Not-for-Profit Organisations

Not-for-Profit organisations (NFPs) are generally created to benefit the community or members and, as the name suggests, do not have the objective of making a profit. The NFP sector in New Zealand includes charity, voluntary and non-government organisations and is estimated to be a more than $10 billion industry. Governance in the NFP sector is playing an increasingly important role.

In this section:

- Key organisations and websites
- Charities
- Incorporated Societies and Trusts
- Maori organisations

The legal structure for NFPs in New Zealand are variable and include, incorporated societies, trusts/charitable trusts, limited liability companies, organisations constituted by Act or Parliament and unincorporated associations. The NFP sector also includes many Māori organisations.

Institute of Director's (IoD) First Directors online resource has an overview of how an NFP board works. Key word search "*Keeping the wolf from the door" and "A World of Experience in Not-for-Profits*"

The 2013/14 Grant Thornton NFP survey, '*Doing good and doing it well?',* shows that NFPs on both sides of the Tasman are striving to adopt more professional standards in how they manage, operate and govern the organisation.

Key organisations and websites

The IRD has information for NFPs on employing staff and volunteers, paying and claiming GST, receiving donations and grants, and keeping records and filing returns.

Changes to financial reporting requirements in New Zealand have implications for NFPs.
The IRB has information about accounting standards for different types of entities, including NFPs.

DIA's Community Development branch (previously OCVS) has resources for NGOs and volunteers.

ANGOA (the Association of Non-Governmental Associations of Aotearoa) is a network of civil society organisations.

CommunityNet Aotearoa is an online hub with resources designed to strengthen community organisations. The Community Resource Kit includes an introduction to Governance.

Philanthropy New Zealand has information and assistance about philanthropic giving.

Transparency International New Zealand (TINZ) is the New Zealand representative of Transparency International, the global civil society organisation against corruption.

The Australian Institute of Company Directors (AICD) has a range of resources on NFP governance in Australia on its website.

Not for Profit.org.nz is an independent site with resources for NFPs.

Charities
The Department of Internal Affairs (DIA) Charities branch carries out the registration, education and monitoring functions for charities. The Charities Registration Board makes independent decisions about registration and deregistration of charities.

Incorporated Societies and Trusts

Incorporation is the legal mechanism used by NFP organisations where members have a common interest. New Zealand has over 23,000 incorporated societies, including cultural, sporting, educational, religious, business and professional groups, and social service providers.

The Companies Office maintains the register for incorporated societies and charitable trusts. The Societies and Trusts Online website has useful information, including guidance, forms and templates.

The Incorporated Societies Act 1908 sets out the mechanisms for incorporation and minimum requirements for governance structures and rules. The Law Commission has reviewed the Act and consultation on a new Act is expected in 2015.

The Law Commission has also reviewed the Law of Trusts, and published an issues paper, *The Duties, Office and Powers of a Trustee* in 2011.

What Governance Really Means

When people talk about company governance, they're talking about the role of the board of directors. Boards exist to ensure a company is well run, and well governed so that shareholder value can be maximised and no 'funny business' goes on.

Governance is about:

- ensuring there is accountability and oversight of a company's operations
- having a defined vision for the future of the company
- making good decisions with a clear view of the big picture
- identifying opportunities
- identifying risks and implementing strategies to manage them.

Governance encourages boards to step back from the operational side of the business and ensure all bases are covered in order to lay the foundations for a smooth future.

Think about:

Where the business is now → Where it is going → What is needed to get there

Good governance helps a company:

- get the most out of skilled directors
- find the balance between making short-term gains and building long-term wealth.

Good governance is about good performance, reputation, sustainability and durability.

The IoD can help you find the best fit and put your governance team in place with:

- information to get things done
- access to networks of people who can help
- help with director recruitment
- Training

Director responsibility

The role of a director comes with great responsibility. They can be held to account for the actions of the company which is why those who are offered directorships should not take them lightly as their personal wealth and reputation are put on the line as a result.

In general, directors must:

- always act in good faith and in the best interests of the company
- not let any obligations to others, or personal interest, conflict with the interests of the company
- ensure that the company at all times passes the solvency test, to ensure it can meet its debts as they come due
- not take advantage of their position as a director to make personal profit:
- for example, insider share trading where a director buys or tips someone else off to buy shares because they know something positive will push up the share price.

