

# CHAPTER 6: BOARD STRUCTURE, PROCEDURES AND ROLE

## *Hard working volunteers?*

### SUMMARY OF KEY FINDINGS IN THIS CHAPTER

#### Organisational size matters

- The data shows that many Board characteristics vary with the size of the organisation. For example, the size and complexity of the structure of the Board tends to increase with organisational size, and so does the support available for Board members.
- This data supports the need for a specialist NFP advisory body, recommended in Chapter 4, Regulatory Framework, which could provide training, advice for directors of NFP organisations.

#### Smaller management group

- Almost half (46%) of the NFP respondent companies have a group of directors, or a Board committee, that deals with management matters on behalf of the Board. A small management group is more common among those NFP companies with a large Board (9 or more directors). This data supports anecdotal evidence that a smaller management group is a distinguishing feature of NFP Boards.
- The legal position of those directors who are not part of the smaller management group is cause for concern. For example, are they keeping themselves sufficiently informed about the company's affairs?

#### Frequency and length of meetings

- The study showed that being a volunteer director of an NFP company is a big commitment - around half the Boards meet once monthly or more frequently, and almost all (92%) Boards meet for an hour or more.
- On average, large Boards (those with nine or more members) meet more frequently than smaller Boards.
- In general, attendance at Board meetings appears to be good with three quarters of directors attending all Board meetings in most (88%) NFP companies.

#### Decision making

- Around three quarters of Boards always receive minutes, financial reports and reports on activities before meetings.
- Forty-one per cent of Boards use email or fax to make decisions.
- Ninety-one per cent of Boards use some form of consensus in their decision making.

#### Induction of new directors

- Most (80%) respondent companies provide a copy of the last annual report and the constitution, and ensure that briefing by senior staff is conducted when a new director is appointed to the Board.
- Overall, directors of larger organisations are better resourced (at least in terms of formal documentation) than those of smaller organisations. For example, only 60% of small organisations provide new directors with strategic and business plans compared with 84% of large organisations.

#### Role of the Board

- The vast majority of respondents agree that the role of the Board is to:
  - s determine strategic direction and monitor performance against the business plan (91%)
  - s guide and monitor the company's financial position (90%)
  - s act as a general advisory body (85%)
  - s appoint and review the performance of the CEO (82%).

- Interestingly, the majority of respondents also thought it was part of the Board's role to:
  - s bring together individuals to assist fundraising (65%)
  - s represent the interests of a particular stakeholder (59%)
  - s participate in management (53%)
  - s monitor and advise on government policy environment(55%).

### **RECOMMENDATION**

#### **Board training**

Support for Board members with training and induction is required. Smaller NFP organisations, in particular, should be targeted as they do not receive the same level of introductory material and training as their larger cousins. Consideration should be given to reaching and assisting the Boards of small NFP organisations. This is an area that would benefit from the independent NFP advisory and training body recommended in this Report (see Chapter 4, Regulatory Framework).

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## 1. INTRODUCTION

This Chapter focuses on the processes followed by NFP company Boards in their meetings. It reports on the data showing how often Boards meet, how they make decisions and how well informed they are prior to meetings. The results covered in this Chapter provide solid evidence about whether NFP Boards are in a position to fulfil their roles. Whilst the data does not tell us about the content of meetings, it does tell us whether an appropriate framework is in place in relation to frequency of meetings and information provided to directors.

The survey results show that generally Boards of NFP companies limited by guarantee meet very regularly, although there are significant exceptions which are reported under Heading 3.1.3. The data also shows that meetings generally take over an hour, and the directors receive a range of material before the meeting. However, the Boards of small organisations appear to be at a significant disadvantage when it comes to formal resources. The Boards of small organisations were between 8-20% less likely to receive financial reports, reports on activities or previous minutes. Likewise, when new directors are appointed to the Board, large organisations are much more likely to provide a comprehensive induction, including site visits, providing strategic and business plans, the constitution and the annual report, and briefings by senior staff. While there was great variation between organisations in their method of decision making, almost all organisations use some form of consensus.

The final section of this Chapter concerns the organisational role of the NFP Board. The data suggests that NFP Boards usually have additional roles to those of a typical 'for-profit' company Board. For example, the majority of respondents believe the Board have an important fundraising role. This suggests that the organisational role of the Board as understood and practised by NFP companies, differs significantly from 'for-profit' companies.

## 2. BOARD STRUCTURE

### 2.1. Smaller management group

#### 2.1.1. SURVEY QUESTION

9.1.1 Does a group of directors, or a Board committee, deal with management matters on behalf of the Board?

- yes
- no

*Number of respondents = 1649*

9.1.2 If 'yes', how often does this group meet? *(please tick only one box)*

- daily
- weekly
- monthly
- other (please specify) .....

*Number of respondents = 770*

#### 2.1.2. SURVEY RESULTS - FREQUENCY

Forty-six per cent of respondents had a smaller management group within their Board.

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Note: All references in this Report to small and large organisations or companies are based on the definition of "small" and "large" (proprietary companies) as contained in s 45A of the *Corporations Act 2001* (Cth), unless detailed otherwise.

### 2.1.3. SIGNIFICANT DIFFERENCES BETWEEN RESPONDENTS

There were no significant differences between respondents based on principal activity or other discernible factors such as size, tax status, etc.

The data showed that if the Board is larger than the average of eight directors, they are more likely to have a smaller management group. Organisations that have a 'large Board' (nine or more directors) are more likely to have a Board committee that deals with management issues on behalf of the Board than organisations with a 'small Board' (less than 9 directors) (50% vs 42%). Therefore the data supports the notion that having a 'large Board' often makes it necessary to have some issues delegated to a smaller 'executive' group.

### 2.1.4. OBSERVATION

Prior to conducting the survey, we received anecdotal evidence that a smaller management group within the Board was a distinguishing feature of NFP Boards. While not quite the majority (46%, n=753), the data does support this anecdotal evidence.

The legal position of those directors who are not part of the smaller management group is cause for concern. Do they still keep themselves sufficiently informed about the company's affairs?<sup>1</sup> In particular, do they regularly monitor the company's financial position? They are at risk of personal liability if they rely on the smaller management group and do not keep abreast of the company's affairs sufficiently to act appropriately if there are reasonable grounds to expect that the company will not be able to pay all its debts when they fall due.<sup>2</sup>

The data on the frequency of a smaller management group, and concern about the legal position of those directors who are not part of the smaller management group, support the recommendation on Board size made in Chapter 5, Board Size, Composition, Remuneration and Experience.

### 2.1.5. SURVEY RESULTS - MEETINGS

Of those respondents with a smaller management group (n=770), 56% said that it met at least monthly, while ten per cent said that it met on a daily or weekly basis. For this latter sub-group, it can be assumed that they are actively managing the company's day-to-day operations rather than the overseeing and strategic role envisaged, for example, by Drucker.<sup>3</sup>

**Table 1: How often does this group meet?**

<i>How often meeting</i>	<i>Frequency</i>	<i>Per cent</i>
daily	26	3
weekly	50	6.5
monthly	352	46
other	342	44.5
no answer given	918	
total	1688	100

### 2.1.6. SIGNIFICANT DIFFERENCES BETWEEN RESPONDENTS

The data was then cross-tabulated to see if there were any significant differences between respondents based on whether the smaller management group meets at least monthly. Sports and Recreation organisations were much more likely than other organisations, based on principal activity, to have smaller management group meeting at least once a month. This was 76% compared with the overall figure of 56%.

<sup>1</sup> See generally *Commonwealth Bank of Australia v Friedrich* (1991) 5 ACSR 115, especially pp. 125- 6 and p. 197.

<sup>2</sup> This overarching duty to 'be informed' cannot be delegated to an executive group of directors. Thus, for example, they would be in breach of their director's duties to prevent insolvent trading under s588G *Corporations Act 2001*. See also comments by J. Tadgell in *Commonwealth Bank of Australia v Friedrich* (1991) 5 ACSR 115.

<sup>3</sup> Drucker, see n. 18

## 2.2. Other committees

### 2.2.1. SURVEY QUESTION

9.1.3 Does the Board have any other committee?

yes

no

*Number of respondents = 1631*

### 2.2.2. SURVEY RESULTS

Half of all respondents (50%, n = 819) said their Board had other committees.

