



BUSINESS COUNCIL
OF CO-OPERATIVES AND MUTUALS

Notes for smaller mutuals and co-operatives Co-operative and Mutual Enterprise (CME) Governance Principles

1st Edition, September 2018

GENERAL INQUIRIES:

info@bccm.coop

National Office

Business Council of Co-operatives and Mutuals
Level 8, 9 Hunter Street
Sydney NSW 2000

This document was prepared by the Business Council of Co-operatives and Mutuals (BCCM) with contributions from the CME 100 Chairs' Forum, BCCM members and academic colleagues. We wish to thank Trent Bartlett FAICD, Antony McMullen and Lyb Makin for their input and hard work in helping to prepare this governance framework. We also wish to acknowledge the contributions of Trish Ridsdale FAICD, the Hon Robert French AC and Eva Scheerlinck in guiding our thinking about the importance of corporate governance for CMEs. We thank the members of the reference group for their invaluable insights and feedback. Finally, we acknowledge and thank the ASX Corporate Governance Council for allowing our adaption of the ASX Corporate Governance Principles.

Disclaimer: The information provided in this document is not intended to constitute legal, financial or other professional advice or standards. While all reasonable care has been taken in its preparation, neither the BCCM or any contributor makes any express or implied representations or warranties as to the completeness, currency, reliability or accuracy of the CME Governance Principles document and it should not be used or relied upon as a substitute for professional advice or as a basis for formulating business decisions. To the extent permitted by law, the Business Council of Co-operatives and Mutuals and all contributors exclude all liability for any loss or damage arising out of the CME Governance Principles document.

This 1st edition of the Notes for smaller mutuals and co-operatives was published by the Business Council of Co-operatives and Mutuals, September 2018. Copyright in this material is strictly reserved. Any disputes in respect of copyright in this material are subject to the laws of New South Wales. No part of this material should be copied or reproduced in any form or by any means without the written permission of the Business Council of Co-operatives and Mutuals.

TABLE OF CONTENTS

Introduction	4
How to use this document	4
The CME governance principles	6
Principle 1: Create, protect and return member value	7
Recommendation and notes for smaller CMEs	7
Principle 2: Lay solid foundations for management and oversight	10
Recommendations and notes for smaller CMEs	11
Principle 3: Structure the board to add member value	15
Recommendations and notes for smaller CMEs	16
Principle 4: Act ethically and responsibly	19
Recommendations and notes for smaller CMEs	19
Principle 5: Safeguard integrity in CME entity reporting	20
Recommendations and notes for smaller CMEs	20
Principle 6: Make timely and balanced disclosure	22
Recommendation and notes for smaller CMEs	22
Principle 7: Respect the rights of members and other stakeholders	23
Recommendations and notes for smaller CMEs	23
Principle 8: Recognise and manage risk	25
Recommendations and notes for smaller CMEs	25
Principle 9: Remunerate fairly and responsibly	27
Recommendations and notes for smaller CMEs	28
List of Key References	29

INTRODUCTION

These notes have been designed to clarify the CME Governance Principles document in the context of smaller CMEs and to provide further guidance on key governance matters.

Effective member-focussed governance can contribute to the sustainable creation of value for members in a CME of any size. The consultation process for the development of the first edition of the CME Governance Principles made it clear, however, that the diversity in size of entities in the CME sector meant that commentary would be needed for smaller CMEs to properly make use of the CME Governance Principles. 'Notes for smaller mutuals and co-operatives has been developed to allow smaller CMEs to consider the CME Governance Principles in their legal, regulatory, risk and (human and financial) resource context. In its Guidance Notes on the co-operative principles, the International Co-operative Alliance notes that:

'A small new co-operative enterprise in an emerging economy will need simpler procedures and less complex governance codes than a larger, more mature co-operative business with thousands or millions of members. A large co-operative business is likely to need a detailed governance handbook. Whether small or large, implementing the basics of good democratic governance codes and best practice will guarantee member sovereignty and members' democratic rights.'¹

Size is not the only difference among CMEs. In reflecting on what constitutes effective, member-focussed governance, CME boards may contextualise the governance principles in many ways:

- Size (from small non-distributing co-operatives with a turnover of \$50,000 to CBH Group with turnover of \$4 billion)
- The legal and regulatory requirements that delimit governance arrangements (primarily, requirements of company or co-operatives legislation; significant regulation for financial co-operatives and mutuals);
- Whether the CME is producer-owned (enterprise or worker) or consumer-owned (including financial, insurance, housing, retail);
- What industry the CME operates in (the market conditions, public opinion, regulation etc of that industry)

- The accounting/tax status of the CME (whether the CME distributes surplus to members; for-profit or not-for-profit status; whether CME tax concepts such as the mutuality principle apply to the particular CME)
- The identity of the CME (CMEs have different historical or cultural identities, such as co-operative, friendly society, credit union, profit-to-member fund or other.)

In future, it may be possible for the BCCM and the sector to develop further bespoke commentary. The co-operative and mutual sector in the UK, to provide one example, has developed distinct governance principles for consumer co-operatives and worker co-operatives, in recognition of the different dynamics in these two types of member-owned enterprise.²

How to use these notes

At a minimum, the notes should be read alongside the introductory sections of the CME Governance Principles document.

Some smaller CME boards may already refer to a governance framework such as the international Co-operative Principles or the AICD's Good Governance Principles and Guidance for Not-for-profit Organisations; these notes can be used to provide further suggestions alongside those frameworks.

One strategy for reflecting on the application of governance principles and recommendations is to use the 'if not why not' approach. Since CMEs are member-focussed, the question a CME board should ask is whether the application of a recommendation is in the interest of members.

These notes are intended to be a living document and we welcome feedback from smaller CMEs on how the notes can be refined in line with practical experience. The BCCM also provides referrals for governance training providers: info@bccm.coop

How the CME Governance Principles in this document relate to the international co-operative identity, values and principles³

Co-operatives are businesses owned and run by and for their members. Whether the members are the customers, employees or residents they have an equal say in what the business does and a share in the profits.

The International Co-operative Alliance (ICA) statement on co-operative identity, values and principles (the seven co-operative principles) is universally adopted by

¹ International Co-operative Alliance, 2015, Guidance Notes to the Co-operative Principles, 20

² The UK worker co-operative and consumer co-operative codes are both available online: https://www.uk.coop/sites/default/files/uploads/attachments/worker_co-operative_code_2nd_edition_0_0.pdf and https://www.uk.coop/sites/default/files/uploads/attachments/governance_code_0.pdf

³ See <https://ica.coop/en/whats-co-op/co-operative-identity-values-principles>

the co-operative movement. The principles are based on the principles of the Rochdale Society of Equitable Pioneers, formed in 1844.⁴ The current version of the co-operative principles were adopted globally in 1995 by the ICA and, in Australia, are enshrined in sections 10 and 11 of the Co-operatives National Law.⁵

All Australian co-operatives can use the co-operative principles as a standalone framework for governance, or can additionally adopt the CME Governance Principles.

At a time when many business sectors are looking to improve their culture by defining core values, the statement on co-operative identity, values and principles is an invaluable asset for the co-operative movement. The ICA publishes Guidance Notes on the co-operative principles.⁶

About the Business Council for Co-operatives and Mutuals (BCCM)

The BCCM is the peak body for Australian co-operatives, mutuals and member-owned enterprises. The BCCM represents a diverse range of enterprises operating in sectors including agriculture, finance and banking, insurance, motoring services, health services, aged care, disability, employment, education, indigenous services, housing and retail. The BCCM advocates for recognition of the sector and for measures that create a level playing field between co-operatives and other businesses, including implementation of the recommendations of the Senate Economics References Committee report into co-operative, mutual and member-owned firms (2016) and the recommendations of the Hammond Review (2017).

About the Co-operative and Mutual Enterprise (CME) 100 Chairs' Forum

The BCCM holds a CME 100 Chairs' Forum bi-annually, bringing together the Chairs of co-operative and mutual enterprises to discuss issues facing the sector and the economy more broadly.

