



CLV SETTING POLICIES BACKGROUND PAPERS

Community Languages Victoria

Where language and culture come together

ABN: 44 646 483 627

Level 2, 189 Faraday St Carlton, VIC 3053

Phone: (03) 9349 2863

Fax: (03) 9349 2698

Email: info@communitylanguages.org.au

Website: www.communitylanguages.org.au



CONTENTS

CONTENTS	2
INTRODUCTION	3
THE CONSTITUTION	5
Building the Constitution	5
What is a Constitution?	5
Creating a Constitution for a Company Limited By Guarantee	7
Model Constitutions for Incorporated Associations	7
The Rules in an unincorporated association	7
ACNC and registered charities	8
Checklist for completion of a Constitution	9
CREATING A BOARD	11
Committee Charter	11
Benefits of a Charter	12
Structure of the Charter	13
Steps to develop a Charter	14
Code of Conduct	15
Facilitation of the development of the Charter	17
GOVERNANCE AND CULTURE	18
Examining culture	18
Board's influence on culture	19
Board dynamics	20
The Board/Management relationship	21
Board evaluation	21
EFFECTIVE BOARD MEETING DISCUSSIONS	23
The need for Boards to engage in argument	23
The quality of decision-making	24
Ethics in decision-making	25
Tips for building effective Board	25
Effective Boards require a constructive Board culture	25
Vulnerability-based trust	26
Developing vulnerability-based trust	26
Productive conflict	27
The conflict continuum	28
Developing productive conflict	29
Setting the 'tone from the top'	30

INTRODUCTION

Organisations and the Committees leading them should always look at how to improve their effectiveness in delivering programs and how the organisation is governed.

Good governance, robust discussion, strong planning, and evaluation are good ingredients for a recipe for success.

In recent times I have attended workshops to gain a better understanding of:

*What creates a good organisation?
What are the barriers?*

In preparing the draft policies to be discussed at committee meetings, attached are some background papers to assist us in upskilling ourselves. As committee members and management, professional development is essential.

Being a member of a committee and leading an organisation brings with it many responsibilities.

If our objective is to lead a strong national community language schools sector or our State CLV association we need to better understand our Constitution, its objectives, and how we work as a united group to deliver these.

We also need to understand our responsibility for ensuring legislative requirements are met. The Committee is ultimately responsible for all aspects of conducting the business of CLV.

The papers in the document are meant to provide some background reading for committee members, staff and management.

The areas covered revolve around:

- THE CONSTITUTION
- CREATING A BOARD
- GOVERNANCE AND CULTURE
- EFFECTIVE BOARD MEETING DISCUSSIONS

The material is based on information prepared by the Australian Institute of Company Directors (AICD) and the Governance Institute of Australia. They are the two leading and quite excellent sources of expertise, knowledge, training and information on governance within the Australian corporate and legal environment.

I trust they will be of some benefit to each of us and assist us in moving forward.

Stefan Romaniw OAM
Executive Director
November 2023

THE CONSTITUTION

Building the Constitution

The purpose of this paper is to provide some background information on Constitutions; what is good corporate governance, what are the structure options, the Constitution and social purpose, roles and responsibilities of directors or management committee members, make up of boards/committees, delegation of authority with other governance related policies, and culture.

It explores the Constitution of the For Purpose organisation. It briefly discusses the equivalent of the Constitution in an unincorporated association being the rules, however this business guide will focus predominantly on the incorporated company structures of an incorporated association or company limited by guarantee.

Developing the Constitution as well as satisfying the legal obligations of establishing an organisation, will also assist in your decision-making around how you choose the organisation to operate and be governed.

The Australian Institute of Company Directors (AICD) and the Governance Institute of Australia are the two leading and quite excellent sources of expertise, knowledge, training, and information on governance within the Australian corporate and legal environment. This guide should not be used as a substitute for legal advice in establishing a Constitution.

What is a Constitution?

The Constitution sets out the organisation's name, its objectives (purpose) and details around how it is managed. It forms the basis of a contract between the incorporated association or company and its members, directors/committee members, the company secretary and between members. The Constitution deals with matters such as:

- **Company/association name** – defines the legal name of the organisation
 - o Incorporated association has the label 'Inc'
 - o Company limited by guarantee is denoted 'Limited'
- **Objects of the organisation** – sets out the social purpose (objects), which may also include its charitable purpose, of the organisation

and how the organisation will go about achieving those objectives. It is important that time be spent to define the social purpose.