### 2.2.3. SIGNIFICANT DIFFERENCES BETWEEN RESPONDENTS

The most significant difference between respondent organisations was based on size. Large organisations were more likely to have an additional committee than 'small' organisations - a difference of 38%.

Public-serving organisations were 9% more likely than member-serving organisations to have a committee, and those receiving some government funding were 16% more likely than those receiving none to have at least one other Board committee. Sixty-five per cent of Health organisations and 64% of Interest Group organisations had committees, compared with only 21% of Religious organisations.

### 2.2.4. COMPARISON WITH UK CHARITIES

The recent Cornforth study found that the percentage of Boards with sub-committees varies from 25% in organisations with an income of less than £10,000, to 93% in organisations with incomes of more than £10 million. The UK study also found that the number of sub-committees had increased.<sup>4</sup>

### 2.2.5. FEEDBACK

We received feedback from a legal practitioner experienced in dealing with a large range of NFP organisations. This was that, as a general rule, he advises larger NFPs to 'enshrine an Audit Committee of the Board (but with at least some outside people) in the constitution.'

## 3. BOARD MEETINGS AND PROCEDURES

### 3.1. Meeting frequency

#### 3.1.1. SURVEY QUESTION

10.1 How often does the full Board of Directors meet? (*please tick only one box*)

fortnightly (or more often)

monthly

every two months

quarterly

twice yearly

yearly

other (*please specify*) .....

*Number of respondents = 1655*

<sup>4</sup> C. Cornforth, 'Recent Trends in Charity Governance and Trusteeship: the results of a survey of governing bodies of charities', *NCVO: Voice of the voluntary sector*, 2001, p. 15.

3.1.2. SURVEY RESULTS

Almost exactly half the respondents said that the full Board of their organisation met monthly or more frequently.

Table 2: Frequency of full Board meetings

<i>How often meeting</i>	<i>Frequency</i>	<i>Per cent</i>
Fortnightly	41	2.5
Monthly	785	47.5
every two months	230	14
Quarterly	287	17
twice yearly	96	6
Yearly	85	5
Other	131	8
no answer given	33	
Total	1688	100

3.1.3. SIGNIFICANT DIFFERENCES BETWEEN RESPONDENTS

Again, size was a significant factor in relation to the frequency of committee meetings. Large organisations were 17% more likely than small ones to meet on a monthly or more frequent basis.<sup>5</sup>

In terms of principal activity, 62% of Community Service organisations and 82% of Sports and Recreation organisations had full Board meetings on a monthly or more frequent basis. In contrast, only 31% of Education organisations, 32% of Religious, 18% of Philanthropic, 20% of Environmental and 24% Interest Group organisations met on a monthly or more frequent basis. It seems, therefore, that because of the great number of Sports and Recreation organisations and Community Services organisations in the overall statistical body (both categories make up 40% of all respondent organisations), the frequency of meetings figure was somewhat skewed by their presence. For example, without Sports and Recreation organisations, the overall percentage of organisations meeting on a monthly or more frequent basis was 42% compared with the overall figure of 50%.

3.1.4. DOES BOARD SIZE AFFECT THE FREQUENCY OF MEETINGS?

We looked at two measures in order to see if Board size affects the frequency of meetings. First, using the overall number of directors covered by the survey (n=14,159), we calculated the average size of the Boards that meet 'frequently'. Second, we looked at what percentage of Boards meeting 'frequently', could be classified as a 'small Board'. For the purposes of these calculations, a Board was taken to meet 'frequently' if it met monthly or more often.<sup>6</sup>

By reference to the first measure, we calculated that the average Board size of those Boards meeting 'frequently' (n=826) is 8.7 directors. This is larger than the average of 8.1 directors for those Boards meeting less frequently (that is, less often than monthly)(n=697), and the overall average Board size of 8.5.<sup>7</sup> Although this is a small numeric difference, it is a statistically significant result<sup>8</sup> that suggests that larger Boards meet more frequently.

The data using the second measure also supports this observation. Cross-tabulations were run using a definition of a 'small Board' as eight or less directors, and a 'large Board' as nine or more directors. Based on this definition, just under half (47%) of 'small Boards' met at least monthly, compared with almost two-thirds (63%) of all 'large Boards'.<sup>9</sup> In other words, having nine or more directors on the Board a 'large' number by NFP and 'for-profit' standards - did not inhibit attendance. On the contrary, 'large Boards' seem to meet more frequently than 'small [or at least smaller] Boards'.

<sup>5</sup> This is a different result from that found the Cornforth study of UK charities, which found that the number of Board meetings varies little with the size of the charity. As above, n. 4, p. 16.

<sup>6</sup> Those that choosing 'other' as their option under question 10.1 (n=131) were excluded for the purposes of these calculations.

<sup>7</sup> See Chapter 5, Board Size, Composition, Remuneration and Experience.

<sup>8</sup> Statistically significant on a T-Test at the 0.01 level of significance.

<sup>9</sup> Significant at the 0.01 level on a Chi-Square test of independence.

### 3.2. Electronic mechanisms used

#### 3.2.1. SURVEY QUESTION

10.2 Are Board meetings ever held by any of the following means:

telephone conference

yes

no

*Number of respondents = 1638*

video conferencing

yes

no

*Number of respondents = 1607*

decision made by email or fax, then ratified at next Board meeting

yes

no

*Number of respondents = 1624*

other electronic means (please specify) .....

*Number of respondents = 32*

#### 3.2.2. SURVEY RESULTS

The survey results for this question show that, whilst not a particularly high take-up, electronic technology is being used to facilitate decision making for NFP Boards. Email and fax are most frequently used. Forty-one per cent of respondents said that email or fax was used to make Board decisions.<sup>10</sup>

**Table 3: Board meeting held by alternative means**

	<i>Frequency</i>	<i>Per cent 'Yes'</i>
telephone conference	485	29.5
video conferencing	14	1
Decision by email or fax	658	40.5
other electronic means	32	2
Total	1189	73

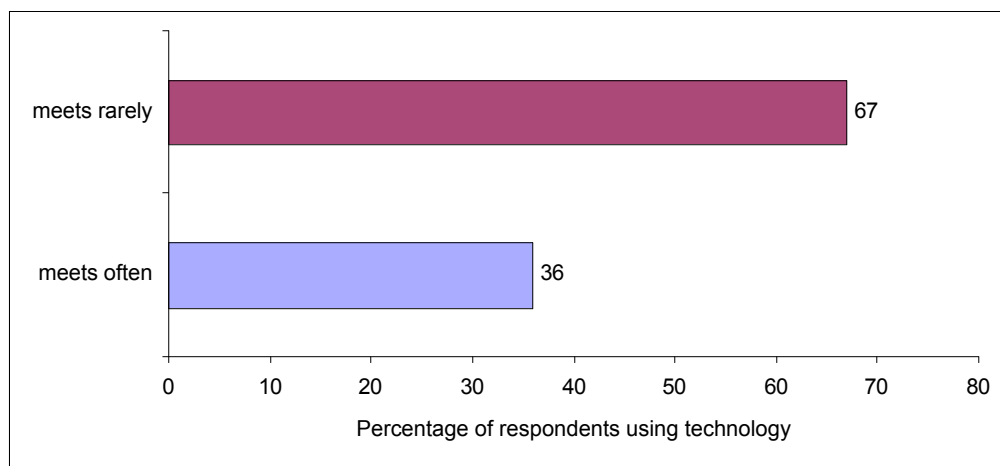
#### 3.2.3. DOES THE USE OF TECHNOLOGY AFFECT FREQUENCY OF MEETINGS?

The data concerning the frequency of meetings was combined with the data concerning the use of technology in order to examine whether or not the use of technology increases the frequency of meetings. The data showed that 'rarely meeting' (every two months or longer) Boards are more likely to use the phone (43%) as against only 16% of 'often meeting' (monthly or more) Boards. Similarly, Figure 3 shows that when all types of technology were combined, 36% of the 'often meeting' Boards used *some* form of technology for holding Board meetings compared with two-thirds (67%) of the 'rarely meeting' Boards.

Thus, the data shows that there is an inverse relationship between the use of technology and the frequency of Board meetings. Namely, the more frequent the use of technology as a means of holding a Board meeting, the fewer the number of Board meetings. This may mean that because Boards are making decisions via email etc, they are not meeting as frequently. Alternatively, it may be that organisations have greater difficulty meeting frequently, such as multi-State organisations, are the organisations that have been taking up the use of technology. The data collected does not reveal whether the use of technology has increased or decreased the frequency of meetings.