What does 'act in good faith' mean?

Acting in good faith:

- the concept of good faith is covered by the legal principle of company law and is used to determine if a director has acted appropriately
- while directors can't be expected to know everything and get everything right, they need to demonstrate that their intentions are good and any decision made, or action taken, is reasonable in the light of their knowledge and experience:
  - if a director is in doubt they should get professional advice to demonstrate they acted in good faith
  - getting this wrong can be severe from hefty fines to imprisonment; ignorance is no defence in the eyes of the law
  - also, civil suits can be brought by disgruntled employees, creditors, customers and competitors.

Directors build value in the company

Directors build value by:

- acting in the best interests of the company a director is instrumental to building value in the business
- sometimes owners lack the objectivity and the skills to create long term business building strategies and high growth which outside directors can bring
- bringing in experienced directors offer lots of benefits.

Experienced directors:

- understand the legal issues and how to avoid pitfalls
- use 'big picture' thinking to look at the long term vision of the company
- offer fresh thinking, additional skills sets and experience
- have extensive networks to help you grow
- help cross-pollinate ideas, best practice and knowledge.

Types of directors

There are three types of directors:

- Executive
- Non-executive
- Independent.

Common director responsibility myths

Myths include:

- *Director Myth #1*: Like companies, directors have limited liability.
  False! Directors can be personally liable and individually liable if they act negligently or in breach of trust. They can risk their own personal wealth and that of their entire family if they are negligent or in breach of their duties. Directors who are badly prepared, lack the skills to be effective or are ignorant of the activities of the company put themselves at risk. Taking out directors' liability insurance is critical.
- *Director Myth #2*: ‘Silent partners' have no (or less) liability
  False! A silent partner is a director who plays no active role in the company, but even if they have no idea what's going on, never attend board meetings and haven't read a company document in their lives, they are just as liable as their fully active counterparts. The courts

consider directors should be positively involved in the affairs of the company and be actively aware of what's happening.

- *Director Myth #3*: My lawyer and accountant should automatically be directors
  False! Your lawyer and accountant are professional advisors to your company and would not agree to become a director because it would compromise their effectiveness.

Director responsibilities FAQs

What are a director's legal obligations?

- Whether you have one or many directors, they all need to know their legal responsibilities
- Directors are charged with making sure your company complies with the wide range of company legislation, including the Companies Act 1993, and approving the yearly financial reports.
- Directors also have a 'duty of care,' which means directors must not put your business in substantial risk of serious loss to the company's creditors, better known as 'reckless trading'.

Board vs Management

An effective company must ensure the relationship between the board and management is complimentary rather than adversarial. This is one of the most important relationships within a company, so make sure it is well managed.

Separating ownership from control

It's easy to get confused with the difference between governance and management. The board is in charge of governance of a company which seeks to ensure the smooth running of a business by making accountability and oversight the core of their workings. Governance also ensures that the business has a future-facing strategic plan.

This is where management comes in. They take the strategic plan and work to implement it into the day-to-day operations of the company.

Both roles are vital and complementary.

The difference can get blurred with SME's when:

- there are only one or two directors
- the same directors are founders
- these directors also manage the day-to-day operations.

Which hat to wear?

Executive directors need to think about the hat they have on:

- for operational aspects an executive director wears the management hat
- for board meetings, an executive director will need to switch to the more strategic cap (ie governance).

This is where an independent director can help guide your board discussion, and make this delineation clearer.

The governance metaphor: The right crew to shift into top gear

A board can help grow and develop at a pace that suits the owner, staying inside the speed limits, or accelerating to full throttle.

Governance applies to all companies, but not all in the same way. There is no set route to follow, but most companies face similar issues, such as:

- the need for capital injections
- maintaining and expanding market share
- innovation and risk management
- managing debt and stakeholders.

Driving a well-tuned car is a joy. Winning a race is invariably a team effort. You might try to do it on your own but success is more likely with the right support crew.

