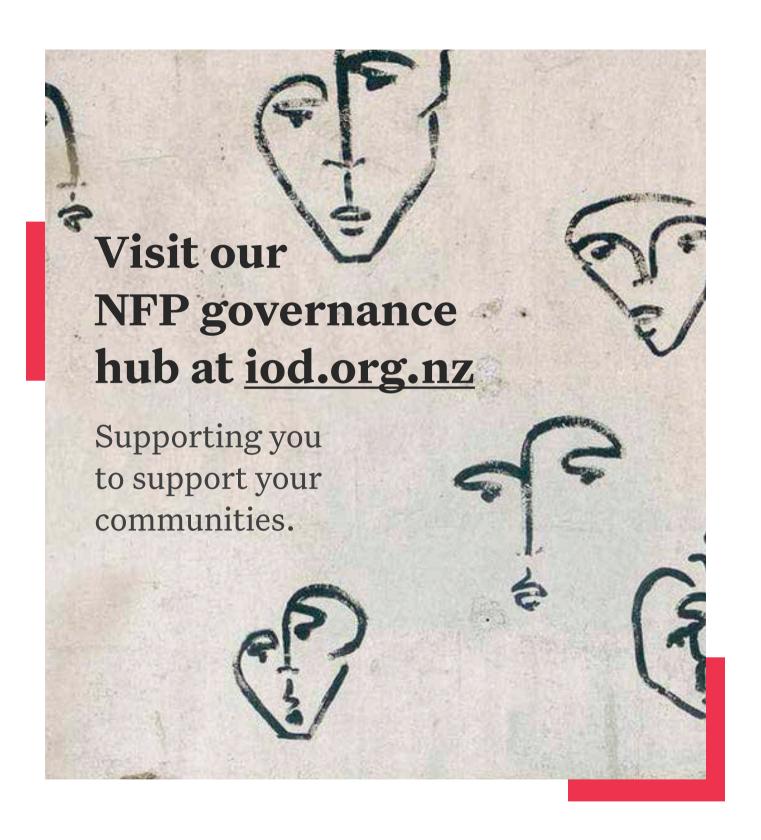
# Rotford Hondit Reader

PERSPECTIVES FOR DIRECTORS ON NFP BOARDS IN NEW ZEALAND



FOR

PASSION AND PURPOSE







#### **Foreword**

IoD's vision is for a strong, fair and sustainable New Zealand powered by good governance. It is humbling to think that over half our members serve on not-for-profit Boards because without these organisations we wouldn't have many important services that people in our communities rely on – particularly at times when they are vulnerable and in need of support.

There are 115,000 not-for-profit organisations in New Zealand and together they are a significant economic force with unique challenges and issues to deal with. This year has not been kind in some ways and so those challenges have likely been amplified. Good leadership and strong governance are essential and with that in mind we have produced this reader – a collection of articles, insights and tools which we hope will give you some food for thought.

ΚP

KIRSTEN PATTERSON
CEO, INSTITUTE OF DIRECTORS



Not-for-Profit Reader is a magazine of the Institute of Directors in New Zealand iod.org.nz

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## A boost for community governance

The National Action Plan for Community Governance launched in August will help boards across 114,000 New Zealand non-governmental organisations, charities and community groups.



Work is beginning on the implementation of new ideas to support community governance in New Zealand.

The National Action Plan for Community Governance launched in August by the Centre for Social Impact brings together the expertise of 150 people from across the country, and across the community governance spectrum. It targets seven "outcome areas" (see sidebar) for discussion.

The Centre's focus will now turn to ensuring the Action Plan is effectively implemented. This will occur in two phases.

The initial "disrupt and support" phase includes the development of a good governance code of practice, campaigns to promote awareness of the vale of community governance and the On Board initiative to deliver basic training to board members when they first take up a role. The plan also calls for the enhancement of resources and opportunities for sharing knowledge across the community.

Phase two, "embed and sustain", will seek to strengthen the pipeline of talented leaders in the sector, provide opportunities for chairs to support one another, and to promote increased business investment to support the work of community organisations.

In the foreword to the Action Plan, Steering Group Chair Mele Wendt MNZM MInstD and Head of the Centre for Social Impact Monica Briggs note that COVID-19 has put pressure on funding and presented huge challenges to the community sector, which is facing the potential of unprecedented change.

"There is always huge weight placed on those who serve on the governance (boards and committees) of community organisations, especially to make good strategic decisions and navigate changing environments," they write.

"This Action Plan is for the 500,000 committed community board members serving their communities."

#### **SEVEN OUTCOME AREAS**

The Action Plan was developed to answer seven questions on governance capability and effectiveness in the community sector:

- How can we ensure all board members have the basic skills and knowledge needed for their governance roles?
- 2. How can we ensure boards perform their governance functions well?
- 3. How can we ensure community governance is understood and valued?
- 4. How can we ensure a pipeline if diverse and talented community leaders become members of NGO and community boards?
- 5. How can we ensure best practice in community governance is identified and shared?
- 6. How can we ensure the boards of all community organisations are well chaired?
- 7. How can we ensure all kaitiaki exhibit and role model the right behaviour needed for success in their governance roles?



#### **READ THE PLAN**

The National Action Plan for Community Governance is available in full at centreforsocialimpact.org.nz IoD insights about not for profits from the 2019 *Director Sentiment Survey.* 

## Four Orici for NE oarcs



AUTHOR

AMELIA VELA, RESEARCH ANALYST

AT THE IOD'S GOVERNANCE

LEADERSHIP CENTRE

ust over half (51%) of IoD members serve on not-for-profit boards. Their workload and level of responsibility has increased markedly over recent years in line with increased compliance obligations and challenges facing the sector including:

intense competition for limited resources

securing reliable funding

competing entities providing similar or overlapping services

traditional reluctance to partner, enter joint ventures, collaborate or merge

attracting, motivating and retaining board members and staff

adapting to technological change.

