

Good governance and understanding your constitution

Ian Woodruff - Institute of Community Directors Australia

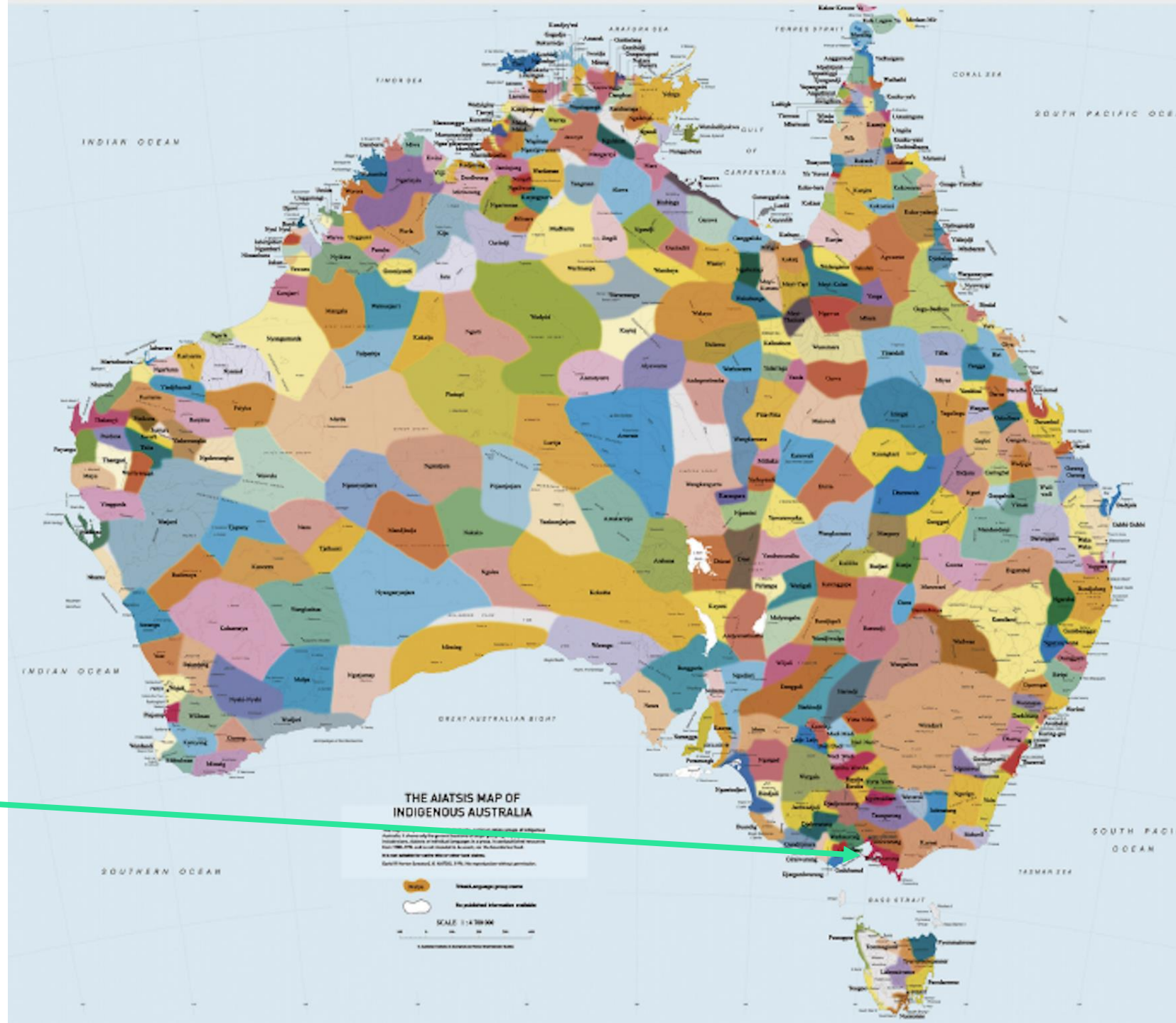
Wednesday 28 February 2024

Acknowledgement of Country

This map attempts to represent the language, social or nation groups of Aboriginal Australia. It shows only the general locations of larger groupings of people which may include clans, dialects or individual languages in a group. It used published resources from the eighteenth century-1994 and is not intended to be exact, nor the boundaries fixed. It is not suitable for native title or other land claims. David R Horton (creator), © AIATSIS, 1996. No reproduction without permission. To purchase a print version visit: <https://shop.aiatsis.gov.au/>.

The lands of Wurundjeri People of the Kulin Nation

First languages interactive map: <https://gambay.com.au/>



What we will cover

The regulatory framework

- Acts
- Regulators
- Model rules
- Your Constitution

Good governance

- Responsibilities of board members
- Decision making (principles)
- Role of the board
- Policies and Procedures as governance tools
- Board Effectiveness
- Skills mix
- Codes of Conduct




How the day will run (hopefully!)

- a mix of presentations
- small group breakout rooms to consider an issue and feedback to the main room
- chat function – pose questions, leave comments
- finish up with general Q&A

Breaks:

10 mins at 2 pm and 3 pm



Regulatory
frameworks

**What options do we have
when forming an
association in Australia?**

Unincorporated associations

An unincorporated association is not a separate legal entity from its members.

It is simply the group itself, of people who have agreed to come together to pursue a common purpose.

The advantages are:

- ✓ Fewer compliance issues
- ✓ No regulator fees
- ✓ Less onerous reporting requirements.

The disadvantages are:

- × individual members are personally liable if things go wrong.
- × Difficulty opening bank accounts
- × Problems with insurance
- × Confusion about who owns what property.
- × Foundations and government departments unlikely to fund

Companies

The focus of companies is making a profit.

A company has owners, or shareholders if the company is publicly listed, and the regulator is ASIC – the Australian Securities and Investments Commission.

Companies fall under the *Corporations Act 2001 (Cth)*.

Co-operatives

A co-operative is an organisation that has formed to benefit its own members (rather than the broader community) through its activities and is owned and controlled by its members. Co-operatives are regulated by the same state and territory bodies as incorporated associations.

Co-operatives fall under the ***Co-operatives National Law (CNL)*** for the relevant state or territory.

Companies limited by guarantee

A company limited by guarantee is a not-for-profit organisation which uses its profits to further its mission.

It is owned by the members and is regulated by the ACNC – the Australian Charities and Not-for-profits Commission.

It sits under the ***Charities Act 2013 (Cth)***

In some cases, and in some areas, a company limited by guarantee may also have to follow guidelines set out by ASIC (***Corporations Act 2001 (Cth)***) or state bodies (the relevant ***Associations Incorporation Act***), in addition to the ***Charities Act 2013 (Cth)***.

This structure tends to be used when a not-for-profit operates across a number of state and territory jurisdictions.

Incorporated Associations

An Incorporated Association is a state or territory-based not-for-profit organisation which uses its profits to further its mission.

It is owned by the members and is regulated by the relevant state / territory government department (e.g. Consumer Affairs Victoria, NSW Fair Trading)

It sits under that jurisdiction's incorporation act.

This structure tends to be used when a not-for-profit operates *within* a state and territory jurisdictions.

Indigenous corporations

Indigenous corporations often choose to be regulated by ORIC – the **Office** of the Registrar of Indigenous Corporations – but can also choose to be incorporated associations or companies.

They are owned by the members or shareholders and can be for profit or not for profit.

ORIC oversees the ***Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act)***.

Statutory organisations

In an organisation created by an Act of Parliament (for example, a government university, a cemetery trust), the government is the owner and regulator of that organisation.

Organisational Legal Structures

Structure	Focus	Owners	Regulator
Unincorporated association	NFP	Individuals	None
Incorporated association	NFP	Members	State/territory government departments
Co-operative	NFP/Profit	Members	State/territory government departments
Company	Profit	Shareholders	ASIC
Company limited by guarantee	NFP	Members	ACNC / ASIC
Indigenous Corporation	NFP/Profit	Members/shareholders	ORIC
Statutory organisation	NFP	Parliament (state/federal)	Parliament

Governance

An example of a Company Limited by Guarantee – the ANZ Society for Geriatric Medicine



Corporations Act 2001



Parliament of Australia

Long title [\[hide\]](#)

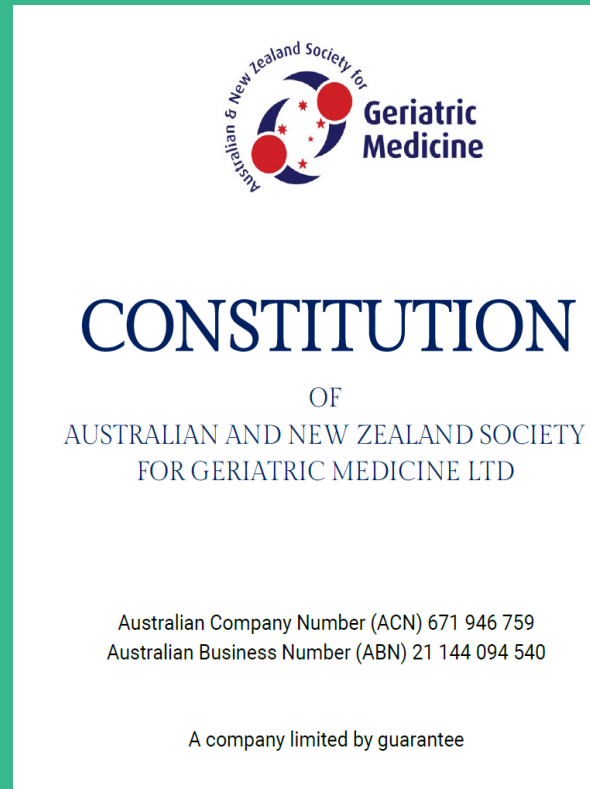
An Act to make provision in relation to corporations, securities, the futures industry and financial products and services, and for other purposes

Citation [No. 50 of 2001](#) or [No. 50 of 2001 as amended](#)