<sup>10</sup> The use of technology has been specifically permitted by legislation since 1 July 1998. See s248D *Corporations Act 2001* (Cth).

Figure 1: Frequency of Board meetings held by any electronic means



3.2.4. OTHER STUDIES

This data confirms previous research on the use of technology in group decision making. Research on decision making has found that groups linked by computer make fewer remarks and take longer to reach decisions than groups meeting face-to-face.<sup>11</sup> Kiesler & Sproul, for example, found that meetings conducted through computers result in greater delays, and that time-constrained groups exchanged much less information when meeting electronically than when meeting face-to-face.<sup>12</sup>

3.3. Distribution of material before the meeting

3.3.1. SURVEY QUESTION

10.3 Please indicate which, if any, of the following papers are distributed before Board meetings:

(1) never, (2) one in four times, (3) two in four times, (4) always

- previous minutes 1...2...3...4
- report on all activities 1...2...3...4
- financial report 1...2...3...4
- other (please specify) .....

Number of respondents = 1644

3.3.2. SURVEY RESULTS

NFP respondent organisations generally have good practices in relation to the distribution of papers before meetings. Ninety per cent of respondents said that previous minutes are always distributed, 73% of respondents said that reports on activities are always distributed before Board meetings, and 77% of respondents said that financial reports are always distributed before Board meetings. We note that the majority of respondents were CEOs and, therefore, there may have been some bias in favour of responding in this way. However, we do not expect any significant bias, given that the survey was confidential.

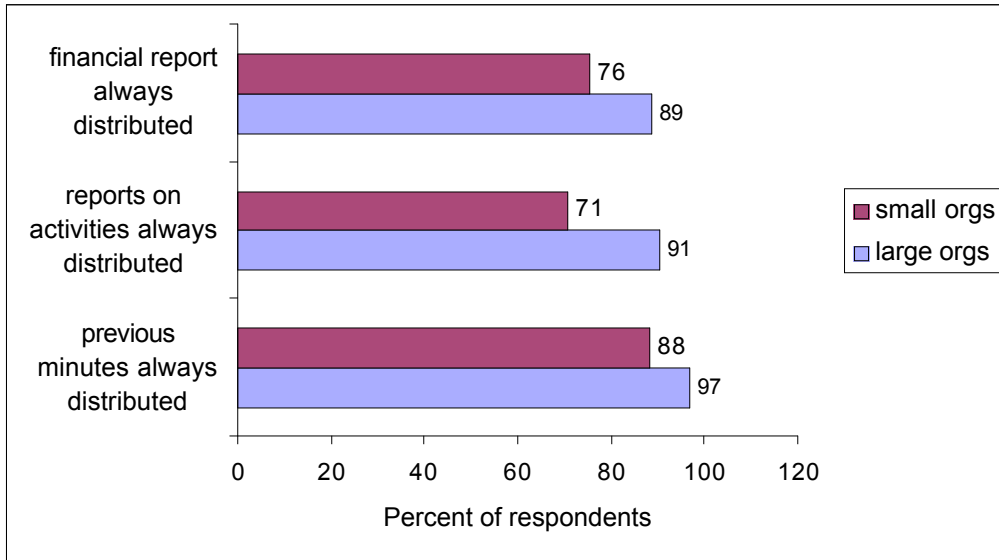
<sup>11</sup> Hiltz et al., 'Experiments in Group Decision Making: Communication Process and Outcome in Face-to-Face versus Computerized Conferences', (1986) 13 Human Communication Research 225.

<sup>12</sup> S. Kiesler & L. Sproul, 'Group Decision Making and Communication Technology', 1992, 52 *Org. Beh. & Human Decision Processes* 96, p. 108

3.3.3. SIGNIFICANT DIFFERENCES BETWEEN ORGANISATIONS

Figure 2 shows that Board papers are consistently more likely to be distributed before meetings in large organisations than papers in small organisations. This may simply be a result of the difference in resources available to the organisation to provide secretarial and other kinds of support to the Board. There were similar differences between those organisations that receive government funding and those that do not. There were no significant differences between organisations based on principal activity.

Figure 2: Differences in distribution of papers before Board meetings, based on size



3.3.4. FEEDBACK

We received feedback from a lawyer experienced in acting for a range of NFP organisations who said that he advises NFP directors that they should insist on:  
 being given accurate and up-to-date financial statements each month. In my experience, if this occurs the company is being sufficiently well run that it is unlikely to get into serious financial difficulty.

3.4. Length of meetings

3.4.1. SURVEY QUESTION

- 10.4 Typically, how long do Board meetings take? (please tick only one box)
- less than 1 hour
  - 1- 2 hours
  - more than 2 hours
  - other (please specify) .....

Number of respondents = 1662

3.4.2. SURVEY RESULTS

Most respondents either said that the Board meetings took one to two hours (45% of respondents) or more than two hours (39%). This demonstrates that, in most cases, being a voluntary member of a Board requires a substantial commitment given the frequency of meetings attended, the length of meetings, and the materials provided before the meeting.

Table 4: Typical time taken for Board meetings

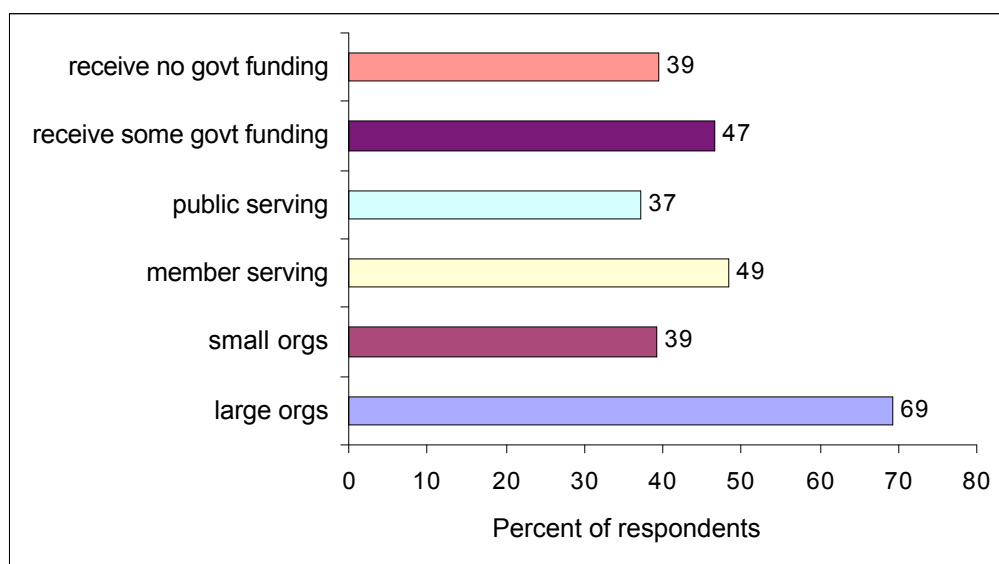
<i>Time for Board meetings</i>	<i>Frequency</i>	<i>Per cent</i>
<1 hr	128	8
1- 2 hrs	754	45
>2hrs	654	39
Other	126	8
no answer given	26	
total	1688	100

3.4.3. SIGNIFICANT DIFFERENCES BETWEEN RESPONDENTS

Figure 3 shows that, in relation to the length of meetings, there was a significant difference between respondents based on size. Boards from large organisations were much more likely to meet for more than two hours than Boards from small organisations. Indeed, over two-thirds of Boards of large organisations (69%) meet for more than two hours, compared with just over a third (39%) of Boards of small organisations. The majority of Boards from small organisations (52%) meet for between 1 to 2 hours. This difference may simply be a result of the amount of time required to oversee the more complex arrangements of a large organisation compared with a smaller one.

Around half (49%) of Boards from member-serving organisations meet for over two hours, compared with only 37% of Boards from public-serving organisations. It is possible to speculate that there is greater factionalism amongst member-serving organisations (leading to the greater likelihood of contested Board elections, as reported in Chapter 5, Board Size, Composition, Remuneration, and Experience) than in public-serving organisations. Alternatively, directors of member-serving organisations may discuss issues that affect them directly, and therefore spend greater time discussing the details of their management, leading to longer meetings. However, without further qualitative study, it is difficult to account for this difference in meeting length.

