

Benefits of Good Governance

- Effective planning and positioning of your organisation
- Ensuring risks are properly identified, assessed and managed
- Meeting regulatory and contractual obligations
- Managing and monitoring performance
- Maximising the impact of available financial and other resources
- Provides a strong organisational framework for people who work in your CLC (staff, volunteers, students)
- Gives assurance to clients, stakeholders and funding bodies about organisational effectiveness and functionality

The NFP sector

- Different organisational structures within the CLC sector
- Variable forms, sizes and operational structures
- A range of revenue / resource sources
- Almost all CLC's are governed by volunteer Boards or Management Committees
- Irrespective of structure or size, the requirements of good governance still apply, and there are common legal duties and obligations
- Useful resource: *AICD Good Governance Principles and Guidance for Not-for-Profit Organisations*.

Benefits of Good Governance

- In summary – will provide all stakeholders /community with the confidence that your CLC will "do the right thing":
 - Confidence in the management of funds and assets
 - Confidence to protect the interests and meet the expectations of clients and stakeholders
 - Confidence that any risks and exposure are properly managed.
- A loss of trust and confidence will potentially impact on client services, funding, membership, and influence - local communities, service network, voice to power
- Only takes one or two mismanagement issues to impact the confidence of stakeholders !

The National Accreditation Scheme for Community Legal Centres (the NAS)

An example of things going wrong ☹️

- Brisbane Youth Service v Beven [2017] QCA 211
 - Client known to have a history of mental health issues, violence and sexualised behaviours, and other workers refused to see the client
 - Ms Beven was put into an unsafe situation with the client, and was assaulted
 - Court found risk of assault, including sexual assault, was reasonably foreseeable considering past history of the client
 - A significant award of damages made against the service
- In this case, the failure of the service was to **respond reasonably to the relevant risk**.
- An example of how a failure in day to day systems for WH&S left the service exposed to significant liability (award was \$1.5M).
- Failure in systems of risk assessment & management, compliance, and monitoring – all going to effective governance.

The NAS

- All CLCs in Queensland must maintain Certification under the National Accreditation Scheme for Community Legal Centres (the NAS)
- A condition of membership of Community Legal Centres Qld membership, and of key funding agreement/s
- Standards are not optional – for most CLCs they are a necessary prerequisite to operating as a CLC in the state
- As a result, these Standards must be understood as a **core governance requirement** for all CLCs.

Governance under the NAS

- The NAS has a strong focus on governance
- Standards and Requirements are made up of four sections
- The areas of focus today form part of Section *A1 Organisational Management*
- Standard A1.1 relates directly to Governance, but 4 other Standards also speak to governance issues to some extent:
 - A1.2 Planning, Evaluation and Quality Management;
 - A1.3 Staffing including Volunteers;
 - A1.4 Financial Management; and
 - A1.5 Risk Management and Compliance
- A total of 35 Requirements across these 5 Standards, **28 of which are Primary Requirements**

Standard A1.1 Governance

- **Define clear goals and purpose**
 - Clear definition of organisational purpose and vision essential to strategy development – why, what, who, how.
 - What's the vision? – shaping the future
- **Provide leadership, direction and guidance for achieving organisational goals**
 - selecting goals that will assist to achieve the purpose, and developing ways to achieve them.
 - determine how to meet agreed goals, respond to changing environment/context, allocate resources, prioritise actions, lead the centre

Standard A1.1 Governance

- **NAS Standard A1.1 Governance requires:**
 - commitment to sound governance, accountability and ethical conduct
 - that the membership of the governing body is appropriately skilled, and includes members from its community or target groups
 - that the governing body will:
 - Define clear goals and purposes
 - Provide leadership, direction and guidance for achieving organisational goals
 - Ensure adequate resources for sustainable and effective services
 - Assess and manage strategic risks
 - Set organisational policies
 - Monitor achievements and activities
 - Be accountable for its activities and activities of the organisation

Standard A1.1 Governance

- **Ensure adequate resources for sustainable and effective services**
 - securing funding and other resources to support the organization's work
- **Assess and manage strategic risks**
 - Understand the risk environment, risk appetite and necessary treatments and controls to address strategic risk
- **Set organisational policies**
 - Define organisational principles and positions to guide actions and decision making in areas of core responsibility

Standard A1.1 Governance

- 11 specific requirements flesh out each of the elements of the Standard
- **Primary Requirements:**
 - clearly defined purpose, aims, values
 - clear definition of roles and responsibilities of both the governing body and its relationship with the CEO / Director
 - defined and documented delegations and lines of authority
 - compliance with statutory and contractual obligations
 - systems for policy and procedures reviews
 - code of conduct/ ethics
 - managing conflicts of interest.
- **Secondary Requirements:**
 - appointment to the governing body, representative membership on the governing body and a mix of skills
 - appropriate processes around induction, regular training and performance review.

