

An introduction to governance for new Board members

Appointment to the Board and Disqualification

Your appointment to the board was either through a process of nomination and election by the membership or by Board appointment to fill a vacancy. Clause 6.2 (and its sub-clauses) of our Constitution provides further detail on who can be appointed to the Board and how the process works. Clause 6.4 (and its sub-clauses) explains the situations where a Board member can be disqualified from being on a Board and from holding an office bearers position. Please read these clauses carefully.

The Act stipulates who can not be on a Board. You will have been given a declaration to fill in and sign which relates to this Section of the Act. It is very important that you answer truthfully when completing this declaration as there are significant fines and penalties that may result from us appointing a person to the Board who is not legally permitted to hold a position on a board of an association.

Part 4 Division 1 Section 30 of the Act:

30 (1) A person who is an insolvent under administration must not, without leave of the commission, be a member of the committee of an incorporated association, or be in any way (whether directly or indirectly) concerned in or take part in the management of an incorporated association.

(2) A person who has been convicted within or outside the State

(a) on an indictment of an offence in connection with the promotion, formation of management of a body corporate;

(b) of an offence involving fraud or dishonesty punishable on conviction by imprisonment for a period of not less than three months;

(c) of an indictable offence;

Or

(d) of (i) an offence against section 39a)

(ii) an offence against a provision applied by section 41b or

(iii) an offence against section 60(see explanation below)

Must not, within a period of 5 years after his or her conviction or, if he or she was sentenced to imprisonment, after his or her release from prison, without leave of the Commission, be a member of the committee of an incorporated association, or be in any way (whether directly or indirectly) concerned in or take part in the management of an incorporated association.

Division 3A S39a – duties of officers etc

(1) Is concerned with not committing an act with intent to deceive or defraud the association, members of creditors or any other person. Max penalty \$20,000 or 4 years imprisonment.

(2) An officer or employee, or former officer or employee must not make improper use of information acquired by virtue of his or her position to gain, directly or indirectly any pecuniary benefit or material advantage to themselves or another

person so as to cause a detriment to the association. Max penalty \$20,000 or 4 yrs imprisonment.

(3) Is concerned with an officer or employee making improper use of their position to benefit themselves or another person to the detriment of the association. Max penalty \$20,000 or 4 yrs imprisonment.

(4) Is concerned with an officer carrying out his or her powers and duties with diligence. Max penalty \$1,250.

Division 1 S41b Reports to be submitted to liquidator

Is concerned with the board and board members, past and present, providing a report to a liquidator on the prescribed form within 14 days after an order to wind up an association by the Supreme Court Max penalty for not complying with this requirement is \$5,000.

Part 6 – Miscellaneous S60 Misrepresentation as to incorporation under this Act

Is concerned with persons falsely representing that a body is an incorporated association to gain an advantage to themselves or another person.

If you have already submitted your declaration but now realise that the information you have provided needs to be amended please contact the CEO immediately.

Confidentiality

As a Board member you will be privy to information about our operations, our financial situation, the members of the association, our employees and our clients – some of which will be classified as personal or sensitive under the Privacy Act. Because of this you will be required to sign a confidentiality agreement. Breaches of this agreement may be grounds for disqualification. More information regarding confidentiality is included later in this manual. A copy of the Confidentiality Statement is included in the reference section at the back of this manual.

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Conflict of interest

When a person is appointed to a board they are appointed as a 'natural person'. This means that you are on the Nunyara Aboriginal Health Service Inc Board as yourself – not as a representative of another organisation or group. Consequently, you personally are held accountable for meeting the legislative compliance obligations and for ensuring the ongoing viability of the Association.

As a 'natural person' you are also required to carry out your duties and make decisions in the best interests of Nunyara even if this conflicts with your own or your family's best interests or those of other boards you may be on or indeed even those of your employer. When you come to Nunyara Board meetings you are required to make decisions with your "Nunyara hat on". If you find it impossible to do this you have what's known as a conflict of interest – you must declare this as the other Board

members may determine that you can't participate in a certain discussion. Where there is a pecuniary conflict of interest (that's a conflict involving money) the Act forbids you to vote on a motion or resolution.

