



Not For Profit Governance: What You Need To Know



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The governance of not-for-profits or 'nonprofits' (NFPs) is becoming an increasingly scrutinised, regulated and debated topic. This is partly as a result of the increasing size and complexity of organisations in this sector, as well as an increase in corporate regulation generally.

In particular:

- ✓ Board composition is placing a greater focus on to the skills, knowledge and experience of each board member;

- ✓ Regulatory and community pressure is being placed on boards to become more professional and compliant;

- ✓ Pressure is also being placed on NFP organisations to have appropriate and compliant NFP governance policies and procedures in place; and

- ✓ Board members are increasingly requesting access to specific NFP governance training and information in order to properly discharge their duties.

The purpose of this paper is to flag some of the key issues or governance challenges facing charity and nonprofit boards, and set out what good governance looks like for a not for profit organisation in 2022.



What governance issues does a nonprofit board face?

As a result of increasing focus in this area, our experience has shown us that many nonprofit boards are currently in the process of working through the following governance issues:

Agreeing on a clearly defined purpose and strategic direction

- ✓ This is particularly relevant given that NFP organisations have social, cultural, educational or religious objectives rather than profit-making ones; and
- ✓ Where an organisation does not have a clearly defined purpose and strategic direction, issues such as poor resource management, loss of confidence by donors and funding bodies, and reputational impacts may follow.



Agreeing on a clearly defined purpose and strategic direction is very important.



Defining and documenting the role of a nonprofit board

- ✓ The role of a nonprofit board may vary depending on the size and type of the organisation i.e. its role may vary from a pure governing one to that of greater participation in running and managing the organisation on a day to day basis;
- ✓ From a best practice perspective, roles and responsibilities should be outlined in a board charter and made available to members and other stakeholders; and
- ✓ Having a clearly defined role will help ensure that board meetings run smoothly, efficiently and with an overall purpose in mind.

Determining an appropriate board composition

- ✓ Traditionally, charity and NFPs have placed significant reliance on members, stakeholders, employees etc. to fill board positions;
- ✓ In recent times, there has been a greater focus on ensuring that board appointees comprise the requisite skills, knowledge and experience to guide the organisation forward;
- ✓ Regular evaluations and discussions should be had amongst existing board members in order to ensure that future needs are met; and
- ✓ This can also be achieved by appointing “skills-based” directors.

Managing stakeholders

- ✓ In the NFP sector, stakeholders can include members, donors and funding bodies, government agencies, interest groups, accreditation bodies and the community at large depending on the organisation type;
- ✓ NFP's will be required to manage and balance the views and perspectives of all of these stakeholders in light of the overall objectives of the organisation; and
- ✓ For community-driven organisations, public expectations of NFP directors in the performance of their duties can be high.



Navigating regulatory complexity

- ✓ Unlike in other countries, there is no centralised regulatory authority for NFPs in Australia.
- ✓ If operating nationally, an NFP may have multiple reporting obligations to various state/territory organisations and bodies.

Minimising legal exposure

A board director (or directors) of charity and NFPs (particularly those registered under the Corporations Act) face similar legal liabilities as company directors. For this reason, NFPs should ensure:

- ✓ Procedures and policies are appropriately documented;
- ✓ Board members are trained and informed of their roles and responsibilities; and
- ✓ Director & Officer (D&O) liability insurance is purchased (where appropriate).

Understanding financial information

- ✓ Financial information/updates should be presented to the board in a way that allows them to easily check and confirm the financial health of the organisation (i.e. it's solvency);
- ✓ Directors should be able to read P&L statements and balance sheets, or trained and assisted to do so; and
- ✓ Directors will be personally liable in the event that an organisation is found to be trading whilst insolvent.





Enacting basic policies and procedures

As explained by the Australian Institute of Company Directors:

- ✓ Many boards compromise their success by failing to get basic procedures right, e.g. board meetings don't run to time; board papers are not sent with enough time in advance; there are no or not enough board policies or a code of ethics; there are few work plans, succession plans, crisis plans; directors have not prepared properly for meetings, etc.
- ✓ Having appropriate policies and codes communicates the expectations of board members. Directors will feel that their time is well spent if these basic procedural matters are conducted in a professional manner.



What does good NFP governance look like?

The phrase “good governance” can be an intangible, buzz-word, that is often used but difficult to derive meaning from and apply in practice.

In reality, a good governance standard can and should take many forms, including:

- ✓ Having a clearly defined purpose and strategic direction for the organisation and the board itself;
- ✓ NFP board members being aware of their duties and responsibilities (and potential legal exposures);
- ✓ Governance procedures and policies being appropriately documented, understood and circulated to members;
- ✓ NFP board composition reflecting the skills, knowledge and experience needed to achieve the organisation’s purpose;
- ✓ NFP board composition being continuously monitored and evaluated to ensure that it remains fit-for-purpose as an organisation grows and develops;
- ✓ NFP board appointees being selected on the basis of rigorous assessment; and
- ✓ Adequate liability insurance being in place.



Conclusion & Recommendations

The success of any organisation, including NFPs, will be dependent on the quality of its leadership. This starts at the board level, given that it is the board that is responsible for setting the tone of the organisation's culture.

As a board is ultimately responsible for:

- ✓ reviewing an organisation's financial performance;
- ✓ ensuring compliance with legal requirements and regulations; and
- ✓ supporting the achievement of its core purposes.

NFP organisation's should ensure that:

- ✓ they have clearly documented governance policies and procedures;
- ✓ each board member is adequately and regularly trained and informed; and
- ✓ external advice and assistance is sought where necessary.

To this end, we note that the corporate secretarial and legal arm of Breakthrough can assist with:

- ✓ Helping you to define and articulate your purpose and strategic direction;
- ✓ Drafting and implementing governance protocols and procedures;
- ✓ Informing directors of their roles, responsibilities and legal duties;
- ✓ Attending and overseeing board meetings (including preparing agendas, drafting minutes, preparing board meeting materials, assisting with due and proper process/compliance with the Corporations Act 2001 (Cth));
- ✓ Undertaking board evaluations and reviews; and
- ✓ Assisting with regulator compliance.



About Breakthrough Accounting



Breakthrough Accounting

Breakthrough Accounting is passionate about making a difference in the world — accounting and finances is just what they're really good at. They assist NFPs with specialist services, particularly finance and compliance services. Breakthrough believe that by assisting organisations with services that are not part of their core-activity functions, they will have more capacity to focus on achieving breakthrough within their communities.



www.breakthroughaccounting.com.au





About BoardPro

We exist to increase boardroom productivity and create better functioning boards. We don't believe good governance processes should be left to the domain of larger companies. We know that all parties in a board/management relationship want to use their time and resources most efficiently and productively. We found that a product that helped with the processes, workflows and guidance to work on the right things was missing from the market. So we developed BoardPro in partnership with some of the best independent directors and most progressive CEOs.



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