

Review of the NFP Governance Principles - Discussion Paper

July 2023

1. INTRODUCTION

The AICD Not-for-Profit Governance Principles (the Principles) are considered one of the key sources of publicly available guidance for directors and those involved in governance of Australian not-for-profits, (NFPs) including charities. The Principles were first published in 2013 with an updated and expanded document released in 2019 following an extensive review.

It has been over four years since the publication of the current Principles and this is an opportune time to review and update this key piece of guidance for NFP directors, given the evolution in stakeholder and regulator expectations as well as governance practice.

The AICD's engagement and support of the NFP sector, including through the Principles and other guidance and research, is strongly aligned with our purpose to 'strengthen society through world class governance'.



Appendix A provides an extensive list of AICD guidance and resources for NFP directors

The Principles can be accessed at the following webpage: <https://www.aicd.com.au/tools-and-resources/not-for-profit-governance-principles.html>

AUSTRALIAN INSTITUTE
of COMPANY DIRECTORS

Not-for-Profit Governance Principles

Second Edition, January 2019



2. REVIEW OBJECTIVES

To ensure the Principles remain fit-for-purpose as one of the chief sources of guidance for the governance of NFPs, the review will pursue the following objectives:

- a. Capture developments in Australian governance practices and emerging issues;
- b. Reflect changes in regulatory obligations and community expectations applying to NFP organisations and directors; and
- c. Update the structure and design of the Principles.

3. REVIEW PROCESS AND TIMELINE

A key component of the review process will be the AICD consulting with the AICD membership base, particularly senior directors of all sizes of NFPs. To guide the review, we have established a Director Reference Group, comprised of Virginia Bourke FAICD, Bruce Cowley FAICD, and Fiona Payne FAICD, who will provide close support and feedback to the AICD throughout the review.

The AICD will also consult with key external stakeholders, including legal experts, relevant industry bodies and Government agencies and regulators. The AICD aims to release the updated Principles in the first quarter of 2024.





4. AREAS OF FOCUS

The AICD has identified areas of focus for updating the Principles aligned with the objectives listed above. The areas of focus are not exhaustive but are intended to signal where the AICD is intending to review and update the existing guidance.

The areas of focus will use, where appropriate, other AICD guidance and tools and be informed by the extensive work the AICD does with NFP directors, including the annual [NFP Study](#).

We welcome feedback on these areas.

OBJECTIVE A: CAPTURE DEVELOPMENTS IN AUSTRALIAN GOVERNANCE PRACTICES AND EMERGING ISSUES

Since publication of the current Principles in 2019, there has been an evolution in governance practices of all Australian organisations. This has been driven by not only changing regulatory obligations but importantly stakeholder and community expectations. Directors of both for-profit and NFP organisations have been grappling with a broadening scope of risks and issues that boards are increasingly expected to oversee.

PROPOSED FOCUS AREAS	DETAIL
Environment, Social and Governance (ESG) and Sustainability	ESG and sustainability issues are increasingly key considerations for NFP boards. The Principles do not currently explicitly refer to ESG issues or key elements of ESG oversight, for example climate risk. The AICD intends to reflect guidance published under the Climate Governance Initiative in the Principles. For instance, guidance on board structures and sustainability and how NFP boards can oversee climate risk.
Cyber Security and Data Governance	Cyber security and the protection and management of data has emerged as a standout issue for boards, especially with several high-profile breaches in late 2022. The AICD intends to reflect guidance published under its Cyber Security Governance Principles , which includes a SME/NFP checklist of practical low-cost steps to enhance cyber security resilience.
Stakeholder Governance	An increased focus in the Principles on how boards can incorporate ‘stakeholder governance’ into their practices drawing on the AICD publication Elevating Stakeholder Voices to the Board . As discussed below, the AICD is proposing to have a dedicated section on how ‘client voice’ can fit into the governance practices of NFPs.

PROPOSED FOCUS AREAS	DETAIL
First Nations-led organisations	<p>Expanded recognition of the governance of First Nations led organisations. The Principles currently have very limited references to First Nations organisations and their governance obligations and practices, including those incorporated under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act) and concepts such as reflective practice.</p> <p>This guidance would also seek to reflect on how other NFP boards can, where appropriate, incorporate First Nations’ considerations in governance processes.</p> <p>Amendments to incorporate such perspectives would be made in close consultation with key First Nations stakeholders.</p>
Organisational culture	<p>Directors are increasingly expected to have oversight of organisational culture, covering employees, volunteers, and suppliers. This issue has been magnified by changes in work patterns since COVID, including the challenges the NFP sector faces in recruiting and retaining staff in key sectors.</p> <p>Furthermore, boards are impacted by reforms arising out of Royal Commissions, and government inquiries such as the Respect@Work Inquiry into workplace sexual harassment, which recommended the AICD develop education for boards and directors (see the AICD commissioned Clayton Utz report and A director’s guide to preventing and responding to sexual harassment at work).</p>
Diversity and inclusion	<p>Increasing diversity is an increasing focus for NFP boards. The AICD’s annual NFP Study found that “improving board composition (including skills, diversity and succession planning)” as one of the top three actions for NFPs to take. The most recent 2023 AICD Director Sentiment Index also found that “Meeting board diversity requirements (e.g. gender, age, ethnicity)” was one of the top three challenges their board faced in recruiting new directors.</p>

OBJECTIVE B: REFLECT CHANGES IN REGULATORY OBLIGATIONS AND COMMUNITY EXPECTATIONS APPLYING TO NFP ORGANISATIONS AND DIRECTORS FOR NFPs

Since the publication of the Principles, the expectations and demands on NFP directors has markedly shifted, in part due to the increased community focus on the governance of NFPs in key social services sectors following the Aged Care and the Disability Royal Commissions. This change has been reflected in the results of the AICD’s annual **NFP Study** and has meant there are now greater demands on NFP directors, necessitating broader skill sets around NFP board tables.

