



Australian Government
Australian Sports Commission



State Sporting Organisations and Peak Industry Bodies

Governance Principles: A Good Practice Guide

April 2009

Introduction

Based on national principles developed by the Australian Sports Commission (ASC) for national sporting organisations, these guidelines have been modified to make them more relevant to sporting organisation operating within New South Wales.

Under each heading the original commentary and guidance has not been changed, however an additional commentary section has been added with New South Wales perspectives related to each principle and to guide sporting organisations in implementing these principles.

Should you have any further questions on matters in this document or relating to the resources mentioned go to the New South Wales Department of Arts, Sport and Recreation web site <http://www.dsr.nsw.gov.au/> or contact the Industry Programs Branch of the Participation and Development Directorate of the Department, Telephone 9006 3700.

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GOVERNANCE Principles

A good practice guide for New South Wales
State sporting organisations and peak industry bodies

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Australian Sports Commission

The Australian Sports Commission (ASC) is the Australian Government's statutory authority responsible for the funding and development of sport. As such, the ASC is responsible for the Australian government's funding to Australia's national sporting organisations (NSOs) to develop sporting excellence and increase participation in sports. It is important, therefore, that the ASC has a clearly stated position with respect to the governance of national sporting organisations to which the ASC provides taxpayer moneys.

NSW Department of the Arts, Sport and Recreation

The Department of the Arts, Sport and Recreation (DASR) was established in March 2006, bringing together Arts NSW, NSW Sport and Recreation, and the NSW Office of Liquor, Gaming and Racing. The purpose of the Department is to foster participation in arts/cultural activities and sport and recreation in NSW and to ensure the proper conduct and balanced development of the liquor, gaming, racing and charity industries. The DASR is the lead agency for Priority E8 of the NSW State Plan: *A New Direction for NSW*. Priority E8 recognises that participation in physical and cultural activities contributes significantly to people's quality of life, health and well-being and sense of community connection.

The sporting landscape in Australia is enriched and delivered through the countless hours of service and support provided by volunteers. Volunteer boards, committees and administrators in particular carry extra responsibilities and burdens associated with the complex legal and regulatory environment within which they have necessity to operate. The contribution and commitment to ensuring Australia has a quality environment from which people can participate and strive for success is of immeasurable value to the community.

Purpose

The purpose of these guidelines is to, assist members of boards and committees, executive officers, managers of NSW sporting organisations to develop, implement and maintain a robust system of governance that fits the particular circumstances of their sport, provide the mechanisms for an entity to establish and maintain an ethical culture through a committed self regulatory approach, and provide members and stakeholders with benchmarks against which to gauge the entity's performance.

Accountability

The size, complexity and operations of sports organisations differ, and so flexibility must be allowed in the structures and systems adopted to optimise individual performance. Flexibility must be balanced against accountability, contestability and transparency; there is an obligation for all sports organisations to explain to stakeholders why if any alternative approach to the best practice principles is adopted. The if not, why not obligation.

GOVERNANCE

Governance is the system by which organisation's are directed and managed. It influences how the objectives of the organisation are set and achieved, spells out the rules and procedures for making organisational decisions, determines the means of optimising and monitoring performance, including how risk is monitored and assessed.

The ASC and DASR recognises that effective sports' governance requires leadership, integrity and good judgment. Additionally, effective governance will ensure more effective decision making, with the organisation demonstrating transparency, accountability and responsibility in the activities undertaken and resources expended.

It is commonly accepted that governance structures have a significant impact on the performance of a sporting organisation. Poor governance has a variety of causes including director inexperience, conflicts of interest, failure to manage risk, inadequate or inappropriate financial controls, and generally poor internal business systems and reporting. Ineffective governance practices not only impact on the sport where they are present, but also undermine confidence in the Australian sports industry as a whole.

Governance concerns three key issues

- (1) How an organisation develops strategic goals and direction,
- (2) How the board of the organisation monitors the performance of the organisation to ensure it achieves these strategic goals, has effective systems in place, complies with its legal and regulatory obligations, and
- (3) Ensuring that the board acts in the best interests of the organisation as a whole, demonstrating transparency, accountability and responsibility to its members.

The Governance Principles advocate strengthening structures that support good leadership and decision making and ensure sound and effective governance.

In keeping with best practice in Australian corporate governance, this paper contains guidelines within which the ASC and the Department of the Arts, Sport and Recreation believes a sporting organisation's board members should operate and enact their role. The guide takes the form of six major principles, focusing on:

- Principle 1. Board Composition, Roles and Powers**
- Principle 2. Board Processes**
- Principle 3. Governance Systems**
- Principle 4. Board Reporting and Performance**
- Principle 5. Member Relationship and Reporting.**
- Principle 6. Ethical and Responsible Decision Making**

PRINCIPLE 1: BOARD COMPOSITION, ROLES AND POWERS.

Different sporting organisations operate under different governance structures. The rules of an incorporated association form the structure within which the club operates.

The rules include the constitution, regulations and by-laws, if any, of the association.

Under the *Associations Incorporation Act 2009* (NSW) (AIA) an association may:

- adopt the model rules (download copy at www.fairtrading.nsw.gov.au)
- adopt the model rules with changes, or
- draft its own rules.

Sporting organisations may also be incorporated either as a company under Corporations Act. Under section s.112(1) of the Corporations Act there are two basic types of company, proprietary companies and public companies. While not advocating the adoption of a single model, the ASC and DASR do recommend that the structure of sporting organisations should be clearly documented within the Constitution, and regulations with a clear delineation of roles, responsibilities and powers of the board, management and each body involved. Further, there should be no overlap in the powers of any two bodies or individuals in a governance structure.