- **Stipulates that there are no profits** – sets out clearly that the organisation does not generate a profit and that no property or income can be distributed to members. In particular it details what happens to property when the organisation is wound up.
- **Membership** – defines the type of members (e.g., founding, ordinary, life, corporate) voting rights, notice to members, resignation, and termination of memberships, register of members.
- **Members liability** – in the case of companies limited by guarantee, it defines the limit of members liability.
- **Financial record-keeping** – details the financial record keeping parameters, such as the financial year start and end date, how financial statements are distributed to members, compliance with relevant legislation.
- **Audit** – deals with the appointment of the external auditors.
- **AGM** – outlines the rules and proceedings around the Annual General Meeting (AGM.) and general meetings. This includes meeting notices, who can attend, how the meetings are conducted, the role of the chair, the required quorum, adjourning. Postponing, cancelling, voting, special meetings, voting rights, proxies and so on.
- **Directors/Management Committee** – defines the minimum and maximum number of Directors/Committee Members, the appointment and removal of Directors/Committee Members, elections, the powers of the Board/Management Committee.
- **Proceedings of Board/Management Committee meetings** – details how Board meetings are conducted, the appointment and role of the Chair, delegations, validity of acts, voting, resolutions, powers of the Board/committee, contracting with the company.
- **Minutes** – stipulates the contents of minutes and their signing.
- **Gift funds** – if the organisation is to be a registered charity the Constitution will stipulate how these funds are managed.
- **Notices** – outlines how notices can be served.
- **Dispute resolution** – clarifies how disputes, whether these between directors, members, are handled.
- **Indemnity and insurance** – define the level of insurance and indemnities for directors, company officers and employees
- **Winding up** – defines if members must contribute the guarantee amount in the event the organisation is wound up. It also expresses the guaranteed amount (which is usually nominal)

Creating a Constitution for a Company Limited By Guarantee

A company limited by guarantee will have a constitution that is a little bit more involved.

The ACNC also provides a template for a Constitution for a company limited by guarantee.

The ACNC template and guide can be found at : [Template constitution for a charitable purpose company](#)

These templates can be adapted for your specific needs.

Model Constitutions for Incorporated Associations

Unincorporated associations may adopt what is known as 'Model Constitutions' or 'Rules for Model Constitutions'. Incorporated associations can choose to adopt the Model Constitution or create its own or modify the model. The models are an easy way for an incorporated association to quickly create its Constitution.

Consumer Affairs Victoria provides [model rules for Victorian incorporated associations](#).

The Rules in an unincorporated association

Unincorporated associations are often where a group of individuals come together around a common purpose. Being unincorporated means there is no legal separation between the association and the members. For this reason, you should strongly consider an incorporated structure for your For Purpose organisation.

Having said that, those who do choose an incorporated association need a Constitution equivalent of the association Rules. The Rules form a contract

between members (as opposed to a Constitution that is between the organisation and the members).

The process often starts with a Memorandum of Understanding between the members towards reaching agreement about how the association will operate, then moves to the development of the Rules that set out the purpose for which it operates, how members join and how the association will operate. They are generally easy and inexpensive to set up, there are many who offer templates for Rules for an unincorporated association. Once the Rules are finalised then all the original or founding members should sign with their names and addresses.

ACNC and registered charities

A registered charity is not structured but rather a status being Deductible Gift Recipient or what is known as DGR status. This allows the organisation to receive donations that are then tax deductions for the donor.

It is important to note that whilst all charities are not-for-profit organisations, not all for profits are charities.

Charities must be registered with the ACNC, to do so a charity must:

- be not for profit
- have a charitable purpose. (Check with the ACNC website for the list of charitable purposes)
- not have any disqualifying purposes (which are engaging in, or promoting activities that are unlawful or contrary to public policy; and promoting or opposing a political party or candidate for political office)
- not be an individual, political party, or government entity.

Beyond these requirements, a charity must:

1. have an active Australian Business Number (ABN)
2. provide its governing document (for example, its Constitution, Rules)
3. provide an Address for Service (and notify the ACNC when it changes)
4. provide the details of its Responsible People (and notify the ACNC of any changes)
5. report annually to the ACNC by submitting the Annual Information Statement (and Financial Report, depending on its size)

6. comply with the Governance Standards (if not a Basic Religious Charity)
7. comply with the External Conduct Standards (if it has activities or sends funds overseas).

Checklist for completion of a Constitution

The following checklist of key decisions that can be used as guide when building a Constitution:

- 1) What is the organisation's name?
 - a) Has this been registered with the relevant state authority (associations)?
 - b) Has this been registered with ASIC (companies limited by guarantee)?
 - i) What is the Australian Business Number (ABN)?
 - ii) What is the Australian Company Number (ACN)?
- 2) What is the social purpose (including charitable purpose if applicable) and the objects?
- 3) Is the company seeking charity to become a registered charity with the ACNC (Deductible Gift Recipient)?
- 4) Who will be the members?
 - a) Founding
 - b) Ordinary
 - c) Corporate/institutions
 - d) Life members
- 5) What is the member's limit of liability if the organisation is wound up? (Companies limited by guarantee)
- 6) What is the quorum for an AGM?
- 7) How many directors (minimum is 3) what is the maximum?
- 8) What is the quorum for a board meeting?
- 9) Will directors receive fees?
- 10) What is the financial period (usually July 1 to June 30)?