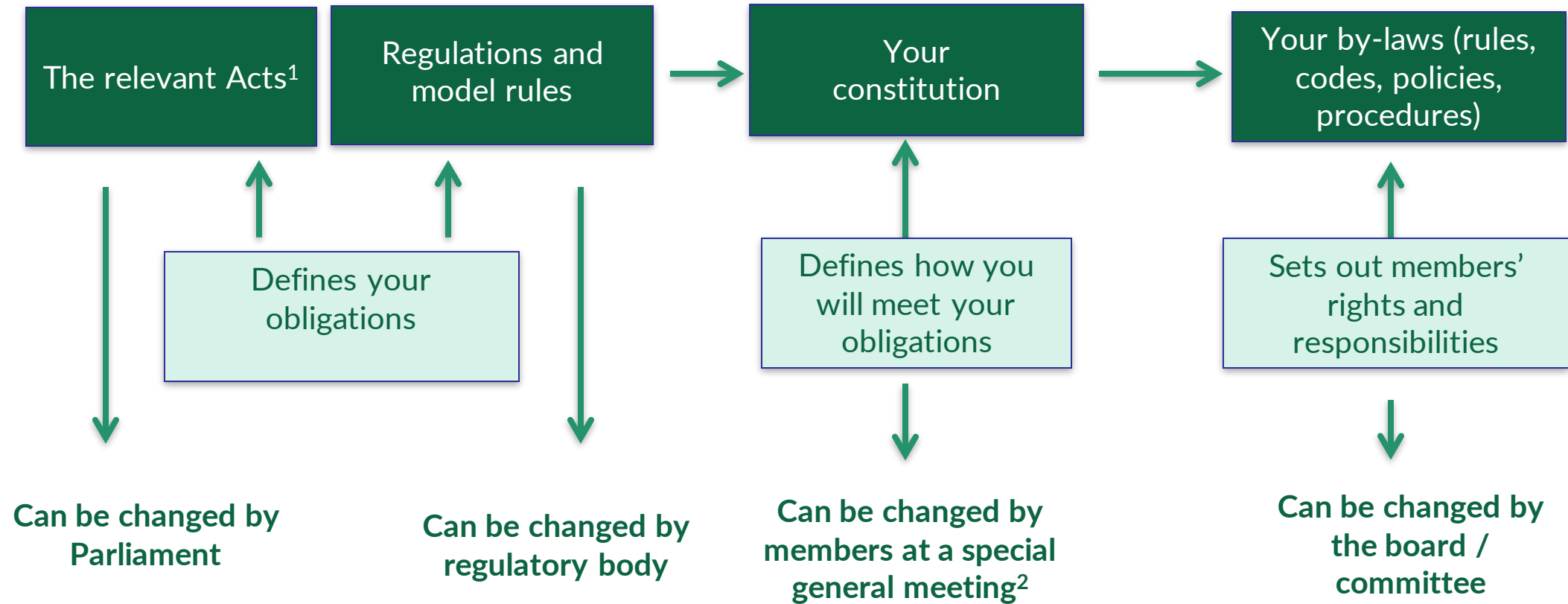
Territorial extent [States and territories of Australia](#)

Royal assent 28 June 2001

Status: In force



One organisation, three governing instruments



1. For example: Victoria's act is: Associations Incorporation Reform Act (2012)

2. Subject to later approval by regulator

The Anglo-Saxon evolution of meeting rules



1. One subject should be discussed at a time (adopted 1581).
2. The chair must always call for the negative vote (1604).
3. Personal attacks and indecorous behaviour are to be avoided in debate (1604): “He that digresseth from the Matter to fall upon the Person ought to be suppressed by the Speaker....No reviling or nipping words must be used.”
4. Debate must be limited to the merits of the question (1610): “A member speaking, and his speech, seeming impertinent, and there being much hissing and spitting, it was conceived for a Rule, that Mr. Speaker may stay impertinent speeches.”

Lex Parliamentaria 1689 - A pocket manual for House of Commons members (UK)

Model rules - what are they?

Your regulator has developed a set of rules (77 in Victoria!) that address all the requirements of the Act and Regulations.

They specify how you operate –things like:

- membership criteria
- Voting at meetings
- board / committee appointments
- Subcommittee formation
- Financial matters
- winding up (hopefully not required!)

You can simply adopt these rules as your constitution.

Whenever the model rules are changed by the regulator your constitution is automatically updated

Alternatively, you can write your own rules (consistent with the intent of the regulations).

You'll need to get the rules approved by your membership and then by your regulator

[ACT model rules](#)

[Victoria model rules](#)

What is a constitution?

A Constitution is established when an organisation files for incorporation with the appropriate state or federal government agency.

A constitution specifies the governing rules of an organisation in order to manage the relationship between its activities, directors and members.

It can be thought of as a guide for running your organisation

There is also a legal requirement that an organisation and its members follow these rules.

CONSUMER AFFAIRS VICTORIA		MEETINGS OF THE ASSOCIATION	10
Associations Incorporation Reform Act		request of members	11
MODEL RULES			12
For an			12
INCORPORATED			13
ASSOCIATION			13
Associations Incorporation			14
TABLE			14
Regulation			15
PART 1—PRELIMINARY			15
1	Name		16
2	Purposes		16
3	Financial year		16
4	Definitions		17
PART 2—POWERS OF ASSOCIATION			17
5	Powers of Association		18
6	Not for profit organisation		18
PART 3—MEMBERS, DISCIPLINARY PROCEDURES AND			19
Division 1—Membership			19
7	Minimum number of members		19
8	Who is eligible to be a member		20
9	Application for membership		20
10	Consideration of application		20
11	New membership	5	20
12	Annual subscription and fee on joining	5	20
13	General rights of members	6	20
14	Associate members	6	21
15	Rights not transferable	6	21
16	Ceasing membership	6	21
17	Resigning as a member	6	21
18	Register of members	7	21
Division 2—Disciplinary action			21
19	Grounds for taking disciplinary action	7	21
20	Disciplinary subcommittee	7	22
21	Notice to member	7	22
22	Decision of subcommittee	8	22
23	Appeal rights	8	22
24	Conduct of disciplinary appeal meeting	9	23
Division 3—Grievance procedure			23
25	Application	9	23
26	Parties must attempt to resolve the dispute	9	23
27	Appointment of mediator	9	23
28	Mediation process	10	24
29	Failure to resolve dispute by mediation	10	24
FINANCIAL MATTERS			21
68	Source of funds		21
69	Management of funds		22
70	Financial records		22
71	Financial statements		22
PART 7—GENERAL MATTERS			22
72	Common seal		22
73	Registered address		23
74	Notice requirements		23
75	Custody and inspection of books and records		23
76	Winding up and cancellation		24
77	Alteration of Rules		24

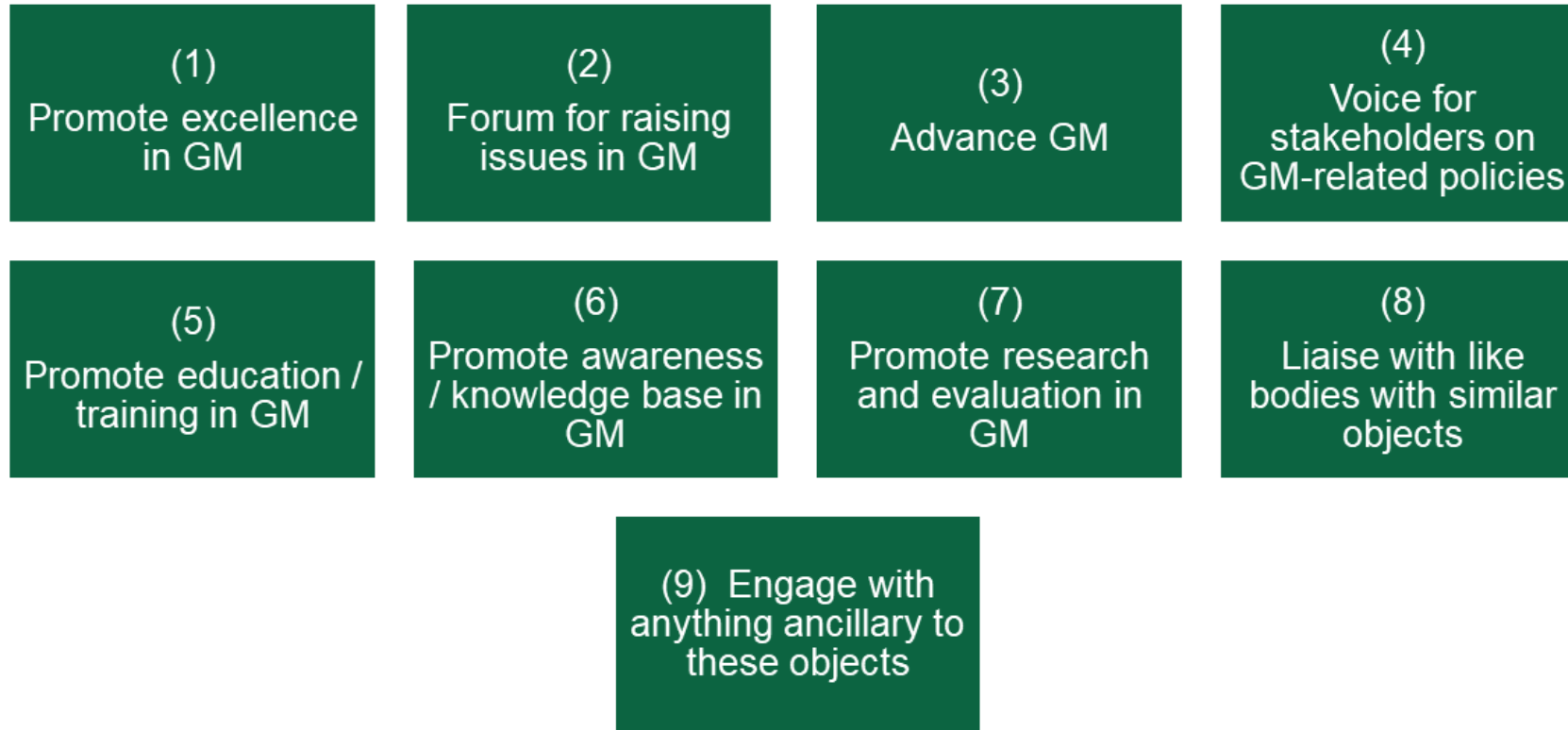
What's in the model rules (and therefore, in our constitution)

1. Preliminary: name / purpose / financial year / definitions
2. Powers of association: buy stuff, open a bank account, invest, borrow
3. Membership rules: who can join, fees, resigning, register of members
4. Disciplining members: process and natural justice
5. Grievance procedure: process and external mediation
6. General meetings: when, how run, quorum, voting, minutes
7. Committee: powers, delegation, composition, duties
8. Election of committee members: process, tenure, specific roles (eg chair)
9. Meetings of committee: frequency, quorum, COI, technology use, minutes
10. Finances: source of funds, management of funds, records, annual statements
11. General matters: common seal, registered address, record keeping, winding up



Purpose / Objects in your constitution

These are the objects in the ANZ Society for Geriatric Medicine's (GM) constitution



Purpose / Objects in your constitution



What the ACT's model rules say about objects

ACT Associations Incorporation Act (1991) Republication 39, effective 12 December 2023

Division 3.4 Objects and rules of incorporated associations

29 Objects

The objects of an incorporated association are the objects appearing in the statement of the association's objects lodged with the registrar-general under section 18 (1) (b) (i) or 26 (2) (b) (i),

30 Alteration of objects

- (1) An incorporated association may, by special resolution, alter its objects.
- (2) An incorporated association must, not later than 1 month after a special resolution to alter the objects of the association has been passed by the association, lodge with the registrar-general a notice setting out the particulars of the alteration.