Standard A1.1 Governance

- **Monitor achievements and activities**
 - Ensuring the organization is achieving its purpose, stated goals and key deliverables
- **Be accountable for its activities and activities of the organisation**
 - meeting obligations, monitoring performance, managing finances and operating transparently

Standard A1.2 Planning Evaluation and Quality Management

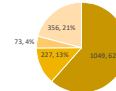
- This Standard is also relevant to governance obligations
- Requires:
 - a planning process to be in place to guide a centre's work
 - Monitoring of progress against the plans
 - Regular service evaluation
 - Outcomes of evaluation and client feedback used to manage service quality.
- Strategic Planning – understanding where you are going, how to get there, and what constitutes success.
- Strategic Plan – essential tool for guiding an organisation in meeting its purpose and key outcomes.
- Setting strategy is the role of the governing body; implementing it on a day to day basis is the role of the CEO and management.

NAS Data: Focus of Recommendations

National

Total Number of Recommendations

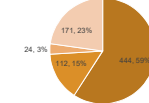
- Section A: Governance, Management & Administration
- Section B: Provision of Legal Services
- Section C: Community Development, Education & Reform Activities
- Section D: Client Services



Queensland

Total Number of Recommendations

- Section A: Governance, Management & Administration
- Section B: Provision of Legal Services
- Section C: Community Development, Education & Reform Activities
- Section D: Client Services



Other Relevant Standards

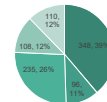
- **A1.3 Staffing, including volunteers**
 - Requires the organisation to plan, develop and support its workforce...to ensure the effectiveness of the organisation and its services
- **A1.4 Financial Management**
 - Requires sound financial decision making processes and financial management that is transparent, accountable and appropriately authorised
- **A1.5 Organisational Risk Management and Compliance**
 - Requires effective processes for identifying and managing risk which are monitored regularly, including strategic, governance, property, financial, physical, reputational and service delivery risks.

NAS Data: Actions within Section A1

National

Actions within A1: Organisational Management

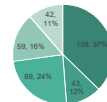
- A1.1 Governance
- A1.2 Planning, evaluation and quality management
- A1.3 Staffing, including volunteers
- A1.4 Financial management
- A1.5 Organisational management and compliance



Queensland

Recommendations within A1: Organisational Management

- A1.1 Governance
- A1.2 Planning, evaluation and quality management
- A1.3 Staffing, including volunteers
- A1.4 Financial management
- A1.5 Organisational management and compliance



NAS Data Analysis

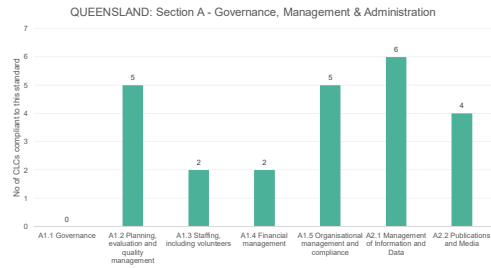
- Recognition that the NAS can provide a big-picture view of how the sector as a whole is performing
- Rich source of insight provided by meta-analysis of Improvement Plans
- NACLC has undertaken some analysis of common trends seen in the Improvement Plan actions so far – showing the main gaps and areas of challenge for centres
- Relevant for our purposes today because of the findings on governance...

Compliance with Section A Standards – National

NATIONAL: Section A - Governance, Management & Administration



Compliance with Section A Standards: Queensland



Main Governance Gaps under the NAS

- **Evaluation of Outcomes**
 - Limited to client feedback
 - Limited engagement by Boards
- **Risk Management**
 - Lack of strategic engagement
 - Need for risk management tools (eg risk management policy & plan)

Main Governance Gaps under the NAS

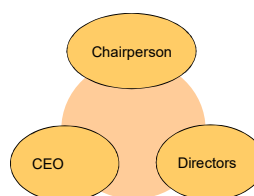
- **Board recruitment processes**
 - documentation; systems for screening potential appointees
- **Board membership**
 - Diversity of members (community and / or target groups)
 - Mix of skills and knowledge
 - Maintaining insight into skills to guide recruitment
- **Board training and development, performance reviews**
 - Updating, refreshing, expanding skills
 - Reviewing own performance
- **Compliance**
 - Systems for providing assurance that centre complies with statutory and contractual obligations