Many of the templates discussed will then answer the detailed questions around the above framework. If you are building a Constitution from scratch, then a solicitor will also help in filling in the details.

There is a lot to consider when starting a For Purpose organisation. Many decisions need to be made with a conscious view as to the future. In

particular take the time to define the social purpose, from this point many decisions will fall into place.

CREATING A BOARD

Committee Charter

Not a legal document but critical for the success of a Board.

This guideline discusses: what is good corporate governance, what are the company structure options, the Constitution and social purpose, roles and responsibilities of directors or management committee members, makeup of boards/committees, delegation of authority with other governance-related policies, and culture.

The Charter defines the aspects of the Board that sit outside the legal requirements. Board Charters are not a legal document but are important in defining and providing clarity of the role and work of the Board and most importantly detailing acceptable (and unacceptable) behaviours for Directors. Many of these behaviours come down to respect and openness but at times we all go off the path. Specifically, the Charter usually includes a 'Code of Conduct' (although it may and can sit outside the Charter) to define standards of behaviour generally and in particular during a Board meeting.

The process of developing a Board Charter is an important and valuable opportunity for Directors to discuss and agree with clarity on how the Board will operate and how the Board members will work together. Do not dismiss lightly or under work this process, make use of the opportunity.

The purpose of this is the Code of Conduct.

The Australian Institute of Company Directors (AICD) and the Governance Institute of Australia are the two leading and quite excellent sources of expertise, knowledge, training, and information on governance within the Australian corporate and legal environment. This guide should not be used as a substitute for advice in establishing a Board charter.

Documenting that which sits outside the legal frameworks.

We have discussed at great length the legal frameworks that define governance, whether these be under the Corporations Act 2001(Cth) applicable to companies limited by guarantee, or state-based legislation for incorporated associations and of course those requirements from the

ACNC. We have also examined the Constitution which stipulates the contract between the organisation, the members, and the directors.

There is, though, much about governance that sits outside of the above frameworks and documents. A Board Charter is a good way to capture these. Most importantly the Charter defines the roles, the power, and the responsibilities of Directors individually and collectively as a Board. Most importantly it assists in providing that important clarity around the delineation of the roles of the Board and that of management.

In short, the purpose of the Charter is to:

- reinforce the legal framework within which the Board operates.
- detail the policies that the Board has agreed upon to meet its responsibilities and facilitate the communication of Board's expectations as to these policies to management.
- define the roles of the Board versus management.
- demonstrate robustness to the members and other stakeholders as to the governance processes adopted by the Board.
- be a tool for new Director induction.
- define a point of reference around disputes.
- sets the acceptable and (therefore unacceptable) behaviours of Directors. This can be within the charter as a code of conduct or can sit outside as a standalone document.

Benefits of a Charter

The benefits of implementing and adopting a Board Charter are as follows:

- Focuses the Board on improving their standard of governance. It is amazing what writing the unwritten down can achieve.
- Facilitates discussion on issues that can be difficult issues to raise or to discuss such as behaviour.
- Provides an activity, in its implementation, to develop a stronger working relationship between the Directors and between the Board and management.
- Assist in developing a constructive Board culture.

Structure of the Charter

Good Charters are usually divided into five sections as follows:

1. **Definition of roles** – explains the role of the Board, policies around the composition of the Board and expectations of participants. It includes:
 - Board composition
 - Role of the Board
 - Role of Directors
 - Role of the President
 - Role of the Secretary
 - Role of the CEO (Management)

2. **Board functions** – in essence this is based around the nine key roles which is suggested by the ASX as the central role of all Boards:
 - i. The Board and strategy
 - ii. The Board and the CEO
 - iii. Monitoring
 - iv. Risk Management
 - v. Compliance
 - vi. Policy framework
 - vii. Networking
 - viii. Stakeholder communication
 - ix. Decision-making

3. **Board processes** – concentrates on the mechanics of Board meetings. In summary as follows:
 - Board meetings
 - Board meeting agendas
 - Board meeting minutes
 - Board papers
 - Board calendar
 - Committees

4. **Board effectiveness** – includes areas to improve the effectiveness of the role of Directors such as:
 - Directors' protection
 - Board evaluation
 - Director remuneration
 - Director selection

- Director induction
 - Director development
5. **Code of Conduct** – defines with clarity those behaviours that are agreed to be acceptable in particular during Board meetings and specifically to facilitate rigorous debate and discussion.