Membership



Victoria's Association Incorporation Reform Act

Rule 7: Minimum number of members - The Association must have at least 5 members.

Rule 8: Who is eligible to be a member - Any person who supports the purposes of the Association is eligible for membership.

RULE 9: Application for membership

To apply to become a member ... a person must submit a written application ...stating that the person

- (a) wishes to become a member of the Association; and
- (b) supports the purposes of the Association; and
- (c) agrees to comply with these Rules.

The application must be signed by the applicant ... and may be accompanied by the joining fee.

Notes

1 The joining fee is the fee (if any) determined by the Association under rule 12(3).

2 A requirement for a signature of a person **may be met by electronic signature.**

Committee / governing group

Will define:

1. Who can nominate to be on the committee
2. The process for nomination / selection
3. How long is a member's term of "office"
4. How many members
5. How many roles are there on the committee
6. How to replace someone who resigns

Meetings and quorum

Quorum (pronounced “core um”)

Noun - quorum (plural quorums or quora)

Definition:

“The minimum number of members required for a group to officially conduct business and to cast votes, often but not necessarily, a majority or supermajority”

“We can discuss the issue tonight but cannot vote until we have a quorum”.

Quorate – we have met the constitution’s requirement for the minimum number of members

Inquorate – we have too few members / directors present to enable us to make binding decisions

Meetings and quorum



Annual General meetings (all members)

Rule 30: AGM - The Committee must convene an annual general meeting of the Association to be held within 5 months after the end of each financial year.

Rule 36: Quorum at AGM - No business may be conducted at a general meeting unless a quorum of members is present.... The quorum for a general meeting is the presence (physically, by proxy or as allowed under rule 35) of 10% of the members entitled to vote.

Hybrid meeting /
remote attendance

Rule 32: SGM - The Committee must convene a special general meeting if a request to do so is made in accordance with subrule (2) by at least 10% of the total number of members.

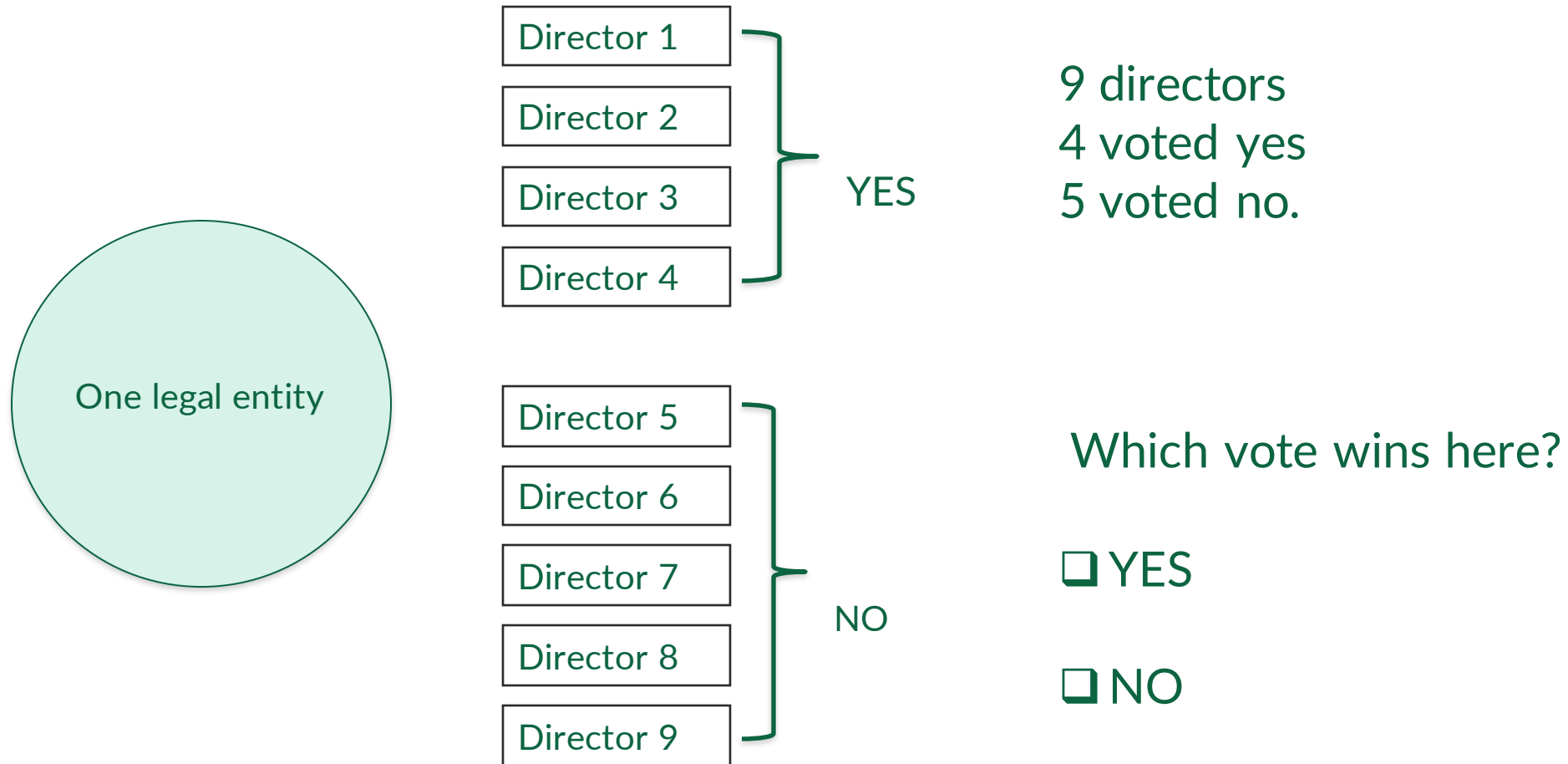
Committee meetings (just the committee)

Rule 58: Meetings of Committee - The Committee must meet at least 4 times in each year at the dates, times and places determined by the Committee

Rule 63: Committee Quorum - No business may be conducted at a Committee meeting unless a quorum is present.....The quorum for a committee meeting is the presence (in person or as allowed under rule 62) of a majority of the committee members holding office.

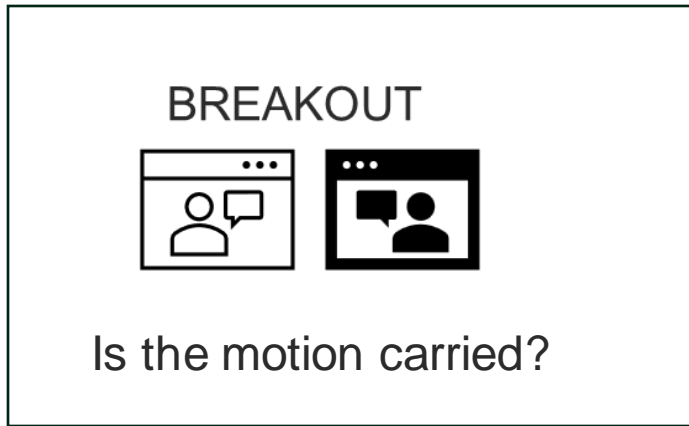
The motion put to the nine directors of the board is that:

“Ian Woodruff be paid a sitting fee of one million dollars for each committee meeting attended”

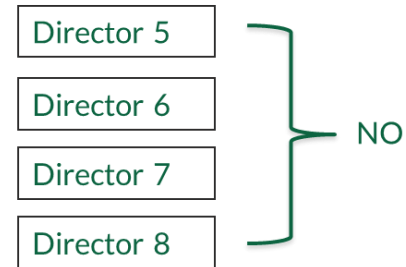
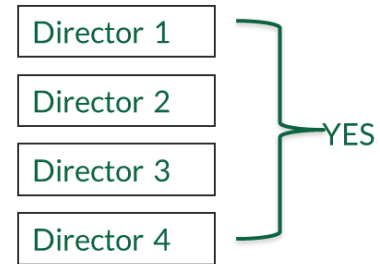


The motion put to the nine directors of the board is that:

“Ian Woodruff be paid an attendance fee of one million dollars for each committee meeting attended”



Breakout Room 1 and 2 to comment briefly when we return to main room



9 Directors
9th Director was genuinely indisposed and couldn't vote on this occasion

Vote is 4 YES and 4 NO

Voting

Did you know that Directors who were absent and didn't vote, **are just as liable under the law for the decision?**

Do you know what your Constitution says about proxy voting?

Is there allowance for voting by electronic means?

So, does Ian Woodruff get the
money?

Breakout 1 and 2 to comment

Conflict resolution

Victoria's AIR Act (new rule from late 2023)

Rule 25 Application

- (1) The grievance procedure ...between a member and another member; and a member and the Committee; and a member and the Association.
- (2) A member must not initiate a grievance procedure in relation to a matter that is the subject of a disciplinary procedure until the disciplinary procedure has been completed.

Rule 26 Parties must attempt to resolve the dispute

The parties to a dispute must attempt to resolve the dispute between themselves within 14 days of the dispute coming to the attention of each party.

Rule 27 Appointment of mediator

- (1) If the parties to a dispute are unable to resolve the dispute between themselves... they must and agree to the appointment of a mediator.
- (2) The mediator must be a person chosen by agreement between the parties; or a person appointed by the Committee; or if the dispute is between a member and the Committee or the Association—a registered mediator.

Winding up

1. Why are we winding up?
 - insufficient funds
 - another NFP is doing a far better job than us
 - issue we are working on solved / cured / changed
 - too much turmoil within our organisation
2. Who gets our money?
3. What happens to our intangible assets? (brand name, software, CMS etc)
4. What do we tell our stakeholders?
5. How do we support our staff, volunteers, donors, local communities?

Vic AIR Act (again!!)

Rule 76 Winding up and cancellation

The Association may be wound up voluntarily by special resolution.. and ..the assets of the Association must not be distributed to any members or former members... the surplus assets must be given to a body that has similar purposes to the Association ...the body to which the surplus assets are to be given must be decided by special resolution.

What does a Constitution do?