Find out more about the BCCM and our members:
bccm.coop

⁴ See <https://www.rochdalepioneersmuseum.coop/about-us/the-rochdale-principles/>

⁵ Alongside the Co-operatives National Law, Queensland and Western Australian co-operatives legislation both enshrine the co-operative principles. See Sections 6-7 Co-operatives Act 2009 (WA); Sections 7-8 Cooperatives Act 1997 (Qld).\

⁶ See <https://www.ica.coop/en/blueprint-themes/identity/guidancenotes>

THE 9 CME GOVERNANCE PRINCIPLES

Principle 1: Create, protect and return member value: A CME should act on behalf of its members to achieve its agreed purpose by pursuing the sustainable creation, protection and return of value to current and future members.

Principle 2: Lay solid foundations for management and oversight: A CME should establish and disclose the respective roles and responsibilities of its board and management and how their performance is monitored and evaluated.

Principle 3: Structure the board to add member value: A CME should have a board that meets the organisation's minimum requirements, is of an appropriate size, diversity and composition, and has the skills and commitment to discharge its duties and responsibilities effectively.

Principle 4: Act ethically and responsibly: A CME should act ethically and responsibly in relation to its members and other stakeholders.

Principle 5: Safeguard integrity in CME reporting: A CME should have formal controls and rigorous processes that safeguard its assets, provide independent attestations to members of the integrity of its financial processes and disclosures, and can demonstrate alignment with purpose.

Principle 6: Make timely and balanced disclosure: A CME should make timely, transparent and balanced disclosure of all matters concerning it that a reasonable person would expect to have a material effect on the value received from ongoing membership and the interests of members and other stakeholders.

Principle 7: Respect the rights of members and other stakeholders: A CME should respect the rights of its members and other stakeholders by enabling them to access information, and where appropriate, education and training to allow them to exercise those rights effectively.

Principle 8: Recognise and manage risk: A CME should establish a sound risk management framework and periodically review the effectiveness of that framework in relation to the creation, protection and return of member value.

Principle 9: Remunerate fairly and responsibly: A CME should pay director remuneration sufficient to attract and retain high quality member and independent directors and design its executive remuneration to attract, retain and motivate high quality senior executives and employees and to align their interests with the creation of value for members and other stakeholders.

PRINCIPLE 1:

CREATE, PROTECT AND RETURN MEMBER VALUE

A CME should act on behalf of its members to achieve its agreed purpose by pursuing the sustainable creation, protection and return of value to current and future members.

Recommendation 1.1 - Strategic Objectives

The board of a CME should:

- a. consistent with its governing document and purpose and primary activities, develop a clear set of strategic objectives designed to ensure the sustainable creation, protection and return of value for current and future members;
- b. obtain collaboration and support for these strategic objectives from the membership;
- c. monitor and review implementation of these strategic objectives; and
- d. report regularly to members as to the implementation, monitoring and review of these strategic objectives.

Notes for smaller CMEs

Regardless of the size of the CME, its underlying purpose is to create, protect and return member value. Setting a strategy to achieve this purpose is a fundamental task for all CME boards.

Types of value in a CME

What is value for members? Professor Tim Mazzarol suggests that members of CMEs wear 'four hats': they are its patrons (users or suppliers), its owners, its investors and are a community. Value is provided not just through services (the patron hat), or through financial returns (the investor hat), though these are important – it is also through the ability to exercise ownership rights to set the long-term strategy of the organisation (right to stand for election, right to information, right to make decisions in the general meeting) and feel part of a community of likeminded persons. Mazzarol suggests each has a role in building member loyalty.⁷

Different hats may have different weighting in different CMEs but this framework provides an important starting point for boards of CMEs seeking to develop or revisit

strategies to create value for members. In all CMEs, each hat is likely to have some importance – small not-for-profit CMEs should not discount the importance of members as investors (which could be through annual subscriptions, shares, debentures or other means). For all CMEs, the distribution of member value extends across a range of social, cultural and economic benefits.

Case study in creating value for members: The Co-op (Nuriootpa)

The Co-op is a consumer co-operative owned by more than 18,000 members in the Barossa Valley and provides an example of how a co-operative can create value for members in various ways. The Co-op's mission is to be the 'heart of the Barossa', reflecting its role in generating economic and social value for members and the community.

The Co-op operates a local shopping centre in Nuriootpa, including directly managing a supermarket and hardware store. A 2014 study by EY showed that for every dollar spent at the Co-op's supermarket, an additional 76c of value was created in the local economy.⁸ It achieves this through a commitment to stocking 40% local produce and value-added products, being a major local employer, donating \$100,000 annually to community groups and clubs and paying rebates and interest to members based on patronage and shareholding. It has recently invested millions of dollars in redeveloping its shopping centre, including improved community meeting spaces.⁹

The offer of patronage rebates and interest payments (above the bank term deposit rate) on shareholdings are clear ways of creating value for members as patrons and investors, but sits alongside proposition of creating a vibrant local community (through donations, support for local farmers, provision of community spaces), of which members are a part.

⁷ See Mazzarol, Soutar and Limnios, 2013, 'Key Drivers of Co-operative Member Loyalty: Findings Across Industry Sectors'. Available online at https://cemi.com.au/sites/all/publications/Member_Value_Coops_UWA_2013.pdf

⁸ See EY, 2014, Sticky Money: Recognising the total value created by Australian Co-operatives and Mutuals. Available online at <http://www.barossa.org.au/assets/Uploads/Publications--Reports/StickyMoneyReport-2014.pdf>

⁹ See <https://barossa.coop/annualreport2018/#fb0=24>

Case study in creating value for members: CBH Group

CBH Group is a producer co-operative owned by more than 4,200 grain growers and is Australia's largest grain exporter. Its activities include the storage, transport, marketing and processing of grain.

CBH identifies four channels in which it creates and returns value for members (and other users of its services) :

- As customers of the co-operative, grain growers access the cheapest grain transport network in Australia through a rebating system
- Grain growers benefit from CBH's commitment to developing the grains industry, with increased farm profitability, land prices and sustainability
- Grower members have ownership and control of the supply chain beyond the farm gate
- CBH strengthens grain growing communities, through its role in local economies, the provision of community grants and its advocacy to government

Both the Co-op and CBH not only have clear strategies to create value for members but also clearly communicate this to members in formal and informal events and meetings and in written and video materials.¹⁰ Smaller CMEs may not have the same resources to produce an array of communications materials, but they can provide members with a clear and consistent message about the value of the CME in meetings, newsletters and social media messaging.

Strategies for delivering value to members in charitable CMEs

Many smaller CMEs are registered charities and provide services to members that are funded by government. As member-owned and focussed organisations, CMEs have the structural possibility to develop competitive advantages over other service deliverers (government, not-for-profits, for-profits). However, for many CMEs, achieving this competitive advantage and thereby demonstrating the value of CME membership to members in the absence of a strong two-way patronage relationship between the CME and members can be a strategic challenge. A CME that does not demonstrate the value of membership can be exposed if the government's approach to funding changes,

for example from block funding to user-controlled budgets. This is the case even though a user-controlled budgetary environment may make a CME an ideal structure (such as under the NDIS). One strategy to address this risk could be examining ways of 'value adding' for members above the government-funded essential service the CME provides. For example, a CME providing free primary health services to members may investigate the merits of starting an affordable healthy food scheme for members. A CME may also play an advocacy role, giving more voice to users receiving government-funded services, and may link this to member-ownership (it can offer members a bottom-up mechanism in relations with stakeholders such as government). The 'four hats' framework referenced earlier should show there are many ways that any CME can deliver value to members.¹¹

The roles of members, board and executive in developing CME strategy

In CMEs, the relations between members, board and executive take on a different flavour than in other types of organisation (such as investor-owned firms or traditional charities) because the members are also the key supplier or customer of the CME. While the board also has an important relationship with the executive in developing strategy, the democratic governance of CMEs means the relationship and genuine engagement between large parts of the membership and the board is important for the effective development of strategy. Professor Johnston Birchall puts in the following terms:

*'The design architecture of a co-operative has to foster three sets of relationships: between members and the board, the board and the managers, and the managers and the employees. A successful board finds out what are the members' priorities, turns these into organisational aims, and then holds managers accountable for pursuing these aims. The board energises the managers, making demands but also offering support. Managers, in their turn, energise the employees, making demands on them but also offering support. The circle is complete when the relationship between employees and members becomes mutually reinforcing, with both employees and members gaining energy from each other.'*¹²

¹⁰ See, for example, <https://www.youtube.com/watch?v=ovWQNXW6Png>

¹¹ See Mazzarol, 2013, 'Key Drivers of Co-operative Member Loyalty'. Available online at https://cemi.com.au/sites/all/publications/Member_Value_Coops_UWA_2013.pdf

¹² Johnston Birchall, 2017, 'The Governance of Large Co-operative Businesses', 31. Available online at <https://www.ica.coop/sites/default/files/publication-files/governance-report-2017coops-ukfinalweb-1823508697.pdf>

Smaller CMEs often do not have a separate paid staff or executive and therefore the categories described by Birchall may overlap to some extent. Occasionally smaller CMEs (often worker co-operatives) will deliberately choose a collective management structure where all members are directors. The size, scarcity of resources or choice of governance structure can make delineating roles of members, board and executive difficult in smaller CMEs (see below recommendation 2.1). Nevertheless, the following table sets out the roles of members, board and executive in the development of a member-focussed strategy.