There are degrees of conflict of interest as well as different types. For governance purposes we are most concerned about pecuniary interest – that's concerned with money. At an organisational level we are concerned with personal conflicts of interest that come from being related or closely connected to an employee for example. At a community level we are concerned with conflicts of interest you might have because of your involvement with other Boards or your involvement with and standing in the community. At a cultural level we are concerned when events or pressures adversely affect our capacity to govern and manage with cultural integrity.

We need to know if there are any **standing conflicts of interest** – these usually arise from your place of employment, your relationships with staff or clients or your involvement on other boards. We also require you to inform other Board Members if any items on an individual agenda for a meeting raise issues for you that may amount to a conflict of interest.

Conflicts of interest are generally classified into three categories:

1. Real (or actual) conflict of interest
2. Potential conflict of interest
3. Perceived conflict of interest

The first category is self-explanatory and is evidenced by the Board Member's inability to separate out their position on a matter from how it affects them or those close to them. Essentially, a real conflict of interest exists when the Board Member has a vested interest in the outcome of the vote.

The second category is often not as simple to work out but could include matters like the Board discussing applying for a grant for a service or program that is currently being delivered by another organisation that a Board Member is involved with. The conflict of interest is that information about the application Nunyara is putting together could be 'leaked' to the other organisation.

Perceived conflicts of interest are about how things look from an external point of view – the community or another stakeholder. It may be the case that we are actually successfully managing the conflict of interest but from the outside looking in doubts may be cast.

Board Members are required under the Act to declare pecuniary conflict of interest and Nunyara also requires Board Members to declare non-pecuniary conflicts. Whenever a conflict of interest is declared or noted it will be recorded in the minutes. You may have also noted that the Declaration form we asked to complete includes a section for you declare any conflict of interest that you already know about.

Code of Conduct

As a Board Member you are required to meet certain standards that are legislated for. These rules for your conduct are not a matter of policy they are law. This means that neither you nor the organisation as a whole can decide that they don't apply to our Board Members.

In addition to the legislated rules about your conduct as a Nunyara Aboriginal Health Service Board Member we also have other rules that form the complete code of conduct. These additional rules focus mostly on how the Board operates and works together and how it relates to employees, members and the community.

Together, the legislatively required codes of conduct and the organisational codes form the Board Code of Conduct that you are required to sign and lodge with the CEO or administrative assistant to the Board. There are significant consequences for you personally if you breach the clauses in the Act and you may be subject to disqualification if you breach these and/or the organisational codes. A copy of the Code of Conduct is included in the reference section at the back of this manual.

The role and purpose of boards and board members and how this relates to the CEO's role

Being on any board requires commitment, knowledge, skills and abilities. The decision to be on our Board should not be taken casually – there are significant implications for Board Members who do not fulfil their obligations or are neglecting their role. Decisions made at a Board Meeting are taken as if they were made by every Member of the Board regardless of whether you were present at a meeting or not. Failing to attend Board meetings does not guarantee you immunity from the consequences of the decisions made.

Boards need to focus on governance not management. The chart below compares governance and management.

There is more information regarding the actual Code of Conduct later in this manual.