- NOT a strategic plan
- NOT a procedures manual
- NOT an automatic governance machine
- NOT a guarantee

<p style="text-align: center;">Model Rules for an Incorporated Association</p> <p>Note The persons who from time to time are members of the Association are an incorporated association by the name given in rule 1 of these Rules. Under section 46 of the Associations Incorporation Reform Act 2012, these Rules are taken to constitute the terms of a contract between the Association and its members.</p> <p style="text-align: center;">PART 1—PRELIMINARY</p> <p>1 Name The name of the incorporated association is "[insert name] Incorporated". Note Under section 23 of the Act, the name of the association and its registration number must appear on all its business documents.</p> <p>2 Purposes The purposes of the association are <u>[insert purposes]</u>.</p> <p>3 Financial year The financial year of the Association is each period of 12 months ending on <u>[insert last day of financial year, e.g. "30 June"]</u>.</p> <p>4 Definitions In these Rules— absolute majority, of the Committee, means a majority of the committee members currently holding office and entitled to vote at the time (as distinct from a majority of committee members present at a committee meeting); associate member means a member referred to in rule <u>14(1)</u>; Chairperson, of a general meeting or committee meeting, means the person chairing the meeting as required under rule <u>46</u>; Committee means the Committee having management of the business of the <u>Association</u>; committee meeting means a meeting of the Committee held in accordance with these <u>Rules</u>; committee member means a member of the Committee elected or appointed under Division 3 of Part <u>5</u>; disciplinary appeal meeting means a meeting of the members of the Association convened under rule <u>23(3)</u>; disciplinary meeting means a meeting of the Committee convened for the purposes of rule <u>22</u>; disciplinary subcommittee means the subcommittee appointed under rule <u>20</u>; financial year means the <u>12 month</u> period specified in rule 3; general meeting means a general meeting of the members of the Association convened in accordance with Part 4 and includes an annual general meeting, a special general meeting and a disciplinary appeal <u>meeting</u>; member means a member of the <u>Association</u>.</p> <hr/> <p style="text-align: center;">3</p>	<p>member entitled to vote means a member who under rule 13(2) is entitled to vote at a general <u>meeting</u>;</p> <p>special resolution means a resolution that requires not less than three-quarters of the members voting at a general meeting, whether in person or by proxy, to vote in favour of the <u>resolution</u>;</p> <p>the Act means the Associations Incorporation Reform Act 2012 and includes any regulations made under that <u>Act</u>;</p> <p>the Registrar means the Registrar of Incorporated Associations.</p> <p style="text-align: center;">PART 2—POWERS OF ASSOCIATION</p> <p>5 Powers of Association</p> <p>(1) Subject to the Act, the Association has power to do all things incidental or conducive to achieve its purposes.</p> <p>(2) Without limiting subrule (1), the Association may—</p> <ul style="list-style-type: none">(a) acquire, hold and dispose of real or personal <u>property</u>;(b) open and operate accounts with financial <u>institutions</u>;(c) invest its money in any security in which trust monies may lawfully be <u>invested</u>;(d) raise and borrow money on any terms and in any manner as it thinks <u>fit</u>;(e) secure the repayment of money raised or borrowed, or the payment of a debt or <u>liability</u>;(f) appoint agents to transact business on its <u>behalf</u>;(g) <u>enter into</u> any other contract it considers necessary or desirable. <p>(3) The Association may only exercise its powers and use its income and assets (including any surplus) for its purposes.</p> <p>6 Not for profit organisation</p> <p>(1) The Association must not distribute any surplus, <u>income</u> or assets directly or indirectly to its members.</p> <p>(2) Subrule (1) does not prevent the Association from paying a member—</p> <ul style="list-style-type: none">(a) reimbursement for expenses properly incurred by the member; or(b) for goods or services provided by the member— <p>if this is done in good faith on terms no more favourable than if the member was not a member.</p> <p>Note Section 33 of the Act provides that an incorporated association must not secure pecuniary profit for its members. Section 4 of the Act sets out in more detail the circumstances under which an incorporated association is not taken to secure pecuniary profit for its members.</p> <p style="text-align: center;">PART 3—MEMBERS, DISCIPLINARY PROCEDURES AND GRIEVANCES</p> <p style="text-align: center;">Division 1—Membership</p> <p>7 Minimum number of members The Association must have at least 5 members.</p> <hr/> <p style="text-align: center;">4</p>
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GOOD
GOVERNANCE

First up, what is governance?

Breakout Room 3 and 4 to comment briefly when we return to main room

BREAKOUT



Define governance in the context of a NFP organisation in Australia

Governance is....

Breakout 3 and 4 to comment

What is Governance?

“The systems and processes put in place to steer an organisation’s operations and directions, stipulating the rights and responsibilities of the board, staff and other stakeholders to ensure it meets its purpose”

Institute of Community Directors Australia



What is Governance?

“Governance is like the brain and the nervous system.”

“When working well it provides clear direction, anticipates danger, communicates, is inclusive, moves and acts, all the while giving out and receiving information so that it can take remedial action and change course.

“Poorly governed organisations have poor ‘nervous’ systems.

“They can’t always see where problems are likely to occur or have occurred and they don’t scan their environment or listen to messages from users.”



Healthy decision-making for boards



*'Boards should be building a hierarchy of reason ... as
opposed to an aristocracy of position'*

Simon Longstaff

Policies and procedures as tools of governance

Best practice is to keep your **constitution slim** and focused.

It is your *rule book* that covers the organisation's name, objectives, membership rules, governance structure, and dissolution process.

The *processes* you adopt to meet the rules are described in your **policies and procedures**



Each state / territory requires certain policies to be in place.

Below is the list of those that are compulsory for Victorian incorporated associations

Financial Management Policy:

finances, including budgeting, expenditure, investment, and record-keeping.

Member Complaints Policy:

addressing and resolving complaints from members.

Conflict of Interest Policy:

prevent and manage situations where personal interests conflict with the organisation's interests.

Annual General Meeting (AGM) Policy :

procedures for holding AGMs, including notice requirements, agenda, voting rules, and minutes.

Check out the [ICDA Policy Bank](#) for many more examples

What's the board's role in governance?

GOVERN
not
MANAGE

'Noses in hands out'

Understanding your board's obligations

General obligations

The board is responsible for ensuring that the organisation meets its legal requirements and remains accountable to donors and other stakeholders.

These responsibilities include:

- Ensuring the group conforms to all laws
- Ensuring the group acts according to the purposes for which it receives any tax exemptions
- Finalising, approving and monitoring the group's annual budget
- Ensuring auditing requirements are fulfilled
- Managing risk ('setting the risk appetite') through regular risk auditing and mitigation activities

Understanding your board's obligations

Legal obligations

These 10 legal duties fall out of the Corporations Act, which are a good guide for board members from all organisations

1. act bona fide* in the best interests of the company
2. exercise powers for proper purposes
3. retain discretion (retain freedom to make decisions)
4. avoid conflict of interest
5. not improperly use your position in the company
6. treat confidential information properly
7. treat related-party transactions properly
8. treat payments to directors in the proper fashion
9. exercise care, skill and diligence
10. prevent insolvent trading



** Bona fide – genuinely, without intention to deceive*

What laws and regulations are important beyond the incorporation act?

Breakout Room 5 and 6 to comment briefly when we return to main room

BREAKOUT



Identify 10 laws / regulations that are central to NFP organisations

Some important legislation /
regulations for NFPs includes:

Breakout 5 and 6 to comment

Other legal and regulatory responsibilities

A few examples

- Occupational Health and Safety
- Environmental Law
- Negligence
- Trade Practices Act
- Anti-Discrimination
- Contracts Law
- Privacy
- Food Safety
- Defamation
- Fundraising