Steps to develop a Charter

There are two approaches to developing a Charter:

- 1) delegate it in its entirety to a third party to develop OR
- 2) commence a process with the Directors to work up the Charter as a group.

The former is faster and “ticks a box”. The latter is a far more productive process and most importantly takes advantage of the process to define how the Board operates, how Directors operate, what is their role versus management, etc. Just ticking the box wastes a rare opportunity and runs the risk of creating the charter but still failing to achieve clarity and buy in.

It is strongly recommended if working up a new charter or revising an old, to use the activity to develop a constructive and productive Board.

The steps in developing charter are:

1. **Collect information** – bring together the policies and written documents around governance that exist and the unwritten practices that exist in the operation of the Board. This part of the process could be delegated to the company secretary or a committee.
2. **Analyse the documentation** - to identify any gaps between policies and practices and that which is non-existent. This part of the process will identify those areas that may actually not comply with legal frameworks or best practice.
3. **Draft a Charter** – here the draft Charter should be debated and discussed with the Directors. Following which it can be drafted into a document. The actual drafting could be delegated to a person, maybe the company secretary.
4. **Board approval** – Directors should then be invited to comment on the draft document and then lead towards finalisation and approval. It is the Board’s responsibility as a collective to sign off on all governance processes and practices including the charter.

5. **Annual review** – once adopted, the Charter should be reviewed annually. The annual review has the added advantage of refreshing Directors as to their governance practices.

Code of Conduct

The code of conduct is a particularly important area that defines the acceptable behaviour of Directors. The Australian Institute of Company Directors (AICD) has defined a code of conduct for self-regulation of Director conduct which its members must agree to. It is a good start for developing the Board code of conduct.

It includes the following:

A member should, in respect of any corporate entity of which the member is a director, comply with the following standards of conduct.

1. The member should act honestly, in good faith and in the best interests of the company as a whole.
2. The member should have a duty to use care and diligence in fulfilling the functions of office and exercising the powers attached to that office.
3. The member should use the powers of office for a proper purpose, in the best interests of the company as a whole.
4. The member should recognise that the primary responsibility is to the company as a whole but may, where appropriate, have regard for the interest of all stakeholders of the company.
5. The member should not make improper use of information acquired as a director.
6. The member should not take improper advantage of the position of director.
7. The member should properly manage any conflict with the interests of the company.
8. The member has an obligation to be independent in judgement and actions and to take all reasonable steps to be satisfied as to the soundness of all decisions taken by the board of directors.
9. Confidential information received by the member in the course of the exercise of directorial duties remains the property of the company from which it was obtained, and it is improper to disclose it, or allow it to be disclosed, unless that disclosure has been authorised by that

company, or the person from whom the information is provided, or is required by law.

10. The member should not engage in conduct likely to bring discredit upon the company.

11. The member has an obligation, at all times, to comply with the spirit, as well as the letter, of the law and with the principles of this Code

Specifically, with regard to behaviours that are exhibited during Board meetings and discussions, the Code of Conduct should define those acceptable behaviours that encourage rigorous and powerful debate whilst always maintaining respect. These may be different from Board to Board but could include items such as:

- Address issues not personalities.
- Everyone arrives on time with mobile phones turned off.
- Matters discussed should not be those that should be addressed in management meetings.
- Keep to the point, do not go off topic or be ambiguous.
- Assume everyone has read the Board papers.
- Avoid the use of technical terms that others may not understand.
- Be positive and constructive, not negative, and destructive.
- Not be discouraged from presenting a contrary view.
- Listen attentively.
- Use the meeting to present superior intellect or knowledge.

The code of conduct is a good place to also define those cultural aspects that define the organisation and the Board. Whilst the above behaviours may seem normal behaviour as expected in general terms, the benefit of having these written down and that Directors are held accountable to these is incredibly important. It is imperative and productive that Directors discuss and debate the code of conduct whether this be within the charter or outside the charter.

Once a charter is approved and operational Directors must be held accountable to it.

Facilitation of the development of the Charter

Whilst it is not recommended to delegate the process of Charter development, external facilitation of the Board in its development is often helpful to get on the table some of the more difficult issues and to keep the process moving, not allowing it to get bogged down.

Developing a Board Charter has many advantages. It also provides a rare opportunity for Boards to discuss and define with clarity those governance issues that will make them a great and productive Board. Specifically defining those issues around their role and their behaviours.

GOVERNANCE AND CULTURE

Values, culture, and leadership start at the top.