The organisations framework of governance should:

- enable strategic guidance of the entity
- ensure the effective monitoring of management by the board
- clarify the respective roles, responsibilities and powers of the board and management
- define the board's accountability to the members and stakeholders.
- ensure a balance of authority so that no single individual has unfettered powers.

Principle 1.1: That the management powers be formalised, disclosed and placed in a board which has the power to exercise all the powers of the organisation except those powers that the Act or Constitution requires to be exercised in General Meeting.

Commentary and Guidance

The ASC does not endorse a governance structure featuring both a Board and another body, whereby this other body (usually called a Council) assumes some Board functions.

The nature of matters reserved to the board and delegated to management will necessarily depend on the size and complexity of the organisation and be influenced by its tradition, culture and skills of directors and managers.

The Department of the Arts, Sport and Recreation agrees with this commentary. However, some sporting organisations have found it useful to conduct an annual strategic forum or conference, without giving that forum any formal powers.

The model sport constitutions templates developed by the Department include provision for a strategic forum and can be modified to suit the needs of each sporting organisation.

Principle 1.2: That NSOs be incorporated as a company limited by guarantee under the Corporations Act 2001 (Cwlth).

Commentary and Guidance

It must also be noted that, regardless of the Act (Corporations or Associations) under which the organisation is incorporated, if a National Sporting Organisation carries on business in a state other than that in which it is incorporated it is required to be registered under the Corporations Act as a registrable Australian body. This registration imposes additional administrative requirements on the Association.

While there can be arguments for the adoption of various legal structures and indeed there are limitations and benefits attached to each. The ASC encourages national sporting organisations to adopt a company limited by guarantee organisational structure.

The more comprehensive legislation entailed within the *Corporations Act 2001 (Cwlth)* provides for a very robust and structured platform for the operation of organisations and provides clarity in areas otherwise silent within the Association Incorporation Act.

The key governance role of the organisation under each of the Acts rests with the board of directors, who must act in accordance with the requirements of the relevant Act, within other federal and state laws and the constitution of the incorporated body.

This commentary generally does not apply to sporting organisations in New South Wales with most incorporated as associations under the Associations Incorporation Act 2009 (NSW) (AIA). The Department recommends this form of incorporation.

Principle 1.3: That the incorporated body has a constitution, which embodies the following key sections:

- **Interpretation – objects and powers**
- **Members – membership and meetings of members (general meetings)**
- **The Board – powers, other roles (CEO and secretary) and meetings of the board**
- **Reporting**
- **Accounts**
- **Auditors**
- **Winding Up**

Commentary and Guidance

The Constitution should be written in a clear, unambiguous and succinct manner. It should not be over-burdened with items that would be better served to be detailed in the organisations by-laws or policies, which are usually the items that can be expected to be required to be changed and updated from time to time. In these circumstances the board should, through by-law and policy development, be empowered to oversee and manage the issues.

The Department of the Arts, Sport and Recreation has prepared model sport constitutions templates for state, regional and sports clubs that can be customised for an individual sport, which meets these requirements.

By customising and adopting these model constitutions sporting organisations can ensure that it is best practice in this area.

Principle 1.4: The members should elect the majority of the board of directors (board). In addition, any issue on which a member vote is taken should require a majority of member vote's for any vote to be passed, unless specified otherwise by the constitution.

Commentary and Guidance

Each sporting organisation should detail how people and/or organisations may become the members of them. The constitution of the incorporated body will state the voting power of each member in this regard.

The ASC advocates that a “one state one vote” voting system be applied to federal sporting structures. While a proportional voting system is an option, this should never enable large member bodies to dominate the direction of an organisation and it is not recommended. Where a board is made up of appointed and elected directors, it is recommended that at least a majority of the board membership is elected by the members. In addition it is also advocated that votes taken at board or general meetings should be passed by a majority of directors / members and not be subject to a casting vote. This principle is based on the premise that if a majority can't agree on an issue then the issue should be forfeited.

The Department of the Arts, Sport and Recreation also supports a 'one member one vote' voting system for sporting organisations.

Principle 1.5: That the governance structure should feature a clear separation of powers and responsibilities between the board ('mind' of organisation) and the CEO and his/her staff ('hands' of organisation).

Commentary and Guidance

This clarity of powers and responsibilities must also apply to the various board and management committees.

The governance structure should also recognise that individual directors, the CEO (or similar), his/her staff, board committees and management meetings hold no authority to act on behalf of the organisation by virtue of their position alone. All authority rests with the board, which may delegate authority to any person or committee.

Each such delegation should be clearly documented in a delegations manual or similar. Normally there shall be significant delegations to the Chief Executive Officer. In their capacity as directors, directors have no individual authority to participate in the day to day management of the entity, unless authority is explicitly delegated by the board.

The Department of the Arts, Sport and Recreation has prepared model sport constitutions templates for state, regional and sports clubs, which meets this principle.