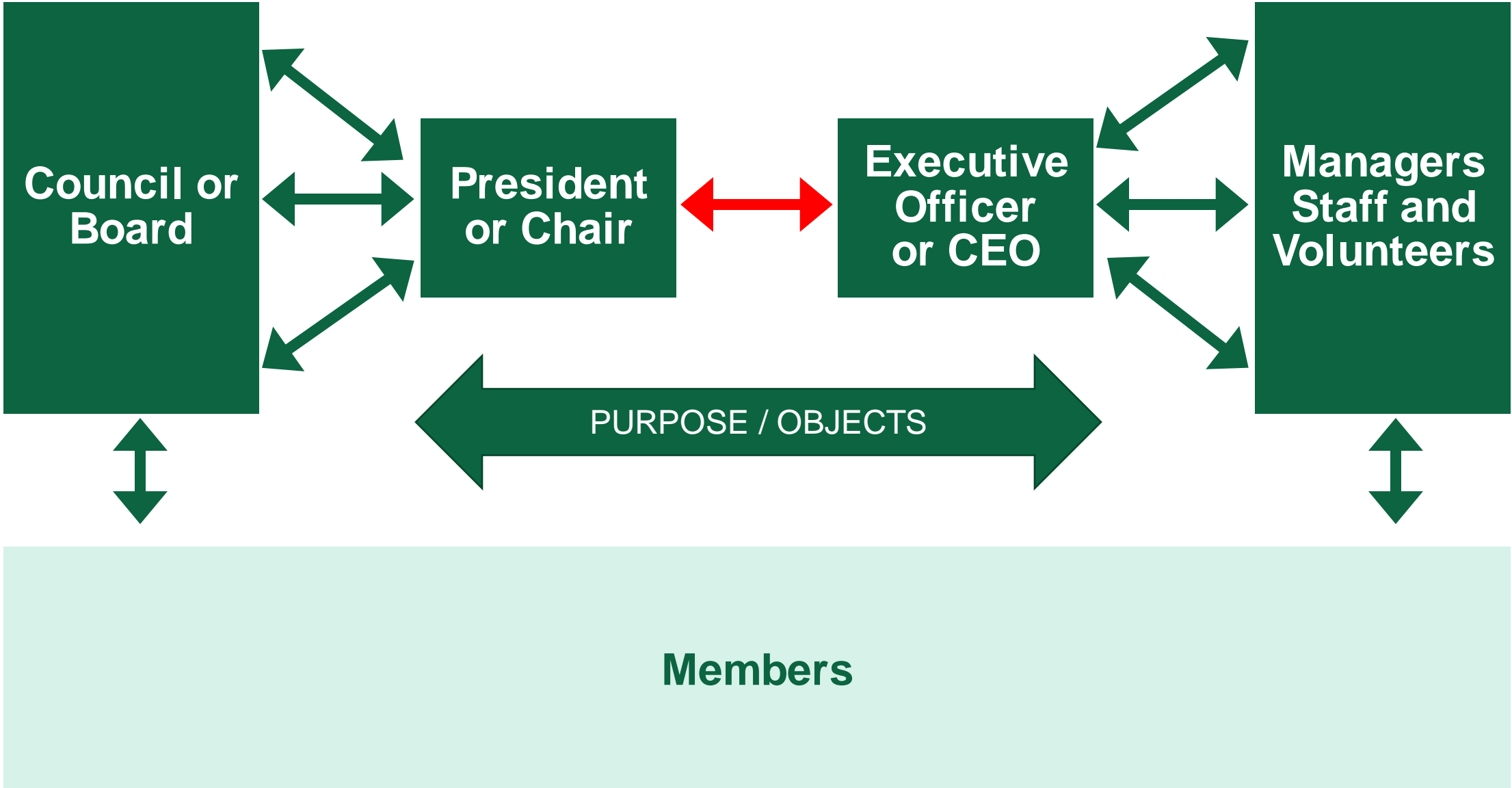


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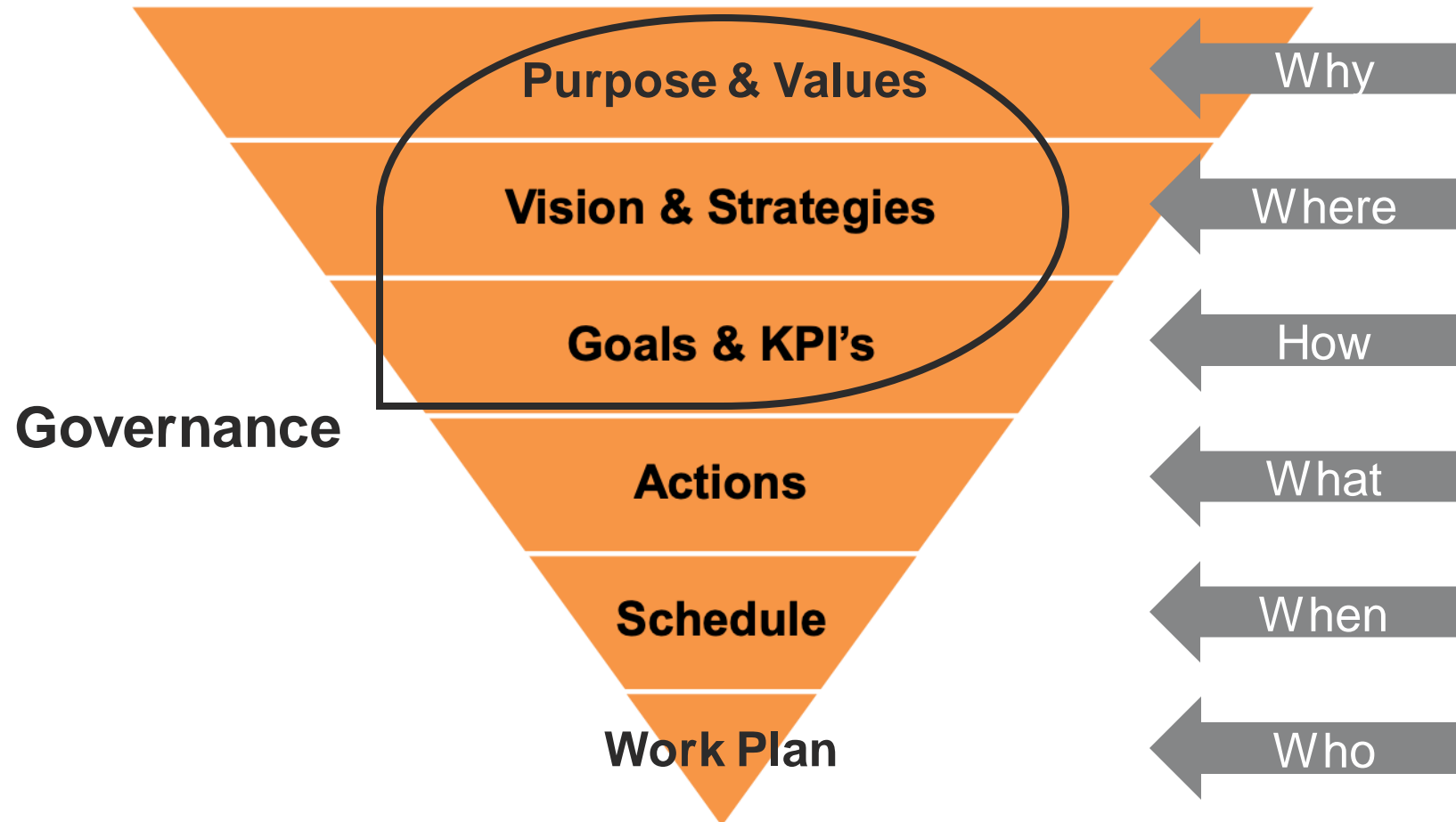


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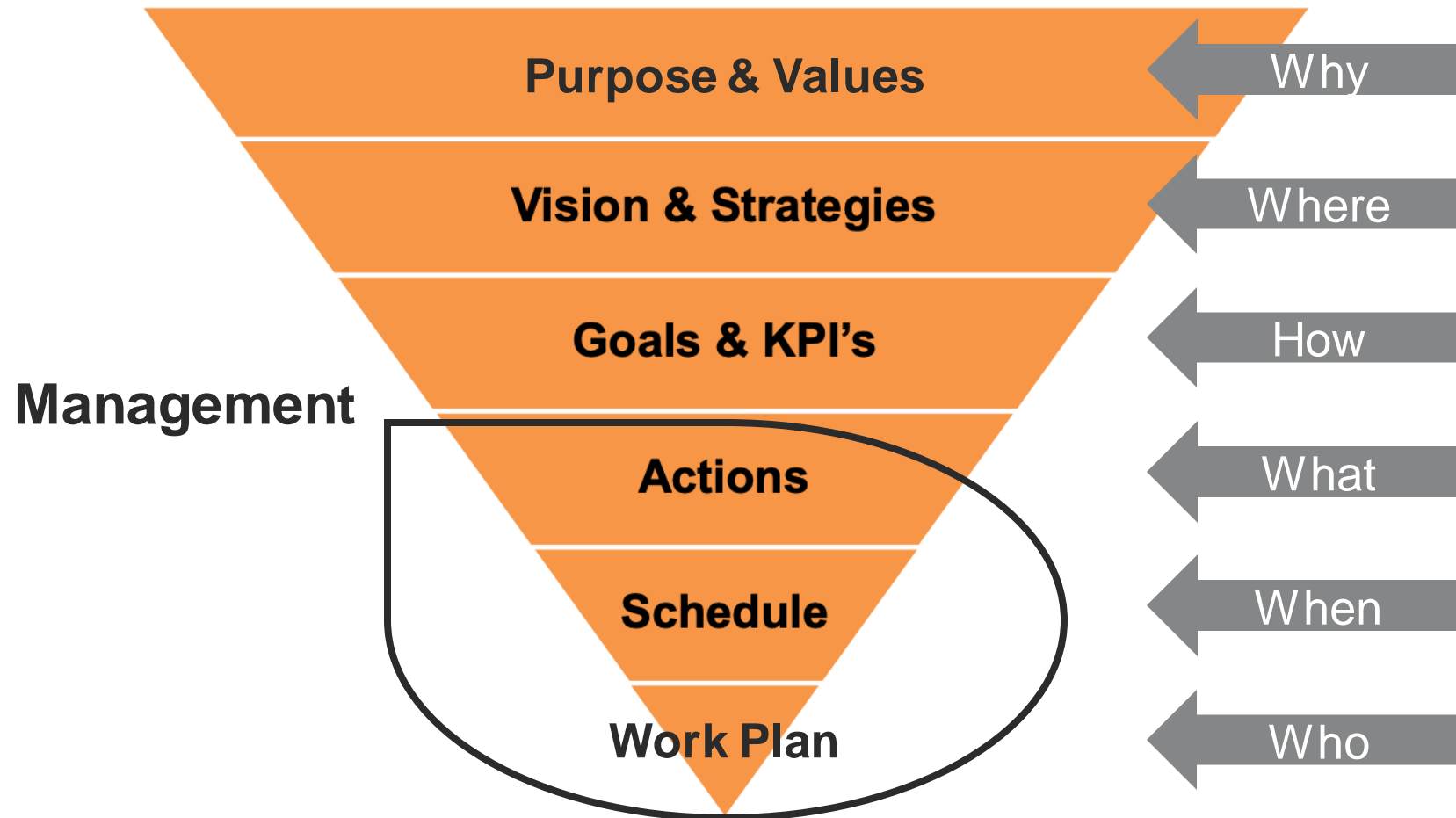
Board – staff interaction



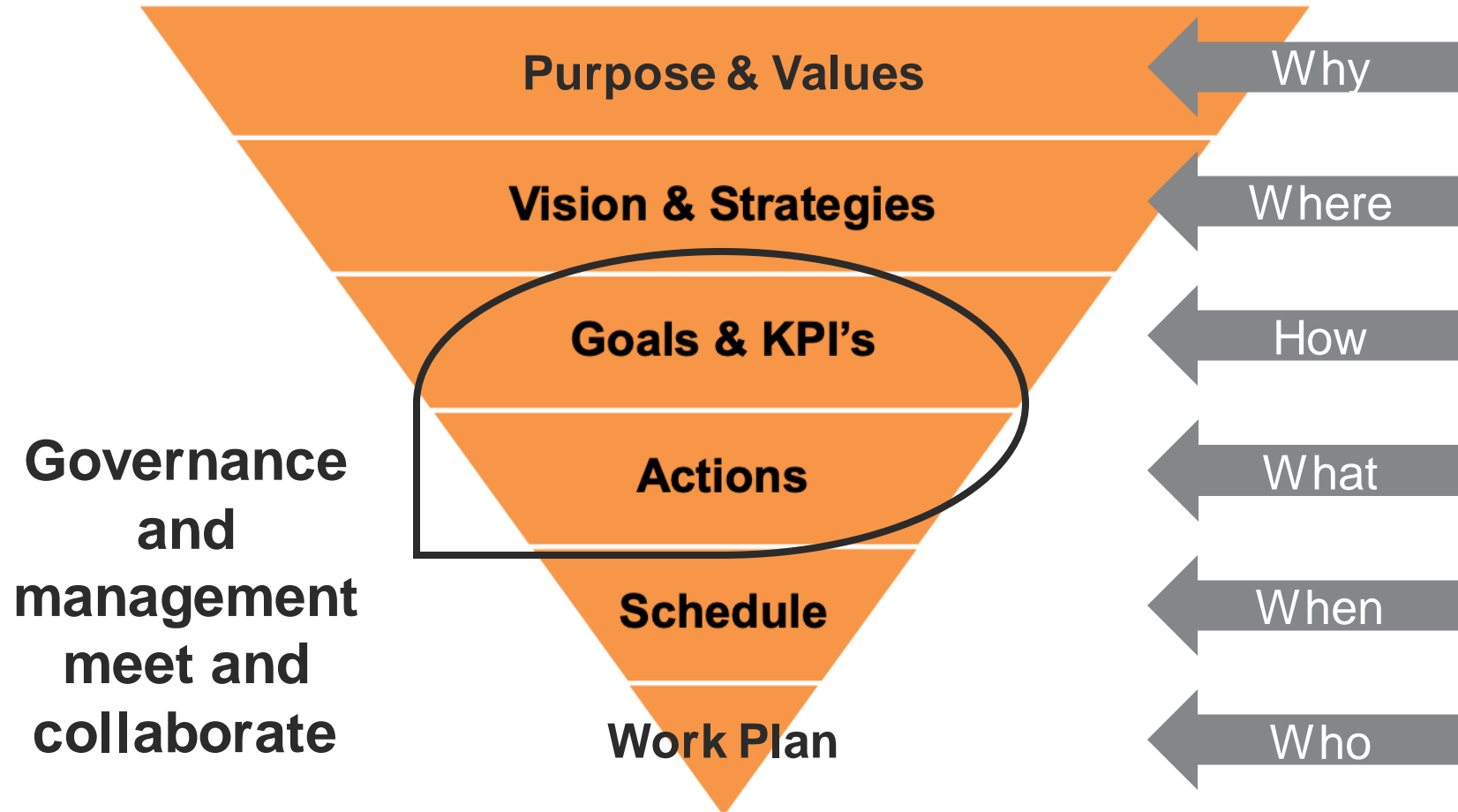
What is the difference between governance and management?