Members - As much as possible, have the opportunity to be collaboratively involved in the development of strategy (to create, protect and return value to members); members generally elect the board to develop and oversee implementation of the strategy.

Board - Develops the strategy; monitors and reviews its implementation and reports to members, primarily through AGMs and other general meetings. In some CME entities, the board may appoint independent / non-member directors to provide expertise to inform development of strategic outcomes and policy it requires on behalf of members. Some CMEs feature an established advisory or supervisory Member Council to inform and complement the strategic work of the Board and to inform policy to guide operational practice.

Executive - Contributes to the strategy developed by the board, and implements and reports on progress to the board.

PRINCIPLE 2:

LAY SOLID FOUNDATIONS FOR MANAGEMENT AND OVERSIGHT

A CME should establish and disclose the respective roles and responsibilities of its board and management and how their performance is monitored and evaluated.

Recommendation 2.1 - Roles and responsibilities

A CME entity should disclose the respective roles and responsibilities of its board and management.

Notes for smaller CMEs

Regardless of size, CME entities should develop clear statements of role and responsibility for each member of their board of directors and executive team (e.g. chair, deputy chair, secretary, member director and, where relevant, independent / non-member directors) along with key management positions. All directors should understand that being part of the board means joining a collective: the board always speaks with one voice within the parameters of approved policy. The board is responsible for developing strategy, approving budgets and monitoring financial performance, monitoring the integrity of reports, hiring and firing the CEO, monitoring of risk and undertaking engagement with stakeholders.

Beyond establishing the general nature of each role within the organisation, statements of role and responsibility should also outline the legal and fiduciary duties of directors set out under each CME entity's governing legislation, e.g. Corporations Act and / or CNL. Broadly, the duties for directors include:

- Discharging duties in good faith
- Exercising care and diligence
- Making sound business judgements
- Appropriately using position
- Appropriately using information
- Preventing insolvent trading

CMEs should also consider what duties apply to officers or any other persons, such as the secretary:

- NSW Fair Trading's website provides basic information on the obligation of directors and the secretary of a co-operative: <https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/co-operatives/running-a-co-operative>
- The Co-op Manual provides further description of the roles of directors and the secretary: <https://nsw.coop/co-operatives-in-australia-a-manual/part-three-running-a-co-operative/staying-on-track-the-directors/>
- Justice Connect's Not-for-profit Law provides useful introductory resources designed for charities and not-for-profits (including companies limited by guarantee and co-operatives) on the role of boards and the nature of directors duties: <http://www.nfplaw.org.au/governance>

Keeping strategy and management clear can be a challenge in smaller CMEs

As noted above, in smaller CMEs and in worker co-operatives, the members and/or board may also be responsible for undertaking operational activities, and this may make delineating between the board's strategic role and other activities more difficult. In some co-operatives, members might also act as volunteers and have individual accountabilities to employed staff. Where directors of CMEs are expected to be involved in the operations of the CME, this should be made clear to potential directors.

Directors should remember that while they may have additional operational roles, their directors' duties always apply.

Notes for co-operatives

Section 11 of the CNL sets out that the CNL is to be interpreted in line with the co-operative principles (provided as an Appendix to the CME Governance Principles), and this should be kept in mind in relation to directors' duties.

The CNL requires a co-operative to have a majority of member directors on its board. Other directors are known as non-member directors.

If the rules of the co-operative allow, the board may by resolution delegate the board's functions (other than the board's power to delegate) to one director or to a committee of directors, or members (section 178 of CNL). As stated above, legal and fiduciary duties arising under co-operatives legislation are non-delegable duties. Although designed to comply with UK law and practice, for helpful guidance, Co-operatives UK has developed a range of template statements of role and responsibility, for various positions within a co-operative.¹³

Box 2.1 Suggested principles for effective delegation

- Delegations should be made clearly, in writing, by way of board resolution and recorded in a delegations register
- All delegations and sub-delegations should be made to the employees' (or members) position, not to the individual occupying that position
- All delegations should be exercised for a proper purpose, in good faith and in the best interests of the CME
- All delegations should be exercised in accordance with any directions or policies approved by the board

Recommendation 2.2 - Board accountability to members

A CME should have mechanisms in place to ensure board accountability to members.

Notes for smaller CMEs

The boards of smaller CMEs are often made up entirely of member directors, and this provides a strong foundation for accountability to and representation of members. Birchall identifies representation as one of the

three mechanisms, along with expertise and voice, that are needed for effective member-focussed governance.¹⁴ Representation of members on the board provides a link between members and the board, and increases the likelihood of decisions being made in the interests of members. While member directors are representative, even of a sub-section of the membership (by geography or where there is more than one class of member), their duty is to make decisions in the interest of the CME as a whole.

All CMEs should reflect on whether there is enough engagement with members and enough information provided to members about elections and board requirements for the benefits of representative governance to be realised.

Recommendation 2.3 - Due diligence

A CME entity should:

- a. undertake appropriate checks before appointing a person, or putting forward to members a candidate for election, as a director;
- b. provide members with all material information in its possession relevant to a decision on whether or not to elect or re-elect a director.

Notes for smaller CMEs

A smaller CME may have a volunteer board. In this context, ascertaining the time commitment of current and potential directors may be one of the most important due diligence considerations.

In all CMEs, checks as to a candidate's character, education, experience, criminal record and bankruptcy history should be undertaken. There are basic qualifications all directors must meet under both company and co-operatives law (see Part 2D.6 Corporations Act 2001 and s181 CNL).¹⁵

Notes for co-operatives

The CNL requires co-operatives to have a majority of member directors at all times. This is a reflection of the co-operative principle of democratic member control (principle 2) in the Australian legal framework for co-operatives. All else being equal, then, active members of a co-operative should be eligible to stand for election to the board with as few barriers as possible. However, a co-operative may require certain expertise and consider setting relevant qualifications to stand for election as a director. A co-operative will then need to undertake due

¹³ You can access these resources via <https://www.uk.coop/resources>

¹⁴ Birchall, Governance of Large Co-operative Businesses, 5

¹⁵ See https://aicd.companydirectors.com.au/~media/cd2/resources/director-resources/director-tools/pdf/05446-6-8-duties-directors_who-can-be-director_a4-web.ashx

diligence on candidates to ensure members voting in director elections are fully informed about the eligibility and expertise of all candidates.

The International Co-operative Alliance Guidance Notes suggest that co-operatives can balance the need to maintain democracy (representation) and develop expertise for effective co-operative governance as follows:

*'All co-operatives should consider whether it is appropriate to develop qualifications that are appropriate for members to hold before they stand for elected office. The requirement that candidates for election should hold specified qualifications before they stand for election is to be encouraged and should be approved by the members in general meeting or assembly. However, the requirement for qualifications should not be used as a means of disqualifying members from seeking elected office. Where such qualifications are required and are approved by the membership, members wishing to stand for election should be given training opportunities to gain the qualifications needed.'*¹⁶

Box 2.3 Suggested content for a board recruitment policy

- A list of processes supporting disclosure to members
- A list of standard information for disclosure to members about new candidates, for example: The candidate's name, professional background, skills and experience
- Details of any previous or current directorships held by that candidate - including organisation and term of service
- Details of the checks performed in relation to that candidate
- Any material interests that may affect decision making (and the CME's processes for managing any such conflicts of interest)
- A statement as to the candidate's potential to create, protect and return member value (from either the candidate or the board)
- A list of standard information for disclosure to members about candidates standing for re-election / re-appointment, for example: All information provided in relation to new candidates

- The term of office already served by the that director
- Record of meeting attendance
- A statement from the candidate as to why they are seeking re-election / re-appointment

Recommendation 2.4 - Terms of appointment

A CME should have a written agreement with each director and senior executive setting out the terms of their appointment.