Principle 1.6: That the board should:

- **Confirm the broad strategic directions of the organisation.**
- **Appoint, dismiss, direct, support professional development, evaluate the performance and determine the remuneration of the CEO.**
- **Determine the key performance indicators for which the performance of management will be measured.**
- **Approve, monitor and review the financial and non-financial performance of the organisation.**
- **Ensure an effective system of internal controls exists and is operating as expected and that policies on key issues are in place and appropriate and that these can be applied effectively and legally to those participants or persons they are intended for.**
- **Develop a clearly articulated and effective grievance procedure.**
- **Ensure financial and non-financial risks are appropriately identified and managed.**
- **Ensure the organisation complies with all relevant laws, codes of conduct and appropriate standards of behaviour.**
- **Provide an avenue for key stakeholder input into the strategic direction of the organisation.**
- **Ensure director, board and chairman performance evaluation occurs regularly, including the induction and education of newly appointed directors.**

Commentary and Guidance

The board's primary role is one of trusteeship on behalf of stakeholders, ensuring that the legal entity, the organisation remains viable and effective in the present and for the future.

The Board's role includes determining the organisation's strategic direction, core values and the ethical framework, as well as key objectives and performance measures. A key critical component of this role is the board's ultimate authority and responsibility for financial operations and budgeting to ensure the achievement of strategic objectives.

Where a sporting organisation does not have a chief executive officer or equivalent position, either paid or unpaid, management and operational tasks may be delegated to a range of people, including board members or committees. In this case, directors must ensure that they separate their strategic board roles and responsibilities from their individual operational responsibilities.

The Department of the Arts, Sport and Recreation has prepared model sport constitutions templates for state, regional and sport clubs, which meets this principle.

Principle 1.7: That each board should be structured to reflect the knowledge of the sport and sports industry and the complex operating environment facing the modern sporting organisation. Normally, it is envisaged that a board will:

- **Comprise between 5–9 directors.**
- **Have a sufficient blend of expertise and skills necessary to effectively carry out its role.**
- **Have all directors being independent, regardless of whether they are elected or appointed.**
- **Have the ability to make a limited number of external appointments to the board to fill skills gaps.**
- **Institute a staggered rotation system for board members with a maximum term in office to encourage board renewal while retaining corporate memory.**
- **Be broadly reflective of the organisation's key stakeholders, but not at the expense of board skills mix.**

Commentary and Guidance

The number of directors on a board should reflect the size and level of activity of the organisation.

As such the ASC advocates a board with the necessary skills to carry out its governance role rather than a representative board. The Chair of a board should be elected by the board rather than the members.

Independent directors are those that are not appointed to represent any constituent body, are not employed by or have a significant business relationship with the organisation, do not hold any other material office within the organisational structure and have no material conflict of interest as a result of being appointed director.

In relation to traditional federal sports structures, the holding of state level positions would be seen to be a material conflict of interest if held at the same time as national level positions.

In unitary sporting structures, where there is only one organisational entity with a direct relationship to individual members and or their clubs, club level positions may create a similar level of conflict to that of the state level in the federal structure. Similarly, sporting organisations whose operations are predominantly of a business owner nature should avoid situations where the owners of those businesses are also the key decision makers of the organisation, where those decisions will have a material affect on the outcomes of those businesses, perceived or actual.

Examples of material conflicts are, president's of member bodies, representatives of select groups (e.g. umpires) and Chief Executive Officer or senior staff. When directors do represent a constituency, they are bound by their legal responsibility to represent the organisation as a whole.

External appointments (appointed directors) are appointments to the board that have not been elected by the constitutional members and are at the discretion of the existing board.

An effective board has a proper understanding of, and competence to deal with, the current and emerging issues of the business and can effectively review and challenge the performance of management and exercise independent judgement.

The model sport constitutions templates allow for the appointment of independent board members. The issue of conflicts of interest and how to address these is also addressed in the templates.

At a State Level, it may not always be practical for a board member to not also hold a position at a lower level. The consideration may be the type of position held, it is not recommended for example, that a board member is also the president/chairperson of a member body.

Principle 1.8: That national sporting organisations and their member bodies have aligned objects and purpose to ensure effective and efficient achievement of sport outcomes.

Commentary and Guidance

To achieve effective outcomes for the sport it is essential, particularly in a federated model, that national and member bodies have aligned objects and purpose. It is critical that the sporting organisations within a sport work as if they were one body working towards the same outcome to deliver effective products and services to its members and stakeholders.

The sport should have a single strategic plan that drives the over arching objectives, which are delivered consistently and effectively by the member bodies. The sports strategic plan should form the basis of all local implementation outcomes and be developed with input and agreement from all stakeholders.

The model sport constitutions templates addresses this principle.

Principle 1.9: That where two or more bodies are amalgamating, an interim board arrangement occurs in order for all parties to be confident about the future direction and priorities of the amalgamated body.

Commentary and Guidance

In the interim arrangement, the board of the new organisation would include equal representation drawn from the boards of the amalgamating bodies or representatives nominated by each of the amalgamating groups' interests.

This interim arrangement would operate for a finite period of time at which point a new board structured as outlined in Principle 1.7 should then be adopted.

The ASC encourages like organisations to look into the benefits of amalgamation to ensure sustained competitiveness, efficiencies and economies of scale are achieved to provide enhanced outcomes for the sports members and participants.

The Department of the Arts, Sport and Recreation has prepared model change process fact sheet, which may assist sporting organisation in amalgamation.