Figure 3: Board typically meets for more than 2 hours, based on key indicators



### 3.5. Meeting attendance

#### 3.5.1. SURVEY QUESTION

- 10.5 Typically, how many Directors attend Board meetings? (please tick only one box)
- less than \_
  - \_ to less than \_
  - \_ to less than \_
  - \_ or more

*Number of respondents = 1656*

#### 3.5.2. SURVEY RESULTS

In the vast majority of cases (88%) three-quarters or more of the total number of directors attend Board meetings (Table 5).

**Table 5: Typically, how many directors attend Board meetings?**

<b>Number of directors in attendance</b>	<b>Frequency</b>	<b>Per cent</b>
less than a quarter	2	0.1
quarter to less than half	13	0.8
half to less than three-quarters	177	10.7
three-quarters or more	1464	88.4
no answer given	32	
<b>Total</b>	<b>1688</b>	<b>100</b>

#### 3.5.3. SIGNIFICANT DIFFERENCES BETWEEN RESPONDENTS

There were very few significant differences between respondents. The main difference was based on size. Almost all (98%) of respondents from large organisations said that three-quarters of directors typically attend Board meetings, compared with 87% of small organisations. Philanthropic organisations typically have lower rates of attendance of Board meetings - only 71% (compared to the overall result of 88%).

### 3.6. Formal enough?

#### 3.6.1. SURVEY QUESTION

- 10.9.1 Overall, do you feel your company operates 'formally' enough in terms of its processes?
- yes
  - no
  - not sure

*Number of respondents = 1655*

#### 3.6.2. SURVEY RESULTS

Almost all respondents (92%) were satisfied that the company operates 'formally' enough in terms of its processes. Only Religious organisations were slightly behind the average at 86% vs 92%. Four per cent of all respondents were 'not sure'.

## 4. DECISION-MAKING METHOD

### 4.1. Survey question

10.6 How does the Board decide most issues? (*please tick only one box*)

- consensus
- mix of consensus and voting
- consensus, but as a matter of procedure, vote always taken
- vote

*Number of respondents = 1659*

### 4.2. Survey results

Almost all respondents (91%) reported that some form of consensus was used in the decision making of the Board. This may have involved (a) only consensus decision making, (b) a mix of consensus and voting, or (c) consensus and then, as a matter of procedure, a vote. Breaking this down further: 64% always used consensus (that is, (a) and (c)) and 27% used a mix of consensus and voting. Only 9% of respondents said that they always voted.

**Table 6: Method of decision making**

<i>Method</i>	<i>Frequency</i>	<i>Per cent</i>
Consensus	645	39
mix of consensus	447	27
consensus but vote	413	25
Vote	154	9
no answer given	29	
Total	1688	100

### 4.3. Significant differences between organisations

The significant findings, once data was cross-tabulated, were as follows:

- Seventeen per cent of respondents from Sports and Recreation organisations said they always voted compared with 9% overall.
- Member-serving organisations were 9% less likely to use only consensus than public-serving organisations (35% vs 44%).
- Sixty per cent of respondents from Religious organisations said that decisions were made using only consensus (option (a) Heading 4.2), compared with 39% overall.

## 5. CONFLICTS OF INTEREST

### 5.1. Survey question

10.7.1 Are you aware of any situation in the past five years where an actual or potential conflict of interest has arisen between the interest of a director (or a stakeholder whose interests they represent) and the interests of the company?

- yes
- no

*Number of respondents = 1655*

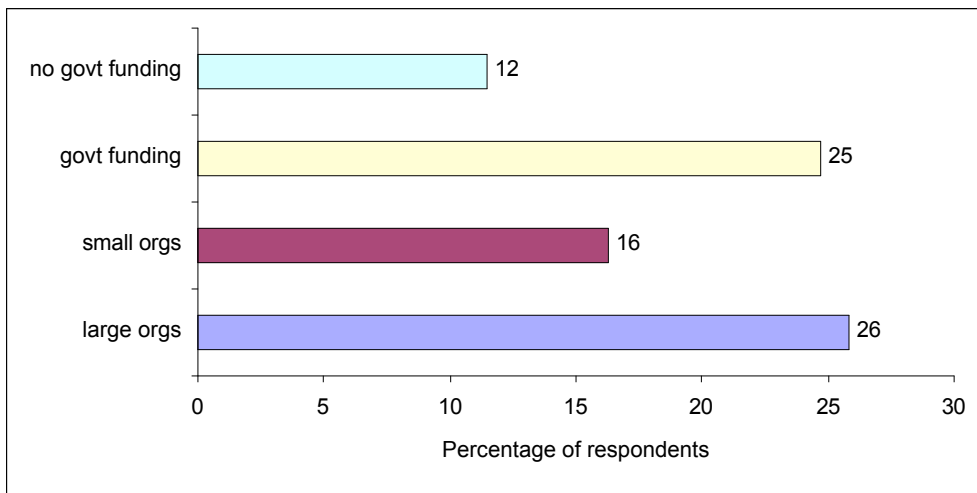
### 5.2. Survey results

Eighty-two per cent of respondents said that there had been no conflict of interests experienced in the last five years, while 18% (n=292) said that some conflict of interest had been experienced.

### 5.3. Significant differences between organisations

Large organisations were significantly more likely to report a conflict of interest in the past five years than small organisations (a difference of 10%), as were those receiving government funding compared with those that do not (a difference of 13%). More than a third (35%) of respondents from Other Human Services organisations also reported some actual or potential conflict of interests in the past five years, which is significantly higher than the overall figure 18%.

Figure 4: Conflict of interests, based on key indicators



### 5.4. Observation

Without results for a 'for-profit' group it is not possible to comment on whether or not the overall figure of 18% who have experience an actual or potential conflict of interest is higher than for other types of companies. However, this overall figure does, indicate that the conflict of interest issue is one that arises as a practical matter for many NFP organisations. Good corporate governance practice would require all NFP organisations to have clear procedures for disclosure of such conflicts or potential conflicts.<sup>13</sup>

## 6. INDUCTION OF NEW DIRECTORS

### 6.1. Survey question

- 10.8 When a new director is appointed, indicate which (if any) of the following occurs:
- receive a copy of the last annual report
    - yes (1240)
    - no (284)
  - receive a copy of the company's constitution
    - yes (1257)
    - no (286)

<sup>13</sup> NFP companies limited by guarantee are public companies and therefore must comply with both ss191- 3 and voting restrictions contained in s195 *Corporations Act 2001* (Cth).

are briefed by senior staff	
<input type="checkbox"/> yes	(1222)
<input type="checkbox"/> no	(292)
receive a copy of strategic and business plans	
<input type="checkbox"/> yes	(938)
<input type="checkbox"/> no	(539)
go on site visits	
<input type="checkbox"/> yes	(502)
<input type="checkbox"/> no	(142)
<input type="checkbox"/> not applicable	
other (please specify).....	

Number of respondents = indicated in brackets next to each option

## 6.2. Survey results

NFP companies generally reported following good practice in inducting new directors. Just over 80% of respondents said that new directors receive a copy of the last annual report, a copy of the constitution and are briefed by senior staff. Sixty-four per cent said that new directors receive strategic and business plans. Seventy-eight per cent of respondents said that new directors, where relevant, go on site visits. Again, we note that the majority of respondents were CEOs and, therefore, there may have been some bias in favour of responding in this way. However, we do not expect any significant bias, given that the survey was confidential.