Irrespective of size the expectations for boards working in the not-for-profit sector are similar to other sectors. Our 2019 Director Sentiment Survey (undertaken in association with ASB) found that the majority of not-for-profit boards were focusing on the future and assessing how they can strengthen their organisations.

They regularly discussed innovation and strategic opportunities (85%), how they can operate more effectively (76%), long-term value creation and their role as stewards of the organisation (79%), boards composition/renewal and the skills/experience they need now and for the future (81%).

These are areas that all boards should be discussing and it's encouraging that they are regularly on the agenda of many not-for-profit boards in New Zealand.



## "However, just 48% of boards had discussed workplace bullying in the past 12 months, while just 26% had discussed sexual harassment."

However, the Survey also found areas where notfor-profit boards needed to focus to help make their organisations stronger and more resilient in the future.

For example, just 56% of not-for-profit boards had discussed crisis management plans in the previous 12 months. With the COVID-19 lockdown upon us, that 56% may be glad that they did.

Four key focus areas for NFP boards and share some ideas on how to improve outcomes.



#### **ORGANISATIONAL CULTURE**

The board's role in governing organisational culture has been in the spotlight in recent times with increased scrutiny of the way that boards assess and monitor culture. The majority of not-for-profit directors were consciously and actively setting the tone and modelling their values for organisational behaviour (70%), and monitoring and regularly discussing the culture of their organisation (77%).

However, just 48% of boards had discussed workplace bullying in the past 12 months, while just 26% had discussed sexual harassment.

Having the processes and systems in place to allow cultural issues and misconduct to be reported is critical to ensuring that management is aware of potential issues. This includes ensuring that the organisation has whistleblowing policies and speak-up provisions in place. However, just 25% of not-for-profit boards agreed that they had discussed whistleblowing and how the organisation makes speak-up provisions effective in the last 12 months.

Further to this, just 47% had received comprehensive reporting from management about ethical matters and conduct incidents, and the actions taken to address them. Having the right information from management is vital to allow the board to effectively assess and monitor culture and all boards should take time to consider what information they need and whether their board is receiving comprehensive reporting from management regarding culture and conduct.

Points for boards to consider:

Take the time to consider what sort of culture is needed to support the successful delivery of the organisation's mission/purpose.

Take active steps to ensure that there is a common understanding between the board and management about the desired culture, including through the establishment of clearly defined values and principles.

Review the organisation's structures, policies and practices to ensure that they are supporting the culture that you are trying to embed.

Regularly monitor culture and conduct (eg through reports, site visits, market feedback) and the way that management is embedding culture within the organisation.

Ensure the decisions the board makes and the actions of the board send signals to staff and volunteers about what is acceptable.

### 2

#### OVERSEEING CLIMATE RISKS

Climate change is part of the governance landscape now and climate-related risks are increasingly being considered by organisations of all sizes across all sectors. Just over a quarter of not-for-profit directors (27%) said their board was engaged and proactive on climate change risks and practices in their organisations. The majority (75%) said their board considers environmental and social issues are very important to their business.

Demonstrable sustainable practices may become increasingly important when securing funding and donations in the future.

#### Points for boards to consider:

Invest in developing an appropriate level of understanding of climate-related risk at board level.

Take the time to assess whether climate risk is present within your organisation.

If climate risk is present within your organisation, consider what information the board needs to monitor and oversee this risk.

Question whether there are more sustainable ways to undertake your mission and purpose – it could become a competitive advantage.

"... less than a quarter (21%) of notfor-profit directors thought their board had a clear picture of the organisation's overall cybersecurity strategy and how it relates to industry best practice "

### 3

#### **SEEING CLIMATE RISKS**

Cyber-attacks are a real and constant risk facing organisations globally. However, less than a quarter (21%) of not-for-profit directors thought their board had a clear picture of the organisation's overall cybersecurity strategy and how it relates to industry best practice. While just 34% said their board regularly discusses cyber-risk, and are confident that their organisation has the capacity to respond to a cyber-attack or incident.

No organisation is immune to cyber-attack. It is vital that all boards regularly discuss cyber-risk and what they can do to build cyber resilience. This has become increasingly important as more organisations shift to remote working due to COVID-19.

#### Points for boards to consider:

Take time to consider how your organisation uses and relies on digital technologies to operate.

Ensure that the board as a whole understands the legal implications of cyber-risk as they apply to the organisation's specific circumstances.

Consider what cybersecurity expertise you need and how you can access it if needed

Establish an enterprise-wide cyber-risk management framework.

Engage with management to categorise any cyberrisks that are present. Include identification of which risks to avoid, which to accept, and which to mitigate or transfer through insurance, as well as specific plans associated with each approach.

### 4

#### DATA GOVERNANCE AND PRIVACY

Data governance and privacy should be a priority for all boards, not only because of the considerable harm breaches can have, but also to prepare for the introduction of new privacy legislation, expected in 2020. However less than half (48%) of not-for-profit directors agreed that their boards regularly discussed data governance and the use of data analytics to drive performance and strategic opportunities. Further to this, only 34% agreed their board receives comprehensive reporting from management about data breach risks and incidents, and the actions taken to address them.

It is vital that all boards ensure that there are processes, systems and frameworks in place to effectively oversee the data practices of the organisation, including the collection, storage and use of data. In addition to this, taking time to think about how the organisation can get the most value out of accessible data can lead to new avenues of value creation.

Points for boards to consider:

Develop board digital capability to meet the board's current and future data governance needs.

Prioritise privacy, understand your data and ensure that there are processes facilitating the transparency about how data will be used.

Ensure the board is getting comprehensive and timely reporting (good and bad news) from management (and other sources) about cybersecurity and risks.

Take the time to understand the implications of the incoming privacy legislation on your organisation.

"It is vital that all boards ensure that there are processes, systems and frameworks in place to effectively oversee the data practices of the organisation..."