Principle 1.10: That the board outline the role of individual directors/board members, including (at a minimum):

- **The fiduciary duty of directors to act in the interests of the members as a whole and not to represent individual constituents. Thus, once elected the board should have the ability to operate independently in the interests of the organisation as a whole, free from undue influence.**
- **The legal duties of individual directors, including the requirement of directors to:**
 - **act in good faith and for a proper purpose**
 - **exercise due care and diligence**
 - **ensure the organisation does not continue to carry on its business while insolvent**
 - **meet the requirements of various other federal and state laws which directly impact on the organisation.**
- **A code of conduct or policy specifying the behaviour expected of directors. (see Principle 6)**
- **A conflict of interest provision that specifies:**
 - **A director must disclose actual/potential conflicts of interest.**
 - **The process for disclosure of real or potential conflicts of interest disclosure.**
 - **A process that governs a director's involvement in any decisions with which she/he has a conflict of interest.**
 - **The requirement for a register of ongoing interest to provide a record of all potential conflicts.**
 - **Directors should not hold any other official or corresponding administrative position within the organisation at any level that**

creates a material conflict of interest. This is to ensure no actual or perceived conflicts of interest.

- **Maintaining a register of Related Party Transactions.**
- **The responsibilities of directors for continuing professional development as well as the engagement in ongoing performance assessment. (see Principle 4)**

Commentary and Guidance

The role of a director of an organisation is one of the key components of the governance framework to ensure the accountability, transparency and contestability of the direction, performance and conformance of the organisation.

It is critical that new directors are appropriately inducted to the board and the organisation and that they understand their roles within the organisation.

In relation to a director's conflict of interest, a director should not hold any official position at state, regional, club level or corresponding administrative position that provides a material conflict of interest which is actual or perceived and that all endeavours to avoid this should be pursued. (refer Principle 1.7)

Directors should have the appropriate personal qualities such as loyalty, honesty, the courage to ask tough questions and exhibit high ethical standards. As a minimum directors should embrace fairness, respect, responsibility and safety as key guiding principles of ethical behaviour within their organisation.

The model sport constitutions templates make provision for this principle.

Principle 1.11: That the roles and responsibilities of key positions in the governance system are documented and understood. Normally these positions should include:

- **Board**
 - **Chair/President**
 - **Directors**
 - **Company Secretary**
 - **Chairs of Board Committees**
- **Management**
 - **Chief Executive Officer**

Commentary and Guidance

As it is expected that national sporting organisation's will form a company limited by guarantee structure, then it will be necessary to appoint a company secretary to provide for the legal compliance requirements under company law.

The model sport constitutions templates make provision for this principle.

The templates refers to "Board" and "Directors" instead of committee and committee members. The reason for this is that an incorporated association is still a corporation and its governors (whatever their title) owe duties to the members and the Association.

The templates seeks to use true corporate governance terminology. There is also no "offices" such as President, Vice-President or Treasurer. These terms despite their cultural weight are not of any constitutional relevance.

There is nothing in the templates which precludes such titles being attached to particular Director's offices. Titles of Director Positions and job descriptions can be included in Regulations, if desired.

Principle 1.12: That the CEO will not normally be a director of the board. This enables and supports a clear separation of powers between the board and management.

Commentary and Guidance

The ASC suggests it is good practice to ensure a distinction between management and board membership occurs and that the CEO of the organisation should not necessarily be a member of the board, however in this circumstance it is also good practice to ensure the CEO is aware of and present at board meetings to provide information and advice to the board on the operations of the organisation and to understand the direction provided by the board.

If however the CEO is a member of the board best practice would suggest that they should not be a voting member of the board, nor should they be the chairperson.

The model sport constitutions templates make provision for this principle.

PRINCIPLE 2: BOARD PROCESSES.

Each board should agree to and document a clear set of governance policies and processes to facilitate effective governance. These processes should reflect best practice and be subject to regular review.

An effective board meeting should have the following attributes:

- A capable chair with meetings held regularly and attended by the appropriate personnel.
- Board papers for every item provided in advance so directors are informed and well prepared.
- Clear, timely and accurate recording of decision making and communication of outcomes to stakeholders.

Principle 2.1: That the board should document its meeting process. Normally this will include:

- **legal requirements;**
- **decision-making approach (consensus versus voting) and voting rights of attendees;**
- **protocol(s) for meeting conduct and director behaviour;**
- **logistical details such as meeting frequency, meeting location, timing of meetings, attendees, etc.**

Commentary and Guidance

The legal requirements in regards to meetings incorporate such items as; the official number required to make a quorum, the amount of notice required for calling a meeting, other such requirements as specified in the organisations constitution.

The frequency of meetings will depend on the size of the organisation and the internal and external circumstances, including any specific issues the organisation needs to deal with at any given time. A sports organisation board should meet no less than 6 times per year and often as regularly as monthly. The schedule of dates for board and committee meetings should be agreed in advance.

The model sport constitutions templates also make provision for the conducting of electronic meetings.

Principle 2.2: The board should prepare an agenda for each meeting. In addition, the board should agree how the agenda will be developed and the items for regular inclusion.

Commentary and Guidance

The governance policy should outline the process for establishing the agenda for each board meeting. It is essential that the board ensures meetings adhere to pre agreed time frames and that adequate time is given to each agenda item. It is also essential that the board ensures some agenda items are linked to the strategic objectives of the organisation and that there is an alignment between the reporting from management and the key performance indicators that have been approved by the board.

Principle 2.3: Board meetings should have appropriate documentation. This means issues submitted to the board should be in an appropriate and agreed form (a board paper) and be circulated sufficiently in advance of the meeting. The board should similarly maintain a clear record of decisions made through an appropriate and agreed minuting process.

Commentary and Guidance

The governance policy should determine timing with regard to receiving board papers in advance.

Minutes should be an accurate record of discussions held and should be distributed in a timely manner, usually within a week of the meeting. These should be agreed by the board and outcomes communicated to stakeholders again within a timely manner.