Governance in Practice

Main Governance Gaps under the NAS

- **Roles and Relationships**
 - Definition of Board roles and responsibilities
 - Definition of relationship with CEO
 - Delegations
- **Policies and Procedures**
 - Systems for reviewing, monitoring, updating
 - Ensuring remain current and relevant
 - When Board approval required
- **Strategic Planning**
 - Definition of the planning cycle and process

Governance Responsibilities



- Each role has a different set of responsibilities / focus
- The separation of roles maintains a balance to ensure that no personal interests are served
- All three must perform their roles separately, in harmony and in collaboration

Governance Responsibilities: The Board

- Board / Management Committee is the 'governing body'
- Exists to guide and support the organization to pursue its purpose...
 - Concentrates on environmental, strategic and major decisions
 - No direct day-to-day operational role
 - Monitoring / assurance
 - Strategic awareness
- Collective decision making
- Key relationship with the CEO & delegates a range of responsibilities to the CEO
- Some legal Board duties and responsibilities **can't be delegated ***

Governance Responsibilities: The CEO

- Responsible for Operational matters
- Focuses on the long term
- Provides information to the Board on strategic matters and major operational issues
- Focuses on the financial strategy and cycle
- Position and responsibilities require an instrument of delegation

The Board's role

- Key elements:
 - **Accountability** - meeting obligations, monitoring performance, managing finances and operating transparently
 - **Strategy** - setting long-term goals and making sure organization pursues its purpose and meets key outcomes
 - **Resourcing** - securing funding and other resources to support the organization's work
 - **Advocacy** - representing the organization to the community, its members and stakeholders
 - **Monitoring** - complying with governing documents and the law
- For Incorporated Associations, Office Bearer positions (Chair (President), Treasurer, Secretary) hold unique roles and responsibilities,
- Source: ACNC Governance Standards ; BNG Governance Basics

Governance Responsibilities: Board Directors

- Concentrate on strategic issues
- Focus on making effective strategic decisions
- Consider the risk impact of Board decisions
- Monitors major operational matters but no day-to-day operational role
- Perform oversight/control functions

Governance Responsibilities: The Chair

- Overall leadership of Board and whole organisation
- Uses stewardship to focus the Board
- Interface between the Board and CEO; will meet as required with CEO
- Leads recruitment and induction of new Board members
- Leads recruitment and management of CEO

Directors' Legal Duties and Liabilities

- All Board and MC members need to be aware of their legal duties and responsibilities
- Essential component of fulfilling obligations as a Director
- Directors have personal legal responsibility to:
 - Act in good faith and for proper purpose
 - Act with care, diligence and skill
 - Not misuse information or position
 - Disclose and manage conflicts of interest
- For more information refer to the Justice Connect *Not-for-Profit Law Duties Guide*: https://www.nfpilaw.org.au/sites/default/files/media/Duties_Guide_CTH_2.pdf

Directors' Legal Duties and Liabilities

- ACNC's *Governance Standard 5* applies to registered charities (*refer to the ACNC website for more information*).
- For Directors of Companies Limited by Guarantee that are registered charities, the following requirements of the Corporations Act apply:
 - criminal offences relating to breaches of duties of good faith and acting for a proper purpose and misuse of position or information (under section 184 of the Corporations Act), and
 - the duty to prevent insolvent trading (under section 588G of the Corporations Act) (also included under ACNC Governance Standard 5).

Further information and resources

- NAS Standards – NACLC Website, Members Only page
- Governance session at the upcoming Community Legal Centres Qld Conference (8-9 March 2018)
- Governance resources in the Standards and Performance Pathway (SPP) Reading Room – all CLC's have access to these resources
- Australian Charities and Not-for-profits Commission (ACNC)
 - website: <http://www.acnc.gov.au/>
- Australian Institute of Company Directors (AICD)
 - Website: <http://aicd.companydirectors.com.au/>
 - Range of resources for Not-for-profits
- Justice Connect
 - Website: <https://www.justiceconnect.org.au/>
 - Not-for-profit law: <https://www.justiceconnect.org.au/our-programs/not-for-profit-law>
- Contact your NAS Regional Accreditation Co-ordinator

Tools for Good Governance

- Constitution / Rules
- Governance Policies and Procedures – including integrity and ethics
- Board /Management Committee meetings
- Performance and financial reporting
- Definition of Roles and Responsibilities

Any Questions?

Tools for Good Governance

- Strategic planning
- Risk reviews
- Succession planning; Board skills and training
- Monitoring compliance and accountabilities
- Relationships and culture
- Board Self-Evaluation

Thank you.