



Governance Workshop

Saturday 30 March 2019

Presenter – Suzanne Holohan, RAHS General Manager
Contact – executive@rahs.org.au

PART A. WHAT IS GOOD GOVERNANCE

Topics

How do you define 'good governance'? What are its key components? Why bother defining and implementing good governance practices?

A.1 Definition – some examples

The Governance Institute of Australia define good governance as:

- *Not only the system by which organisations are controlled, but the mechanisms by which organisations and those who comprise them are held to account.*
- *What would ordinary, right-thinking members of the community — knowing all the relevant facts — believe to be an appropriate exercise of stewardship in such circumstances?*

The Australian Institute of Company directors also provide a definition in *Good Governance Principles and Guidelines for Not-for-Profits*.

- *Corporate governance refers to the systems and processes put in place to control and monitor – or 'govern' – an organisation.*
- *Good governance is embedded in the good behaviour and the good judgement of those who are charged with running an organisation*

My personal favourite is from the Justice-Connect, Not-for-Profit Law:

The 'governance' of an organisation refers to the direction, control and accountability of an organisation. Particular legal obligations apply to the governance of organisations. Governance is undertaken by the committee or board of the organisation.

Remember that governance and management is different. Governance is about the core policies and processes that outline the organisation's purpose, values, and structure. Governance decisions should provide guidelines for management. *Management* refers to the routine decisions and administrative work related to the daily operations of the organisation. Management decisions should support or implement goals and values defined by the governing body (board/management committee).

A.2 The four components of good governance

The Governance Institute of Australia breaks governance down into four components.

The first two – transparency and accountability – are very practical and tangible.

The second two – stewardship and integrity – are more intangible and reflect the culture of the organisation and the values of those responsible for running it.

Your organisation's ability to practice good governance is influenced by:

Culture: This is the 'personality' of the organisation, and is sometimes described as 'how we do things around here'. It is an intangible asset so it lacks a physical form, but makes a valuable contribution to an organisation.

Values: These are the unseen drivers of our behaviour, based on our deeply held beliefs that drive decision-making. The collective behaviours of the board, volunteers and members become the organisational culture.

Please note that the four components are not in separate silos as they often overlap e.g. acting in a transparent manner, without breaching any appropriate confidentiality agreements, is often a core part of acting with integrity.

<h2>1. Transparency</h2>	
<p>What it means:</p> <p>Being clear and unambiguous about the organisation’s structure, operations and performance and providing insight to legitimate stakeholders.</p> <p>The board’s/management committee’s* primary stakeholder are its members. Other stakeholders can include:</p> <ul style="list-style-type: none"> • Funders and government departments • Regulators, police and the courts; • Clients and customers • Financial institutions such as banks • Creditors and vendors 	<p>Ideas on how to be transparent:</p> <ul style="list-style-type: none"> • Publish a regular newsletter. • Compile and publish an annual report, including details of the activities your group has undertaken in the past year and financial statements, and make it available to all interested parties (members, donors, funders, service users, etc.) • Put in place an ‘interest register’ that details all of the personal and business interests of current board members – particularly those that could lead to a potential or real conflict of interest • Ensure your group is responsive to requests for information – be prompt and polite when replying • Have information about your group and board that is readily available and can be easily distributed. This includes: committee minutes (excluding confidential reports and discussions); mission and vision statements; organisation's programs; details on board • Use your website to publish information about your organisation and your board – but have it available in hard copy as well
<h2>2. Accountability</h2>	
<p>What it means:</p> <p>Ensuring that there is clarity of decision-making within the organisation, with processes in place to ensure that the right people have the right authority to make effective and efficient decisions, with appropriate consequences for failures to follow those processes.</p> <p><i>Note: The board is entrusted by its members to govern on their behalf. As a result, the primary accountability of boards is to their members.</i></p>	<p>There are two components of accountability:</p> <ul style="list-style-type: none"> • Answerability – which means providing information and justification for how your actions align with expectations • Enforcement – which means being subject to, and accepting the consequences of, failing to meet these expectations <p>Ideas on how to be accountable:</p> <ul style="list-style-type: none"> • Undertake an independent financial audit at least once a year and act promptly to resolve any concerns that are raised • Avoid conflicts of interest and deal with them promptly and properly when they do arise • Have a handbook or set of policy documents that lay out the roles and responsibilities of the chair and the committees and how they interact to ensure appropriate communication and decision-making • Keep good records of all financial transactions, as well as board decisions and actions • Put in place a complaints procedure to give interested parties the opportunity to voice any concerns they may have • Have procedures in place to deal with media enquiries • Regularly send funders updates on funded projects • Keep a close eye on how grants money and other donations are being spent