Principle 2.4: The board should be provided with all relevant information on an issue to enable proper execution of directors' duties. The board, or any individual board member should also have the right to request, through the CEO, any additional information from management if required. (see Principle 4)

Commentary and Guidance

The governance policy should state the circumstance when and how board members should go about accessing external or additional information in relation to board papers, for example a director may wish to receive additional financial reports to enable them to effectively carry out their duties.

Principle 2.5: The board should plan its key annual activities and develop a corresponding board calendar / work plan.

Commentary and Guidance

The board calendar / workplan should include major annual activities for the board agenda such as budget approval, strategy review, Chief Executive Officer evaluation and Annual General Meeting etc.

Principle 2.6: The Board and each committee established by the board should have a term of reference or a charter. The terms of reference /charter should include, at a minimum:

- **responsibilities of the board**
- **board / committee purpose**
- **authority delegated to the board / committee**
- **board / committee composition, including the appointment of a Chair**
- **role of the chairperson and the procedures should the chair be absent**
- **reporting requirements**
- **delineation of the role of the board / committee and the role of management.**
- **when directors can seek independent advice, or have access to outside advisors**

Commentary and Guidance

Board committees allow directors to give closer attention to important issues facing the organisation than is possible for the full board. Board committees are an effective way

to distribute the work between the directors and allow more detailed consideration of specific matters.

The number of board committees, size and mix, will vary from organisation to organisation depending on its size, complexity and the challenges it faces. Sporting organisations should consider the need to have board committees, the following are examples; Audit, Remuneration, Selection and Technical. The function and importance of the audit committee are considered later in these guidelines.

The model sport constitutions templates make provision for the board to delegate functions.

The delegations clause recognises that the Board has to delegate functions and tasks to special committees. In sport, these are common for example, rules and technical committee, selection committee and judicial committee. The templates contain clauses which sets out how such delegations should be made and how they operate.

PRINCIPLE 3: GOVERNANCE SYSTEMS.

The board is ultimately responsible for the success of the organisation it governs. The board should clearly define its role in discharging this responsibility.

An effective organisation should have the following systems:

- A strategic planning framework, identifying core organisational values, goals and performance management indicators.
- Clearly document board / management interaction including appropriate delegations and authority of all parties.
- A thorough process for identifying and monitoring legal, compliance and risk management requirements.
- A thorough system of audit including internal and external processes.
- A performance management system to provide evidence and ensure monitoring of legal compliance and performance against plans.

Principle 3.1: The board should determine the process by which it will develop the strategic direction, key objectives and performance measures as well as core values and ethical framework for the organisation.

Commentary and Guidance

It is important that that a board regularly reviews its strategic priorities to ensure it maintains its competitive advantage and is clear on what it wants management to focus.

The ASC considers it important that all key stakeholders are consulted through the strategic planning framework to ensure future strategies are addressing the most pressing issues within the industry.

Principle 3.2 The board should develop a protocol outlining expectations for board-management interactions. This will normally include:

- **expectations regarding the use of a board member's networks/contacts;**
- **expectations regarding provision of advice to the CEO and management;**
- **a protocol for individual directors to acquire all information required for decision making and control. (see Principle 4)**

Commentary and Guidance

The relationship between management and the board is critical and must be supported by a clear segregation of responsibilities. At all times the board must be in control, however management must be accountable, operate with delegated authorities, have appropriate levels of skills and perform against the established key performance indicators.

Directors should not approach management directly but rather should channel all additional information requests through the Chair and CEO, unless specifically approved within the protocols.

The model sport constitutions templates make provision for the appointment of an Executive Director and can be modified to fit the position circumstances of each sport.

Principle 3.3 The board should have in place an effective and efficient monitoring and evaluation system. This will include financial and non-financial monitoring. In particular, each board should monitor outcomes of the implementation of the strategies as the basis for the evaluation of overall performance and reporting to members.

Commentary and Guidance

It is essential that the performance indicators are clear and concise and more important can actually be measured.

It is also imperative that an organisation understand where they currently stand in relation to key performance indicators so a comparison can be achieved between past, current and future result targets.

The Department of the Arts, Sport and Recreation has developed performance evaluations surveys for use by boards and directors. Copies of the survey's can be found the Departments web site under 'running your club'.

Principle 3.4 The board should have in place an effective risk management strategy and process. This will require the board to take actions to identify key risks facing the organisation and ensure that risk management strategies are developed and actioned. The risk management system should comply with the Australian Risk Management Standard (AS/NZS4360:2003).

Commentary and Guidance

It is essential that an organisation regularly review its risk exposure across all facets of the organisation. In line with AS/NZS 4360:2003 an organisation should review the likelihood and impact of all possible incidents and assess the actions required to minimise, avoid or eliminate potential risks. An organisation should ensure it also assesses the opportunities forgone as part of its risks assessment and evaluation process, as risk is not only a negative element, the opportunity cost of not doing activities should also be considered.

In addition some events or activities often need a specific and comprehensive risk assessment done e.g the hosting of an large sporting event, in this situation a business case should be developed as part of normal risk management processes to assess the impact and potential outcomes, negative or positive, of such an event.

The Department of the Arts, Sport and Recreation has developed risk management resource to assist any sporting body to implement this requirement. This resource is updated regularly updated to comply with legislation specific to New South Wales and meets with the AS/NZ 4360:2004 Risk Management Standard.