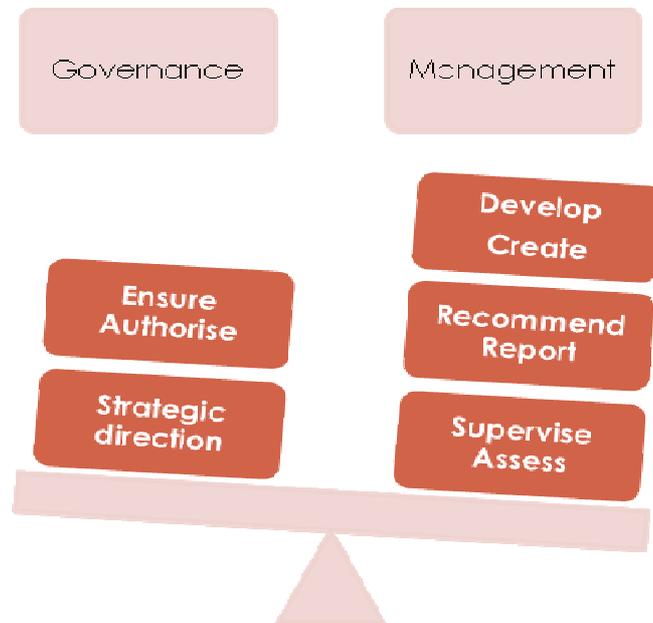
A copy of the Code of Conduct for you to sign is in the reference and resource section at the back of this manual.



Key points for Board Members:

- Responsibility can be delegated, accountability cannot
- The Board is held accountable for the functioning and viability of the Association and will be subject to prosecution and fines if they fail to properly govern the Association, especially if negligence is indicated or where the Act has been breached
- The Board has such an important role in establishing the strategic direction of the Association and in fulfilling other governance functions that it should not allow itself to get bogged down in or distracted by day-to-day matters that should rightly be managed by the Association's CEO and employees

Getting this distinction clear is central to fulfilling your role. It will at times seem like a balancing act. As the diagram below indicates there are some key words that will let you know when a function is a governance function or when it is a management function.



You are not required to be involved in the day to day operations of Nunyara. The CEO is responsible for the management and administration of the organisation, the supervision and direction of employees, the allocation and monitoring of financial resources and assets and service delivery.

If you have matters to raise about any operational issue please do this through the CEO or at a Board Meeting.

The CEO will bring matters to the Board that require the involvement of the Board, the approval of the Board or just when the Board needs to know about something.

It's inevitable that community members, clients, association members and members of the public will want to talk to you or ask a question or make a complaint about the organisation. When this happens it's best that you refer the person to the CEO, in the first instance. You may though feel that the issue is a matter for the Board to discuss. Take care not to breach confidentiality in these situations.

Your CEO is the most important link you have to the rest of the organisation and it's important to build a good relationship with them. It is also a requirement of the Board to manage the CEO through annual reviews of their performance and of their remuneration package. You can get help to do this from our HR provider Pinnacle HR.

The Board and individual Board Members have a clear purpose and a set of functions that go along with that purpose, as the chart below explains.

Purpose	Functions
To govern the Association	<ul style="list-style-type: none"> Meet as constitutionally required Review and update constitution as necessary Keep accurate minutes of all meetings Report as required to the membership
To ensure its ongoing viability	<ul style="list-style-type: none"> Receive and analyse financial reports Provide advice and decision making on financial matters Endorse and approve contracts, especially those involving grant funding Support opportunities for the association to obtain additional funding Ensure the organisation remains relevant to the needs of the community Ensure that the best people are employed in the organisation Review the performance of the CEO
To meet legislative obligations	<ul style="list-style-type: none"> Act in accordance with the code of Conduct Act in accordance with the Confidentiality Statement Declare conflicts of interest Ensure that CBS is provided with the necessary information and reports Appoint an auditor Appoint a Public Officer Ensure that Business Activity Statements are lodged as required Ensure that the organisation has all the relevant ATO concessions, rebates and exemptions Endorse key policy documents
To establish the vision, mission and strategic direction	<ul style="list-style-type: none"> Participate in regular workshops to discuss and determine the strategic direction and priorities Regularly review and determine the relevance of the vision and mission
To monitor progress towards the strategic direction	<ul style="list-style-type: none"> Receive reports on the organisation's efforts to fulfil the strategic plans Allocate sufficient resources to ensure the strategic plan can be achieved Address areas that are not progressing
To responsibly act on behalf of the membership	<ul style="list-style-type: none"> Promote the organisation and its work Address issues that need to be dealt with within the forums and processes designated for problem resolving Report as required to the membership Support members to actively participate and responsibly utilise their rights as members Involve members in planning process Develop opportunities for members to feedback to the Board