This article is featured in **Boardroom April/May 2020 issue** 





"Such a scenario means that the financial responsibilities of arts company boards require sound judgement and steady nerves. Sailing close to the wind is built into the no-margins business model." — Peter Walls

A board appointment in a performing arts company can bring satisfaction of quite a special kind – but with that come distinctive challenges.

Performing arts companies are not-for-profit (NFP) organisations. The idea of "for purpose" is gaining ascendancy over "not for profit" since, quite properly, it puts the focus on non-financial outcomes – the good works achieved by the company.

I want to put "for purpose" to one side for a moment and face up to the stark financial reality of being an NFP. As a broad class, NFPs encompass very different business models. A humanitarian charity raises funds and distributes them. Performing arts companies, on the other hand, operate as businesses – but businesses with no margins. A zero bottom-line is a relief, not a disappointment. The ideal year-end result is a modest surplus achieved by keeping three interlocking income streams in balance: sales; sponsorship/community grants/donations; and government funding.

A focus on healthy sales is where performing arts companies most resemble other businesses with a retail dimension. Incidentally, concerts – certainly symphonic concerts – cannot be sustained by box office alone. Sir Selwyn Cushing, a former NZSO Chair, used to joke that orchestras work by reverse business logic – the more you do, the harder it gets.

Sales are crucially important. The revenue matters in itself, but it also provides reassurance to government funders of demand for the outcomes that they support and is a critical tool in persuading sponsors that their funds are well invested – that through their sponsorship they can engage with a sufficient and relevant market.

#### A lot of work goes into calculating expected audience levels – but this can't be an exact science.

A spectacular example of miscalculation occurred on my watch with NZSO. We'd engaged Burt Bacharach for a tour that would begin with what was to have been the first concert in Auckland's Vector Arena. There were construction problems so we had to move to the Aotea Centre. Next, Bacharach had to withdraw because of an injury. We booked Dionne Warwick but sales flatlined. We ended the tour \$30,000 short of target. In this case, there was a happy ending. Our first classical subscription tour that year was with Dame Kiri Te Kanawa as soloist. Kiri's tour ended \$30,000 ahead of budget.

I learned a lot from it – mostly not to risk your shirt on activity that might be perceived as not central to the organisation's mission.



The difference between sponsorship and philanthropy is perhaps not well enough understood. Sponsorship involves a business transaction in which the sponsor offers cash and/or contra (sponsorship in kind) to the arts company in return for a range of benefits (such as brand exposure, ticket allocation, hosting opportunities for clients plus a few intangibles such as the chance to make connections with other sponsors or the government as funder). The value placed on the benefits offered to the sponsor should be at least be equal to the value of the sponsorship itself.

A happy alignment between a sponsor's interests and the arts company can be the catalyst in creating something new and immensely valuable. In the early 2000s, Wrightson's (rural services providers) were principal sponsors of the NZSO. The "Wrightson's Tours" allowed the NZSO to visit regional centres and, for their part, Wrightson's got better engagement with their clients than through some of their rural event sponsorships thanks to the appeal of symphonic concerts to farmers' wives. The synergies were surprising, perhaps, but very real.

A marketing sponsorship with a substantial contra element commits the organisation to allocating a fixed amount of its marketing budget to the sponsoring organisation. If, for example, the percentage of the marketing budget that must be committed to, say, a newspaper group increases, that effectively reduces the flexibility to alter the balance between one marketing channel and another.

All arts companies depend on gaming trusts. These trusts make great things possible. The gaming trust system is, however, ridiculously inefficient. Every arts company in New Zealand invests human resource in just keeping up with the treadmill of applications (and reconciliations) – many for small grants that will, nevertheless, make the difference when it comes to staying on the right side of zero at year end.

What concerns me more than the inefficiency of the system is the fragility of this funding in the medium term. Gaming trusts are grappling with sinking-lid policies being adopted by local authorities. Such policies recognise that pokies are a contributor to problem gambling.

From a governance perspective, there are two issues here. The first is a practical one. How do we ensure that development funding for the arts company does not decline? But the second is ethical. How do we feel about the arts being so reliant on gaming?

The final component of development funding is philanthropy – generous people who support the arts, sometimes through their private trusts and foundations (such as the Wallace Arts Trust, the Adam Foundation, the Turnovsky Endowment Trust, and the Deane Endowment Trust). We couldn't do without them. One private donor regularly covers the cost of bringing children from low-decile schools to Chamber Music New Zealand's education concerts. There are countless examples of this sort.

Government funding comes with an expectation that it will supplement earned revenue and development funding at appropriate levels. Such a scenario means that the financial responsibilities of arts company boards require sound judgement and steady nerves. Sailing close to the wind is built into the no-margins business model.

#### Acting as custodians of an important art form,

encouraging innovation, and promoting diversity are all complicated by the constraints of the financial model. It is worth noting in passing the extent to which arts companies are price takers: venue costs, marketing costs, and people costs rise inexorably at rates that cannot be wholly recovered through adjustments to ticket pricing.

Arts companies are answerable to two masters: their boards and their core government funder. Each of these imposes significant reporting requirements. While there is overlap, the governing body and the funder have distinctly different interests and strategic priorities. It would be fair to say, by and large, that the starting point for board members is an appreciation of the intrinsic value of the art form while the Ministry of Culture and Heritage or Creative NZ begin with a desire to maximise the social benefits of the art form. There is no conflict between the two, but there is nevertheless a kind of natural tension.

A typical board member needs no convincing of the importance of the art form and its capacity to enrich lives. They are not embarrassed about their love for classical music and they are strongly supportive of education and outreach programmes that unlock this for young people regardless of cultural or ethnic background. Almost all will have been invited to join the board because of critical supporting expertise financial, perhaps, or connectivity in the business world that can be so valuable in nurturing sponsorships. One of the important things about classical music is that it is not the property of any single culture or ethnicity. It crosses boundaries - happily. Some of its greatest exponents are not ethnically from the Western tradition: Seiji Ozawa, Lang Lang, the Palestinians in Barenboim's East/West Divan Orchestra, Wilma Smith, Jonathan Lemalu, Kiri... the list could go on. But the capacity of what looks a conservative art form to transform young New Zealanders' lives and horizons does not appear to be front-of-mind for government funders. It is becoming harder to argue the case for classical music, opera, ballet.