The purpose of this paper is to form a series of start-up notes specifically for settlement service providers wishing to establish a Not-for-Profit enterprise, or what can be described as a 'For Purpose' organisation.

Specifically, this paper looks at those issues around corporate governance. It discusses what is good corporate governance, what are the company structure options, the Constitution and social purpose, roles and responsibilities of directors or management committee members, make up of boards/committees, delegation of authority with other governance-related policies, and culture.

Around the world, regulators are shifting more of their focus from the more tangible aspects of corporate governance to that of the role of the board in setting and overseeing the culture of the organisation.

It is very difficult of course to consider culture in terms of the black and white nature of compliance and regulation. It is clear though that a poor culture has played a part in many corporate failures. It has now become unavoidable for boards to turn a blind eye in taking proactive steps towards examining formally and informally the culture of the organisation. This must start with the culture within the board itself and in their emphasis on culture when working with the organisation's management.

It also discusses board effectiveness with a particular emphasis on the board's culture and its relationship with management.

Examining culture

For the board to examine culture properly, it is important for the directors to deliberate around its function as a board across three dimensions as articulated so clearly by the AICD¹.

- 1) ***The board needs to set clear cultural direction and expectations around behaviours and decision-making.*** Good organisational

¹ J MacCormick, 2019, Governing organisational culture, director tools: Organisation, Australian Institute of Company Directors

governance sets expectations for both formal and informal behaviours that shape culture. These expectations serve to create a link between the organisation's purpose (why it exists) and its strategic goals by expressing the behaviours it expects from its people.

- 2) ***The board needs to align the levers at its disposal to reinforce these expectations.*** Expectations are reinforced if they are embedded in the organisation's policies, systems and processes and carried out in the behaviours and decisions of employees. Strong cultures are those where there is clear alignment between expectations and the structures used to reinforce them. This alignment delivers a circularity where expectations shape policies that define processes and where processes shape desired behaviours and decisions that in turn reinforce expectations.
- 3) ***The board needs to regularly test that these expectations are being met.*** Boards should test that expectations are being met through both reported metrics (formal) and observed enacted behaviours (informal). Contradictions and inconsistencies (e.g., informal rules around complacency, insularity, and collegiality) can undermine board efforts to govern culture effectively

Board's influence on culture

There are a number of areas where the board influences culture:

- **Appointment of the CEO** – probably the most significant area where the board impacts the culture of the organisation is the recruitment, monitoring the performance and its relationship with the CEO. It is vital that in recruiting the CEO, the board places significant emphasis on the alignment of candidates with the culture of the organisation. In working with the CEO, it cannot simply delegate all the responsibility for developing organisational culture to the CEO. Conversely, it cannot rely on formal structures and systems to measure culture, it comes down to developing a framework for constructive and challenging discussions with management around culture.
- **The boardroom** – sometimes a blind spot for directors, how they act or sometimes don't act, what they say or don't say has a great impact on the culture. Key points in the boardroom are:

- What the board wants in reports, how it interacts with these reports and how it objectively responds to challenges, will drive the culture
- Having a safe environment for questioning and debate and that such debate stays in the boardroom.
- Holding each other to account as to individuals' alignment to the organisation's values.
- Treating management with respect and equally held to account as to the values.
- That the CEO is held to account on issues around behaviour and supporting the culture and values of the organisation.
- **Individual conduct of directors** – the nature of the directors' styles, their level of emotional intelligence, their ability to think deeply and critically, sets the tone from the top for the organisation. It is truly the situation that the impact of the collective is greater than the sum of the parts. Directors must exhibit qualities of curiosity, challenge, and courage. They must hold each other to account.

Board dynamics

Dynamics within the boardroom will flow through to define the culture of the Board. Many of these facets are the responsibility of the chair and centred around the level of debate and questioning.

These include:

- That debate is conducted and encouraged by all Directors.
- The President manages the agenda effectively.
- The level of matters that are deferred to the President or a sub-committee often to simply avoid debate.
- That the performance of the Board is reviewed regularly (annually).
- That the Board is not fractured into factions and cliques.
- The level of independence in this series, in particular the level of independent thought.
- The degree to which some directors sit on other boards with each other and if this impacts the level of debate and challenge.

Some observations that may indicate the existence of cultural issues at board level:

- Overly collegiate and excessive emphasis on relationships especially between the President and the CEO.

- Tolerance of small breaches of the rules.
- Complacency.
- Short-term thinking.
- Reactive attitude to risk as opposed to a proactive approach to risk.
- Groupthink.
- Uneven influence and application as to the risk function and approach. (E.g., apply a risk emphasis in certain circumstances but not in others, often as a manipulation of an outcome).
- Insufficient and constructive questioning and debate.
- Being too comfortable in terms of the 'feel' of the boardroom.
- Management driving the priorities as opposed to the board.