3. Stewardship	
Ensure that the organisation is managed for the benefit of its members, taking reasonable account of the interests of other legitimate stakeholders**	Ideas on how to practice stewardship <ul style="list-style-type: none"> • Regularly review your organisation’s values and missions so they remain appropriate for members • Make sure that your board reflects your memberships interests (RAHS has a mixture of academic, public, professional, community and local historians on its board) • Recognise that you are part of a broader community, and must do the best by your members in a way that honours your commitments to your other stakeholders • Think about future board members and manage your organisation’s assets so that those who come next have inherited a financially and operationally sustainable organisation
4. Integrity	
Developing and maintaining a culture committed to ethical behaviour and compliance with the law.	Ideas on how to practice integrity <ul style="list-style-type: none"> • The ‘fish rots from the head’ so make sure that every decision made by a board must be impartial and in the best interests of the organisation. • Having clear codes around potential conflicts of interest and other conduct and ethical standards – this shows that your organisation is committed to upholding certain standards.
<p>* This handout uses the word ‘board’ to describe the group of people responsible for running your organisation in accordance with its constitution and the legal framework under which your organisation operates. Other terms people use are ‘management committee’, ‘committee’, ‘council’.</p> <p>** Definition of stakeholder – A person, group or organisation that has interest or concern in an organisation. Stakeholders can affect or be affected by the organisation's actions, objectives and policies. Some examples of key stakeholders are: members, directors, volunteers, employees, government (and its agencies), creditors and suppliers</p>	

A.3 Why bother with good governance?

It makes for a stronger and viable organisation:

- Better strategies and plans
- Improved operational effectiveness
- Supports regulatory compliance, financial management and risk management
- Improved member and stakeholder engagement and communication flow
- Increases likelihood and degree to which an organisation actually delivers on its purpose.

However, when it comes to understanding good governance, giving examples of poor governance may help to explain its importance:

- Losing your charity status or DGR (deductible gift recipient) status because you have not done the appropriate filing to government agencies or because you have used donations inappropriately
- Breaching grant conditions because you haven’t got processes in place to manage projects
- Having a board member approve hiring a family member to undertake work without declaring conflict of interest
- Deciding not to take out appropriate insurance for your business because you believe ‘it won’t happen to us’, but then it does and your organisation becomes insolvent
- Being slack about understanding and reading monthly financial reports and not seeing or acting on the signs that your organisation is running into solvency issues

Ensuring good governance depends as much on effective implementation as it does on organisational commitment – so have a list of your key governance tasks and make governance items a standing agenda in your board meetings.

PART B – The two key role descriptions

Topics: What are the key duties and responsibilities of the board? If I am the treasurer, what is my job exactly? And should my job include worrying about fraud?

B.1 Duties and responsibilities of the board

The board is responsible for the governance of not-for-profit organisations.

The key principle that guides the duties and responsibilities of your board is that they always do their best to help your organisation achieve its goals and obligations. They must always have in the forefront of their mind that their ultimate responsibility is to its members.

The roles and duties of a board are defined and influenced by the following:

1. your legal structure (incorporated association, indigenous corporation and company limited by guarantee are the three most common in Australia)
2. your governing documents (constitution, rules, trusts or deeds)
3. your organisation's requirements
4. your code of conduct/ethics (if you have one)

Each type of structure is regulated differently – and is a topic for its own workshop. But the key message in this workshop is to take time to understand the legal framework of the structure that applies to your organisation.

Don't know your legal structure?

- If your organisation is a charity, the best place to look is on the Australian Charities Not-for-Profit (ACNC) register. Once you have found your organisation's entry, you can check your rules or constitution which should state the type of legal structure. You can search by name and by ABN or ACN.
- If your organisation is not a charity, you should start with the Australian Business Register search: <https://abr.business.gov.au/>

Incorporated Association (most RAHS affiliated historical societies)

If you are an association then NSW Fair Trading defines the roles of the management committee: <https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/associations/running-an-association/management-committee>

The main roles are:

- managing the association's financial affairs and maintaining its financial viability
- ensuring the association acts in accordance with its objects or purposes
- meeting all legal requirements (listed in detail on the website), which includes ensuring that new committee members are aware of their statutory obligations and responsibilities to the association

Company limited by guarantee

The RAHS is a company limited by guarantee, which is a specialised form of public company designed for non-profit organisations. The RAHS is therefore subject to the Corporations Act 2001 (Cth) and administered by the Australian Securities and Investments Commission. The duties in this act have been incorporated into ACNC Governance Standard 5, and fall into the following main categories:

- duty to act in good faith and act for a proper purpose
- duty to act with due care, skill and diligence

- duty to avoid conflicts of interests
- duty not to misuse position or information
- duty to prevent insolvent trading by the organisation

In addition, under the Corporations Act 2011 (Cth), an RAHS Councillor or office bearer is required to comply with the RAHS constitution.