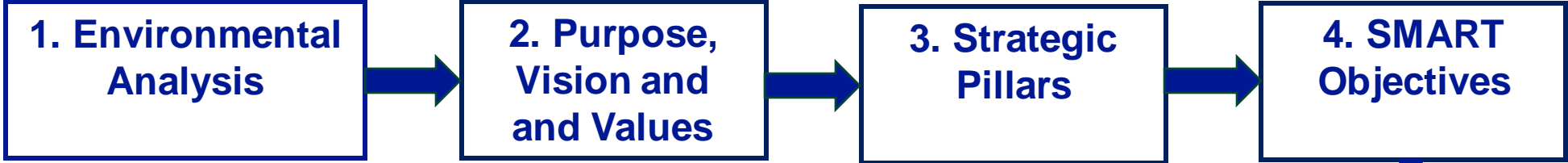
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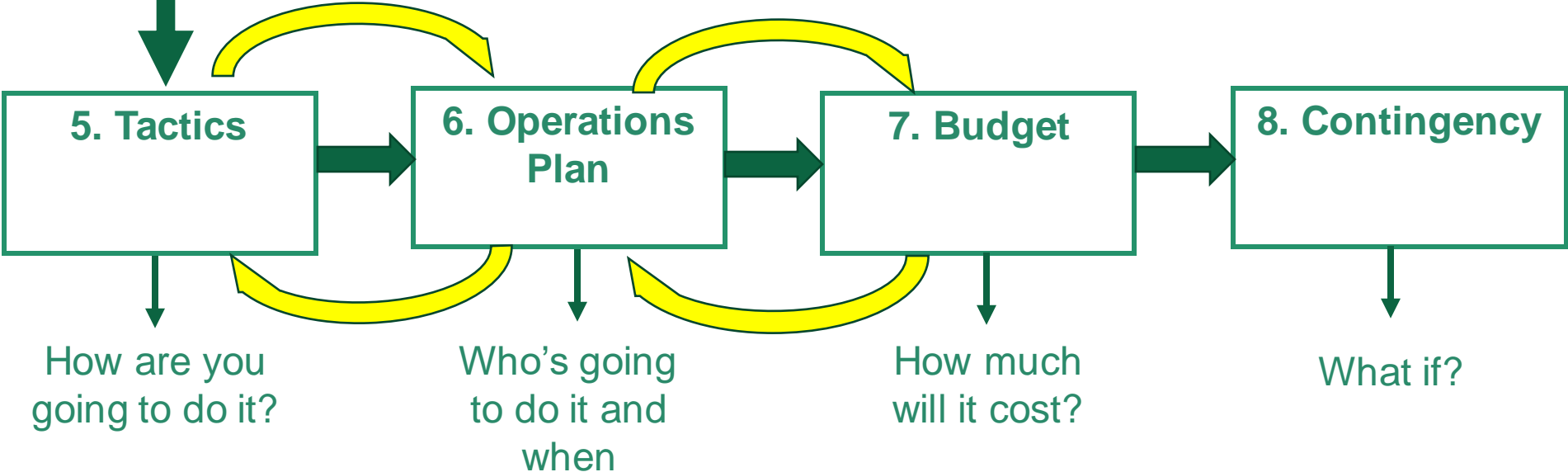
What is the difference between governance and management?



Strategic Plan = boards

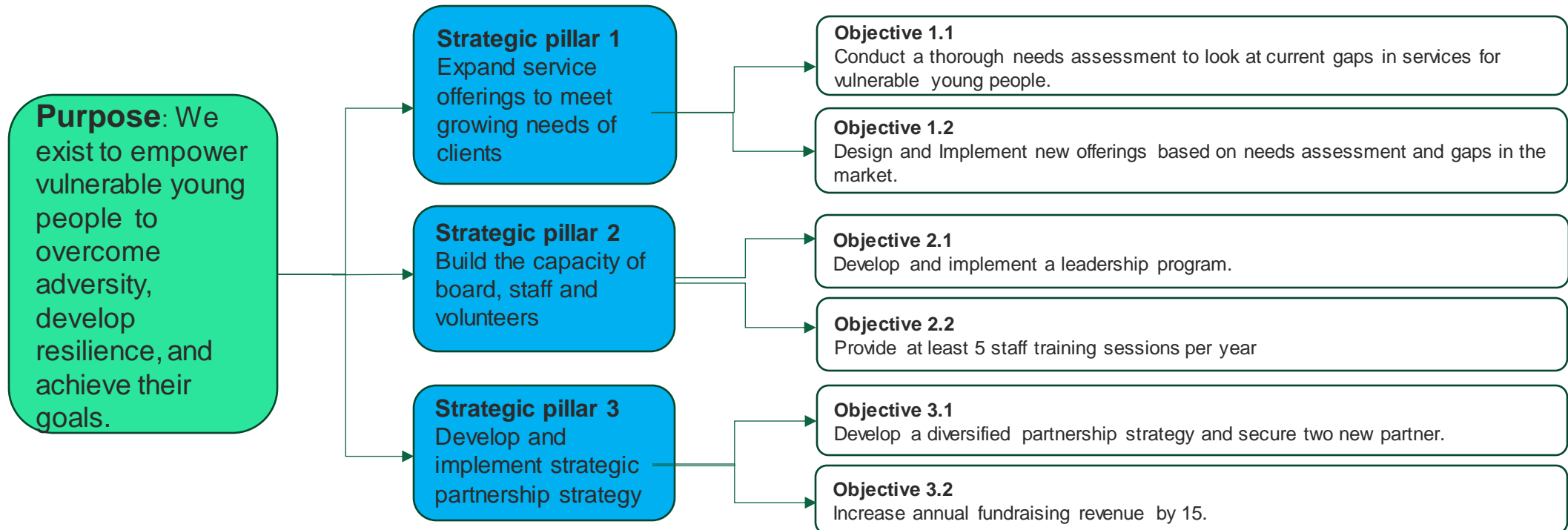


Operational Plan = Staff and volunteers



Youth Support Network four-year strategic plan

Vision: A world where all vulnerable young people have access to the resources, support, and opportunities they need to thrive and reach their full potential.



Mission: To provide comprehensive and compassionate support to vulnerable young people through counselling, job support, mentoring, and community-based activities.

Adaptive leadership – from the balcony to the dance floor



“To diagnose a system or yourself while in the midst of action requires the ability to achieve some distance from those on-the-ground events. We use the metaphor of “getting on the balcony” above the “dance floor” to depict what it means to gain the distanced perspective you need to see what is really happening.”

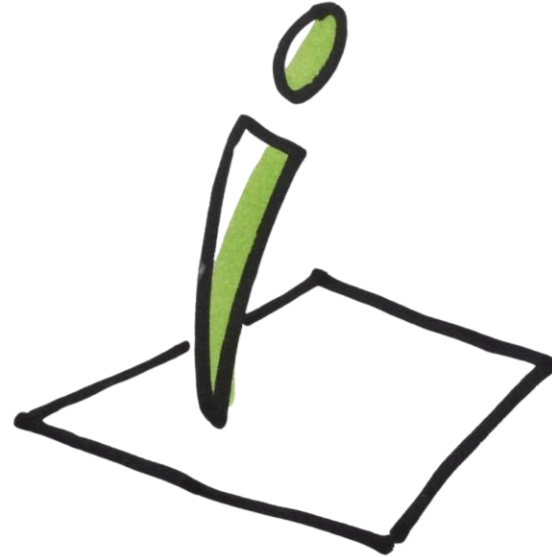
“When you move back and forth between balcony and dance floor, you can continually assess what is happening in your organization and take corrective midcourse action. If you perfect this skill, you might even be able to do both simultaneously: keeping one eye on the events happening immediately around you and the other eye on the larger patterns and dynamics.”

Heifetz, Ronald A., Marty Linsky, and Alexander Grashow.
The Practice of Adaptive Leadership: Tools and Tactics for Changing Your Organization and the World. Harvard Business Press, 2009.

What are we seeing and what are we missing when we're:



On the balcony?



On the dance floor?

Breakout Room 1 and 3 to
comment briefly when we return
to main room

BREAKOUT



Identify a few things that
might be missed if you
are:

- always on the balcony
- always on the dance floor

BOARD SOLIDARITY

An incorporated association or company limited by guarantee is, in the eyes of the law, a legal person – but only

one legal person:

it can only have one opinion at a time.

Board solidarity means that a decision taken in proper form by the board is a decision of all council members. It is improper to behave as if it hadn't happened, or criticise the decision to outsiders, or keep agitating outside the council for your own proposition.

Fiduciary duty

All board members have a duty of trust and are held responsible under relevant Acts and legislation.

This means that by law they must act honestly and in the best interests of the organisation – rather than their own!





Board
Diversity

Diversity

“Diversity refers to the mix of people in an organisation – that is, all the differences between people in how they identify in relation to their:

- **social identity** e.g. Aboriginal and/or Torres Strait Islander background, age, gender, caring responsibilities, LGBTIQ+ status, culture, or faith.
- **professional identity** e.g. profession, education, organisational level, location.”

<https://asic.gov.au/about-asic/what-we-do/our-people/diversity-at-asic>

Gender equity/ equality

“Gender equality is when people of all genders have equal rights, responsibilities and opportunities.

Everyone is affected by gender inequality - women, men, trans and gender diverse people, children and families. It impacts people of all ages and backgrounds.”

<https://www.vic.gov.au/gender-equality-what-it-and-why-do-we-need-it>

Inclusion

1.

the action or state of including or of being included within a group or structure.

"they have been selected for inclusion in the scheme"

2.

the practice or policy of providing equal access to opportunities and resources for people who might otherwise be excluded or marginalised, such as those who have physical or intellectual disabilities and members of other minority groups.

"we value and promote diversity and inclusion in every aspect of our business"

<https://languages.oup.com/google-dictionary-en/>

Demographic diversity

- First Peoples
- Culturally And Linguistically Diverse
- Gender and sexuality
- Age
- Physical ability
- Geographic location
- Educational attainment
- Professional background, core competencies and skills
- Socioeconomic background

Psychographic diversity

- Values
- Personal philosophies
- Motivations
- Political beliefs
- Communication styles
- Extroversion / Introversion
- Judgementalism / Curiosity
- Problem-solving approaches
- Thinking styles

Cultural diversity and psychological safety

“Psychological safety – an environment in which people believe that they can speak up candidly with ideas, questions, concerns, and even mistakes – is vital to leveraging the benefits of diversity, because it can help make inclusion a reality.”