In agreeing to take on this important role you are making a commitment on behalf of the members who elected you to do the following:

Meetings	Governance	Conduct
<ul style="list-style-type: none"> • Attend board meetings as scheduled • Attend the AGM and any SGMs wherever possible • Always provide an apology if unable to attend • Come to the meeting prepared • Contribute to the meetings in a positive and considered way • Declare any conflict of interest • Attend and contribute to strategic planning workshops • Comply with proper meeting procedures • Make decisions in the best interests of Nunyara • Read and understand the constitution and any other governance documents • Ask for clarification before you make a decision on matters you are not sure about • Be courageous to raise innovative ideas and deal with problems • Assess how well meetings are working • Challenge board members who are not fulfilling their obligations 	<ul style="list-style-type: none"> • Work within the constitution and other governance documents • Work within the Act • Learn about the laws that are relevant to Nunyara • Attend training on governance and legal issues • Be honest in all dealings • Represent the Association with integrity • Report as required to the members • Respect and uphold the rights of members • Be visionary • Develop a positive working relationship with the CEO and other senior staff • Focus on governance not management • Focus on the big picture and not get involved with day to day operational matters • Support the CEO and other senior staff to do their jobs • Employ the best people for the job • Regularly evaluate how well the organisation is operating • Regularly evaluate how well the Board is operating 	<ul style="list-style-type: none"> • Treat fellow Board members with respect • Declare any conflict of interest • Maintain confidential information • Deal with serious or difficult matters within the designated forums or processes • Fulfil the obligations in the code of conduct • Work to achieve the vision, mission, objects and the strategic direction of the Association • Ask for assistance, advice, clarification or training • Speak positively about the organisation and the employees while in public • Stand down from the Board if you have acted contrary to the code • Challenge other board members whose conduct is unacceptable • Keep personal issues and community politics out of the equation as much as possible in decision making

You will be asked to sign a statement of commitment – a copy of which is at the end of this manual in the reference and resource section.

Competencies

Nunyara Aboriginal Health Service needs people on the Board who are recognised for their work, commitment to and involvement in the Aboriginal community and in the Aboriginal health sector. These competencies include a range of skills, knowledge and experience is required to be a Board member. More is required of you if you are

elected as an office bearer (chairperson, deputy chairperson, treasurer or secretary). Specifically, our Board will benefit by attracting people who have the following skills, knowledge and experience:

- Experience in the Aboriginal health sector
- Experience in health planning, service delivery, management or governance
- Experience in other Aboriginal associations, corporations or not for profit organisations at a board or management level
- Knowledge of the Associations Incorporation Act SA 1985
- Understanding of meeting procedures
- Capacity to understand and interpret financial reports and advise on the financial management of the Association
- Ability to work positively with other board members, the CEO and other staff
- Actively involved with the community
- Well regarded by the community
- Well regarded within the health sector
- Capacity to build team cohesion
- Knowledge of human resource management
- Knowledge of electronic health records systems and management
- Knowledge of the relationship between funding bodies and funded organisations
- Knowledge of clinical and non-clinical standards and accreditation
- Knowledge of marketing, promotion and fundraising

We don't expect every new Board member to have all of these skills or all of this knowledge, indeed we don't expect that the Board collectively will have all these skills or this knowledge and experience. We do though want our members to nominate and elect people who can genuinely contribute to the governance of Nunyara that is why our nomination forms will contain this information.

It is important for us to know the skills, knowledge and experience you bring to the board table; that is why we ask you about them in the Board Members Declaration form. By collating the information we are able to identify gaps in the Board's knowledge collectively and individually. Training, mentoring and written information will be provided.