This article is featured in Boardroom April/May 2020 issue





#### BY INSTITUTE OF DIRECTORS PUBLISHED 26 MAR 2020

any organisations are required to hold their annual meeting within the next few months but they have been disrupted by COVID-19. To relieve pressure on organisations at this time, we are working with the government to see what can be done to extend the annual meeting timeframe (and other procedural timeframes) for companies and not-for-profits. We will keep members updated on any developments. In the meantime, we have set out some guidance below\*.

#### VIRTUAL SHAREHOLDER MEETINGS

Since 2012, New Zealand companies have had the ability to conduct virtual shareholder meetings including using online voting. Providing virtual options for shareholder meetings does not change the basic shareholder meeting processes, it just provides alternative means to conduct them and more shareholders may be able to participate as a result. A hybrid between virtual and physical meetings are becoming more common in New Zealand and can enable a wider mix of shareholders to engage.

A few years ago, the proposition of virtual-only shareholder meetings was met with strong shareholder opposition in New Zealand. However, in the current climate, such meetings may be an appropriate solution. For more information, see the IoD Directors Brief Shareholder meetings in the digital age.

For most incorporated societies, their general meeting requirements are set out in their rules.

Some organisations' rules will expressly cover virtual

\* Since this article was written, the government has announced a temporary insolvency package which includes relief for AGMs. We provide an overview of the relief in our article <a href="Temporary insolvency relief for directors">Temporary insolvency relief for directors and organisations</a>

meetings and electronic voting. Other organisations' rules will not (especially if their rules haven't been reviewed for some time), and they may also have other inflexible and unhelpful provisions for meetings in extraordinary times. It is noted that the proposed new Incorporated Societies Act will likely have considerations for electronic voting and meetings.

#### **PRACTICAL TIPS**

**Keep up-to-date:** COVID-19 is an evolving space. Daily developments and updates from the government, regulators and other key stakeholders may have an impact on annual meetings and associated matters

And keep others up-to-date: Shareholders/members need to be fully informed about annual meetings including if there are material changes

**Prepare contingency plans:** Given the changing situation, it is prudent for organisations to have back up plans for annual meetings, for instance in terms of venues, dates, key personnel and other procedural logistics

**Ensure participation:** Whatever form the meeting takes, ensure that shareholders/members have sufficient opportunity to ask questions and to engage

**Streamline format:** The usual agenda and speeches at meetings may need to be limited to essential business and legal matters, with other matters deferred to a later date

**Future preparation:** COVID-19 disruption may have highlighted deficiencies and limitations in some organisations rules. When things settle down, organisations should review their rules to ensure they have the flexibility to hold meetings effectively if an unexpected event occurs (eg with online meetings, and flexible notice and adjournment provisions).

#### NZX GUIDANCE FOR LISTED COMPANIES

NZX has issued **guidance** noting that the NZX Listing Rules provide some flexibility in managing annual meetings including around electronic communications. It also states that "While the NZX Corporate Governance Code sets out timing considerations for sending out notices of meeting, those apply as recommendations. You are able to depart from that timing recommendation (for example, if the additional time might assist you to better assess how and when you might most appropriately host your annual meeting), so long as you meet your statutory timing requirements."

#### **CHARITIES SERVICES GUIDANCE**

Charities Services has provided <u>information on COVID-19 for charities</u>. It notes "While charities are generally required to follow their rules, we won't take compliance action against charities that are taking practical steps to prevent the spread of COVID-19. You must prioritise taking steps to minimise social contact, even if this breaches your rules on how you should carry out your AGM or meetings."

#### OTHER USEFUL GUIDANCE

In the UK, the publication <u>AGMs and the impact</u> <u>of covid-19</u> sets out the following options:

Adapt the basis on which you hold the AGM

Delay convening the AGM, if notice has not yet been issued

Postpone the AGM, if permitted under the rules

Adjourn the AGM

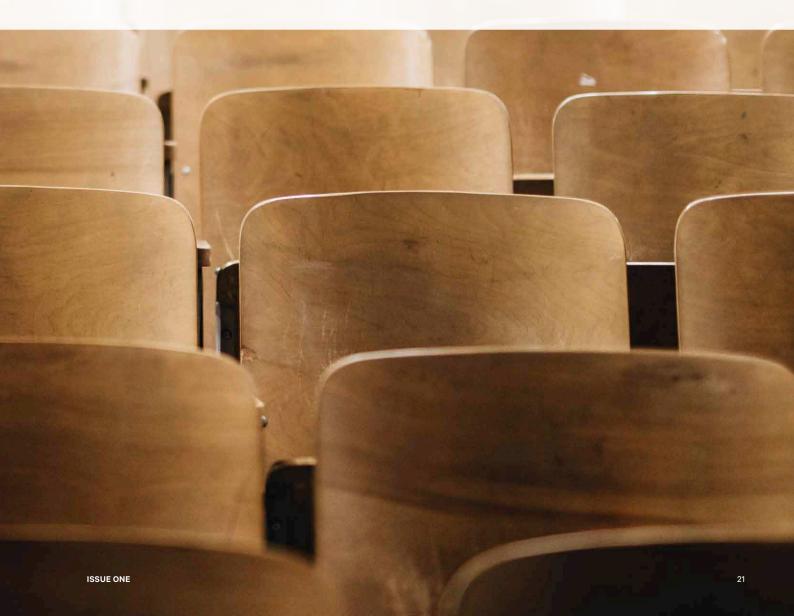
Conduct a hybrid AGM, if permitted under the rules