Principle 3.5 The board should implement an effective compliance system. It is recommended that this compliance system comply with Australian Standard AS3806:2006 and require, at a minimum, that:

- the organisation complies with all relevant statutes, regulations and other requirements placed on it by external bodies;
- effective internal controls exist and there is full and accurate reporting to the board in all areas of compliance;
- the organisation is financially secure and is able to meet all its financial obligations when they fall due, in the normal process of business.

The Department of the Arts, Sport and Recreation has developed good governance checklists for associations and clubs. Copies of the checklists can be found on the Departments web site under 'running your club'.

Principle 3.6 The board should develop and document a regular (annual/six-monthly) performance review process for the CEO.

Commentary and Guidance

While the detail of the performance review may be undertaken by a board committee, at some point in the process all directors should have an opportunity to review and comment on Chief Executive Officer performance.

The performance indicators for the Chief Executive Officer should be clearly linked to the strategic goals and objectives set by the board and should be measurable. In addition, the Chief Executive Officer should have performance measures linked to staff performances and key stakeholders relationships.

Principle 3.7 The board must ensure an effective audit system and process is in place. The audit process may include internal and external processes and systems.

Commentary and Guidance

An effective audit process should ensure there are adequate controls and systems in place to alert management and the board of potential financial risks associated with the operation of the sport.

Given the heavy financial focus on audit processes, management and board directors should have basic financial literacy that enables them to understand and actively challenge information presented.

There is no obligation under the Act for an incorporated association to undertake an audit however, it is good corporate governance and sound risk and financial management to undertake an audit and thus it has been included in model sport constitution templates.

Principle 3.8 That the board should establish an Audit Committee and that its role be set out by formal charter / terms of reference.

Commentary and Guidance

The existence of an audit committee is recognised as an important feature of good corporate governance. The committee should be structured with at least 3 people; the members should be financially literate and include at least one who has financial expertise (i.e. qualified accountant). The audit committee should only comprise persons who are not directly involved in management of the organisation.

The chair of the audit committee should be independent from the chair of the board.

The audit committee should take prime responsibility for but not limited to:

- reviewing the organisations annual financial accounts and recommending them to the board for approval.
- overseeing the relationship, appointment and work of the external and internal auditors.
- reviewing compliance related matters.
- overseeing the organisation's risk management framework.
- regularly reviewing the organisations ongoing financial accounts, systems and delegations.

The audit committee charter should clearly set out the committee's role, responsibilities, composition, structure and membership requirements. The committee should be given the necessary power and resources to meet its charter; this includes rights of access to management and to auditors without management present and rights to seek explanations and additional information. .

If approved by the board an audit committee can extend their mandate beyond purely financial and audit matters to include compliance and risk management as areas of focus.

Principle 3.9 Since ultimate decision-making power rests with the board, the board should clearly document all delegations of authority to the CEO and other individuals, committees or groups. This document or delegations register, should be regularly reviewed and updated. It should be the subject of a formal board resolution.

Commentary and Guidance

To ensure the delegations document is not limiting and restrictive on the operations of the organisation it is often better to articulate the limits of management authority as opposed to trying to articulate every possible approval item. This approach will provide a framework from which management can operate within, without unnecessarily burdening the board with items management should clearly deal with.

The model sport constitutions templates make provision for the appointment of an Executive Director and for delegations.

PRINCIPLE 4: BOARD REPORTING & PERFORMANCE.

Each organisation should have a comprehensive reporting and performance management system in place to ensure organisational effectiveness and efficiency. It is essential that directors be provided with timely and accurate financial accounts to ensure effective decision making can occur.

In addition, the board should review the director's individual and collective performance, including the effectiveness of the chair, to ensure they are discharging their responsibilities against that of the stated objectives. Ensure a board and individual director development program is in place, including mechanisms to respond to non-performing directors.

An effective system of reporting and performance management should include:

- comprehensive and complete financial accounts
- a review and consideration of the accounts by an audit committee
- ensuring the independence of the organisation's external auditors.
- directors and board committee members being knowledgeable, well briefed and informed, having access to the appropriate information or advice when required and being provided with the opportunity for continuous improvement and education.
- a board and director performance evaluation system.
- an alignment between key performance indicators and the strategic objectives as outlined in the organisations strategic and operational plans.

Principle 4.1 The board should ensure that its officers and directors have appropriate insurance cover.

Commentary and Guidance

It is essential that all directors and officers in an organisation have the appropriate liability and indemnity cover no matter what the purpose or structure of the organisation (for example not for profit), as once an organisation starts incurring debts and liabilities directors are potentially liable to provide for any losses incurred.

The model sport constitutions templates sets out the powers of the board/committee make provision for the appointment of an Executive Director and for delegations.

Principle 4.2 The board should ensure all new directors undergo an appropriate induction process.

Commentary and Guidance

The induction process should ensure all directors have:

- an appropriate level of knowledge of the industry the organisation operates in.
- a clear understanding of an organisation's business operations.
- a clear understanding of the organisation's financial circumstances.
- a clear understanding of the organisation's strategy and direction.
- An understanding of their duties and responsibilities as directors.
- a high level knowledge of the business risks that may affect its success.
- access to relevant background information.

Management should provide a briefing session to all new directors once they have had time to assess the information stated above. This will allow them to address any concerns or queries they may have regarding the organisation.

Continuous education and professional development programmes should be made available to directors as necessary.

The Department of the Arts, Sport and Recreation has developed performance evaluations surveys for use by boards and directors. Copies of the survey's can be found the Departments web site under 'running your club'.