Notes for smaller CMEs

It is more likely in a smaller CME that directors will be expected to be involved in operational activities. The terms of appointment provide a means of making clear the board and management duties of a director. CME boards may reflect on whether the duties of directors and officers are clear, whether directors understand their duties, and whether these are clear terms of appointment (e.g. a letter of engagement) and induction processes to communicate the roles and responsibilities of directors and officers.

The AICD Good Governance Principles and Guidance for Not-for-profit Organisations suggests that a letter of engagement should set out the following:

- The manner of appointment (election, board appointment)
- The role, responsibilities and duties
- The term of appointment and any conditions of appointment
- Expectations in relation to the role
- Any induction process¹⁷

Recommendation 2.5 - Company secretary

The secretary of a CME should be accountable directly to the board, through the chair, on all matters to do with the proper functioning of the board.

Notes for smaller CMEs

In some CMEs, often smaller co-operatives, the secretary is also a member, director or the Managing Director (i.e. the CEO who is also a member of the board). In these situations, there should be clarity about what each role entails.

¹⁶ International Co-operative Alliance, 2015, Guidance Notes on the Co-operative Principles, 21. Available online at <https://www.ica.coop/sites/default/files/basic-page-attachments/guidance-notes-en-221700169.pdf>

¹⁷ Australian Institute of Company Directors, 2013, Good Governance Principles and Guide for Not-for-profit Organisations, 13.

Where the secretary is also Managing Director, in addition to setting out all statutory (legal) obligations, the board must ensure that the employment terms and conditions (including remuneration) for the role are clearly set by the board and are legally compliant, and are considered for approval by a general meeting of the co-operative (as set out in the rules/ constitution of the co-operative and in the CNL or other relevant state based legislation). This must be done without any involvement by the secretary in these matters to avoid risk of conflict-of-interest.

Box 2.5 The role of a CME secretary

- Advising the board and committees in relation to matters of governance
- Monitoring the implementation of governance policies and procedures and, where necessary, providing general feedback to support successful implementation of these policies and procedures
- Coordinating the timely distribution of all board and committee papers
- Calling board and general meetings and ensuring proper notices are given
- Ensuring a proper record of all meetings is made and stored in the minute book
- Coordinating the induction and professional development of directors
- Supporting the CME to meet its reporting obligations to external regulatory bodies
- Assisting the Board and interested members in relation to board nomination processes
- Acting as returning officer for elections (in larger CMEs this can be outsourced to an independent third party such as the Australian Electoral Commission / state equivalent).

CME secretaries may find the document and form templates provided on completion of a constitution using the Co-op Builder tool useful for their role in assisting the board in governance procedures: <http://co-opbuilder.agworks.com.au/>

Co-operatives may also refer to Co-operatives UK's Secretary's Roles and Responsibilities Guidance Note: https://www.uk.coop/sites/default/files/uploads/attachments/the_roles_responsibility_of_the_secretary.pdf

Recommendation 2.6 - Gender and cultural diversity

A CME should:

- a. have a diversity policy which includes requirements for the board or a relevant committee of the board to set measurable objectives for achieving gender diversity and pay parity and to assess annually both the objectives and the entity's progress in achieving them;
- b. disclose that policy or a summary of it; and either:
 - i. the respective proportions of men and women on the board, in senior executive positions and across the whole organisation (including how the entity has defined "senior executive" for these purposes); or
 - ii. if the CME is a "relevant employer" under the Workplace Gender Equality Act, the entity's most recent "Gender Equality Indicators", as defined in and published under that Act; and
- c. have a cultural diversity policy.

Notes for smaller CMEs

Smaller CMEs do not have legal obligations to make disclosures under the Workplace Gender Equality Act. Nevertheless, boards of small CMEs should reflect on what steps can be taken to promote gender and cultural diversity in their CME, including through engagement and disclosure to members.

The first co-operative principle, voluntary and open membership, is important in the context of diversity. Co-operatives are open to all persons who are able to meet the qualifications of membership, and do not exclude persons from membership based on race, gender, sexuality, class or other discriminatory reasons.

Many smaller CMEs may have historically had a membership 'bond', perhaps faith-based, or have been formed to meet the needs of a cultural or ethnic community, who are its members. The International Co-operative Alliance Guidance Notes on the co-operative principles explain how such a membership can be reconciled with the principle of open membership:

'Some co-operatives are organised specifically to serve minority cultural, ethnic or religious groups. Faith-based co-operatives and faith leaders, in particular, have a proud history of promoting the development of co-operatives to tackle poverty and promote financial inclusiveness, many of these co-operatives being open to people of other faiths. Faith-based co-operatives

*have every right to exist where they are established in order to overcome the exclusion and disadvantage that minority groups suffer so long as they do not discriminate against others, do not impede organisation of like co-operatives among other cultural groups, do not exploit non-members in their communities, and so long as they accept responsibility for participating in and fostering the development of the wider co-operative movement.*¹⁸

Recommendation 2.7 - Board Performance

A CME should have a process for periodically evaluating the performance of the board, its committees and individual directors.

Notes for smaller CMEs

CMEs of all sizes should review board performance from time to time. Often, informal interviews with board members by the chair will constitute part of the performance review. It is more likely in a smaller CME that a chair is elected by the membership without the advantage of professional directorial experience. Performance evaluation may prove challenging for such a chair; the chair may wish to seek advice from, in the first instance, the CME secretary or, alternatively, the chairs or senior staff of other CME entities, about successfully managing this process. Such strategies are perfectly encapsulated by the sixth co-operative principle of 'co-operation among co-operatives', which is described by the International Co-operative Alliance as a means of sharing social resources to create co-operative economies of scale.

External facilitators and governance assessment tools can also be used to review board performance.

Box 2.7 Managing Performance

A strong performance evaluation process should include:

- Clear expectations around both general standards for performance (e.g. regular attendance at board meetings) and board member specific goals - this may include a terms of appointment, role description and a professional development plan, tailored to reflect the distinctive roles of independent and member directors
- Opportunities for both self assessment and collective peer review, possibly on an annual basis or as deemed necessary by the board
- Regularly scheduled opportunities for monitoring & review, facilitated by the chair
- A separate process for monitoring, reviewing, evaluating, supporting and strengthening the chair's performance (e.g. through self-assessment, peer review and the support of an external mentor/advisor)
- A range of strategies designed to improve upon poor performance (e.g. training, professional development & mentoring)
- Clear consequences for ongoing poor performance (e.g. termination of appointment for independent directors)

¹⁸ International Co-operative Alliance, 2015, Guidance Notes on the Co-operative Principles, 11. Available online at <https://www.ica.coop/sites/default/files/basic-page-attachments/guidance-notes-en-221700169.pdf>

PRINCIPLE 3: STRUCTURE THE BOARD TO ADD MEMBER VALUE

A CME should have a board that meets the organisation's minimum requirements, is of an appropriate size, diversity and composition, and has the skills and commitment to discharge its duties and responsibilities effectively.

Recommendation 3.1 - Nomination committee

The board of a CME should:

- a. have a nomination committee that has at least three members; or
- b. if it does not have a nomination committee, disclose that fact and the processes it employs to address board succession issues and to ensure that the board has the appropriate balance of skills, knowledge, experience, independence and diversity to enable it to discharge its duties and responsibilities effectively.

Notes for smaller CMEs

The board and committee structure of a CME should be appropriate to the risks and resources in the organisation. Smaller CMEs may, for example, decide to combine the functions of multiple committees into one committee (for example an audit, risk and compliance committee or a nomination, succession and search committee) or that the functions remain with the board.

Where a CME has a volunteer or nominally remunerated board, succession and turnover may be ongoing issues. In this context, committee structures may provide a way of developing a pool of potential director candidates from the membership.

Notes for co-operatives

Co-operatives must have a majority of member directors on the board. Where a co-operative is able to appoint non-member directors under its rules, these should be recommended by the nomination committee.

