will be a formal document listing all items to be considered by participants and may, according to the purpose of the meeting, identify what outcomes are expected. If necessary, there may be other relevant documents which could be distributed at the meeting. These may include information brochures from other community agencies as well as media releases from government bodies.

Depending on the purpose and who is involved, the agenda might be:

- written on the flyers or posters advertising the meeting
- announced on local/community radio or television or via social media platforms
- announced at earlier community meetings
- passed by word-of-mouth throughout the community
- distributed to organisations in the community
- written down and sent to all those invited

There are a number of benefits from ensuring people attending the meeting are fully informed before the meeting. These include:

- the initiating organisation receives informed information, opinion, advice and direction
- participants receive information and are empowered through their contribution to community business
- community protocols are strengthened and with them, the social structures and organisations they support
- guests receive appropriate information and gain a better understanding of communities, their cultures, business and issues (this is a two-way benefit).

Whatever way the agenda for the meeting is communicated, the final document must be approved by the appropriate people. The agenda includes:

- the name of the organisation initiating or facilitating the meeting
- the date and time of the meeting
- the venue for the meeting
- the business of the meeting
- contact person's details for further information or an email address.

Planning a Meeting

Date and time

The date and time when the meeting is to take place needs to be negotiated with appropriate key people according to protocol and organisational policies. Furthermore, it needs to respect all cultural business and may need to be changed if other urgent community business arises e.g. sorry business.

Other factors determining the date and time of the meeting include:

- the availability of the venue
- other community events/attractions are being held at the preferred time
- whether guests and other invited persons are available at that time
- whether it clashes with regular events in the community.

Venue

Usually meetings are held wherever the majority of participants are going to feel most comfortable and which may be easily accessible. There may be a tradition in some communities about where meetings are held.

When considering the venue, there will be factors that will determine whether the venue is suitable. These include:

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- availability on the day
- transport arrangements
- health and safety issues
- seating capacity
- available equipment
- whether facility hire fees are incurred.

Availability

The unavailability of the most suitable venue for the meeting may have a major impact on the success of the meeting. It may mean that if the organisers want to go ahead with the meeting, they may need to settle for the next option – which may be less than ideal.

The disadvantages of the second option may be such that the organisers decide to defer the meeting until the preferred venue is available. However, whether the purpose of the meeting is urgent, is something to be considered.

Health and safety

Organisers of meetings have an obligation to ensure that all those present are able to participate in a safe and healthy environment. In fact, the organisation may address such venue aspects as:

- ease of access
- fire evacuation procedure
- lighting
- security
- food handling and storage facilities complying with health regulations
- noise
- alcohol and other drug regulations

Refer to the organisation and venue's WHS policies and procedures when planning the meeting and for any risk assessments that need to be carried out.

Transportation

In some communities, transportation may be a major item for consideration especially if the organisers want a large number in attendance. Seniors, elders and those with a disability are more likely to attend if transport is available.

It may not necessarily be provided by the corporation but arranged with the assistance of volunteers and or other stakeholders.

Promotion of the meeting

One important step in encouraging attendance is to ensure that the meeting is promoted or advertised as widely as possible. Strategies for doing this include:

- social media
- emails
- faxes
- local community radio, newspapers and television
- letterbox drops
- networks with other stakeholders
- mailed personal invitations
- posters on community and supermarket notice Boards
- flyers under car windscreen wipers

- websites
- personal telephone calls
- house-to-house visits
- reference to previous successful projects supported by the community
- word-of-mouth (community grapevine)

Whilst the list of strategies for promotion of the meeting is an extensive one, an organisation may not use all the strategies listed above. Before choosing which promotional strategies it could use most effectively, an organisation needs to consider a number of factors before deciding which of these strategies it could use. These factors may include:

- who is to be invited
- the venue
- associated costs of promoting/advertising the meeting.

If those organising the meeting are given a budget, they will need to consider the most effective way to use it in order to achieve the maximum benefit.

Examples of factors affecting advertising methods include:

- social media which is widely used, but not everybody may have access to it; and
- community media such as radio, television and newspapers, may be too expensive

Circulate Background Papers

Board members gain a great deal of information about the decisions they need to make through the papers they receive prior to a Board meeting. Papers cover a variety of functions, from providing general information to outlining a call for action, and the level of detail presented will vary depending on the complexity of the issue and the organisation.

The information contained in Board papers should be consistent, coherent and complete. Board papers are part of the official records of the organisation and a complete set must be retained in accordance with legal and organisational document retention requirements.²⁶

Chairing a Meeting of the Board

Board meetings cannot take place without a Board Chair. The role of the Chair is to ensure the meeting is conducted efficiently and that meeting rules are adhered to. The Chair should facilitate discussions, keep members on track and the meeting on time. When a topic has been fully discussed, the Chair will often summarise the points and put the motion to the Board for a decision or vote.²⁷

Board Member Responsibilities

Board members should not think that their role begins when the Board meeting starts and ends when it closes. Before meetings, members should make a careful reading of the agenda and ensure they clarify any points that are unclear. After meetings, members should review the minutes as soon as they are circulated (while they are fresh in their minds) and make note of any amendments they think are needed. Members should also carry out any tasks they have been assigned and keep track of their progress for reporting purposes at the next meeting.²⁸

²⁶ <https://www.aicd.com.au/Board-of-directors/meeting/paper/Board-papers.html>

²⁷ <https://communitydirectors.com.au/help-sheets/overview-of-Board-meetings>

²⁸ <https://communitydirectors.com.au/help-sheets/overview-of-Board-meetings>

Identify Conflicts of Interest

If a director holds an office or has an interest in a matter that could conflict with the director's duties, the conflict of interest must be declared at a meeting of the Board of directors. Unless the Board decides otherwise, the director cannot be present while the Board deliberates on the relevant matter. The conflicted director cannot take part in the Board's decision on the matter. However, no conflict of interests exists if a member director simply holds an interest in common with all other members. The term 'personal interests' refers to interests more broad than just those of an individual. It may also refer to the interests of someone's family, friends, or other organisations they are involved with.

Maintain Confidentiality

It is important to get information out to community members and network organisations about the organisation, the work it does, the assistance it needs and the opportunities it is looking for. In this situation information is being shared and work contact details are exchanged which is a vital part of a community organisations function. However, some information must not be discussed with people outside of the organisation.

Both the constitution and the organisation's policies and procedures will spell out guidelines for confidentiality and privacy. It is important to have access to these kinds of documents for reference. The Board and management must be very clear about which information they can and cannot share. This confidentiality usually extends beyond employment, Board appointment or other association with an organisation as well.

Board members and organisational management have access to information about the organisation and its people. Some of this information will be considered sensitive. Sensitive information may include:

- personal details of members of the organisation (as listed below)
- information in contracts and agreements
- financial information
- legal matters

Using organisational information for personal gain, or for the advantage of friends or family is an example of a conflict of interest. Kinship responsibilities and family protocols must be carefully considered by Board members and management when performing their duties.

Some sensitive information has additional protection under *The Privacy Act 1988*. This may include personal details of members, staff and volunteers of the organisation, such as:

- contact and address details
- wages or salary
- health (including predictive genetic information)
- racial or ethnic origin
- political opinions
- membership of a political association, professional/ trade association or union
- religious beliefs or affiliations
- philosophical beliefs
- sexual orientation or practices
- criminal record
- biometric information (from identifying images etc. such as fingerprints).