Wayne Norrie knows how to drive

Wayne Norrie has around 30 years IT industry experience and has worked in New Zealand and off-shore in technical, sales, management and governance roles. Wayne is a regular speaker for the IoD. Wayne is an IoD Fellow and thinks he knows a bit about driving.

(Taken from an interview with Wayne Norrie)

Driving a better business

Running a business is a bit like driving a car, very fast and at night. Your headlights only show you what's 50 metres ahead, but you have that uneasy feeling that somewhere out there in the darkness lie a number of potholes and other hazards that could damage your vehicle or, worse, send it careering off the road altogether.

A board of directors is like a team of navigators using floodlights to help you anticipate what lies 500 metres ahead. The board members have been down similar roads before and know what obstacles and hazards might be encountered. They will help you steer round them. Or they may advise you that now is a good time to take more fuel (capital) on board.

The directors help identify the obstacles that lie far beyond the reach of the headlights. You're still doing the driving, but they're making the journey with you and helping navigate a safe passage. It's good to have them along, at all times.

Changing direction

Even when times are good and your business is making satisfying progress, you can canvass your navigators' views to help you explore and set the company's future direction. You get the chance to discuss the itinerary – your aspirations for the business – with trusted peers and mentors whose opinions you respect (even though you may not always agree with them). With their input, your company may be able to change gear or take a new direction.

Getting the right signals

As well as seeing where you're going, you want to have confidence that the lights on the dashboard are giving you the information you need to drive the car safely and achieve its best possible performance. That's where the good governance provided by a board kicks in – it makes sure that performance is maintained and improved, without affecting the day-to-day requirements of keeping the business going. Governance puts sound business practices and forward planning in place so that your business stays in good running order, meets all its legal obligations, and heads in the right direction, rather than straying down a dead-end track. In short, good governance = better business.

What makes a good board?

A good board that truly adds value is not just a group of high performing individuals but a balanced team with complementary skill sets and a culture that allows them to work together to make the most effective decisions for an organisation. While the leadership from the chair is crucial, the participation of every board member is also essential for effectiveness.

Board composition and mix

- Stability vs new membership
- Mutual respect
- Diversity
- Strategic vs operational thinker
- Balance between independent and interested directors
- Optimal size
- Fair and firm chair
- Balance of skills and experience

Key competencies of a director

General ▪ Informed business judgment ▪ Entrepreneurial ▪ Perspective or vision ▪ Integrity ▪ Common sense ▪ EQ	**Strategic** ▪ Organisational awareness ▪ Environmental awareness and context ▪ Compatibility and prioritisation ▪ Change awareness ▪ Governance knowledge	**Analytical** ▪ Financial literacy ▪ Critical faculty ▪ Information-oriented
Character ▪ Honesty and accountability ▪ Commitment ▪ Courage ▪ Objectivity ▪ Conflicts of Interest	**Communication/interaction** ▪ Good communication ▪ Adaptability ▪ Listening ▪ Teamwork	**Knowledge** ▪ Director responsibilities ▪ Business management practices ▪ Business environment ▪ Board structure ▪ Performance appraisal ▪ Financial ▪ Marketing ▪ Information technology ▪ Special knowledge

Board balance

A strong board will be evenly balanced in several respects:

1. Size: The optimum number of directors depends on the size of the organisation. The IoD recommends that medium to large sized companies should have 6–8 directors.
2. Skills and experience: A diverse range of educational and vocational backgrounds will enrich the discussion of a board and help better decisions be made.
3. Executive vs non-executive.
4. Balance of independent and interested directors: to ensure independent thinking, fresh perspectives and greater oversight and accountability, it is important to have a decent balance between ‘insider’ and ‘outsider’ directors.
5. Diversity: a mix of ethnicity, age, and gender all contribute to better representing the community at large and will help a board form insightful and representative decisions.

Board culture

Because a board is made up of a diverse range of characters, the need to develop a strong culture is vital. Members don’t need to be friends, but they do need to be respected colleagues. Unlike most teams, dissent and robust individual opinion is an important trait on boards as it helps members consider all possible options in order to arrive at the best possible decision.

The chair plays an important role in developing the culture of the board and setting the mood of meetings. Other aspects which contribute to a strong culture are:

- full disclosure of information from management
- confidentiality
- regular evaluation of board members
- induction and training.