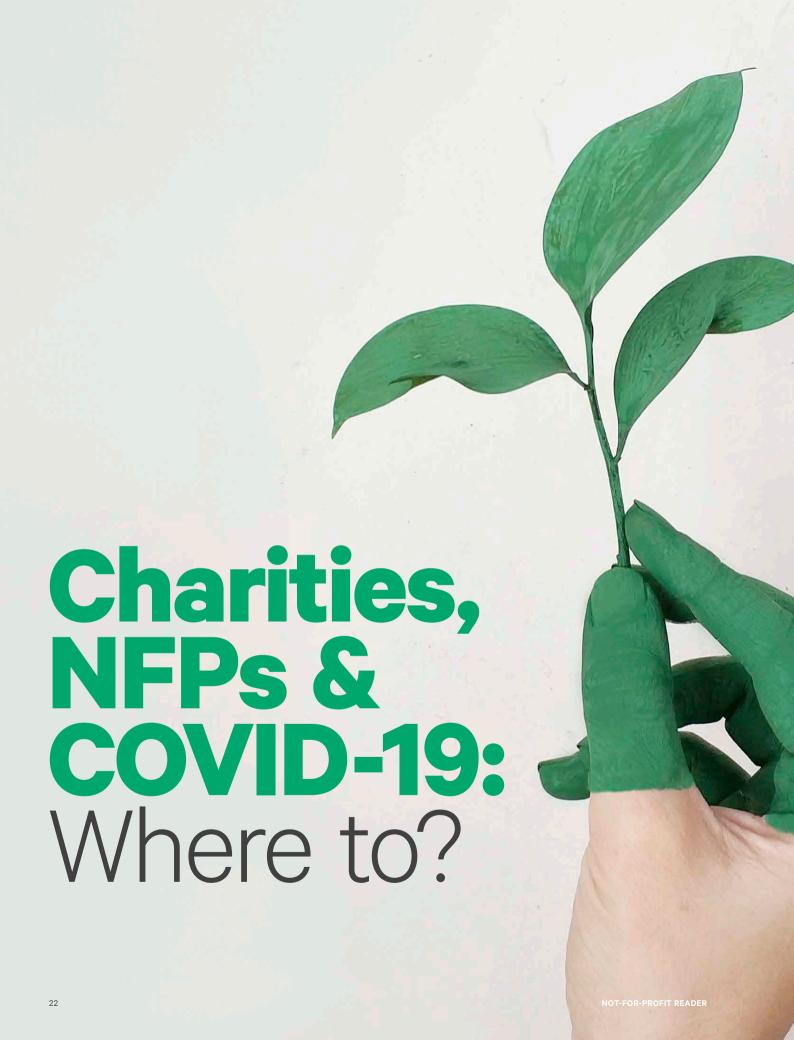
While this is for UK companies, some of the general principles are relevant to New Zealand organisations.

Other relevant AGM resources at this time include COVID-19 and the impact on AGMs, NFP AGMs and Avoiding Corona Virus and Holding or not holding general meetings of members in extraordinary circumstances.

See also <u>insights</u> from experienced director Rick Christie CFinstD on what has worked well in his past experience with virtual board meetings. ●

"While the NZX Corporate Governance Code sets out timing considerations for sending out notices of meeting, those apply as recommendations. You are able to depart from that timing recommendation (for example, if the additional time might assist you to better assess how and when you might most appropriately host your annual meeting), so long as you meet your statutory timing requirements."





#### BY STEVEN MOE MINSTD PUBLISHED 24 APR 2020

"Simply by sailing in a new direction, you could enlarge the world"

Allen Curnow

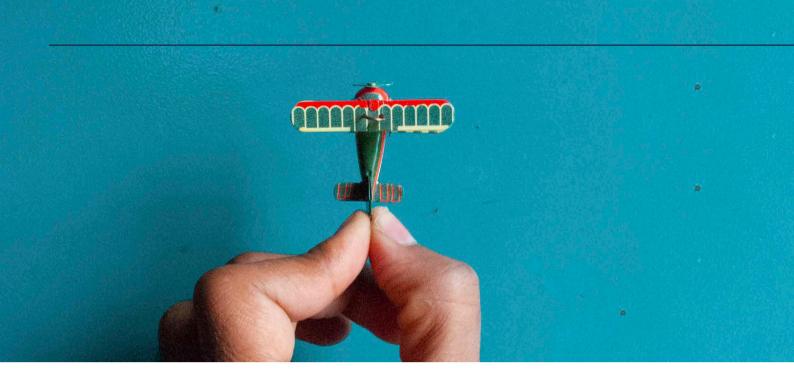
OVID-19 is having an impact on all parts of our society. Some of the most vulnerable organisations are the ones that in turn help those most in need. While business has a strong voice to advocate for assistance what about charities, NFPs and community organisations? What are the unique challenges they are facing and how might they respond to the new world we will be facing?

This is not a small sector, although it is so diverse that it sometimes lacks a unified voice. Statistics New Zealand recently <a href="https://example.com/highlighted data">highlighted data</a> showing the monetary value of non-profit institutions at \$12.1 billion in 2018. According to Charities Services, there are more than 27,000 registered charities who employ around 130,000 staff and millions of hours are given in volunteer hours each week. But the importance of this sector goes beyond the statistics – each of us will be aware of a charity or NFP that we know or support which embodies the best of us: demonstrating kindness, compassion, empathy and understanding. That is what is most needed, yet the organisations at the front lines offering it are also most at risk in this crisis.

When Allen Curnow wrote the words above in 1942 he had in mind the first explorers to New Zealand and certainly not COVID-19 and its aftermath. But perhaps this will turn into an opportunity for many organisations to reflect on their purpose and strategy and then begin to sail in a new direction too.

