



**Community  
Legal Centres  
Queensland**

# Governance in Community Legal Centres: A refresher on the essentials

Webinar  
August 2023

# Acknowledgement of Country

We acknowledge the traditional owners of the lands upon which we meet today. In Brisbane/Meanjin, they are the Turrbal and the Jagera peoples. We pay deep respects to Elders past, present and emerging.

As this webinar is being viewed by people across Queensland and Australia, we also pay respect to the Traditional Owners throughout the country.

We recognise Aboriginal and Torres Strait Islander peoples as the traditional custodians of the land in Australia, and their continuing connection to land, water and culture.

We extend a warm welcome to any First Nations peoples joining us today.

# Introduction



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# Housekeeping

- Today's webinar is being recorded, and the recording will be available in the next few days – I'll send an email with the link when its ready
- The slides for this presentation are available in the handouts section of the GotoWebinar control panel, and were also circulated via email.
- I will endeavour to leave time for questions at the end of the presentation – if you pop your questions into the chat I'll read them out for us to discuss.

# Webinar Overview

- **General Principles**
  - Definition of Governance
  - Benefits of Good Governance
  - CLC sector overview
- **The National Accreditation Scheme for Community Legal Centres**
  - Applicable Standards
  - Main Governance Gaps
- **Governance in Practice**
  - Responsibilities – who does what
  - Directors' Duties and Liabilities
  - Tools for Good Governance
- **Further information and resources**

# General Principles



# What is 'Governance'?

The systems, processes and relationships that are in place to control, manage and monitor an organization.

*ACNC Governance for good (ACNC Website)*

*AICD Good Governance Principles and Guidance for NFP Organizations p.7*

The system by which entities are directed and controlled. It is concerned with structure and processes for decision making, accountability, control and behaviour at the top of an entity. Governance influences how an organisation's objectives are set and achieved, how risk is monitored and addressed and how performance is optimised.

[https://www.governancetoday.com/GT/Articles/Good\\_Governance\\_\\_what\\_are\\_the\\_basic\\_principles\\_and\\_why\\_is\\_it\\_important\\_.aspx](https://www.governancetoday.com/GT/Articles/Good_Governance__what_are_the_basic_principles_and_why_is_it_important_.aspx)

# Defining Governance

- Simply put, its the '**what**' and '**where**' to management's '**how**' and '**who**'
- Key quality: the *trust* and *responsibility* upon those in positions that *control* and *manage* organizational resources.
- Effective organizational governance ensures:
  - Transparency and accountability
  - Independence and performance



# Why good governance is important

*To preserve and strengthen stakeholder confidence*

*To provide the foundation for a high-performing organisation*

*To ensure the organisation is well placed to respond to a changing external environment*

**Helps make sure that the  
organisation's day-to-day  
work aligns with and  
contributes to achieving its  
purpose.**

**Why are we here?  
What are we doing?  
How are we doing it?**



# Benefits of Good Governance

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

# The basis of trust and confidence

- In summary: will provide confidence of stakeholders and community 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
- Loss of trust will potentially impact on client services, funding, membership and influence – local communities, service network, voice to power
- Only takes one or 2 issues of mismanagement to dent stakeholder confidence

# 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.

# Principles of Governance

- Established principles underpin good governance – reflected in the NAS
- Apply regardless of whether for purpose or for profit
- Any structure - Incorporated Association, Company Limited by Guarantee, Proprietary Limited Company. (All governing bodies can be referred to as a Board)
- AICD has very good summary of governance principles for NFPs

<https://www.aicd.com.au/tools-and-resources/not-for-profit-governance-principles.html>

# Sources of CLC Governance Obligations

- Corporations Law
- Associations  
Incorporation Act Qld
- ACNC
- Common law
- National Accreditation  
Scheme for CLCs

# ACNC Governance Standards

Standard	Description
<b>Standard 1: Purposes and not-for-profit nature</b>	Charities must be not-for-profit and work towards their charitable purpose. They must be able to demonstrate this and provide information about their purposes to the public
<b>Standard 2: Accountability to members</b>	Charities that have members must take reasonable steps to be accountable to their members and provide them with adequate opportunity to raise concerns about how the charity is governed
<b>Standard 3: Compliance with Australian laws</b>	Charities must not commit a serious offence (such as fraud) under any Australian law or breach a law that may result in a penalty of 60 penalty units (equivalent to \$12,600 as at December 2018) or more.
<b>Standard 4: Suitability of Responsible Persons</b>	Charities must take reasonable steps to: <ul style="list-style-type: none"> <li>• be satisfied that its Responsible Persons (such as board or committee members or trustees) are not disqualified from managing a corporation under the <i>Corporations Act 2001 (Cth)</i> or disqualified from being a Responsible Person of a registered charity by the ACNC Commissioner, and</li> <li>• remove any Responsible Person who does not meet these requirements.</li> </ul>
<b>Standard 5: Duties of Responsible Persons</b>	Charities must take reasonable steps to make sure that Responsible Persons are subject to, understand and carry out the duties set out in this Standard.