Box 3.1a A note on the role of committees and sub-committees

The purpose of any committee or sub-committee is to provide a forum for independently reviewing relevant information and reporting back to the board. CME committees and sub-committees should avoid having a majority of board members and thereby becoming an extension of the board.

Box 3.1b Tips for Board Succession

- Map the board skills & experience required, in relation to the CME's strategic objectives
- Create a Succession Plan that ensures the staged introduction of new board members over time (and the staged retirement of existing board members)
- Maintain a pool of candidates for future board positions
- Provide information sessions and / or workshops for potential candidates
- Provide induction, mentoring and training to new board members
- Provide exit interviews to board members nearing the end of their term, to identify opportunities for strengthening governance
- Communicate and engage with members around board succession planning, and its role in serving member interests, including the potential benefits of independent or non-member directors to creating, protecting and returning member value

Recommendation 3.2 - Board skills matrix

A CME should have and disclose a board skills matrix setting out the mix of skills and diversity that the board currently has or is looking to achieve in its membership,

that is informed by the purpose and strategic objectives of that entity.

Notes for smaller CMEs

Both values and passion (for the purpose of the business), and business skill, are necessary for the successful management of member-based enterprises of any size. Alfred Marshall, the founder of neoclassical economics, and a supporter of co-operatives, believed that:

*'What distinguishes co-operatives from every other movement is that it is at once a strong and calm and wise business, and a strong and fervent and proselytizing faith.'*¹⁹

While smaller CMEs are often strong on passion, they may have difficulty finding all the skills needed for effective governance of the enterprise. While it may not overcome all the barriers for smaller CMEs to retain the necessary skills, a starting point is to know what skills the CME needs and what skills it currently has. Larger CMEs will commonly have a skills matrix that assists the board with assessing whether it has the right mix of skills. In a smaller CME, a formal skills matrix may not be necessary, but it is still important for the board to actively turn its mind to what it needs in terms of skills, personality, representation and time commitment (this may be an important consideration for volunteer CME boards) and how to engage with the pool of potential directors.

The International Co-operative Alliance Guidance Notes on the co-operative principles suggest that:

*'the democratic process, by itself, does not guarantee that the board of a co-operative will be competent and have the range of skills and expertise necessary to ensure the proper and effective governance of a co-operative, or have the capacity to hold executives to account. Annual board skills audits are advisable in order to ensure that boards have the collective profile and range of knowledge and skills needed to exercise effective governance control. Where a skills audit identifies gaps in the competence of the board, the gaps may be filled by planned training for board members, by the co-option of non-executive board members with the experience or skills the board lacks, or by positively encouraging members with the skills and expertise needed to stand for election to the board.'*²⁰

Box 3.2 Creating the right skills matrix for your CME

When undertaking a skills audit, the skills matrix should reflect the specific needs of your CME. The following list of possible skills for inclusion in a skills matrix has been primarily adapted from a list developed by the Australian Institute of Company Directors (AICD)¹³, however you should determine what these skills mean in the specific context of your organisation. The list can be used for a less formal "audit" in a smaller CME.

Possible categories for your board skills matrix:

- Understanding of CME business model
- Community Leadership
- Corporate responsibility
- Member Engagement
- Industry / Sector Knowledge
- Strategic Expertise
- Legal & Compliance
- Risk Management
- Fundraising & Funding
- People & Change Management
- Accounting & Finance
- Stakeholder Relations & Networking.

Recommendation 3.3 - Independent and Non-Member Directors: A CME should disclose:

- a. the names of each independent or non-member director;
- b. if a director has an interest or position in, association or relationship with the CME, but the board is of the opinion that that it does not compromise the independence of the director, the nature of the interest, position, association or relationship in question and an explanation of why the board is of that opinion;
- c. the general terms of appointment of each independent or non-member director, including length of service; and,
- d. the skills and experience of each independent or non-member director, and the relevance of these skills and experience to the creation, protection and return of member value.

¹⁹ Quoted in Tim Mazzarol, 2012, The Conversation, 'Co-operatives and mutuals: are they a replacement for mainstream capitalism?'. Available online at <https://theconversation.com/co-operatives-and-social-enterprise-are-they-a-replacement-for-mainstream-capitalism-10520>

²⁰ International Co-operative Alliance, 2015, Guidance Notes on the Co-operative Principles, 21. Available online at <https://www.ica.coop/sites/default/files/basic-page-attachments/guidance-notes-en-221700169.pdf>

Notes for smaller CMEs

Box 3.3 - Appointing Independent / Non- Member Directors

Unless otherwise specified in a CME entity governing document, independent or non-member directors may be added to the board through a process known as co-option (referred to as 'appointment' in this document). Co-operatives UK14 provides the following guiding principles regarding the co-option / appointment of directors, which have been adapted for application to the CME sector:

- The board should develop a policy in relation to the appointment of independent / non-member directors
- This policy may include the constitution of a dedicated search committee¹⁵, comprising both member directors and other member representatives. Alternatively the board may wish to consider using external search consultants or by advertising a vacancy
- The search committee / external consultants should conduct any investigations with reference to any succession planning or skills audits recently undertaken by the board
- Appointments should be ratified by members at the next general meeting, and reviewed on a regular basis

Recommendation 3.4 - Member Representation

A CME should ensure there is adequate member representation in its governance.

Notes for smaller CMEs

Member representation provides a link between members and the board, and can act to ensure governance is in the interest of members. Smaller CMEs often have clear representative mechanisms in their governance structure, namely member directors on the board. Co-operatives (of all sizes), must have a majority of member directors on the board.

However, simply having members on the board does not guarantee better governance in the interests of members – CME boards may reflect on how the board structure can be optimised to deliver value to members. Other mechanisms to enhance member representation and voice in governance can also be explored. The UK Consumer Co-operative Code suggests that co-operatives develop 'structures and policies that... promote greater active member involvement at a level below the board.'²¹ Education and training may

be important means of enhancing member director governance skills and broad member participation. Bespoke courses and training on co-operative management and governance are currently offered by AIM WA, University of Newcastle and Co-ops NSW.

Box 3.4 Suggestions for enhancing the representative role of the board

- Consider the development of specific role descriptions / key areas of focus for each director (which may include membership of a related committee)
- For geographically diverse or multi-stakeholder CMEs, consider processes to ensure that no one group is dominant on the board (in some cases, this may require amendment of the governing document)
- Consider development of a diversity policy (this will require ratification by the members and must acknowledge the overriding importance of democratic governance)
- Consider what mechanisms below the level of the board facilitate member participation and can inform the board on the interests of members

Recommendation 3.5 - Role of the chair

To provide leadership that ensures the creation, protection and return of value to the members, the chair of the board of a CME should meet any governing document requirements and have appropriate skills.²²

Notes for smaller CMEs

The chair is a director but, due to their role, must be able to make a more substantial time commitment to the CME. In CMEs that remunerate directors, this is often reflected in the remuneration of the chair.

Facilitating effective board meetings is one of the roles of the chair. The chair is responsible for ensuring meetings are on time, encouraging inclusive debate, developing the agenda with the secretary, dealing with disagreements and engaging management and other stakeholders in meetings.

²¹ Consumer Co-operative Code, 6

²² This recommendation should be read in conjunction with recommendation 2.1

The following box outlines the key roles the chair plays.

Box 3.5 Role of the Chair

A Statement of the Role of the Chair should cover their leadership role in:

- Driving the CME's strategic direction in line with CME values and principles
- Facilitating effective board meetings (and possibly member meetings)
- Promoting good governance and accountability to members
- Providing regular support and guidance to other board members
- Providing regular support and guidance to the CEO / senior executive
- Serving as an ambassador or public spokesperson for the CME, and strengthen relationships with key external stakeholders

Co-operatives UK provides a useful Guidance Note on the role of the Chair: https://www.uk.coop/sites/default/files/uploads/attachments/the_role_of_the_chair.pdf

Recommendation 3.6 - Induction program for directors

The CME should have a program for inducting new directors and provide appropriate learning and development opportunities for directors to develop and maintain the skills and knowledge needed to effectively perform their role as a director.