#### WHAT ARE THE KEY CHALLENGES CURRENTLY FACING THE NFP SECTOR?

The good precautions in place to reduce and eliminate the spread of Covid-19 have resulted in normal fundraising grinding to a halt with a number of usual activities and new initiatives being postponed or cancelled. Uncertainty around employment is causing many donors to tighten their purse strings as well.



With both fundraising and a reliance on donations being vital for many NFP organisations, this has left a financial hole to be filled.

All of this is heightened by the fact that many charities do not carry significant reserves, will not be able to access additional capital or debt easily, and will have reduced access to volunteers. The outcome is a situation that will affect the ability of many of these groups to survive, which in turn will most impact the vulnerable in our communities who they most often serve.

A letter sent in early April from a collective of charity, non-profit and community groups to the Prime Minister highlighted that such groups will be hard hit by the crisis. It suggested ways the Government could assist to alleviate some of the financial pressure that is currently being felt by many, such as an emergency stabilisation fund, special low interest loans, tax relief to incentivise donations and dedicated support to provide assistance to the unique challenges faced by the sector.

## WHAT ACTION SHOULD NFPS BE TAKING IN THE SHORT TERM TO ADDRESS THESE ISSUES AND, IN PARTICULAR, THOSE NFP'S CURRENTLY WORRIED ABOUT THEIR SOLVENCY?

The Government has tried to offset the financial burden felt by many due to Covid-19 with a number of financial

packages. This included \$27 million for essential services in the social sector to ensure such services can continue to assist during the lockdown. However, for those unable to access these funds there are other options:

Wage subsidy scheme: If they have not already and are eligible, these groups can apply for the Government's wage subsidy scheme. What many are realising is that this doesn't cover all costs (or even all of the wages) but it will help.

Emergency funds: If you have funds reserved for that 'rainy day', this situation may just be that. Consider your options, as accessing your emergency funds may relieve some of the financial pressure.

Virtual fundraising: If you do not have an online fundraising plan, this is the time to create one. As many New Zealanders are spending more time on the internet than ever before, now is the time to get your message out there. Fundraising can be done through email campaigns or social media – an alternative is television, as Sky have just announced it is offering \$1 million worth of TV advertising airtime to charities and community organisations aligned with Covid-19 support efforts.

Get advice: If you are worried about the issues that you are facing, particularly in regards to solvency, speak to an independent advisor who will be able to discuss options and potentially a way forward with you.

## WHAT OPPORTUNITIES ARE THERE FOR THE SECTOR IN THE LONG TERM AS A "NEW NORMAL" IS ENTERED INTO? WHAT DO NFP'S NEED TO BE THINKING ABOUT NOW IN ORDER TO HELP ENSURE THEIR LONG-TERM VIABILITY?

In these unprecedented times, it can be difficult to consider the long term, when you are just trying to get by day-to-day. However, for some entities this may be the chance to look for a reinvention. Strategic thinking is more essential than ever. What has been outmoded or part of tradition in an organisation that needs to be trimmed back or thought through?

There are a number of charities out there that aim to assist and serve with the same purpose. Has the option of consolidation ever crossed your mind? Now could be the time to merge and join forces. Consider the resources and skills that could be brought to the table if combined, and the opportunities that it could potentially bring.

It's important to stay positive. Now is the time to consider and explore new opportunities and look at the resources that are available to you. In doing that here are some other key principles to focus on:

Preparation: As a Board have you prepared plans regarding key issues: health & safety of employees, contingency plans in light of changed circumstances, regular review of accounts, review of contracts

and analysis of leases and rights to suspend them, communications strategies etc.

Leadership: This is the opportunity for the leadership to set the tone for the rest of the organisation to follow. When the crisis has passed how will the leaders and their attitude towards others be remembered? Emphasise clear and concise communication to employees, service users, donors and other stakeholders.

Collaboration: Open up discussions with others in your sector, and beyond – what are they going through and can you learn from each other? Is there some synergy or unexpected mutual benefit that could come from those conversations? This is something we have seen arising several times already as people learn from others they may not have spoken to before the crisis.

One thing is for sure and that is the old ways are unlikely to work in the new environment. It is the organisations which are nimble and able to look for opportunities which will survive. Doing that will likely involve sailing in a new direction, and as Allen Curnow said, that may result in an expanded world with new possibilities. •

Author: **Steven Moe MinstD** is an IoD facilitator, board member, and partner at Parry Field Lawyers. See **Steven's profile**He hosts a weekly podcast "**Seeds**"

## Governance in charities

The IoD's Governance Leadership Centre have called for a voluntary governance code for charities in our submission to Internal Affairs on its plan to review and modernise the Charities Act 2005.



BY INSTITUTE OF DIRECTORS PUBLISHED 1 JUL 2019

#### AN OPPORTUNITY TO RAISE THE STANDARDS OF GOVERNANCE IN CHARITIES

harity and not-for-profit (NFP) governance are of core interest to the IoD, with 51% of our members serving on a NFP. In May, we submitted on the Department of Internal Affairs' discussion document on modernising the Charities Act 2005, the first public consultation on the Act in 14 years.

This review is one of many relevant to the NFP sector (eg trusts, Te Ture Whenua Māori, incorporated societies and education reforms). Reform of the Charities Act should take into account these wider reforms to ensure that there is cohesion across the sector, and NFPs will need to refocus their attention on their governance arrangements.

The review of the Charities Act is limited in scope and some stakeholders in the sector have called for a more comprehensive review to be undertaken by the Law Commission. We supported this in our submission, but we still see the current review as an opportunity to help raise the standards of governance in charities.

#### **CHARITIES IN NEW ZEALAND**

The Charities Act provides a registration, reporting and monitoring system for over 27,000 charities in New Zealand. Charities spend around \$17b annually, manage \$58b in total assets, and are supported by more than 230,000 volunteers and 180,000 paid staff.

We understand that 3.5% of charities are companies, 25% are subject to the Incorporated Societies Act 1908, 38% are subject to the Charitable Trusts Act 1957, and most of the remaining charities are unincorporated societies and trusts.