# Overview of CLC 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, some pay sitting fees
- Irrespective of structure or size, the principles and requirements of good governance still apply, and there are common legal duties and obligations



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



# What does the NAS require?

- All CLCs in Queensland must maintain accreditation 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 – 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
- At present the Standards are made up of three sections
- For these purposes focus is on Section A: Governance and Organisational Management
- Standard 1 relates directly to Governance, but 4 other Standards also speak to governance issues to some extent:
  - Standard 2: Planning, Evaluation and Quality Management;
  - Standard 3: Staffing including Volunteers;
  - Standard 4: Financial Management; and
  - Standard 5: Risk Management and Compliance
- A total of 35 Requirements across these 5 Standards; no longer any distinction between Primary and Secondary Requirements

# Standard 1- Governance

## **Standard 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 the activities of the organisation

# Standard 1 - Governance

## 11 Requirements flesh out each of the elements of the Standard

- clearly defined purpose, aims, values
- processes for appointment to the Board, including screening
- representative membership on the Board, and right mix of skills
- appropriate processes for induction, regular training and Board performance reviews
- clear definition of roles and responsibilities of the Board
- Clear definition of Board and CEO / Director roles and relationship, including monitoring & management of CEO performance
- defined and documented delegations and lines of authority
- compliance with statutory and contractual obligations
- systems for policy and procedures reviews
- code of conduct/ ethics
- Documented processes for managing conflicts of interest.

# Standard 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 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 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 2 - Planning Evaluation and Quality Management

- Standard 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 Board; implementing it on a day to day basis is the role of the CEO and management.

# Other Relevant Standards

## **Standard 3 - Staffing, including volunteers**

- Requires the organisation to plan, develop and support its workforce...to ensure the effectiveness of the organisation and its services [*and a positive workplace culture*]

## **Standard 4 - Financial Management**

- Requires sound financial decision-making processes and financial management that is transparent, accountable and appropriately authorised

## **Standard 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.

# Main Governance Gaps under the NAS

- **Board recruitment processes**
  - documentation; systems for screening potential appointees (including reference checks)
- **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, and ensuring the Board gets this information regularly

# Main Governance Gaps under the NAS

- **Evaluation of Outcomes**
  - Limited to client feedback
  - Limited engagement by Boards
  - Emerging focus on impact that needs to be supported by data
- **Staffing**
  - Wellbeing: stress & burnout management, effective support systems
  - Worker personal safety
- **Risk Management**
  - Lack of strategic engagement
  - Need for risk management tools (eg risk management policy & plan, risk appetite statement)