Notes for smaller CMEs

As the AICD Good Governance Principles and Guidance for Not-for-profit organisations states, 'it is inappropriate and unwise to simply have individuals join boards and expect that they should know... what is expected of them and how the board operates.'²³ This is particularly the case in smaller CMEs, where there is likely to be a volunteer board of members who are drawn to the purpose of the organisation but may have little board experience. For smaller CMEs, an introductory conversation with the chair, followed by a letter of engagement and a meeting with the CEO (if applicable) may be an appropriate induction.

The CME Governance Principles document contains suggestions for contents of an induction package (page 20).

²³ AICD, 2013, AICD Good Governance Principles and Guidances for Not-for-profit Organisations,

PRINCIPLE 4: ACT ETHICALLY AND RESPONSIBLY

A CME should act ethically and responsibly in relation to its members and other stakeholders.

Recommendation 4.1 - Code of Conduct

A CME should have a code of conduct for its directors, senior executives and employees, which addresses expectations for ethical and responsible conduct in relation to members, employees and other stakeholders.

Notes for smaller CMEs

The CME Governance Principles document highlights culture as an overriding consideration for driving ethical conduct in organisations (page 22-3). Culture can be discussed by boards of CMEs of all sizes and can underpin the effectiveness of any policy measures such as a code of conduct. CMEs have clear values and principles, such as the co-operative principles, that can be a useful starting point for CMEs looking to strengthen their culture.

Smaller CMEs often have volunteers alongside or instead of paid employees in operational roles. For such CMEs, they are another important stakeholder group for which the ethical expectations of the CME should be clear, as should the reciprocal obligations of the CME. Volunteers should be provided with relevant training, pass any relevant checks (e.g. Working with Children), sign up to a code of conduct and be able to volunteer in a safe working environment. Volunteering Australia has developed the National Standards for Volunteer Involvement as a guide to attracting and retaining volunteers and managing risks associated with volunteers.²⁴

Recommendation 4.2 - Whistleblower protection policy

A CME should have and disclose a policy in relation to whistleblower protection.

Notes for smaller CMEs

CMEs of any size should promote a culture of openness and accountability, where members, employees and volunteers feel they can give suggestions or raise issues without fear of reprisal. Alongside this, regardless of size, CMEs should consider implementing a whistleblower

policy.²⁵ OurCommunity provides a guide for not-for-profits interested in increasing accountability and implementing whistleblowing policies: <https://www.ourcommunity.com.au/files/whistleblowingbook.pdf>

Box 4.2 Suggestions for a whistleblower protection policy

Co-operatives UK have set out the following standard for consumer co-operatives that can be adopted by CMEs in Australia and what follows is modelled on this work: 20

- Any whistleblower protection policy should include a procedure that enables employees (and members) to raise concerns, in confidence, in matters of financial reporting, financial control or any other issues
- This procedure should be in line with the Public Interest Disclosure Act 2013 (Cth)
- Matters raised under the procedure should be investigated in a consistent, proportionate and independent manner and appropriate follow-up action taken
- All employees (and members) should be made aware of this procedure
- The audit committee (or CME board if no audit committee exists) should ensure that the above procedure is effective and review the key conclusions and actions arising from investigations stemming from whistleblowing.

²⁴ Volunteering Australia, 2015, National Standards for Volunteer Involvement. Available online at https://www.volunteeringaustralia.org/wp-content/uploads/National-Standards-Documents-FINAL_Web.pdf

²⁵ See <https://www.whistleblowing.com.au/nfp-whistleblowing-policy/>

PRINCIPLE 5: SAFEGUARD INTEGRITY IN CME ENTITY REPORTING

A CME should have formal controls and rigorous processes that safeguard its assets, provide independent attestations to members of the integrity of its financial processes and disclosures, and can demonstrate alignment with purpose

Recommendation 5.1 - Audit Committee²⁶

The board of a CME should:

- a. have an audit committee that:
 - i. has at least three members, the majority of whom may be (optional) independent/non-member directors (or independent appointees of the board); and
 - ii. is chaired by an independent/non-member director or an independent person appointed by the board; and
 - iii. discloses the following:
 - the relevant qualifications and experience of the members of the committee; and
 - in relation to each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meetings; or
- b. if it does not have an audit committee, disclose that fact and the processes it employs that independently verify and safeguard the integrity of its corporate reporting, including the processes for the appointment and removal of the external auditor and the rotation of the audit engagement partner.

Notes for smaller CMEs

As discussed elsewhere in these notes, the committee structure of a CME should be appropriate for its size and level of risk. Whatever the size of the CME, and whether it has capacity or need for a separate audit committee, the board of a CME has a responsibility to the members to ensure the adequacy of its corporate and finance reporting frameworks. Indeed, any inadequacy in this respect will likely undermine each board member's capacity to fulfil their legal and fiduciary director duties to act in the best interests of the CME, to act in good faith and for proper purpose and to prevent the entity from trading while insolvent.

To assist the board in tracking financial and non-financial performance, the development of a 'dashboard' of key indicators may be helpful.

Box 5.1 Suggestions for the role of an audit committee

The role of an audit committee is to review and make recommendations to the board in relation to the following matters:

- The adequacy of the corporate reporting process
- The adequacy of the financial reporting process, including the accounting policies applied in the preparation of financial reports
- The adequacy of all policies and procedures relevant to the auditing process

An audit committee may also be involved with:

- Preparation for, and participation required during, an audit
- Oversight of the board's response to a management letter or any other recommendations made by an auditor

Recommendation 5.2 - Financial Statements

The board of a CME should, before it approves the entity's financial statements for a financial period, receive from its CEO and CFO (or equivalent officers in a smaller entity) a declaration that, in their opinion, the financial records of the entity have been properly maintained and that the financial statements comply with the appropriate accounting standards and give a true and fair view of the financial position and performance of the entity and that the opinion has been formed on the basis of a sound system of risk management and internal control which is operating effectively.

Notes for smaller CMEs

CMEs will have different minimum reporting requirements based on size, governing legislation and other factors. CME boards should take a position on

²⁶ Where a CME combines audit and risk, then this recommendation can be read alongside recommendation 8.1

disclosure irrespective of legal requirements so as to ensure accountability and transparency for members.

At the time of writing, the AASB is finalising an FAQ document on CMEs and accounting standards.

Notes for co-operatives

Large co-operatives (as defined in CNL and regulations) are required to appoint an auditor (who is a member of the Institute of Chartered Accountants in Australia or is a member of CPA Australia or is a member of the Institute of Public Accountants holding the respective Professional Practice Certificate issued by one of these bodies) in accordance with the procedures under the CNL. Instead of an auditor, small co-operatives (as defined in CNL and regulations) may decide to include in their rules an audit or review requirement. Members in a small co-operative retain the power to direct the co-operative to undertake a review or audit regardless of what the rules require.

Co-operatives should also note that, at the time of writing, the application of Australian Accounting Standards Board (AASB) 132 in relation to the disclosure and presentation of financial instruments, has certain implications for the preparation of co-operative financial statements. Co-operative should seek advice from an accountant with a strong understanding of the implications of these standards for co-operatives.

NSW Fair Trading provides information about financial reporting requirements in co-operatives (while the requirements are largely uniform across jurisdictions, apart from Queensland, co-operatives should refer to information in their home jurisdiction): <https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/co-operatives/running-a-co-operative/co-operatives-financial-reporting>

Box 5.2 Guidelines for declarations

Any formal declaration made, particularly those required by law, should:

- Be made in writing
- Specify the date on which the declaration is made
- Specify the capacity in which the person is making the declaration
- Be signed by the person making the declaration

Recommendation 5.3 - Annual General Meetings and Audits²⁷

A CME that has an Annual General Meeting (AGM) should ensure that its external auditor (or equivalent, as applicable) attends its AGM and is available to answer questions from members relevant to the audit.

1. The board of a CME entity should ensure that all members are:
 - a. encouraged to attend AGMs and that attendance is made as easy as possible for as many members as possible; and
 - b. provided information about how they may democratically participate in AGMs

Notes for smaller CMEs

Some smaller CMEs may not be required to have an external auditor. As noted above, in co-operatives, the right to request an external auditor is reserved to members, regardless of the size of the co-operative, or whether external audits are otherwise required by law.