Table 7: Action taken when new director is appointed

Action	Frequency	Per cent 'Yes'
receive copy of annual report	1240	81
receive copy of constitution	1257	81.5
briefed by senior staff	1222	81
receive strategic and 'business plans'	938	63.5
go on site visits (where relevant)	502	78

### 6.2.1. OBSERVATION

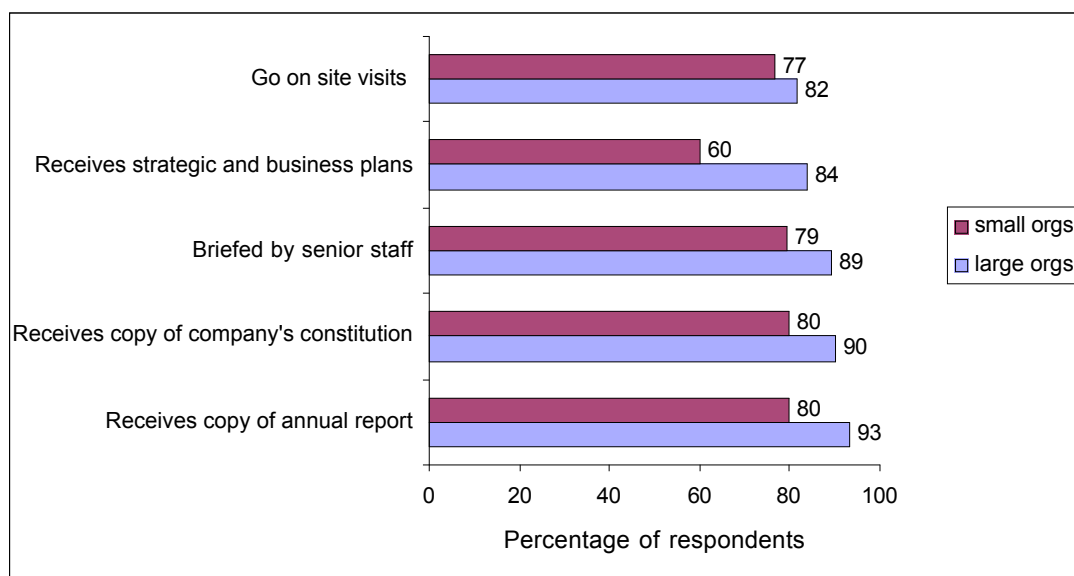
It is cause for concern that 286 respondents said that new directors do not receive copies of the constitution and 284 do not receive a copy of the last annual report, which must be regarded as a basic minimum.

## 6.3. Significant differences between respondents

Once again, the most significant difference between respondents was based on the size of the organisation. Large organisations far more frequently had better practices than small organisations in terms of the induction of new directors. Even assuming fewer resources, there can be little excuse for failing to provide a new director with a copy of the constitution and the most recent annual report, given that both of these have to be prepared regardless of the appointment of a director.

The largest difference between small and large organisations with respect to inducting new directors is the number of respondents that provide the new directors with strategic and 'business' plans - a difference of 24%. If the role of a Board of directors includes overseeing the implementation of the policy of the organisation's mission, then strategic and 'business' plans would seem to be amongst the most crucial material for a new director to have. However, only 60% of small organisations provide new directors with this material. This may be because they have not prepared strategic or 'business' plans, or at least not in any separately articulated written form.

Figure 5: Action taken when new director is appointed, based on size



6.3.1. COMPARISON WITH UK CHARITIES

The Cornforth study had similarly found that the availability of induction and training for new Board members varies between 20% for the smallest charities and increases with size to 77% for the largest charities.<sup>14</sup> The Voluntary Sector UK Almanac 2000 also found that 'around two in five medium to large organisations now offer access to training for their trustees, but only one in five smaller ones do so.'<sup>15</sup>

6.4. Recommendation

**Board training**

Support for Board members with training and induction is required. Smaller NFP organisations, in particular, should be targeted as they do not receive the same level of introductory material and training as their larger cousins. Consideration should be given to reaching and assisting the Boards of small NFP organisations. This is an area that would benefit from the advisory and training body recommended in this Report (see Chapter 4, Regulatory Framework).

7. DIRECTORS' AND OFFICERS' INSURANCE

7.1. Survey question - frequency

10.10.1 Does the company pay for directors' and officers' insurance?

- yes
- no

Number of respondents = 1642

10.10.2 If 'no', is directors' and officers' insurance provided by the government?

- yes
- no

Number of respondents = 565

<sup>14</sup> See Cornforth n. 4 at p. 17.

<sup>15</sup> A. Passey, L. Hems, & P. Jas, *UK Voluntary Sector Almanac 2002*, London, National Council for Voluntary Organisations, 2000, p. 105, cited in Cornforth, n. 4, p. 17.

### 7.1.1. SURVEY RESULTS

Although under law a company is not required to provide directors' and officers' liability insurance (D&O insurance), most do. Sixty-eight per cent of respondents said that the company pays for D&O insurance. Of those saying 'no', only 9% said that it was paid for by the government. This means that a substantial number of directors and officers of NFP companies (up to 23%) are not covered by insurance or pay for it themselves.

Consider this sub-group of 23% further. Although practice varies, the company usually pays 90%- 95% of the overall premium and the directors/officers pay between 5%- 10% of the premium.<sup>16</sup> Our survey did not ask respondents to specify the particular proportions that were paid. However, even if the company paid less than the total, one would still have expected the respondent to answer 'yes' to the survey question. Thus, whilst this means that the percentage not covered by D & O insurance could be less than 23%, it would be useful to further investigate the reasons why they had no insurance.

### 7.1.2. PERMISSIBLE PAYMENTS BY THE COMPANY

D&O insurance is intended to protect the personal assets of directors by providing them with an indemnity against any wrongful acts they may have committed. Most policies also reimburse the company for any lawful legal expenses it may have incurred on behalf of the directors and officers. Pursuant to s.199B of the *Corporations Act 2001*(Cth), the D&O insurance policy cannot cover:

- a wilful breach of duty in relation to the company
- an improper use of position
- an improper use of information.<sup>17</sup>

## 7.2. Survey question - actual or threatened legal claims

10.10.3 During the last five years, are you aware of any actual or threatened legal claims against any of the company's directors for a breach of a legal duty?

- yes
- no

Number of respondents = 1656

10.10.4 If 'yes', please specify the general nature of the claim(s)

.....

### 7.2.1. SURVEY RESULTS

Only 52 respondents (3%) said that there had been any actual or threatened legal claims against any of the company's directors for a breach of a legal duty in the last five years.

## 8. ORGANISATIONAL ROLE

### 8.1. NFP governance theory

The widely quoted work of Drucker contends that the role of a Board within a NFP organisation includes the approval of the organisation's mission, its objectives and the measurements it develops to judge its progress towards these objectives. He also contends that it is the Board's role to look critically at the organisation's financial planning and to act as the 'highest court' in relation to organisational problems. Finally, Drucker believes that it is the role of the Board to 'watch the spirit of the organisation' - to make sure that it develops managers, and that its rewards to management strengthen the organisation and direct it towards its objects.<sup>18</sup>

<sup>16</sup> M. Waller, 'Nonprofit Directors' and Officers' Insurance', Program on Nonprofit Corporations, Working Paper Series, Working Paper 12, Queensland University of Technology, 1992, p. 3.

<sup>17</sup> 'Directors' and officers' liability insurance', *Australian Corporate News*, Issue 13, 16 July 2003, CCH, p. 1.

<sup>18</sup> P. Drucker, *The Practice of Management*, Pan Books, London, 1968.

## 8.2. Survey question

11	We are interested in your views on the role of the Board in the company. Please indicate how much you agree or disagree with the following statements about the Board's main role within your company. <b>(1) strongly disagree, (4) strongly agree, (0) not sure</b>	
(1610)	to act as a general advisory body	1..2..3..4..0
(1624)	to determine strategic directions and monitor performance against plan	1..2..3..4..0
(1625)	to participate in the company's management and/or its operations	1..2..3..4..0
(1630)	to guide and monitor the company's financial position	1..2..3..4..0
(1600)	to bring together individuals with sufficient reputation /connections to assist with fundraising & grant applications	1..2..3..4..0
(1604)	to monitor and advise on government policy environment	1..2..3..4..0
(1605)	to represent the interests of particular stakeholders	1..2..3..4..0
(1594)	to appoint the chief executive officer and to review their performance	1..2..3..4..0
	other (please specify) .....	