New Zealand has significantly more charities per capita than other similar commonwealth countries such as Australia and Canada. This adds to the challenges in the sector around competition for resources, funding and service provision.

#### **KEY CHALLENGES FOR CHARITIES**

A recent Charities Services' survey highlighted the following key challenges for boards and committees (beginning with the biggest challenges):

obtaining funding
strategic planning for the future of the charity
identifying people with the right skill mix to
come on boards

compliance with requirments from government
managing risk to the charity
recruiting staff and managing volunteers
understanding health and safety obligations
difference between the board's role and
management/volunteers
how to keep and report financial information
how to run a meeting.

#### SHOULD NEW ZEALAND INTRODUCE GOVERNANCE STANDARDS?

The Department asked in its consultation whether governance standards would help charities to be more effective and whether the Australian governance standards could be adapted to work in New Zealand.

In Australia, charities must meet core, minimum governance standards that essentially require them to remain charitable, operate lawfully, and to be run in an accountable manner. They are set out in law and are relatively high level. The Australian charities regulator can take action against charities for breaching standards.

New Zealand doesn't have governance standards or a code specifically for charities or not-for-profits and is out of step in this regard with other similar jurisdictions. However, there are several governance codes in New Zealand relevant to NFPs including the FMA's Corporate Governance in New Zealand: Principles and Guidelines and the IoD's Code of Practice for Directors.

In our submission, we said that there is considerable benefit in introducing governance standards through a specific governance code for the charitable/NFP sector that is fit for purpose and value adding to help raise the standard of governance.

A key challenge will be to balance raising standards without burdening organisations and deterring people from getting involved in leadership.

Rather than having legislative governance standards, we support the establishment of a voluntary governance code. This can provide flexibility and more comprehensive guidance (for instance through principles, recommendations, commentary and examples). It would be important to strongly promote take up of the code and charities that adhere to the code would have the considerable benefits of improved governance including through recognition from stakeholders (eg funders).



#### SUBMISSION ON MODERNISING THE CHARITIES ACT

As part of assessing what would be most effective in New Zealand, we encouraged the Department to consider the effectiveness of charity/NFP governance standards/codes in similar jurisdictions overseas including the following.

	Governance standards/codes	Status
England and Wales	Charity Governance Code	Voluntary
Scotland	The Scottish Governance Code for the Third Sector	Voluntary
Ireland	Charities Governance Code	Mandatory
South Africa	King IV Report on Corporate Governance for South Africa (this includes a supplement for non- profits) IoDSA	Apply and explain
Personal gain	ACNC Governance Standards Not-For-Profit Governance Principles (AICD)	Mandatory Voluntary

#### KEY CONSIDERATIONS FOR A NEW ZEALAND CODE INCLUDE WHETHER IT SHOULD:

be solely for charities, or other NFPs and impact/ purpose driven organisations and

have differential requirements for large and small organisations (eg as in England and Wales)

A new governance code for charities and/or NFPs may be able to address some other issues highlighted in the discussion document for example, in relation to the accumulation of funds and managing conflicts of interest (which we discuss further in our submission).

#### SHOULD THERE BE GREATER RESTRICTIONS ON WHO CAN BE OFFICERS OF CHARITIES?

The Department asked whether people with convictions for serious offences (eg serious drug offences, murder, or sexual offences) should also be disqualified from being officers (eg board members). In our submission, we supported the Department looking at options to strengthen who can be officers including disqualifying people who have been banned from governance roles overseas from being officers of charities in New Zealand.

#### IS A NEW 'MICRO ENTITY' REPORTING TIER NEEDED?

Charities have annual reporting obligations to Charities Services and data shows that many charities are not complying with minimum reporting requirements and especially Tier 4 charities (who must attach performance reports to their annual return).

Some stakeholders have proposed that a new microentity reporting tier should be created for charities with \$10,000 or less operating expenditure under which they wouldn't need to comply with the current XRB reporting standards (eg they could just complete a fill-in-the-box financial statement).

There are good reasons for the standard of compliance in the current regime, including the need for transparency and accountability for public funds. However, this needs to be balanced against other factors including the compliance time, cost, capability and risks to the sector. On balance, we thought that there is merit in creating a new reporting tier with simpler reporting requirements for the smallest charities. •

View IoD's submission



This article is featured in Boardroom June/July 2020 issue

## How a not-for-profit board works

BY INSTITUTE OF DIRECTORS 18 SEP 2014



FP organisations are generally created to benefit the community or members and, as the name suggests, do not have the objective of making profits which will be distributed to shareholders/owners. The NFP sector in New Zealand includes charity, voluntary and non-government organisations.

Governance is becoming increasingly important in the NFP sector. Sometimes what starts as a small group of people working on a voluntary basis, grows to become an organisation that employs people or receives public funding. In this case it becomes important to put in place proper governance as part of being accountable for how the funds can be used.

Many directors begin their career in the NFP sector so it is useful to understand some of the differences and similarities with NFP boards.

Good governance of NFP's has a lot of the same advantages of good governance in other sectors, that is making sure that an organisation has a clear vision and strategy and management and staff are clearly aligned to achieve it.

In the NFP environment organisations will often have what is referred to as a governing body. There are usually three officers (also called office bearers or office holders) appointed to a governing body:

chair
treasurer
secretary.

Officers must act in accordance with the funding allocated to them and the powers vested in them by the organisation's constitution. Like any officer or director they have a duty to:

act in good faith and in the organisation's best interests

take reasonable care in exercising their duties.

"Many directors begin their career in the NFP sector so it is useful to understand some of the differences and similarities with NFP boards."