The Board/Management relationship

One of the biggest impacts on culture is the relationship between the Board and Management. This can be and often is, highly visible to everyone in the organisation. These can be considered in terms of questions around:

- **The President/CEO relationship** – too close or too adversarial?
- **Leading from the top** – do the Board, the CEO, and the senior management team lead by example? Do their collective and individual behaviours align to the values of the organisation?
- **Trust** – does the board trust management and is this trust put under scrutiny regularly?
- **Interaction with staff** – does the Board interact with more employees than just the CEO and senior managers?
- **Decision-making** – how often does the Board accept/reject a proposal from management? Do they accept all or most (perhaps blindly without questions) or do they reject all or most (issues of trust and power)?
- **Transparency** – does the Board receive timely information of quality, to adequately challenge management?

Board evaluation

Boards that exhibit strong governance and are committed to developing the culture of the organisation, will focus on the culture within the board and will want to measure their own performance. The board's performance is managed differently to that of management. They can establish KPIs and be a mix of quantitative and qualitative, usually limited to a maximum of six KPIs.

Generally, they are presented annually in the form of a board evaluation report that includes recommendations for change. Best practice boards can establish KPIs in four areas^{2 3}:

1. **Functional** – against the responsibilities of the board and directors against the annual agenda cycle, such as meeting attendance, participation on committees, accounts signed off, management performance reviews completed, etc.
2. **Specific tasks** – against agreed actions usually against specific strategic actions and initiatives and recommendations from the previous board evaluation.
3. **Stakeholder satisfaction** – actions and outcome around specific stakeholders such as the members.
4. **Group performance** – relates to the effectiveness of the board as a group. Group dynamics aspects such as contribution of all directors, deliberation and processes around debate and due diligence.

The four groupings of KPIs interact with each other.

There is a lot to consider when starting a For Purpose organisation. Many decisions need to be made with a conscious view as to the future. Boards must set the tone from the top to be a role model for an ethical culture. It requires leadership, teamwork, and aptitude for directors to make effective long-term decisions that are in the best interest of the organisation.

But of course, it is challenging for directors; balancing their responsibilities, the collective decision-making against individual accountabilities and liabilities, their individual behaviours, and aptitudes with the group dynamics; holding management accountable yet doing so in a manner that develops respect, without getting too close or not close enough, be cohesive but too collegiate to limit debate. So many moving parts for directors to consider but those boards that get this mix right develop organisations that have their culture aligned to their strategic goals and go on to create great things.

² Australian Institute of Company Directors (AICD)

³ L Ralph, 2008, Staying out of trouble while doing good: Not for Profit board effectiveness, presentation for SVA Taking Care of Business, Cameron Ralph Pty Ltd. Melbourne.

EFFECTIVE BOARD MEETING DISCUSSIONS

Not a lot of time but a lot to do on a Board.

Specifically, this paper looks at those issues around corporate governance. It discusses what is good corporate governance, what are the company structure options, the Constitution and social purpose, roles and responsibilities of directors or management committee members, make up of boards/committees, delegation of authority with other governance-related policies, and culture.

After we cut through all the complexities of governance and the duties and responsibilities of Directors, when it all comes down to it, the role of the Board is to **make decisions**. It is vital then the workings of a Board be geared towards creating the environment that facilitates rigorous debate so that effective decision-making can be accomplished. It discusses how to ensure the machinery of Board meetings can be made efficient so that time can be maximised for discussion.

The purpose of this paper is also to focus on the facilitation and nature of the discussion itself. Some discussions of course are routine and have to be had but the real value of the Board comes from everyone engaging in thorough debate of important issues before the Board. Only with such debate are Boards able to make decisions that are clear, accountability established, and results achieved.

The need for Boards to engage in argument

As discussed above, the primary function for the Board is to make decisions. Good, comprehensive decision-making only comes after rigorous debate and argument. Arguments as words can be misconstrued or misused. Argument is the presenting of sound reasons for a point of view. Argument is not fighting, it is the engagement between at least two parties exchanging alternate points of view. The word argument has attracted a negative connotation in organisations because many associate arguments with hostile conflict.

Argument is a good thing and in Boards in particular we need it because only after a thorough and maybe even uncomfortable discussion or debate around the big things that matter and ideas, can really sound decision-making be achieved. Patrick Lencioni in his work “The Five Dysfunctions of a Board” calls argument or debate “conflict”. He uses this word because truly productive discussion around ideas is often uncomfortable.