Registered charity with ACNC

The ACNC **Governance Standard 5** states that all charities must take reasonable steps to make sure its responsible persons (board members) meet certain duties. The following table is a general summary of what each duty requires.

Governance Stand 5 Duties	What each duty requires
1. Act with reasonable care and diligence	Board members are in a position to guide and monitor the management of the organisation. They need to understand and keep informed about its activities and finances.
2. Act honestly in the best interests of the charity and for its purposes	Board members make decisions by honestly considering what would be in the best interests of the organisation, and would further its charitable purposes (as set out in its governing documents).
3. Not to misuse the position of responsible person	An example of misusing the position is where a board member is involved in paying a company owned or controlled by a friend or relative.
4. Not to misuse information obtained in performing duties	An example of misusing information is if a board member gives confidential information about the charity's operations (that they have gained because of their role) to another person or organisation (even if it is to another charity).
5. Disclose any actual or perceived conflict of interest	Board members should disclose any situation where they may appear to have a conflict between their duty to act and a personal (private) interest, and should not discuss or vote on any matter where there is such a conflict.
6. Ensure that the charity's financial affairs are managed responsibly	As a minimum, board members should ensure there are good processes to prevent problems and to manage money responsibly. This includes reading financial statements and having a process to ask questions if there is confusion/uncertainty.
7. Not to allow a charity to operate while insolvent	If a board member reasonably suspects that the organisation cannot pay all of its debts when they become due, then this person should take all reasonable steps to prevent the organisation taking on more debt. The board must regularly review the financial position and ensure there is enough money to pay for its activities.

Know your constitution

Your constitution (or terms of reference if you are not an incorporated organisation) will define the duties of your board. The standard practice is that organisations adopt the 'model' constitution recommended by NSW Fair Trading (in the case of associations) or the ACNC (who provide a template for companies limited by guarantee). Your constitution will have clauses that outline the role of your board and its office bearers e.g. president, senior-vice president and company secretary. Often these relate solely to legal requirements so you need to add others that reflect the changing requirements of your organisation. These 'other' types of duties are

not in the constitution because they are fluid and ever evolving – so going through the process of changing the constitution to update them would be very onerous.

Below is an example of the constitutional duties laid out in the RAHS Constitution, including the role of the President, and the ‘other’ roles that are ever evolving and are reviewed each year. The RAHS has a small staff so its Council is an active one and is involved in its governance and operational activities. We are also working on updating our constitution so it better aligns with the ACNC template for companies limited by guarantee, and so the wording isn't so convoluted.

Section	Clause	Notes
Preliminary	7. The income and property of the Society shall be applied <i>solely</i> toward the promotion of the objects of the Society as set forth in this Constitution.	This aligns with Governance Standard 5 – to act honestly in the best interests of the charity and for its purposes.
Councillors and Officers	30. The Councillors shall elect from their number office bearers being a President, a Senior-Vice President, a Vice-President and one ordinary member who, together with the Treasurer (hereinafter referred to), shall form the Executive. Such elected Councillors and the Treasurer shall be known as the Office bearers and shall hold office until the first meeting of the Council after the next Annual General Meeting.	The current policy is that the Treasurer is also elected at this meeting, as s/he must be a council member. It is also important to note that all Councillors must ensure that the financial affairs of the RAHS are managed responsibly, and it does not operate while insolvent.
	38 (i) No employee of the Society shall be entitled to be elected as a Councillor.	This prevents conflicts of interest (direct financial benefit for a Councillor if they are hired as a paid employee)
	39. A Councillor may not vote in respect of any contract or arrangement in which he or she is interested and may not be counted for the purpose of any resolution regarding the same in the quorum present at the meeting and may not participate in the execution of any instrument or on behalf of the Society whether through signing or sealing the same or otherwise.	This aligns with Governance Standard 5 – disclose any actual or perceived conflict of interest
Proceedings of Council	41. The role of the Council is to control and manage the affairs of the Society in furtherance of its objectives. The Councillors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit but shall meet on no fewer than six (6) occasions in each Councillor calendar year.	This aligns with Governance Standard 5 – act with reasonable care and diligence. Councillors meet this standard by attending, preparing, and participating at Council meetings. It has been policy in the past to ask Councillors to tender their resignation if they miss more than three meetings (this is not a constitutional requirement). Councillors can request leave from a Council meeting, which requires a motion to approve.