Dr Amy Edmondson, Novartis professor of leadership and management, Harvard Business School

“The problem is that we are confusing surface-level diversity (i.e., demographics) with deep-level diversity (i.e., personality, values, strengths). Diversity of thought is a cognitive construct – not a physical manifestation.”

Dr Scott Dust, assistant professor of management, Miami University

BREAKOUT



Five things we can do to ensure /
improve diversity in the board room

Breakout Room 2 and 4 to
comment briefly when we return
to main room



NOT NECESSARILY A BAD THING IF PROPERLY
MANAGED!

What is a conflict of interest?

- A situation arising where your personal interests and your public (board) duty clash.
- It's not wrong or bad to have a conflict of interest – it's common! **What matters is HOW you manage it.**
- It is up to each individual board member to assess whether your personal interests may be in conflict with your duties on the council.
- It is up to the board to decide how to manage the conflict.

Conflicts of interests can be...

- An actual conflict
- A potential conflict
- A perceived conflict

Common types of conflict

Direct financial interest - you receive a financial benefit

Indirect financial interest – someone you are related to or you know receives a financial benefit

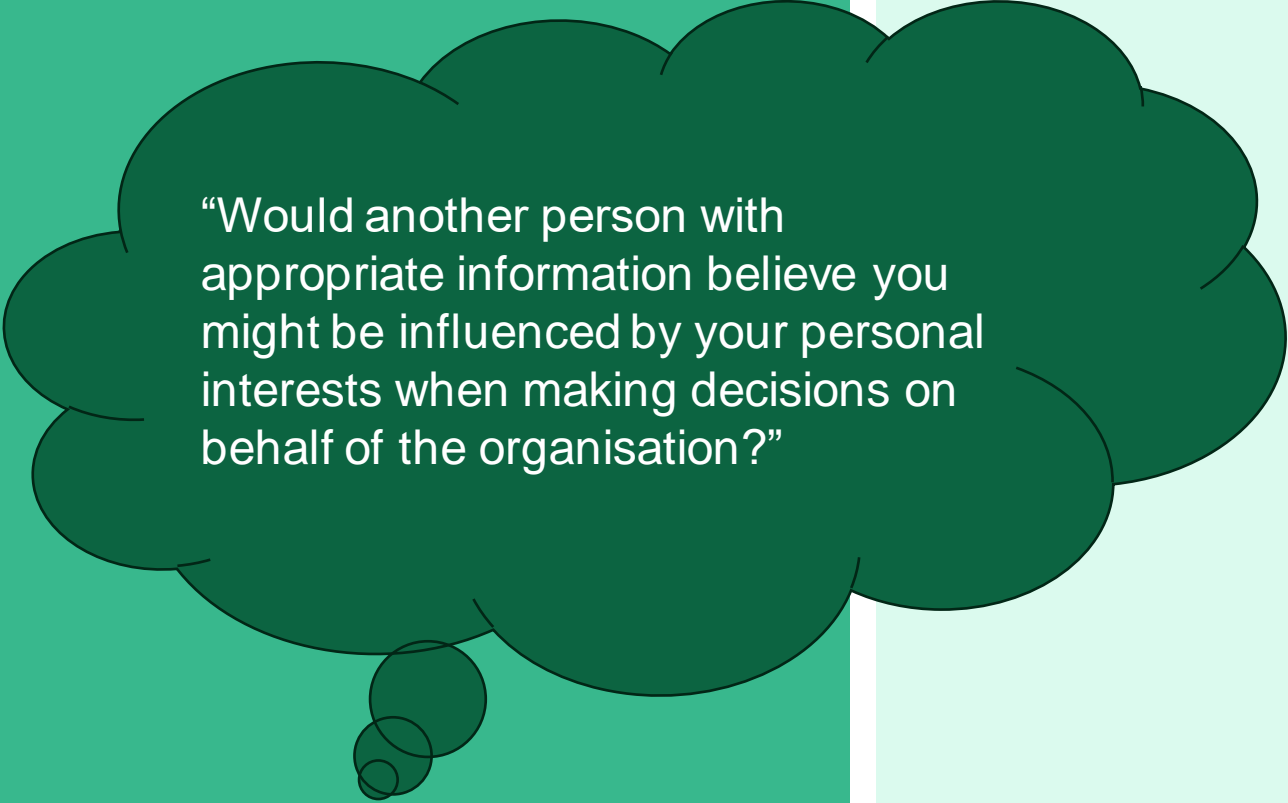
Non-financial or personal conflict – your views or values are in conflict with a decision or action OR the decision/action non-financially benefits friends or family

Conflict of loyalties – you represent two or more organisations

How do you know if it's a conflict?

Consider:

- your organisation's purpose,
- your personal interests, and
- your duties as a council member.



“Would another person with appropriate information believe you might be influenced by your personal interests when making decisions on behalf of the organisation?”

Is this a conflict of interest?

You are a small not-for-profit organisation dedicated to providing food and shelter to homeless individuals within a local community.

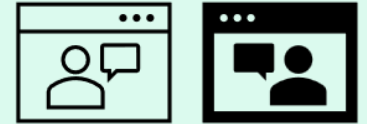
Your board consists of a small group of volunteers, one of whom owns and operates a for-profit real estate agency.

remember:

- your organisation's purpose,
- your personal interests, and
- your duties as a committee member.

Breakout Room 3 and 5 to
comment briefly when we return
to main room

BREAKOUT



What are the
issues?

Consider

- Perceived
 - Potential
 - Actual
- COI categories

Managing conflicts of interest

- Conflict of interest policy and procedure (CRITICAL)
- Interest / Conflict of interest register
- Regular reminders to declare actual, perceived or possible conflicts
- Record all decisions around conflicts of interest
- Consider legal advice if the conflict is complicated

Board's responsibility

The board is responsible for:

- establishing a system for identifying, disclosing and managing conflicts of interest across the organisation
- monitoring compliance with this policy, and
- reviewing this policy on an annual basis to ensure that the policy is operating effectively.

The board must ensure that its members are aware of the regulatory governance standards, and that they disclose any actual or perceived material conflicts of interests as required.

An example of
a policy for
managing
conflict

1. Inform the board as soon as a conflict is encountered
2. Ensure no correspondence related to the conflict is shared with the conflicted member
3. Avoid informal conversations with other board members that might influence their decision
4. As soon as the item is raised for discussion at the board meeting, conflicted member leaves the room and is called back once the matter is dealt with – ensure when and why they left the room is minuted
5. Conflicted member abstains from any votes on the conflict
6. Conflicted member and / or board seek legal advice if needed
7. Depending on the severity of the conflict, it may impact a member's ability to continue in their role

In summary

- Conflicts of interest are common and not necessarily a problem BUT a policy is essential!
- Management of conflicts of interests are key to good and ethical governance
- If in doubt, sit it out
- Document all decisions and actions related to management of conflicts of interest

Codes of conduct (code of ethics)

- Outlines the organisation's policy regarding situations that might put the organisation at risk in ethical matters
- Document that sets out expectations of behaviour
- Document that sets the tone for the workplace culture
- Is a guide for management to assess and address poor behaviour
- Applies to board members just as much as staff and volunteers



<https://communitydirectors.com.au/policies/code-of-ethics>

Codes of conduct – why?

Code of conducts are important for a number of reasons:

- creates inclusive and diverse workplaces
- shows employees that the organisation is responsible
- shows clients/customers that the organisation values integrity and ethics
- prevents “innocent” violations of ethics – e.g. address matters that might not occur to employees on their own
- provides a clear point of reference when management is dealing with a breach



Shared culture and approach

As a board, you must:

- Set the tone for your organisation
 - Set an example to all
 - Embody the standards

Why do we have meetings?

Generating Ideas

Sharing Information

3 Reasons to meet

Decision Making

Meeting for the right reasons

On behalf of the membership we serve

Our constitution gives us the authority

To fulfill the **purpose/mission** of our organisation

Bring our best skill/care for the interests of the group

In accordance with our legal duties

Good meetings need good teams that work well together

Someone to
run the meeting
(PRESIDENT)

Someone to
organise the meeting
(CEO / COMP
SECRETARY)

Someone to
explain the finances
(TREASURER)

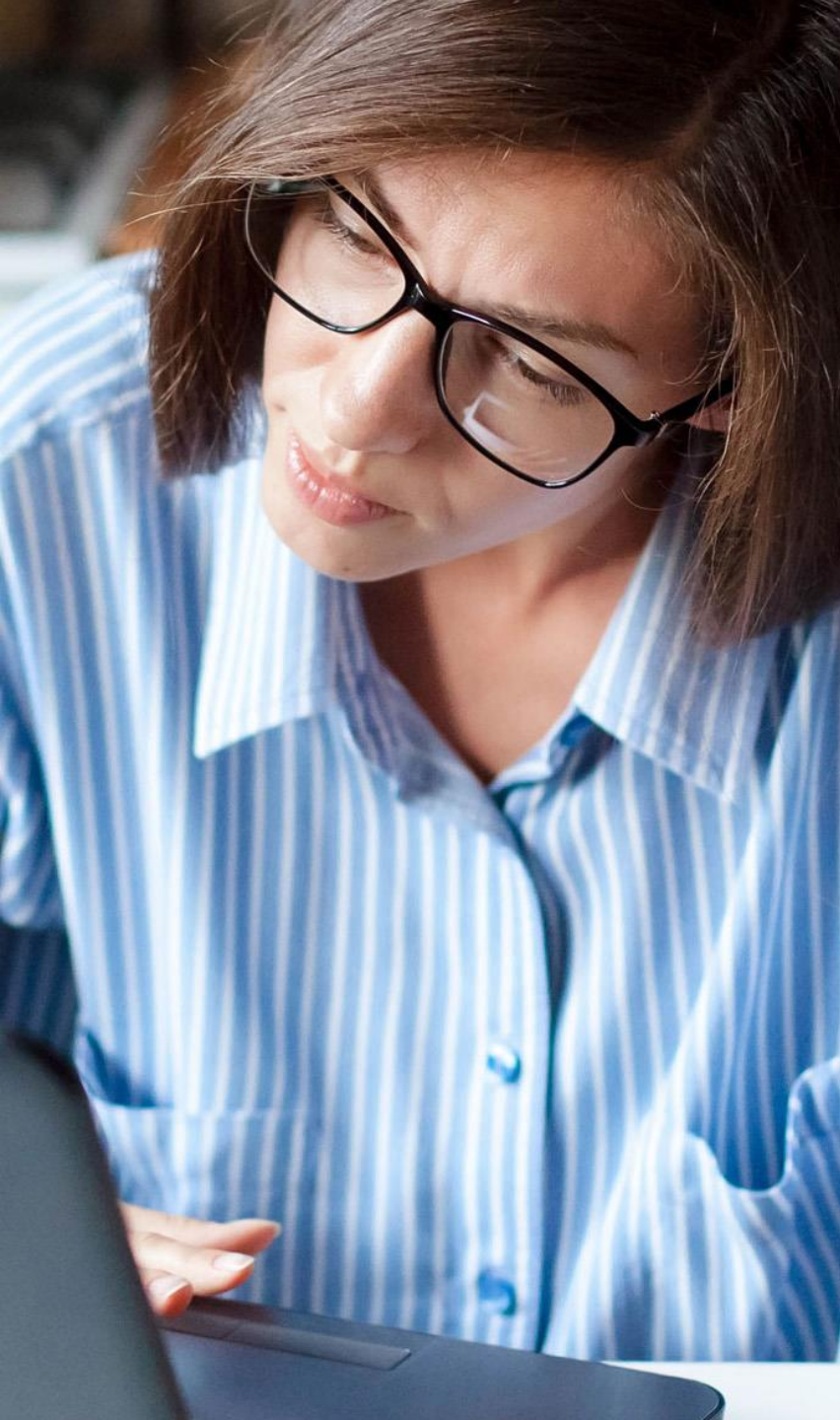
Someone to make
judgements on
what's before them
(COMMITTEE)