*Number of respondents = numbers shown in brackets for each option*

## 8.3. Survey results

The most strongly agreed upon roles for NFP Boards are:

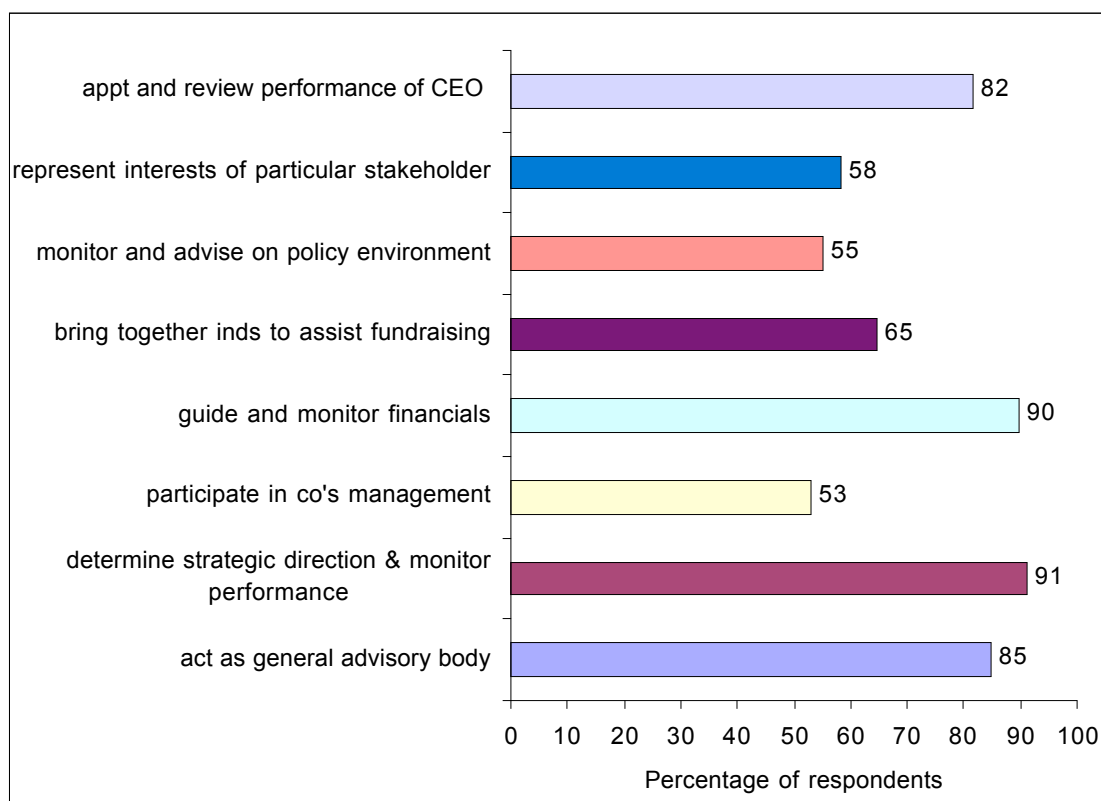
- Determining strategic direction and monitoring performance against the plan (91%: 73% strongly agree, 18% agree).
- Guiding and monitoring the company's financial position (90%: 68% strongly agree, 22% agree).
- Acting as a general advisory body (85%: 61% strongly agree, 24% agree).
- Appointing and reviewing the performance of the CEO (82%: 62% strongly agree, 12% agree).
- Sixty-five per cent agree (40% strongly agree and 25% agree) that the role of the Board is to fundraise.<sup>19</sup>

In Figure 6, the 'not sure' responses have been excluded and the 'agree' and 'strongly agree' have been combined.<sup>20</sup>

<sup>19</sup> For this option there was a larger number of 'not sure' responses than for the other options: 11 % vs less than 2%.

<sup>20</sup> The collapsed chart did not result in any distortion of the refined patterns.

Figure 6: Role of the Board



The majority (53%: 36% strongly agreed and 17% agreed) also agreed that the role the Board included participating in management and/or its operations. Also the majority (53%, again: 36% strongly agreed and 17% agreed) that the role of the Board is to represent the interests of particular stakeholders.<sup>21</sup>

### 8.3.1. SIGNIFICANT DIFFERENCES BETWEEN RESPONDENTS

Figure 7 shows that there were significant differences between small organisations and large organisations with respect to whether respondents thought that the role of the Board was to participate in management. Respondents from small organisations and organisations not receiving any government funding were much more likely to think that role the Board included participating in management and/or its operations. Likewise, respondents from member-serving organisations were more likely to have this view of the Board's role.

Respondents from member-serving organisations were more likely to think that the Board's role is to represent the interests of particular stakeholders. This raises issues with respect to the duties of nominee directors, discussed in some detail in the Chapter 7, Stakeholders.

<sup>21</sup> There were 8% of respondents who were 'not sure' about this statement.

Figure 7: Role of Board is to participate in the company’s management, based on key indicators

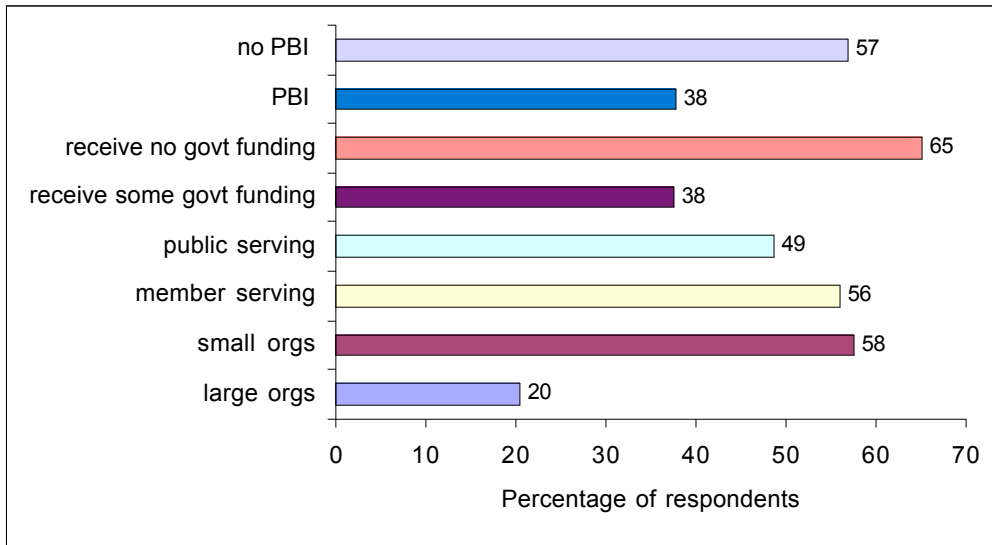
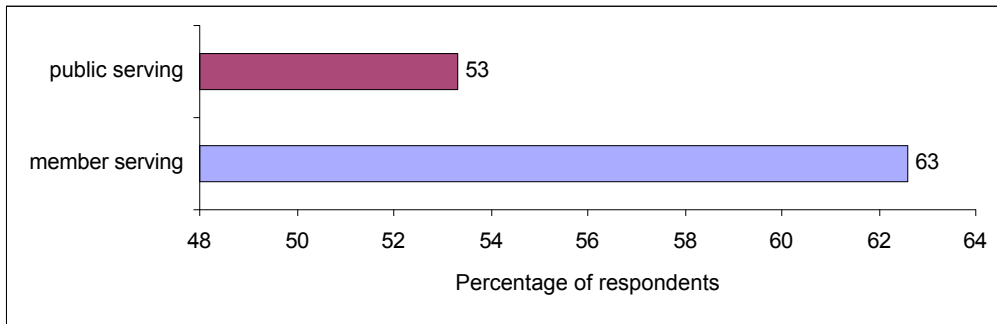


Figure 8: Role of Board is to represent interests of particular stakeholder, based on key indicators



### 8.4. Additional feedback

After the release of the Summary of Preliminary Findings in March 2003, we received the following feedback on the issues of Board selection, accountability and conflicts of interest from an experienced senior employee of a small, national health organisation:

Whatever the legal status of the NFP, most Boards have ‘committee’ mentality, with directors often not having a corporate background and bringing a community organisation mindset to the table. This brings a number of problems:

- A *delegatory* attitude, where their function is perceived as ‘representing’ a certain constituency and influencing the Board in its favour...[this can cause havoc and bad feeling especially, but not exclusively, in member-based organisations]
- An *executive* attitude, where their function is perceived as operational control, with the CEO regarded as an ‘office boy’ who carries them out...
- Difficulty understanding the role of the Board - as the guardian of the NFP’s mission and good name, responsible for ensuring its goals are pursued honestly, prudently and as effectively as possible. This is a subtler, more mature and onerous task than taking the reins away from the CEO.

The difficulty of finding appropriate directors is real, but then so it should be.

This feedback encapsulates some of the key governance issues for NFP Boards and is supported by the data; both the data on the organisational role of the Board and the data on the appointment of directors to represent particular stakeholders (see Chapter 5, Board Size, Composition, Remuneration and Experience).