In addition, the Department will continue to offer professional development programs for Directors of state sporting organisations.

Principle 4.3 The board should ensure that a director can access independent professional advice to information if required and that this is appropriately protected with a deed of access or similar.

Commentary and Guidance

Board directors and board committee members should be entitled to obtain independent professional or other advice at the cost to the entity on pre-defined terms, these rights should be documented and provided to directors and committee members.

Board directors and board committee members should be entitled to obtain certain resources and information from the entity, these rights should be documented in the deed of access or similar document.

The model sport constitutions template sets out the powers of the board/committee and makes provision for Board Directors to seek external advice.

Principle 4.4 That the board receive timely and accurate financial statements and that these are presented regularly (preferably monthly). These statements should include:

- **a profit and loss statement**
- **a balance sheet**
- **a cash flow statement**
- **a written report regarding material variances from budget**
- **budget versus actual on a month and year to date basis as well as identifying the full year budget**
- **a listing of all major outstanding debtors and creditors**
- **bank reconciliation (including bank account evidence)**

Commentary and Guidance

The organisation should have a one year fully costed operation plan as well as having a more strategic 3-5 year financial plan which should link the financial objectives of the organisation with that of its strategic objectives.

It is critical that all directors understand and take their financial responsibility on the board seriously, ensuring they are able to comprehend and challenge the financial information presented to them by management.

It is critical that the board has detailed knowledge of the financial health of an organisation as it is illegal for an organisation to trade while insolvent and the directors could be held personally responsible.

The Board's primary responsibility is one of trusteeship on behalf of its stakeholders, ensuring that the legal entity, the Club, remains viable and effective in the present and for the future. The Board's role includes determining the Club's strategic direction, core values and ethical framework, as well as key objectives and performance measures.

A key critical component of this role is the Board's ultimate authority and responsibility for financial operations and budgeting to ensure the achievement of strategic objectives.

Principle 4.5 That the full board of directors should annually meet and be debriefed by the external auditor on the state of the financial position and systems within the organisation and any issues identified throughout the audit process.

Commentary and Guidance

To ensure that each director can fully extinguish their fiduciary responsibilities, it is good practice that the full board meets with the external auditor annually to discuss the findings of the audit and any identified issues that may have arisen out of the audit.

This open and frank discussion allows individual directors the opportunity to receive further clarification of any certain issues to ensure they fully understand the financial operations and health of the organisation moving forward.

The model sport constitutions template sets out it is good corporate governance and sound risk and financial management for associations to undertake annual financial audits.

Proposed changes to the Associations Incorporation Act provide a more flexible two tier financial system for associations. Details of the new system are available via the NSW Office of Fair Trading web site.

Principle 4.6 That the board should regularly review and assess its own performance and the performance of individual directors including that of the chair and that of its committees.

Commentary and Guidance

Done well, board assessment can be an extremely productive process. A robust and successful assessment process will give the board:

- a balanced view of its performance identifying the positive aspects of the board's operation and areas for improvement.
- a benchmark against which the board can assess its collective and individual progress and performance over time.
- a basis to establish agreed performance objectives for the board.

The process should include mechanisms such as; external facilitators, assessment questionnaires, confidential non-attribution interviews and a workshop of the findings. Additionally 360 degree feedback from the likes of management and key stakeholders enhance the comprehensiveness of any program. An effective program should also include separate assessments of individual director's performance and that of the chair.

The Department of the Arts, Sport and Recreation has developed performance evaluations surveys for use by boards and directors. Copies of the survey's can be found the Departments web site under 'running your club'.

PRINCIPLE 5: MEMBER RELATIONSHIP & REPORTING.

Each board should ensure it exercises leadership, integrity and good judgment, always acting in the best interest of the organisation as a whole, demonstrating transparency, accountability and responsibility to its members.

An effective organisation should ensure its members are:

- consulted and involved in the development of the sports strategic plan.
- supportive of and actively involved in achieving the outcomes of the national plan.
- well informed and actively participate at its general meetings.
- regularly provided timely and accurate disclosures on all material matters regarding the governance and performance of the organisation.

Principle 5.1 The board should strive to ascertain the interests, aspirations and requirements of members and create responses to these in the form of a national strategic plan with alignment between this and member plans.

Commentary and Guidance

Existing boards should canvass the interests, aspirations and requirements of key members. The board should have in place a process that reports and receives feedback from members.

All members should embrace the strategic plan of the sport and should work towards the achievement of its outcomes. In federated organisational structures it is essential that member bodies are working towards a unified strategic document and are held accountable for their outcomes.

The model constitution for a state sporting organisations includes provision for an annual strategic forum to facilitate this process.

Principle 5.2 Members of an organisation should have the ability to remove board members (or a board as a whole) and change the constitution should they see fit in accordance with applicable legislation.

Commentary and Guidance

It is a guiding principle of law that members must have the right to remove the board and change the constitution as they see fit, as they are ultimately the owners of the organisation.

There may be circumstances where certain arrangements are in place that restrict the members capacity to make change, however these should only be temporary measures in periods of instability and ultimate power should always return to that of the members.

The model sport constitutions template make provision for the removal of a board member and for the changing the constitution.

Principle 5.3 Board directors should have no voting rights at general meetings.

Commentary and Guidance

Where the membership of an organisation comprises other organisations, clubs or groups of individuals, board directors should not be eligible to vote at General Meetings or Annual General Meetings. This ensures a clear separation between the “owners” and the “governors” of the organisation.

The model sport constitutions template makes provision for this to occur.