Debate and argument are often avoided in Boards today. Ironically it is often avoided so that people’s feelings are not hurt, or to save time with the objective of efficiency. However, by avoiding conflict with open debate and disagreement between Board members then members often resort to sidebar meetings and back-room personal attacks. These are not only more dangerous than risking hurt feelings, they are unproductive and a waste of time. Issues remain unresolved and have to be revisited or forever languish as elephants-in-the-room.

How a Board operates, how discussions are facilitated, the level of formality, the supporting processes, must all be designed and operate in support of encouraging open debate (argument) by all members of the Board. The quality of the Board’s decision-making and therefore the extent to which Directors fulfil their duties and responsibilities is dependent on it.

The work of governance is complex and only with discussion at Board meetings being effective can Boards navigate their way through this.

The quality of decision-making

Growing complexity means that a ‘one-size-fits-all’ approach to how Boards operate no longer produces good decision-making. Boards must develop structures, processes and practices that fit their organisation’s: needs at its point in the organisation’s life, the For Purpose sector it operates in, its culture, its purpose. A focus on tight rules and procedures in the Board’s operation only, may work against the need for strong open debate around big issues which is critical for the quality of the decisions the Boards have to make.

It is not easy; it is a balancing act between:

Individual & independent thought vs. effectiveness as a group vs. duties & responsibilities.

Ethics in decision-making

Ethical decisions are the basis of good decision-making. Such decisions deliver sustainable success for the future. In simple terms it is about doing the right thing as opposed to just doing things right. But at times the commercial decisions and ethical decisions may not be aligned, and it is here where the complexities occur. In general, For Purpose organisations are more akin to ethical decision-making but this does not make these considerations any easier.

All organisations need to develop a reputation for acting with integrity, honesty, and high ethical standards.

Tips for building effective Board

As a reminder as to some tips below in developing an effective Board⁴. These are centred on the objective of encouraging debate and argument.

- Create a climate of trust and openness through sharing difficult information and engaging in spirited give-and-take debates.
- Foster a culture of open disagreement through the encouragement of argument and probing of silent board members.
- Utilise a fluid portfolio of roles so that directors do not get typecast into positions.
- Ensure individual accountability by requiring directors to inform the rest of the board about strategic and operational issues facing the company.
- Evaluate the board's performance.

Effective Boards require a constructive

Board culture

The culture of the Board shapes the nature of discussion at Board meetings.

Here more than ever the role of the President becomes vital.

⁴ J Sonnerfiled. 2002, "What makes great boards great" *Harvard Business Review*, September.

The effectiveness of the Board culture is shaped by the following questions:

- **The President's approach:** participative, autocratic, consultative?
- **Openness of discussion at board meetings:** does the Chair encourage constructive debate?
- **How Directors perceive their role:** Board member or individual task oriented?
- **Director's behaviour:** how do they speak and interact with each other?
- **Group dynamics:**
 - **Positive impacts:** self-awareness and awareness of how others respond, levels of "vulnerability-based trust", provides checks and balances as to individual biases
 - **Negative impacts:** groupthink, cliques and factions

Vulnerability-based trust

Vulnerability based trust is defined by Lencioni as:

Confidence among Boards members that their peers' intentions are good, and that there is no reason to be protective or careful around the group.

In essence, Board members must get comfortable being vulnerable with one another.

If Boards can master vulnerability-based trust, then they will: engage in productive debate, make good decisions, hold each other accountable and achieve results.

Vulnerability-based trust overcomes the emotion of fear. Such as fear of:

- looking ignorant.
- being seen as intrusive.
- being negative.
- looking incompetent.
- avoiding conflict.

Developing vulnerability-based trust

Developing trust within a Board is hard and cannot be achieved overnight. You can't read a book and have a training course and then say, "so now we have trust on the Board". It takes considerable work, time and requires a

resolve by all Directors on the Board to work toward developing vulnerability-trust.

It can be done, and it can be done quite quickly if the Board is focused on the goal of developing trust on the Board. A facilitator intimately familiar with *The Five Dysfunctions of a Board* can certainly help but some other things that can be done to develop trust:

- Complete individual personality profiling, such as DiSC, that is shared amongst the Board so that the styles of each member can be understood, that is; how each thinks, speaks and acts. This helps break down barriers and they can be facilitated in fun non-threatening ways.
- Spend more time together as a Board.
- Spend more time one-on-one with each other.
- Personal histories exercise is a low-risk exercise where each member answers a shortlist of questions about themselves and shares the answers with each other. These are not overly sensitive questions, first car, school, favourite hobbies, etc, but allow each member to relate to each other on a more personal basis.
- Engage a facilitator to work through actions around trust as part of The Five Behaviours of a Cohesive Board.