### 8.5. Observations

It is interesting to note that the majority of respondents (53%) believe that participating 'in the company's management and/or its operations' is one of the Board's roles. This is consistent with the data that 46% of respondents have a smaller management group within the Board<sup>22</sup> which, in some cases, meets as often as daily or weekly (10%). The approach adopted by this significant group of respondents is contrary to that advocated by Drucker,<sup>23</sup> and the generally accepted role of the Board espoused in Australian company law cases.<sup>24</sup> The delineation of Board and staff roles is seemingly complex for many, and it would appear from our data that in some NFP companies (particularly some of the smaller ones), the directors take a very 'hands-on' role, similar to that of directors/controllers of a small, family business.

The role of the Board in bringing together individuals 'with sufficient reputation/connections to assist with fundraising and grant applications' is a role that distinguishes NFP Boards from those of 'for-profits', and which supports the contention that the governance of NFP organisations is more complex.<sup>25</sup>

The need for the development of Australian, NFP governance theory and practices is evident from this Project. In this regard we believe that the data from this Project adds empirical support to comments made by Professor Myles McGregor Lowndes:

Keen insights about the nonprofit sector are required to inform appropriate policy development that will facilitate nonprofit organisations, their transactions and regulation. This research begins with obtaining a notion of the characteristics of nonprofit organisations in Australia and how they differ from nonprofit organisations in other comparable societies and for-profit enterprise...

These insights are necessary not only as to the place of nonprofits in our economy and society, but also how they organize and operate internally. The challenge is to break from the principal and agent paradigm that drives much of the for-profit policy debate in accounting, accountability and governance issues. The nature of most nonprofit organisations with multiple stakeholders, rather than 'owners' does not easily fit into a principal and agent framework. New theories need to be developed taking account of this and other characteristics of nonprofit organizations...Until this theory is developed, tested and applied, regulatory devices may not produce the intended results as they cannot be crafted to suit the attributes of nonprofit behaviour.<sup>26</sup>

## 9. ADVICE RECEIVED

### 9.1. Free legal advice

#### 9.1.1. SURVEY QUESTIONS

- 13.1.1 Has the company received any free legal advice?
- yes
  - no
  - don't know

*Number of respondents = 1657*

<sup>22</sup> See data on smaller management groups reported under Heading 2.1.

<sup>23</sup> See Drucker as outlined briefly under Heading 8.1.

<sup>24</sup> H.A.J. Ford, R.P. Austin & I.M. Ramsay, *Ford's Principles of Corporations Law*, Butterworths, 2003, para [7.060].

<sup>25</sup> For example, D. Lea, 'Voluntary Organizations and Accountability: Theory and Practice' in H.K. Anheier and W/ Seibel (eds), *The Third Sector: Comparative Studies of Nonprofit Organizations*, Walter de Gruyter, New York, 1990. For a summary of the arguments see C. McDonald, 'Board Members' Involvement in Nonprofit Governance' Working Paper No 16, Program on Nonprofit Corporations, Queensland University of Technology, 1993.

<sup>26</sup> See M. McGregor-Lowndes, *Regulatory Infrastructure for Nonprofit Organisations Working Paper PONC97*, August 2000, Queensland University of Technology, pp. 21- 2.

- 13.1.2 If 'yes', was the advice obtained as a result of the actions/connections of a Board member appointed to the Board primarily for their legal expertise?
- yes
  - no
  - don't know

Number of respondents = 967

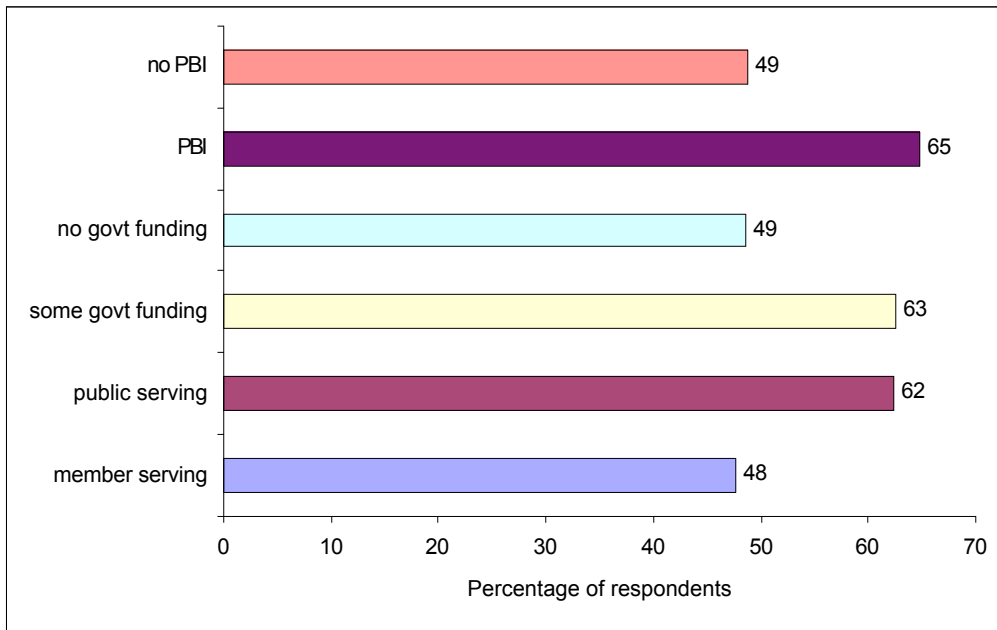
9.1.2. SURVEY RESULTS

Just over half (54%, n=900) of respondents said that the company had received free legal advice. Six per cent said they did not know. Of those that said 'yes', 36% (n=354) received that advice because of the actions/connections of a Board member appointed to the Board primarily for their legal expertise and 5% 'didn't know'. See also data on Board composition reported in Chapter 5, Board Size, Composition, Remuneration and Experience.

9.1.3. SIGNIFICANT DIFFERENCES BETWEEN RESPONDENTS

Interestingly, there were few differences between small and large organisations in relation to whether or not they received free legal advice. Public-serving organisations were more likely to receive free legal advice than member-serving organisations (62% vs 48%) and those receiving government funding were more likely than those that do not to receive free legal advice (63 vs 49%). Philanthropic organisations (71%) and Arts organisations (74%) were the most likely to receive free legal advice.

Figure 9: Free legal advice obtained, based on key indicators



Of those respondents reporting that free legal advice had been received, 36% overall said that it was obtained as a result of the connections of a director. Large organisations were more likely to have received the advice as a result of the connections of a director than small organisations (52% vs 35%), as were public-serving organisations compared with member-serving organisations (43% vs 31%).

Health and Education organisations were also more likely than the overall average to have received the advice as a result of the connections of a director (53% and 49% respectively). Religious (26%), Sports and Recreation (29%) and Interest Group (13%) organisations were the least likely to have received legal advice due to the connections of a director.

### 9.2. Free accounting, financial or investment advice

#### 9.2.1. SURVEY QUESTIONS

13.2.1 Has the company received any free accounting, financial or investment advice?

- yes
- no
- don't know

*Number of respondents = 1653*

13.2.2 If 'yes', was the advice obtained as a result of the actions/connections of a Board member appointed to the Board primarily for that expertise?