Legislative obligations under the Act

Agreeing to accept a position on the Board means that you accept to be held accountable for complying with legislative obligations under the Act – these are summarised below. Many of these obligations are also included in our Constitution – where this is the case, the relevant section or clause/s appears in brackets after the description of the compliance obligation.

Associations Incorporation Act	Legislative obligation
Appointing a Public Officer	A Public Officer must be appointed to be the contact person for the CBS (6.1.6). Every time the Public Officer is changed CBS must be advised in writing on the prescribed form. A pamphlet regarding the role of the Public Officer is in the reference section of this manual.
Appointing an auditor	Nunyara is a 'prescribed association' so it is required to appoint an auditor to audit our financial transactions each year. (11)
Financial reporting and lodging the periodic return	Within 6 months of the end of the financial year we are required to lodge a periodic return to CBS. This includes financial information and reports from the Board. (10)
Lodging changes to the Constitution	We are required to formally advise CBS each and every time the Constitution is changed including any changes to the name of the Association on the prescribed form. (14)
Holding an AGM	We are required to hold an AGM within 5 months of the end of the financial year to report to the registered membership on how well we have fulfilled the roles, responsibilities and functions of a Board over the past year. (8)
Maintaining records	We are required to keep accurate minutes of each and every Board meeting and general meeting. (9) We are required to maintain financial records for a period of 7 years.
Common seal	We are required to hold and keep a common seal and record each time it is affixed. (7)
Not appoint prohibited persons to the Board	We must not appoint individuals to the Board who do not meet the requirements of S30 of the Act. (6.2.7)
Prohibition against securing profits	We are prohibited from distributing profits amongst members. (12)
Winding up and amalgamation	If the Association must be wound up or plans to amalgamate it must do so with the support of members and in accordance with the Act. CBS must be advised if an Association is to be wound up or when there are plans to amalgamate. (13)
Direct or indirect pecuniary interest in a contract or proposed contract	Board members are required by law to disclose any financial interest they may have in a contract or proposed contract. If there is a

	financial interest the board member must not take part in the vote. (6.3.11)
Register of members	We are required to maintain a register of members including all their contact details. All members are to receive correspondence from the Association in regards to general meetings and other significant events. (5.5)
Conduct of Board members	Board members may not conduct themselves in a manner that is detrimental to the reputation of the Association, or contrary to the objects of the Association or to have misrepresented themselves or the Association for their own benefit. (6.4.2)

Governance Policy Statement

Nunyarra Aboriginal Health Service Inc is committed to achieving high standards in governance. For us to achieve our objectives and to ensure that we create a strong and viable health service there must be strong leadership from the Board in determining our overall strategic direction and in ensuring compliance with legislative obligations. The Board is also charged with the duty of fulfilling its obligations with cultural integrity.

Policy Statement 1

The Board will ensure that at all times it operates within the requirements of the Associations Incorporation Act (as a prescribed Association) specifically in relation to:

1. The formation of the Board and its membership
2. The conduct of the Board members
3. The development and ongoing review of the Constitution
4. The lodgement of required forms and reports
5. The appointment of a Public Officer
6. The appointment of an Auditor
7. Convening Annual General Meetings and Special General Meetings

Policy Statement 2

The Board will ensure that at all times it operates according to the provisions of the Constitution and that regular reviews are conducted of the Constitution to ensure its accuracy and relevance to the organisation.

Policy Statement 3

The Board will ensure that there exists a clearly defined set of objectives for the organisation and that these are shaped through consultation with employees, members of the organisation and clients.

Policy Statement 4

The Board will ensure that the day-to-day operations of Nunyarra meet stated standards through:

1. The appointment, supervision and on-going performance review of the CEO
2. Receiving regular reports from the CEO and other key staff members
3. Endorsing critical policy and procedure documents
4. Endorsing the organisation's staff structure including salary remuneration and the essential requirements for the positions

5. Endorsing key position descriptions

Policy Statement 5

The Board is committed to improving the skill set of its members and its internal operations through training, mentoring and performance review.