PROPOSED FOCUS AREAS	DETAIL
Commonwealth regulatory changes	Reflect legislative and regulatory change since publication in 2019, including changes to Australian Charities and Not-for-profits Commission (ACNC) governance guidance and reporting requirements.
Aged Care and Disability Royal Commissions findings and recommendations	Reflect, where appropriate, the governance specific findings and recommendations from the Royal Commissions where they may be of value to the broader NFP sector.
Impact of the COVID-19 pandemic	Reflect on the impact on the COVID-19 pandemic on governance practices, including increased expectations for the board in crisis management and scenario planning.
Client voice	<p>Include a new section on how Boards can incorporate ‘client voice’ into their governance processes.</p> <p>As noted below, this section may be also published as a standalone publication.</p>
Effectiveness and evaluation	Update existing guidance on how NFP directors can exercise oversight of the effectiveness of key programs and whether the NFP is meeting its purpose.
Director skills and remuneration	<p>Update existing drafting on director skills and recruitment.</p> <p>Include drafting on board consideration of whether to pay director fees.</p>

OBJECTIVE C: UPDATE THE STRUCTURE AND DESIGN OF THE PRINCIPLES

The AICD intends to update the design and structure of the Principles consistent with recent AICD publications.

Where appropriate, we will seek to shorten and simplify the Principles to ensure that they are not considered a barrier for directors accessing the guidance.

PROPOSED FOCUS AREAS	DETAIL
Applicability	Ensure each principle is clear and useful for boards. For example, including a simple checklist for boards to report and self-assess performance against the Principles.
Accessibility	Improve accessibility by ensuring that the Principles are written in plain English and can be understood by a wide range of audiences.
Visual aids	Enhance the use of visual aids and diagrams to assist in conveying key guidance and interpretation.
Standalone publications	The AICD also plans to publish a page 2 snapshot of the Principles and a standalone short publication on 'client voice', which would also be a section of the Principles.
Consolidating certain principles and certain sections	Identify sections that could be consolidated to reduce duplication and improve digestibility. For example, it may be appropriate for the existing principles of Board Effectiveness and Board Composition to be merged into one principle.
Real world case studies	Where possible the AICD's preference is to use 'real world' case studies. The Principles currently has hypothetical case studies.
Glossary and Resources	Include a glossary and attachment listing AICD, ACNC and other relevant resources.

5. CONSULTATION AND NEXT STEPS

The AICD invites comment on the proposals set out in this Discussion Paper by 12 September 2023 to NFPGovernancePrinciples@aicd.com.au.

The following questions are intended to identify specific areas for feedback that would assist AICD in updating the Principles.

- a. Do the above focus areas cover where the Principles could be updated? Are there any other areas the AICD should focus on?
- b. How do you use the Principles? What sections are out of date or are not consistent with current NFP governance practice and trends?
- c. Do the Principles assist a new NFP director to understand better governance practice?
- d. How can the Principles be made more relevant to smaller or volunteer-based NFPs?
- e. What are the key ESG considerations facing the boards of NFPs?
- f. Should any of the existing principles (e.g. Roles and Responsibilities, Culture, Purpose and Strategy) be amended, merged or removed?
- g. Should the AICD develop a standalone section on 'client voice'? What should this guidance cover?
- h. What are the key NFP governance related implications from the Aged Care and Disability Royal Commissions?
- i. How can the AICD appropriately reflect on the governance of First Nations-led organisations and the regulatory obligations they face?
- j. Are there any specific areas of the Principles that could benefit from 'real life' case studies or examples of best practices?
- k. How could the Principles be improved in clarity and accessibility for a broader cohort of NFP directors?
- l. Is there anything else the AICD should consider when updating the Principles?



APPENDIX A - AICD RESOURCES FOR NFP DIRECTORS

GENERAL

[NFP Resource Centre](#) (includes Director Tools, NFP related policy submissions, NFP education, AICD scholarships, webinars)

[NFP Governance Principles](#) (Second Edition, January 2019)

[NFP Governance & Performance Study](#) (2023)

[Six Fundamentals of NFP Governance](#) (Roundtable Series)

[Directors' "best interests" duty in practice](#)

AUDIT

[Periodic Comprehensive Review of the External Auditor](#)

CLIMATE

[NFP Climate Governance Guide – Starting the journey to Net Zero](#)

CYBER

[AICD CSCRC Cyber Security Governance Principles](#) (includes SME and NFP Checklist)

INNOVATION

[Innovation Study 2022](#)

STAKEHOLDER ENGAGEMENT

[Social Issues and the Board: Voice to Parliament](#)

[Elevating stakeholder voices to the board – A guide to effective governance](#)

WHISTLEBLOWERS

[Whistleblower director duties and responsibilities](#)

WORKPLACE SEXUAL HARASSMENT

[A directors' guide to preventing and responding to sexual harassment at work](#)

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