Box 5.3 Tips for managing the external audit process

- Set clear terms of reference: working with your auditor, establish and agree on a clear terms of reference for the audit, in advance
- Be prepared: ensure that there are appropriate systems for record keeping in place to contain audit costs
- Be responsive: in the event of a qualified audit & management letter, or any other concerns raised by the auditor, ensure that the board is ready to respond quickly - for example, through the development of an action plan and reporting framework back to members

²⁷ See also recommendation 7.3

PRINCIPLE 6: MAKE TIMELY AND BALANCED DISCLOSURE

A CME should make timely, transparent and balanced disclosure of all matters concerning it that a reasonable person would expect to have a material effect on the value received from ongoing membership and the interests of members and other stakeholders

Recommendation 6.1 - Continuous Disclosure Obligations

A CME should:

- a. have and disclose a written policy for complying with continuous disclosure obligations if any;
- b. ensure that members understand their rights to obtain and transfer shares;
- c. ensure that members have access to information relevant to the CME that includes but is not limited to the following:
 - i. the financial and operating results of the CME;
 - ii. the names of directors and key executives;
 - iii. information about material and foreseeable risk factors;
 - iv. material issues regarding employees and other stakeholders; and,
 - v. the CME's governance structures and policies.

Notes for smaller CMEs

Though not as likely to apply to smaller CMEs, in some cases CMEs will be subject to continuous disclosure obligations under the Corporations Act.²⁸ Some security offers by co-operatives are also affected by the Corporations Act, and therefore both smaller co-operatives and mutuals exploring fundraising options should seek professional advice on their disclosure obligations. The BCCM can provide referrals to advisors.

Box 6.1 Suggested content for a policy on disclosures

- The CME's disclosure obligations, as expressed in its governing legislation
- Consideration of clear forms of communicating balanced disclosures (i.e. both negative and positive communication)
- The role, responsibility and authority of directors and employees in ensuring compliance with the CMEs disclosure obligations
- The standards required by all directors and employees in relation to the treatment of confidential or commercially sensitive information
- Process for vetting and authorisation of internal and / or external communication of any information relevant to the making of an investment decision by a current or potential member or security holder

²⁸ See https://aicd.companydirectors.com.au/~media/cd2/resources/director-resources/director-tools/pdf/05446-2-5-director-tools-bp-continuous-disclosure-requirements_a4_web.ashx

PRINCIPLE 7: RESPECT THE RIGHTS OF MEMBERS AND OTHER STAKEHOLDERS

A CME should respect the rights of its members and other stakeholders by enabling them to access information, and where appropriate, education and training to allow them to exercise those rights effectively.

Recommendation 7.1 - Member and Stakeholder Communications

A CME should provide information about itself and its governance to members and other stakeholders (e.g. other current security holders, potential members and business partners) via its website.

Notes for smaller CMEs

Smaller CME boards may reflect on what level and forms of communication are most likely to contribute to the sustainable creation of value for members over time. Many smaller CMEs do not have an (actively maintained) website with information about itself and its governance. Transparency of information encourages a CME to remain accountable to members and increases the ability of members to make informed decisions.

While many such CMEs are tightknit, with members in one geographic region, and therefore with less need to rely on electronic communications than large, 'consumer-facing' CMEs, a basic website can still provide a cost-effective platform for new members and other stakeholders to engage. Other stakeholders could include volunteers, employees, local community organisations, local and other levels of government, suppliers and other business partners.

Note for co-operatives

Co-operatives have specific legal requirements in relation to active membership and the engagement of members in the primary activities of the co-operative. Given these requirements, information available to members should also include information as to how members can be actively involved in the co-operative (for example, board positions, volunteer positions, social events).

For additional commentary co-operatives may wish to review the International Co-operative Alliance Guidance Notes on the Co-operative Principles, with specific regard to principle 5, Education, training and information.

Box 7.1 Suggested website content for CME entities

- Statements of CME Vision, Purpose, Mission (Primary Activities), Active Membership Requirements and Strategic Objectives (if available, copies of the Strategic Plan for download)
- Copies of past and current annual reports
- Copies of announcements to members
- Copies of meeting notices and other meeting related information
- Copies of media releases, links to social media accounts
- Photos and profiles of all board members and senior management
- An overview of the organisation's structure
- Information relevant to disclosure obligations (including past performance)
- Copies of all newsletters and updates
- Events calendar (including date for AGM)
- Copies of key policies and procedures
- Links to forms for security holders (e.g. share transfer forms)
- Contact information

Recommendation 7.2 - Member engagement

A CME should design and implement a member engagement program to facilitate effective two-way communication with members.

Notes for smaller CMEs

Are there ways members can express their 'voice', such as informal member meetings or CME social events attended by directors? A culture where members have opportunities to and feel comfortable speaking frankly will contribute to the long-term success of a

CME, because it will allow the board to understand and respond strategically to the needs and aspirations of the membership. It will also allow the CME to identify engaged members – potential future leaders.

CMEs may also increase retention and patronage by increasing regular communications that inform members about current activities and the ongoing benefits of membership. A regular newsletter may be a good place to start for smaller CMEs.

Recommendation 7.3 - General Meetings

A CME should disclose the policies and processes it has in place to facilitate and encourage participation at meetings of members and security holders.

Notes for smaller CMEs

Note for co-operatives

Apart from AGMs, a co-operative should schedule regular general meetings of members consistent with the rules of the co-operative. Meetings of specific classes of security holders - for example in multi-stakeholder co-operatives, or where debentures or co-operative capital units (CCUs) have been issued to non-members - should comply with the above principles with regard to meetings along with any other requirements specific to the terms of issue for those securities.

Box 7.3 Suggested content for policy on member meetings

- A code of conduct for meetings, applicable to members, directors, management and other guests
- A clear process for decision making (e.g. by poll or show of hands)
- A clear process on appointing a chair, minute-taker and time-keeper, along with their respective roles
- A clear policy on the use of technology, e.g. how it will be made available, provision of passwords, access to technology
- A clear policy on participation by members who cannot attend a meeting, e.g. direct voting, opportunity to ask questions or make comments
- A clear policy on the presentation of information, e.g. clear, minimal use of jargon, opportunity for members to ask questions and gain clarity

Recommendation 7.4 - Electronic Communications

A CME should give members and security holders the option to receive communication from, and send communications to, the entity and its member database/security registry electronically.

PRINCIPLE 8: RECOGNISE AND MANAGE RISK

A CME should establish a sound risk management framework and periodically review the effectiveness of that framework in relation to the creation, protection and return of member value.

Recommendation 8.1 - Risk Committee

The board of a CME should:

- a. have a committee/s to oversee risk, each of which:
 - i. has at least three members;
 - ii. is preferably (optional) chaired by an independent/non-member director; and
 - iii. discloses the members of the committee, and at the end of each reporting period, the number of times the committee met throughout the period and the individual attendance of the members at those committee meetings; or
- b. if it does not have a risk committee that satisfies (a), disclose that fact and the processes it employs for overseeing the entity's risk management framework.

Notes for smaller CMEs

For smaller organisations, where the establishment of a committee is impractical, risk management should be overseen by the board. Smaller CME boards, with few if any employees, will usually rely on experience and common sense to identify and discuss risks. Regardless of the CME size, key risk areas include:

- Employees and volunteers
- Physical premises
- Recordkeeping
- Financial risks
- Losing member focus

The AICD suggests risks can be grouped as compliance, financial, governance, operational, environmental, reputational and strategic.²⁹

Box 8.1 Tips for communicating risk to members

Consistent with the philosophy underpinning enterprise wide risk management, a CME will be most responsive to risk when it engages a wide range of stakeholders (including members) in the development of its risk management framework. In so doing, members will have a range of opportunities to participate in CME development, and such opportunities may include:

- Participation in a risk assessment workshop to understand the risk management process and to identify & analyse key areas of risk (from a member perspective)
- Receipt of summary of key areas of risk & proposed strategies for risk management (either in member communications, in a workshop or general meeting) and provision of an opportunity to provide feedback
- For smaller CME's, participation in a dedicated risk committee or sub-committee.

Recommendation 8.2 - Risk Management Framework

The board or a committee of the board should review the entity's risk management framework at least annually to satisfy that it continues to be sound

Notes for smaller CMEs

The development and review of a CME's risk management framework should take place in the context of its strategic planning and business & operational planning processes. In such a context, risks will be framed with respect to the extent which they might prevent a CME achieving its strategic objectives that are consistent with governing document objects and primary activities.