#### CHAIR TREASURER

The chair is expected to:	The treasurer's tasks may include:	
conduct efficient governing body meetings	ensuring that the finances of the organisation are managed appropriately	
set annual meeting timetables prepare meeting agendas	making recommendations to the governing body about income and expenditure, investments and debts	
manage the distribution of papers in advance of governing body meetings	keeping records of all incoming and outgoing payments	
ensure accurate recording of meeting decisions	reviewing the annual statement of financial performance (profit and loss) and statement of financial position (balance sheet)	
liaise with the chief executive outside scheduled governing body meetings		
instruct the auditor in the absence of a finance committee	ensuring that the annual audit process is undertaken in a timely fashion according to legal requirements	
establish governing body committees (sub-groups of the full board) for specific tasks and define their terms of reference	providing regular financial statements to the governing body and providing explanations where required	
attend committee meetings where appropriate	drawing up the annual budget in consultation with staff and other governing body members	
make sure the governing body's resources are being well and appropriately used.	ensuring that sufficient funds are available at all times to support the organisation's liabilities.	



#### **SECRETARY**

The secretary's tasks may include:

convening meetings and booking rooms

dealing with correspondence

preparing agendas for meetings (in consultation with the chairperson)

taking the minutes of meetings (although some governing bodies may want to appoint a minute-taker for this task)

ensuring back-up information is available at meetings when required.

#### CHARACTERISTICS OF NFP'S THAT SET THEM APART FROM CORPORATES:

They are accountable to a wide range of stakeholders.

They may be a company formed under Companies Act or established under their own act of Parliament, or the Charitable Trusts Act or be an Incorporated Society

The governing body may be established by statute or elected by the members or some overarching body or be self elected

The governing body may perform a management and operational role as well as governance depending on the size and number of employees

The governing body members are typically appointed for their interest in and empathy with the NFP and may often be unpaid volunteers. •

Adapted from the <u>Charities' website</u>. See also <u>Starting a board</u>





A report on New Zealand's NGO sector identifies governance training and support as critical to the success of charities, not for profits and community organisations.

ew Zealand's NGO governance capabilities need considerable investment if the organisations are to thrive in a disrupted future.

The report What is the Future for NGO Governance? produced by the Centre for Social Impact (CSI) in partnership with the Superdiversity Institute for Law, Policy and Business, released in September, identifies good governance as key to the success of local charities, not for profits and community organisations.

Citing digital disruption, new community expectations and changing patterns of giving and volunteering, it recommends NGO boards – often volunteers with little formal governance training – seek to upskill their members now in the basics of good governance practice.

It suggests a community of expert NGO directors is needed, and that NGO chairs need practical support to get the best from their boards. Those boards would benefit from access to tools (such as selfappraisal and stakeholder mapping) to enhance their performance.

"NGO's in New Zealand generate an estimated \$20 billion in annual income," says researcher and report author, CSI associate, Dr Jo Cribb.

## "NGO s in New Zealand generate an estimated \$20 billion in annual income"

"These NGOs touch the lives of New Zealanders in many ways. They provide services to the elderly, youth, and vulnerable families and whānau. They deliver much of what holds our communities together, such as sports, arts, environmental and cultural programmes. They employ around 100,000 people (nearly 5% of the workforce) and contribute nearly 3% to GDP.

"If the work of volunteers is included the contribution to GDP rises to 6 percent each year. It is in all our interests that they are well-governed."

Cribb's research identified board members as playing important roles in developing strategy and securing funding for the organisations they oversee. But it also found a lack of governance training and support was available to those board members.

"Few of them have had any formal governance training, and many receive limited support in these roles."

#### NATIONAL STRATEGY FOR COMMUNITY GOVERNANCE

The Centre for Social Impact is working with a number of organisations including community trusts, service providers and umbrella groups to develop and implement a strategy for community governance that aims to enhance the value, and support best-practice governance, of New Zealand's NGO organisations. The strategy will be formally launched at an event in December, hosted by the Institute of Directors.

**New Zealand's NGO Sector** 

114,000

**NGOs** 

\$20 Billion

Annual Income<sup>\*</sup>

100,000

**Employed Persons** 

The sector includes a wide variety of organisations from informed commettees to incorporated societies to charitable trusts to social enterprises.

*27,000* 

Charities

supported by around 230,000

Volunteers

Source: What is the Future for NGO Governance?

\* estimated figure



#### <u>Governance</u> <u>innovation at</u> <u>the Sisters of Mercy</u>

One of New Zealand's longest-serving NGOs, the Sisters of Mercy has an unusually long-term view of governance.

The organisation wants its ministries to continue doing good work for many generations.

"The Sisters are very mindful that there is a need to ensure that their ministries continue despite a declining Congregation of Sisters," says Astrid Lambert, group administrator of Nga Whaea Atawhai o Aotearoa Tiaki Manatū, Sisters of Mercy Ministries New Zealand Trust.

"They want to ensure that they set up their ministries for as long as there is need."

Tiaki Manatū Ministries NZ Trust is the single shareholder of all the incorporated societies of the Sisters of Mercy. The organisation has varied portfolio of interests that include schools, community development, spirituality support, healthcare and aged care facilities, and affordable accommodation. Each of its ministries is a limited liability company with its own board and chief executive.

"Most of our directors are volunteers," Lambert says.
"What people like is the opportunity to give something back to the community." Where possible a ministry board has a Sister of Mercy on it, but board composition is

based on getting a balance of skills and honouring the treaty partnership, which means that boards are diverse and not all directors are necessarily Catholic. When directors come onto a board they undergo an introduction to "Whanau Mercy" and the principles that underpin the Sisters of Mercy's work. Tiaki Manatū supports its boards to upskill through a planned programme of professional development supported by the Institute of Directors.

This is a "two-way street", Lambert says. On the one hand it ensures that Mercy boards are as capable as they can be. On the other, it provides professional support for the volunteer directors, who can develop their governance experience and expertise with an eye to expanding their governance portfolio in the future. •



This article is featured in Boardroom Oct/Nov 2019 issue

## Create your future

Just 50% of directors agreed that their board has the right capabilities to deal with increasing business complexity and risk.

(Director Sentiment Survey 2019)