A set of meeting rules
(STANDING ORDERS)



President

- Keeps the meeting focused on the governance context
- Leads by example and is a team builder
- Is fully informed and informs fully
- Gains the respect and trust of their board colleagues, staff and volunteers
- Knows how to achieve consensus and enables equitable discussion
- Achieves results by knowing when to exercise patience and when to push through change



Board Members

- Read the papers
- Stick to the agenda
- Are not afraid to speak up – but don't get personal
- Participate fully in the work of the board – including
 - Decision making
 - Discussions
 - Brainstorming
 - Planning



Treasurer (if you have one)

- Keeps the accounts and maintains financial controls
- Reports to the Committee (and where necessary educates it)
- Prepares the Budget and monitors expenditure

Every meeting:

- Reports on the accounts since the last meeting
- Reports on performance against budget

Once a year:

- Presents a draft budget
- Presents/reviews the business plan

Who is in the room and who is not?

Green	Strong	At least one board member with high level skills as well as other members with moderate skills
Yellow	Moderate	At least one board member with high level skills OR sufficient combined skills
Red	Weak	No board member with high level skills and insufficient combined skills

Board focus area	Finance	People and culture	Business development and marketing	Community and stakeholder relationships	Governance and legal
Skills and knowledge required	Financial analysis	Employee engagement	Strategic planning	Government relations	Board governance
	Audit and compliance	Employee training and development	Innovation	Funding bodies	Workplace law
	Taxation	Succession planning	Communication and PR	Advocacy	Regulatory framework
	Risk	Human resources	Market development	First Nations communities	
			Fundraising	Regional/rural communities	

What makes a good meeting?

The ideal meeting!

1. Meeting starts on time
2. Everyone has read the meeting agenda
3. The agenda is well structured
4. The chair knows the meeting rules
5. Other participants are also acquainted with the rules
6. All participants make a contribution (or have the opportunity to)
7. Contributions are well considered and concise
8. Participants are satisfied that their views have been heard and are happy to accept all decisions
9. The meeting finishes on time (or early!)
10. Actions arising are outlined and clear



Before meetings

At least a week in advance, everyone should receive:

- Agenda (list of issues with suggested timings)
- Meeting Papers (background reading)

Meeting Papers

The Company Secretary sends out the Meeting Papers which contain:

- The background information members need
- The basic arguments for and against different options
- Often the motions that will be voted on

During meetings

- Ensure quorum
- Declare conflicts of interest
- Move through agenda
- Propose motions
- Make decisions – board solidarity
- Record decisions in the minutes
- Ensure psychological safety for all



Motions

- Best when circulated in advance
- Must be seconded by another member (*or not – up to you*)
- Can be moved at the meeting
- Can be amended
- ***Must be in writing***
- Should be clear about what's to be done, who's to do it, and when it's to be done by

The Secretary oversees the Minutes

- Should be read carefully
- Don't have to include everything
- Must show that the Committee has considered all reasonable options
- Must include all motions
- Don't have to include names, unless people ask for it
- Must be signed by the Chair
- ***Become fact once they've been approved***

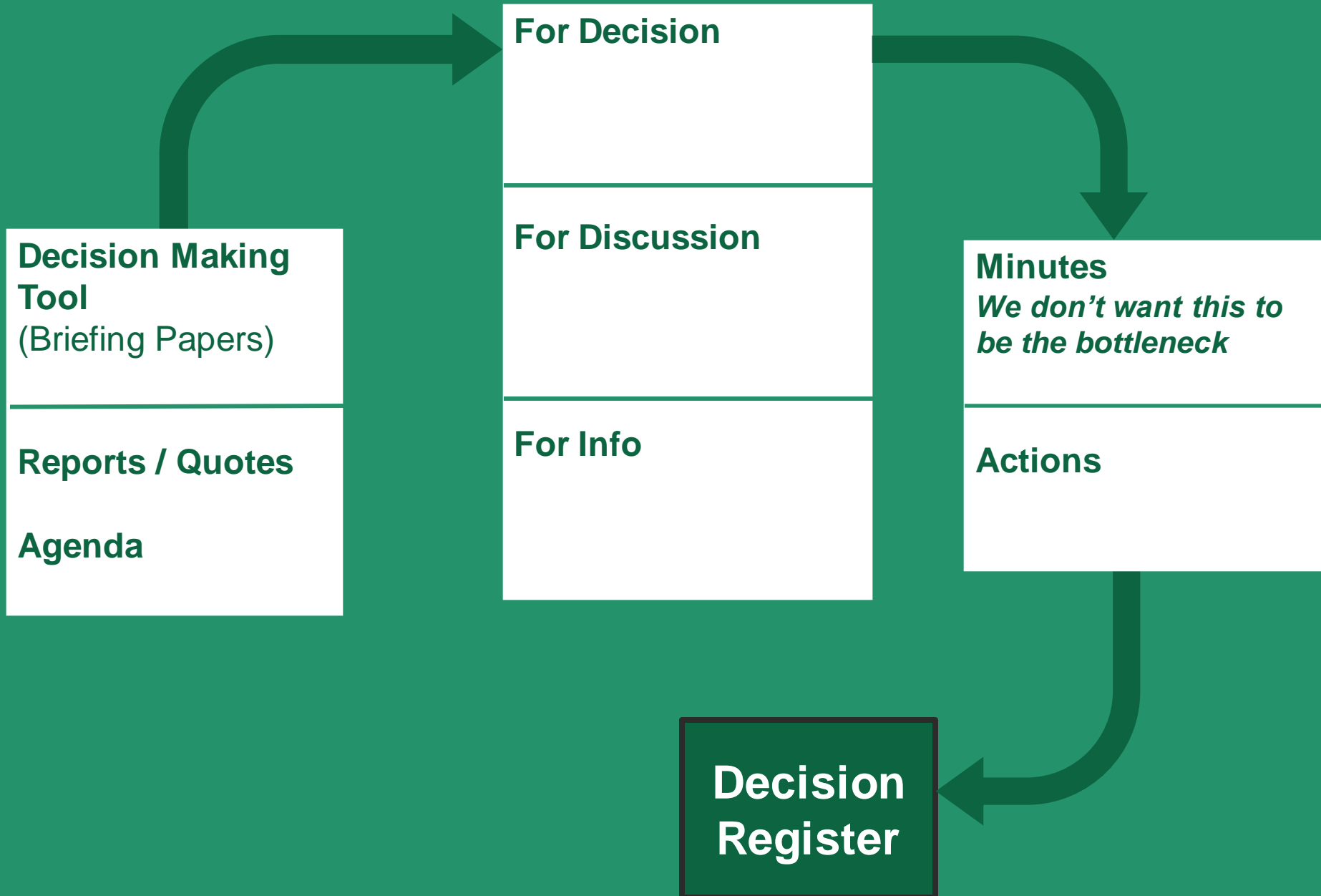
Follow-up after meetings

- Distribute minutes for checking
- Confirm minutes at start of next meeting
- Record all decisions in the Decision Register

<https://communitydirectors.com.au/tools/decision-making-tool>



How does your committee currently make decisions?



Decision Making Tool
(Briefing Papers)

Reports / Quotes

Agenda

For Decision

For Discussion

For Info

Minutes

We don't want this to be the bottleneck

Actions

Decision Register

Decision Making Tool part 1.

Background				
1. What is the issue we are trying to decide?				
2. Is this timeframe dependent?				
3. What are the options available (including no decision)?				
4. What are the benefits and costs of each option? Does it support our mission?	Option	Benefit	Cost	Comment
	A			
	B			
	C			
	D			
5. How do we get information (data) to assist us in the decision?				
6. Who have we consulted?				
7. What are the criteria to decide? (Financial, planned, social, cultural)				

Decision Making Tool part 2.

8. What are the risks and how do we mitigate? (finance, operation, reputation, stakeholder)

9. Has plan been budgeted?

10. What are the social benefits to our organisation/members

11. What are the cultural benefits to our organisation and members?

12. Who wins/loses from this decision?

13. How and Who will communicate this decision to stakeholders?

14. How will we review/ measure success of the decision?

[Decision making tool link:](#)

BREAKOUT



Score your own “board effectiveness” and then discuss as a group strategies for improving any weak spots.

Yes = 1
No = 0

GOVERNANCE ROLES

Is the role of the board clearly defined and understood by the board?

Is the board structure appropriate for the size of the organisation and the work that it undertakes?

Are directors’ roles and expectations clearly articulated within position descriptions, codes or policies?

Is the role of the chair being effectively carried out?

Is the role of the secretary being completed efficiently and in line with the constitution?

Has the head staff member (CEO) been given appropriate delegation?

KEY BOARD FUNCTIONS

Is the board meeting its responsibility to set the strategic direction of the organisation?

Is the board receiving the information it needs to monitor the progress in achieving its mission, to plan and to budget?

Does the board have processes in place to ensure it is compliant with regulatory and legislative requirements?

Are appropriate risk management processes and policies in place?

Does the board conduct the CEO evaluation effectively?

Does the board have appropriate delegations in place and are they recorded?

Does the board understand its role in fundraising? And do it?

MEETINGS

Are we meeting enough/too much?

How well prepared for are meetings?

Are our sub committees effective?

Are we spreading the board workload fairly?

Being a good community director is hard work.

Join the Institute of Community Directors Australia and we'll help you be great.

ICDA is the best-practice governance network for the directors serving on Australia's 600,000 not-for-profit boards, committees and councils, and the senior staff who support them. ICDA members get access to a range of educational, capacity building and networking opportunities that build knowledge, connections and credentials.

Get a leg up. Members and Fellows of ICDA (MICDA and FICDA designations) are best placed to apply for and win seats on not-for-profit boards and perform at their best to help those organisations thrive. These are the best not-for-profit credentials you can have for joining a for-purpose board.



FEEDBACK



<https://www.surveymonkey.com/r/2024standardtraining>



QUESTIONS