	<p>42. The Council may establish committees and may appoint the members of all committees. The committees, including the Executive, may exercise any functions of the Council which the Council thinks fit to delegate to such committees</p>	<p>The RAHS Council cannot delegate any of duties its under Governance Standard 5. For example it could not delegate its financial responsibilities to a committee.</p> <p>Regulation 43 also discusses committee and states that <i>‘the Council may by resolution delegate any of its functions to committees consisting of such of its numbers and or such members of the Society as it thinks fit and shall nominate a member of such committee to be its convenor. Any committee formed shall exercise its functions in accordance with the resolution by which it was established and shall report to the Council on its deliberations as and when the Council requires.</i></p> <p>Again, RAHS Councillors should note, that they cannot delegate any of their duties under Governance Standard 5 to a committee.</p>
<p>Accounts</p>	<p>49. The Council shall cause to be kept such proper accounting and other records as well sufficiently explain the transactions and financial position of the Society and enable true and fair profit and loss statements and balance sheets and any documents required to be attached thereto to be prepared from time to time and shall cause those records to be kept in such manner as to enable them to be conveniently and property audited.</p>	<p>This aligns with Governance Standard 5 – ensure that the charity's financial affairs are managed responsibly.</p> <p>Regulation 46 states that the accounting and other records of the Society shall be kept at the Office or such other place as the Council may determine from time to time and such records shall be open for inspection by members of the Council during normal office hours and at other times by arrangement with the Executive Officer (note – this role is now ‘RAHS General Manager).</p>

All in it together – so no excuses.

All board members take on legal responsibility together for every decision. So the following excuses don't apply:

- I wasn't at the board meeting
- I voted NO to that resolution
- I didn't understand or I did not read the documents
- I voted as the President told me to
- It's not my job

As a board member, you will not breach your legal duties if you:

- make a judgment in good faith for a proper purpose
- do not have a material personal interest
- inform yourself about the subject matter to the extent you reasonably believe to be appropriate
- rationally believe the judgment is in the best interests of the organisation

Other roles and duties – based on organisation requirements and code of conduct

RAHS Councillors play an active role in the operational and strategic activities of the RAHS. Depending on their skill set and interest, RAHS Councillors are members of committees and working parties. Other roles that they traditionally perform are:

- editor of *History* magazine.
- contribute content to RAHS social media platforms, including the RAHS e-Newsletter

- represent the RAHS at events
- accept invitations to speak at RAHS events or RAHS Affiliated Societies events
- coordinate workshop and seminars at the request of the RAHS Council and Events Committee (more information on Events is available in the *RAHS Events Management Policy*)
- investigate proposed changes to government policies and legislation that could impact the practice of history
- support fundraising initiatives, including providing feedback to RAHS General Manager on grant applications or other fundraising activities.

The RAHS also has a Code of Conduct that covers all employees, Councillors, committee members and volunteers when acting for or on behalf of the RAHS. It provides a framework on how RAHS Councillors and Office Bearers should conduct their duties, in particular the sections ‘Working with integrity’ and ‘Working with diligence’.

B.2 ‘Damned good advice for every treasurer’

One of the most important jobs in a not-for-profit volunteer organisation is that of the treasurer. It is the job that can mean the difference between your organisation thriving, or going down the gurgler. The role is often challenging and, based on anecdotal evidence from the 370 historical societies that the RAHS works with, it is quite often the job that no one wants to do. Therefore a big thank you to all the hard-working treasurers in the history and heritage sector as we are in their debt.

If I am treasurer, what is my job exactly?