Once risks have been identified, analysed and evaluated, risk management planning may be integrated with the business & operational planning

²⁹ AICD, Good Governance Principles, 26. Available online at <http://www.companydirectors.com.au/~media/cd2/resources/director-resources/nfp/pdf/nfp-principles-and-guidance-131015.ashx>

process, in order to ensure that all risk management strategies are appropriately resourced. In so doing, the board can simultaneously review implementation of the strategic, operational and risk management functions, to identify goals achieved and new priorities for the coming review period - and to seek feedback from members.

The AICD's Good Governance Principles and Guidance for Not-for-profits provides useful suggestions for issue spotting and a basic framework for smaller organisations.³⁰

Recommendation 8.3 - Internal Audit

A CME:

- a. should disclose if it has an internal audit function, how the function is structured and what role it performs: or, if it does not have an internal audit function, should disclose that fact, and the processes it employs for evaluating and continually improving the effectiveness of its risk management and internal control processes; and
- b. must ensure that accountability and delegated responsibilities and authorisations are comprehensively mapped throughout the entity.

Recommendation 8.4 - Sustainability Reporting

A CME should identify its material exposure to economic, environmental and social sustainability risks and how it manages or intends to manage those risks.

Notes for smaller CMEs

Smaller CMEs should refer to the sample sustainability reporting framework provided in the CME Governance Principles document (page 33).

³⁰ AICD, Good Governance Principles, 29. Available online at <http://www.companydirectors.com.au/~media/cd2/resources/director-resources/nfp/pdf/nfp-principles-and-guidance-131015.ashx>

PRINCIPLE 9: REMUNERATE FAIRLY AND RESPONSIBLY

A CME should pay director remuneration sufficient to attract and retain high quality member and independent directors and design its executive remuneration to attract, retain and motivate high quality senior executives and employees and to align their interests with the creation of value for members and other stakeholders. the effectiveness of that framework in relation to the creation, protection and return of member value.

Recommendation 9.1 - Remuneration Committee

The board of a CME should:

- a. have a remuneration committee that:
 - i. has at least three members,
 - ii. is chaired by an independent/non-member director who possesses experience in executive remuneration frameworks and contemporary models or, where necessary, is an independent person appointed by the board; and
 - iii. discloses, the members of the committee, and, the number of times the committee met throughout the reporting period and the individual attendance of the members at those meetings; or
- b. if it does not have a remuneration committee, disclose that fact and the processes it employs for setting the level and composition of remuneration for directors and ensuring that such remuneration is appropriate.

Notes for smaller CMEs

Some smaller CMEs will not require a separate remuneration committee. In any event, disclosure of the processes for determining remuneration should be clearly articulated to members through, for example, the annual report. In so doing, specific reference should be made to the relationship between remuneration, performance and the creation, protection and return of member value.

In some smaller CMEs there may be a culture of voluntarism and a reluctance to remunerate, or increase the remuneration of, directors or key staff. Often the voluntarism was crucial to the formation and growth of a smaller CME to its current state, but may be standing in the way of further development. In this context, smaller CME boards may reflect on the merits of different approaches to remuneration in terms of the likely effect on the creation of value for current and future members.

Notes for co-operatives

For co-operatives, director remuneration must be approved in a general meeting.

Box 9.1 Suggested role for remuneration committee

The role of the remuneration committee is to review and make recommendations to the board in relation to:

- the entity's remuneration framework for directors, including the process by which any pool of directors' fees approved by security holders is allocated to directors;
- the remuneration packages to be awarded to senior executives;
- superannuation arrangements for directors, senior executives and other employees; and
- whether there is any gender or other inappropriate bias in remuneration

Recommendation 9.2 - Remuneration Policy

A CME should disclose its policies and practices regarding the remuneration of non-executive directors and the remuneration of executive directors and other senior executives.

Notes for smaller CMEs

For smaller CMEs, the position of member director is often a voluntary one, however it remains important to communicate to members the role of member directors in creating, protecting and returning member value.

For CMEs that are considering introducing director remuneration, the following are useful resources:

- Katherine Zimbelman, 1986, 'Director Compensation: They deserve it – or should': <https://www.grocer.coop/articles/director-compensation-they-deserve-it-or-should>
- AICD, 2016, 'Directors Fees': https://aicd.companydirectors.com.au/~media/cd2/resources/director-resources/director-tools/pdf/05446-1-13-mem-director-t-bc-director_fee_a4_web.ashx
- Angela Stackelback, 2017, 'Five legal steps to Remunerating Not for Profit Directors': <https://probonoaustralia.com.au/news/2017/05/five-legal-steps-remunerating-not-profit-directors/>

Recommendation 9.3 - Conflicts of Interest

A CME must have a policy requiring that all directors shall not make improper use of their position or any information gained in respect of their position, including price sensitive information.

Notes for smaller CMEs

Box 9.3 provides some suggestions for managing conflicts of interest.

Box 9.3 Suggestions for managing conflicts of interest

- A conflict of interest can be described as a material interest in a matter or decision that affects that person's capacity for independent judgement.
- Material interests might be either pecuniary (e.g. they own shares in an entity with which the CME is entering into a partnership), professional (e.g. they work for that entity) or personal (their partner or close relative is a director of that entity). They are material to the extent that they might improperly influence the independence of a director.
- Conflicts of interest may be actual, potential or perceived: in this regard, the board must collectively consider the risk to their CME's reputation of conflicted decision making practices.
- Both company and co-operatives legislation include provisions in relation to managing conflicts and these will need to be considered in the development of any conflict of interest policy.
- Generally all conflicts should be identified and declared by the individual and then collectively managed by the board.
- A declaration should be made either by way of register of interests (standing declaration) or at a board meeting (on the spot minuted declaration).
- The board will then collectively manage the declaration and may ask the interested director to leave the board meeting during decision making on the issue in which that director has an interest.
- For boards with a majority of member directors, interested directors may be exempt from this process where each person's interests is the same as a member of that organisation, and those non-interested are satisfied that the independent of member directors will not be affected by that interest

KEY RESOURCES FOR SMALLER CMEs

Get Mutual (resources website of the BCCM):
getmutual.coop

Co-op Builder tool:
<http://co-opbuilder.agworks.com.au/>

Co-ops Manual (2nd edition):
<https://nsw.coop/co-operatives-in-australia-a-manual/>

Co-op Learning Modules:
<https://learning.farmingtogether.com.au/courses-overview/>

Not-for-profit Law:
<https://www.nfplaw.org.au/>

International Co-operative Alliance:
www.ica.coop/en

Co-operatives UK:
<https://www.uk.coop/resources>

Co-operative Research Group, University of Sydney:
<http://sydney.edu.au/business/research/co-operatives>

Co-operative Enterprise Research Unit, University of Western Australia:
<https://cemi.com.au/node/514>

Co-operative education at University of Newcastle:
<https://www.newcastle.edu.au/degrees/graduate-certificate-co-operatives-management-organisation>

Volunteering Australia:
www.volunteeringaustralia.org

Australian Institute of Company Directors:
<http://aicd.companydirectors.com.au/>

Governance Institute of Australia:
<https://www.governanceinstitute.com.au/>

Regulators

Australian Securities and Investments Commission:
asic.gov.au

Australian Charities and Not-for-profits Commission:
acnc.gov.au

ACT Government:
https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/2102/~/~co-operative-registration

NSW Fair Trading:
<https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/co-operatives>

Northern Territory Government:
<https://nt.gov.au/industry/licences/cooperatives>

Queensland Fair Trading:
<https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/associations-charities-and-non-for-profits/cooperatives/registering-a-cooperative>

SA Consumer and Business Services:
<https://www.sa.gov.au/topics/family-and-community/community-organisations/types/co-operatives>

Tasmania Consumer, Building and Occupational Services:
<https://www.cbos.tas.gov.au/topics/licensing-and-registration/registrations/co-operatives>

Victoria Consumer Affairs:
<https://www.consumer.vic.gov.au/licensing-and-registration/co-operatives>

Western Australia Department of Commerce:
<https://www.commerce.wa.gov.au/consumer-protection/co-operatives>



BUSINESS COUNCIL
OF CO-OPERATIVES AND MUTUALS