Productive conflict

In the Five Dysfunctions of a Board model, Patrick Lencioni describes rigorous debate as “conflict”. It is important to be able to distinguish between productive conflict and destructive fighting. Productive conflict is limited to ideas and concepts. It avoids personal meanspirited attacks. However, it can be passionate, even emotional, and sometimes frustrating, and as such for someone looking in it could be confusing. The ground rules around debate have been decided with clarity and been detailed in the code of conduct within the Board charter.

Members of cohesive Boards know that the only purpose for more passionate debate is for timely solutions for the organisation, rather than gaining personal power or a negative political win.

The conflict continuum

If it is actually a positive behaviour to debate ideas why does Lencioni call it conflict, a somewhat negative word? He calls it conflict because the real productive discussions that occur are uncomfortable, and this is why there needs to be a culture of vulnerability-based trust within the Board to be able to engage in robust and passionate debate or argument around ideas. Whilst it is uncomfortable, there is a line that when crossed where the discussion goes from being productive towards being destructive.

Lencioni describes it as the conflict continuum where at one end is artificial harmony where Boards never engage in any conflict, they are always nice to each other (even though they often don't really mean it) but nothing is ever discussed in detail. At the other end is mean spirited conflict where everyone is at each other's throats. As you move down the continuum Boards are getting closer to constructive conflict until somewhere on that continuum a line is crossed where it moves from constructive conflict towards destructive conflict.

This line is different from Board to Board, and it is important that someone in the Board calls this out when that line is crossed. The Chair is largely responsible for encouraging impassioned debate but ensuring the line is not crossed. Many Boards live down the end with artificial harmony for fear of moving towards destructive mean spirited conflict, yet the most productive debate is had just before the line is crossed, and at that point it can be uncomfortable. Boards that won't move down the continuum towards the line are missing so much positive discussion and debate. And yes, sometimes cohesive Boards cross that line, for a moment, come back, then learn from it, and that's ok.

Boards that fear conflict...

- Have boring meetings.
- Create environments where back-channel politics and personal attacks thrive.
- Ignore controversial topics that are critical to Board success.
- Fail to tap into all the opinions and perspectives of Board members.
- Waste time and energy with posturing and interpersonal risk management.

Boards that engage in conflict...

- Have lively, interesting meetings.
- Extract and exploit the ideas of all Board members.
- Solve real problems quickly.
- Minimize politics.
- Put critical topics on the table for discussion.

Developing productive conflict

The first step in developing productive conflict is for all Board members to acknowledge and agree that conflict is a good thing and productive. Too many Boards avoid it and excuse it away saying it is unnecessary. Development of the Board Charter and related code of conduct is the best time to have this discussion.

Some methods can be employed as follows:

- Conflict mining is where someone on the Board extracts buried disagreements within the Board and gives them light. This requires courage and confidence and much objectivity. It requires a commitment to stay with it until issues are resolved. Some Boards assign this responsibility to a member during a meeting.
- Complete individual personality profiling, such as DiSC, that is shared amongst the Board so that the styles of each member can be understood, that is; how each thinks, speaks and acts. This help break down barriers and they can be facilitated in fun non-threatening ways. DiSC produces an exceptional personal DiSC profile that focuses on productive conflict.
- Cheerleading and internal coaching. Is where the Board encourages all members to engage in productive conflict. In particular highlight and recognise when Board members are engaging in productive conflict.

- Engage a facilitator to work through actions around conflict as part of *The Five Behaviours of a Cohesive Board*.

Setting the 'tone from the top'

Management will be observing the Board's behaviours, how it conducts itself, how it makes decisions.

Management will take from what it sees as the Board's priorities and standards this will flow to the wider organisation. For example, if the Board takes WHS seriously then this will flow down to the organisation and develop WHS as an element of the organisation's culture.

This is known as setting the tone from the top.

An effective Board agrees on protocols and standards of behaviour within discussion and in decision-making. A good chair will ensure these standards are met.

Effective Board discussions is the only way decision-making will be of quality and produce a sustainable future for the For Purpose organisation. But it is a complex balancing act, and one size does not fit all. Board processes, culture, and the way meetings are facilitated are vital to achieving this objective but above all needs a commitment by all Directors in developing vulnerability-based trust and engaging in constructive conflict.

Developing trust within a Board is hard and cannot be achieved overnight. You can't read a book and have a training course and then say, "so now we have trust on the Board". It takes considerable work, time and requires a resolve by all Directors on the Board to work toward developing vulnerability-trust.

Policy number	CLV 01	Version	3
Drafted by	Stefan Romaniw	Approved by Committee on	29 November 2023
Responsible person	Fahry Abubaker	Scheduled review date	29 November 2024