- The treasurer is the ‘first among equals’. Although all board members must legally ensure that the financial affairs of a historical society are managed properly, the treasurer plays a pivotal role in ensuring that all the organisation’s financial rules are observed, all the correct financial procedures are followed, and all financial decisions are taken in light of all necessary information.
- The treasurer is NOT responsible for making all the major financial decisions – the board has to sign off on any important financial initiative. But the treasurer is responsible for ensuring that these decisions are made properly according to the rules and in full knowledge of the consequences, e.g.
 - review fund-raising plans to check that the initiative will be financially successful
 - review plans to undertake a project to ensure that it will not negatively impact the financial sustainability of the society
- The treasurer has some particular tasks to do:
 - **Keep the accounts** – Account for every dollar that comes in and every dollar that goes out. You also have to know how much money your organisation has to work with when all debts have been paid.
 - **System Management** – Ensure that systems are in place to govern financial transactions and that people follow them. The treasurer takes the lead in helping the rest of the committee form financial policies. Helpful policies to consider include check signing authority, expense reimbursement, credit card usage, and petty cash policies, if applicable. Typically, not-for-profit organisations require at least two signatures by committee members to process payments.
 - **Planning** – When your organisation draws up plans (e.g. plan for the years activities, plan for a special event), then you must attach revenue and expense dollar figures to it to ensure it is viable.
 - **Budgeting** – Project expenditure and income, monitor the budget and inform the committee if your original guesses were out of line.
 - **Reporting to Committee** – Report to the committee on the finances at every meeting. You have to be sure that they understand what you are telling them.
 - **Reporting to Statutory Bodies** – As treasurer you need to be across reporting requirements to Statutory Bodies. This could include Australian Charities Not for Profit Commission, NSW Fair Trading and the ATO.
 - **Fundraising** – As the go-to person on money, you need to review fundraising plans to make sure the plan will make money.

- **Monitoring Risks** – You have to guard against risks to your organisations' finances. This includes making sure you have systems in place to prevent fraud and that you have adequate insurance.
- **Banking** – You need to work out what your organisation's banking requirements are and what services and facilities your bank can offer.
- **Tax** – You'll have to understand if you should register for GST (this was a topic at the RAHS 2017 Conference Business Session and I can provide the presentation hand-out), if you have/should apply for tax concessions.
- **Finishing up** – After several years in the role, you will need to step down and have handover documentation for the person who is taking it over.

Do I need to worry about fraud?

You can't ignore the possibility of fraud within the organisation, so work in a framework, which limits the chances of fraud happening:

- All outgoing payments (whether by cheque or online payments) should be signed off by at least two authorised people
- Select signing officers (for cheques or online banking) with care – they need to be available for authorising payments and above reproach. Also make sure that you have a back-up person in case one is unavailable
- Never EVER sign a blank cheque
- Always separate financial duties e.g., the person entering the online banking transactions should be different from the person approving them
- Always ring and check if someone emails you to make a payment, or says that their banking details have changed and could you EFT money to a different account. Hackers are getting more sophisticated at sending fake emails

What else should I be afraid of?

Trading while insolvent should be your number one fear. It is **the** number one thing you must never do – allow your organisation to spend money it does not have or doesn't have any prospect of getting. This is illegal.

Even if your organisation is incorporated your committee could still be sued as individuals if the committee has been negligent.

A basic check you should do is to ensure your membership fees cover all your non-discretionary expenditure. Non-discretionary expenditure items are the costs that the organisation must pay each year in order to exist e.g. public liability insurance.

Useful documents (available to download for free)

Damn Good Advice for Treasurers: Twenty-five questions a not-for-profit Treasurer needs to ask. Published by Our Community Pty Ltd, Melbourne Victoria Australia, May 2016

https://www.ourcommunity.com.au/financial/financial_article.jsp?articleId=5902

Good Governance Principles And Guidance For Not-For-Profit Organisations. Published by the Australian Institute of Company Directors, 2013

https://aicd.companydirectors.com.au/~/_media/cd2/resources/director-resources/not-for-profit-resources/pdf/nfp-principles-and-guidance-131015.ashx

Useful links

Australian Charities and Not-for-Profit Commission (ACNC)

<https://www.acnc.gov.au/>

The Australian Charities and Not-for-profits Commission (ACNC) is the independent national regulator of charities. Societies that are not-for-profit companies limited by guarantee need to provide financial and director information to the ACNC.

Fair Trading NSW

<https://asic.gov.au/for-business/>

Fair Trading NSW provides useful information on incorporating and running an association.

Governance Institute of Australia

<https://dcwebsvr.governanceinstitute.com.au/resources/resource-centre/>

This membership based organisation does has a lot of useful and free resources for non-members, including information on the foundations of good governance.

Institute of Community Directors

<https://www.communitydirectors.com.au/icda/tools/>

A governance network for not-for-profit boards, committees, councils, schools, and their staff. In the 'Tools and Resources' section of the website contains really useful help sheets and templates on key governance activities – from defining key roles, managing the finances of your organisation, running meetings and preparing a strategy.
<https://www.communitydirectors.com.au/icda/tools/>

Volunteering Australia

<https://www.volunteeringaustralia.org/#/>

Volunteering Australia is the national peak body for volunteering, working to advance volunteering in the community. It has useful guidelines and templates for managing volunteers.