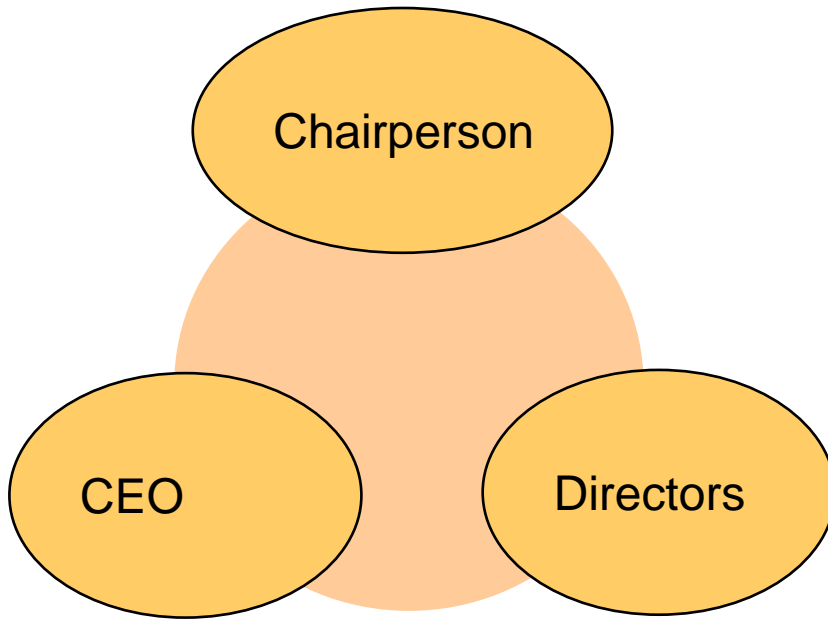
# Hallmarks of a well-governed CLC

The Board is engaged, active, well-qualified and well informed	There is strong financial management and strategic use of resources and assets to maximise effectiveness
The CEO has clear direction and is supported to implement the Strategic Plan	Services are client centred, there are levels of professionalism in service delivery
There is positive workplace culture; the workforce is highly motivated and has good morale.	The organisation is open to growth, change and innovation
Good systems and processes support the CLC's work, and the workforce confidently works within and implements the operational framework	There is strong community connection and reputation

# Governance in Practice



# 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 as a whole

- Board / Management Committee is the ‘governing body’ made up of ‘Directors’ or ‘Members’ – being those duly appointed under the organisation’s Constitution or Rules
- Exists to guide and support the organization to pursue its purpose...
  - Concentrates on environmental, strategic and major decisions
  - Strategic awareness
  - Monitoring / assurance / strategic risk
- 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 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**

# 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

# Governance Responsibilities:

## Individual Board Directors

[https://www.nfplaw.org.au/sites/default/files/media/New\\_to\\_a\\_board\\_or\\_committee\\_Cth\\_0.pdfv](https://www.nfplaw.org.au/sites/default/files/media/New_to_a_board_or_committee_Cth_0.pdfv)

- **Collective decision-making**

*(no individual power or ability to make decisions independently of other Board members)*

- **Responsible for:**

- Understanding the business of the organisation, being aware of key developments
- Providing advice, opinions and independent judgment to inform Board decisions
- Oversight of operations and performance
- Board and AGM meetings – attending and participating
- Declaring conflicts of interest
- Being active in the organisation – eg attending functions/events as a representative where appropriate

# Subcommittees of the Board

- Complex or specialised issues can be delegated to an expert group of Directors, staff and/or specialists
- More effective use of Directors time around the Board table
- Can't make decisions for the full Board – recommends actions that are considered by the Board as a whole (collective decision making responsibility)
- Most common are finance, risk & audit, human resources, fundraising

\*(<https://www.diycommitteeguide.org/resource/what-role-of-sub-committees>)



# 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 – legal duties – i.e. an action **required** by law to take.
- 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**
- These common law duties are reflected in the *Associations Incorporation Act (Qld)* and the *ACNC Governance Standards*



# Directors' Legal Duties and Liabilities

- Qld Associations Act now explicitly requires MC members to:
  - **disclose remuneration or benefits paid/given to management committee members and senior staff members, and their relatives; and**
  - **prevent insolvent trading of the association**
- 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:
  - Duties of good faith, and acting for a proper purpose, and not to misuse position or information. Penalties apply for breaches (s.184 of the Corporations Act)
  - the duty to prevent insolvent trading also applies (s 588G *Corporations Act 2001*)

# Personal liability of Board members

- In some circumstances Directors can be held personally liable for the organisation's debts, or be subject to regulatory action.
- Board members can be subject to penalties as a result of their own actions, and/or for the actions of the organisation where it has breached a law.
- There are limits on an organisation's ability to protect board members against personal liability – i.e certain liabilities can't be covered, for example liabilities under health and safety legislation.
- Directors can be indemnified (reimbursed) for penalties or legal fees - but many (most!) NFPs would not have sufficient resources to cover all potential board member liabilities – insurance is vital.

[https://www.nfplaw.org.au/sites/default/files/media/New\\_to\\_a\\_board\\_or\\_committee\\_Cth\\_0.pdf](https://www.nfplaw.org.au/sites/default/files/media/New_to_a_board_or_committee_Cth_0.pdf)



# Tools for effective governance

Constitution / Rules	Strategic planning
Governance Policies and Procedures – including integrity and ethics	Risk reviews
Board /Management Committee meetings	Succession planning; Board skills and training
Subcommittees	Monitoring compliance and accountabilities
Performance and financial reporting	Relationships and culture
Definition of Roles and Responsibilities	Board Self-Evaluation



# More information and resources

- NAS Standards – CLCA Website (Members only portal)
- 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>
- Range of resources specifically on Directors personal liabilities
- Contact your NAS Accreditation Reviewer



**Community  
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**Thank you**

**Community Legal Centres Queensland Inc.**

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