- yes
- no
- don't know

*Number of respondents = 821*

#### 9.2.2. SURVEY RESULTS

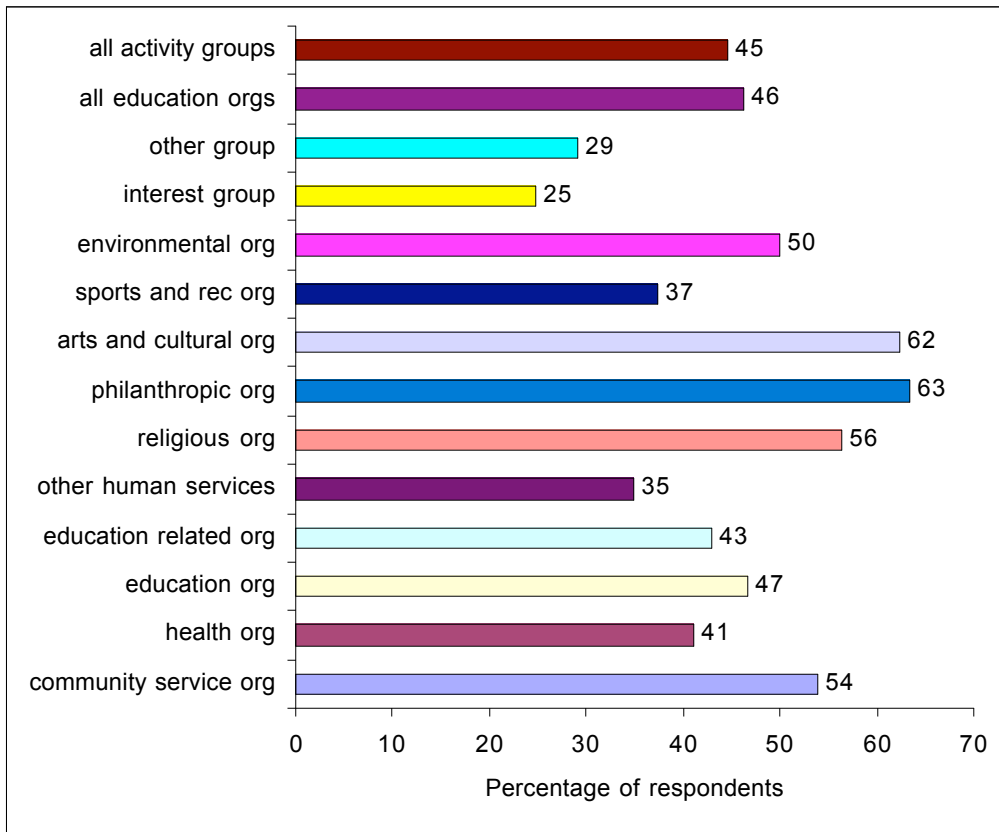
Just under half (45%, n=737) of respondents said that the company had received free accounting, financial or investment advice and 4% said 'didn't know.' Of those that said 'yes', 46% (n=380) said that advice was received as a result of the actions/connections of a Board member and 4% 'didn't know'.

#### 9.2.3. SIGNIFICANT DIFFERENCES BETWEEN RESPONDENTS

Fifty-three per cent of public-serving organisations said they had received free accounting advice compared with 38% of member-serving organisations. This figure was no doubt affected by the fact that only 37% of Sports and Recreation organisations said they had received free accounting advice. In contrast, 63% of Arts and Cultural, 62% of Philanthropic and 63% of Community Services organisations reporting receiving free accounting, financial or investment advice.

The only significant difference with regards to whether that advice was received as a result of a director's connections, was the difference between member-serving and public-serving (41% vs 52%).

Figure 10: Has the company received any free accounting advice, based on principal activity



### 9.3. Auditors' fees

#### 9.3.1. SURVEY QUESTION

- 13.4 Do the company's auditors charge for their services (other than for out-of-pocket expenses)?
- yes
  - no
  - don't know

Number of respondents = 1653

#### 9.3.2. SURVEY RESULTS

Eighty-nine per cent of respondents said that the auditors charged for their services, and 1% said they 'didn't know'.

#### 9.3.3. SIGNIFICANT DIFFERENCES BETWEEN RESPONDENTS

Large organisations were 9% more likely than small organisations to pay auditors fees (97% vs 88%), and member-serving organisations were 7% more likely than public-serving organisations to pay auditors fees (92% vs 85%). Those receiving government funding were also more likely than those that do not receiving government funding to pay auditors fees (91% vs 86%).

Philanthropic organisations were the least likely to pay auditors for their services. Seventy-two per cent of Philanthropic organisations said that auditors charge for their services compared to the overall figure of 89%.

### 9.3.4. OBSERVATION

In 2002, the Office of Small Business estimated the average audit cost for medium-sized companies at \$25,000.<sup>27</sup> There is no reason to think that these figures would be significantly different for NFP companies of a similar size. Given 89% of NFP companies say that auditors charged for their services, this is a considerable cost to the sector. Whilst having accounts audited and maintaining audit independence may be important as a matter of public policy, the cost must be weighed against the benefits.

In Chapter 4, Regulatory Framework, a recommendation is made for setting up a specialist NFP advisory organisation that could provide NFP organisations with audit services at a minimal or at least substantially reduced fee. As the vast majority of respondents pay audit fees (89%), the provision of specialist, low (or no) cost audit services could make a significant difference for many NFP organisations.

## 9.4. Advice received by directors re legal obligations

### 9.4.1. SURVEY QUESTION

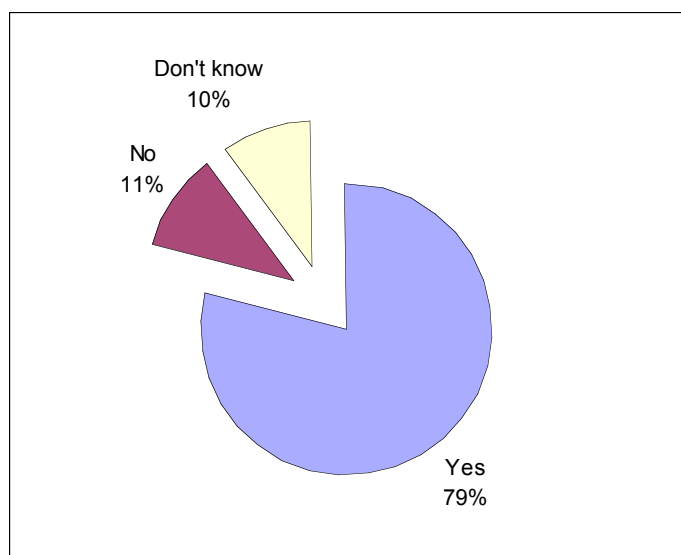
- 13.3 Have directors received any information about their legal obligations as directors?
- yes
  - no
  - don't know

Number of respondents = 1648

### 9.4.2. SURVEY RESULTS

Over three-quarters (79%) of respondents said that directors had received information about their legal obligations as directors, but because 10% said that they 'didn't know' the percentage may be higher than 80%.

Figure 11: Directors received information about legal obligations



<sup>27</sup> Office of Small Business, Department of Employment, Workplace Relations and Small Business, *Submission to the Parliamentary Joint Statutory Committee on Corporations and Securities*, 2001, p. 2. The Motor Trades Association of Australia (MTAA) which represents franchised new motor vehicle dealers, estimated the additional audit cost in excess of \$20,000, Motor Trades Association of Australia, *Submission to the Parliamentary Joint Statutory Committee on Corporations and Securities*, p. 15.

#### 9.4.3. SIGNIFICANT DIFFERENCES BETWEEN RESPONDENTS

Ninety per cent of respondents from large organisations said that directors were given information about their legal obligations. That is 13% higher than for small organisations.

Arts and Cultural organisations had the best-informed directors in this respect. Eighty-nine per cent of Arts and Cultural organisations said that directors were given information about their legal obligations, followed by Community Services (84%) and Other Human Service (82%). In contrast, only 67% of Other Groups and 71% of Interest Group directors had received any information about their legal obligations.

## 10. CONCLUSION

The level of commitment of predominately volunteer, non-executive directors is significant - both in terms of what is expected by the organisation and what is given. The majority of Boards meet monthly or more often, and meet for an hour or more.

The written resources made available to directors prior to meetings seem comprehensive, but Boards of smaller organisations maybe at a disadvantage and this is cause for concern. The vast majority of Boards use some form of consensus in their decision making, with 64% always using consensus.<sup>28</sup> The data supports the need for an independent organisation that can assist, particularly smaller organisations, with induction and training of Board members. Our suggested model is for an independent NFP advisory body, see Chapter 4, Regulatory Framework.

In terms of their organisational role, NFP Boards have distinguishing features. A significant group have a smaller sub-group of directors who act as a management team, in some cases meeting daily or weekly. Many view the Board as having additional roles such as assisting with fundraising and representing the interests of particular stakeholders. The delineation of Board and staff roles is seemingly complex for many. Fifty-three per cent of respondents agreed that it is the Board's role to 'participate in the company's management and/or its operation'. The need for the development of Australian, NFP governance theory and practices is evident from this Project.<sup>29</sup>

<sup>28</sup> See Heading 4, 64% always use consensus, although 25% of this group would, as a matter of procedure, take a vote.

<sup>29</sup> In this regard, we would add our support to comments made by Professor Myles McGregor-Lowndes, see n. 26.