Principle 5.4 The board should provide the members with a comprehensive annual report outlining how they fulfilled the governance roles of the organisation, the achievements of the organisation, the aspirations of the organisation and sufficient financial information so that members can make a judgment as to how effectively the board is fulfilling its role.

Commentary and Guidance

The system of governance should ensure that timely and accurate disclosures are made on all material matters regarding the organisation, including governance, financial situation and performance of the organisation.

It is not appropriate that these reporting documents are delayed; it is the board’s responsibility to ensure the appropriate legal timeframes are met.

Disclosure should include, but not be limited to material information on:

- any legally required information as per the relevant act.
- the financial operating results
- the entity’s strategic objectives and goals
- members of the board and key management personnel
- material foreseeable risks
- material issues regarding employees and other stakeholders
- governance structures and policies

PRINCIPLE 6: ETHICAL AND RESPONSIBLE DECISION MAKING.

Each board should ensure and actively promote ethical behaviour and decision making within their organisation. Good corporate governance ultimately requires people of integrity to ensure the reputation of an organisation is managed, protected and enhanced.

A culture of integrity and ethical behaviour is characterised by:

- an effective code of conduct
- quality decision making processes
- people of the highest integrity and ethical standards
- an intent to put the organisation ahead of individual gains

Principle 6.1: That the board establish a code of conduct to guide directors, the CEO and other senior management as to:

- **the practices necessary to maintain confidence in the organisation's integrity.**
- **the responsibility and accountability of individuals for reporting and investigating reports of unethical practices.**

Commentary and Guidance

The code of conduct should set out ethical and behavioural expectations for both directors and employees. It is critical that both the board and senior management demonstrate, through both their words and actions, absolute commitment to the Code and stakeholders in its execution.

Adherence to the Code should be periodically evaluated and action taken, where necessary.

Principle 6.2: That the board ensure key decisions and actions are based on a thorough review of all available information and are assessed against the organisation's risk management framework and that these are documented.

Commentary and Guidance

When organisations embrace opportunities to expand or promote the sport they should assess the opportunities against the risk framework and key strategic objectives of the organisation.

There should be evidence of an evaluation of the benefits and risks prior to any key decision being taken by management or the board.

Principle 6.3: That the board ensure a business case is developed for each major project or significant activity or event prior to the organisation committing resources and that the worst case scenario has been evaluated and can be mitigated / managed by the organisation.

Commentary and Guidance

The development of a business case allows sporting organisations to embrace opportunities to expand or promote the sport through a major event / activity by assessing the ability of the organisation to sustain a worst case scenario loss.

Given that most sporting organisations have very limited available resources the assessment of risk and opportunities is critical to the long term viability of the organisation.

To not develop business cases for major projects and events potentially leads to poor decision making and lack of awareness of the various scenarios that may play out, hence all major events and activities should be fully costed and assessed for variations from budgeted figures prior to the organisation committing scarce resources.

The model sport constitutions template make provisions for principle 6.

GLOSSARY OF TERMS

Members	Those persons, clubs or associations that by virtue of fulfilling the conditions stated in the constitution belong to or “own” the said sporting body.
Director	A person who is on the board of directors of an organisation by either being elected or appointed to the board.
Board	The official group of people (directors) empowered through the constitution to oversee the running of an organisation.
Appointed Director	A person who is on the board of directors of an organisation by virtue of being appointed by the board for a set period of time.
Elected Director	A person who is on the board of directors of an organisation by virtue of being elected by the members of the organisation.
Independent Director	A person who has no direct links, perceived or real, to any official position within the organisation or its directly related member bodies.
Officer bearer	<p>Are elected or appointed to boards or committees of sporting clubs/associations who are often seen as community sports leaders. Typically, club office bearers have higher levels of involvement and are responsible for running their club.</p> <p>Office bearers have legal obligations as directors and are often given titles including: committee member, sports administrator, president, chairperson, treasurer, secretary, public officer, member protection information officer.</p>
National Sporting Organisation	The organisation recognised by government and the majority of playing participants as the national representative for that sport.
NSW State Sporting Organisation And Peak Industry Body	The organisation recognised by NSW Government and the majority of playing participants as the state representative for that sport or recreation.
Organisation	A collection of persons, clubs or associations registered as an incorporated association or Company limited by guarantee.
Material Variances	A variance that by virtue of its size or impact would materially change the result or outcomes for an organisation had it not been adjusted.
Legal Compliance	Adherence to the various laws and statutes that govern the operations of the organisation by virtue of the activities that it is involved in.

TABLE 1: TYPICAL CHARACTERISTICS OF NSW STATE, REGIONAL AND COMMUNITY SPORTING ORGANISATIONS.

Characteristics	Type 1	Type 2	Type 3
Legal status	Basic constitution, unincorporated or small incorporated club or district/zone association	Small to medium incorporated club or district/zone association or company	Medium to large incorporated club or district/zone association or company
Workforce	Volunteer	Volunteer, paid administrators	Paid administrators
Club structure	Basic committee	Properly constituted committee/sub committees	Board of directors, management committee
Management expertise	Volunteer only	Training encouraged	Expertise sought/paid
Planning	Short term	Short – medium term	Long term
Membership	<200	<500	>500
Technical expertise	Unaccredited	Accreditation encouraged and supported	Accreditation required
Range of activities	Narrow	Expanding	Broad
Assets	Equipment only	Equipment, club rooms	Equipment, offices
Affiliation	None	Affiliated	Affiliated

(i) **Simple** —————→ **Complex**