

# WEST AUSTRALIAN OPERA

DOCUMENT	CORPORATE GOVERNANCE CHARTER
DATED	2010
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FOR REFERENCE	WAO CONSTITUTION (SEPARATE DOCUMENT)
REVIEWED BY	Deputy Chair, Executive Director 30 July 2020
ATTACHMENT FYI	Essential Governance Practices for Arts Organisations

## **SECTION 1 – THE ROLE OF THE BOARD**

### **1.1 THE ROLE OF THE BOARD**

The Board has overall responsibility for the performance and good corporate conduct of the Company. The Board is responsible for, and has the authority to determine, the policy, practices, management and operation of West Australian Opera and shall do all such things as may be necessary to be done from time to time in order to carry out the objectives of the Company.

Without limiting this general role, the principal functions and responsibilities of the Board include:

1. Overseeing the management of the Company and the management of risks
2. setting the short, medium- and long-term goals of the Company
3. providing strategic direction to the Company
4. determining the policies governing the operations of the Company
5. appointing and setting the terms and conditions of the appointment of the Executive Director and the Artistic Director (or Music Director)
6. Reviewing and providing feedback to the Executive Director and Artistic Director (or Music Director) on their performance
7. Establishing and determining the powers and functions of all committees of the Board
8. Approving the annual budget and long-term budget plans
9. Approving significant contracts and agreements entered on behalf of the Company
10. Monitoring the performance of the Company, reviewing audit reports, and providing direction on any corrective action needed
11. Ensuring proper accounting records are maintained by the Company
12. Ensuring legislative and regulatory compliance
13. Reporting to members on the performance of the Company
14. Reviewing annual progress and performance in meeting the objectives of the Company including, reporting on the outcome of such reviews

The Board will carry out its activities through the Executive Director and delegates to him/her specific powers and responsibilities.

### **1.2 BOARD STRUCTURE**

In line with good governance principles, the Board of West Australian Opera believes that it is essential for its structure to reflect the need for independence, transparency, flexibility and to protect/represent the interests of all stakeholders. The structure and powers of the board are set out in the Constitution

### **1.3 THE ROLE AND DUTIES OF INDIVIDUALS**

The Board of West Australian Opera is responsible for the overall success of the Company, including:

1. Financial operations and solvency
2. All matters as prescribed by law and
3. The strategic direction of the Company.

The common law principle of the duties of directors is to act honestly, to exercise reasonable care and skill, to be diligent and to be aware of and understand the fiduciary duties of a director. These are:

### **1.3.1 Duty to Act in Good Faith**

The duty to act in good faith (bona fide) is an overall common law duty. A director owes the Company the fiduciary duty to act in good faith. This requires the director to act for the benefit of the Company. Directors must retain their independence and not act in accordance with the wishes of a third party. The common law duty is reinforced by section 181 of the *Corporations Law* which provides that a director must exercise their powers in good faith in the best interests of the corporation and for a proper purpose. The courts have interpreted this duty to act 'honestly' in common law terms to mean acting in good faith and in the best interests of the Company. A director must not by intention or lack of clarification to another person or party give a view or opinion that is interpreted as representing the opinion of the Board or the Opera Company unless such a view has been discussed and agreed by the Board.

### **1.3.2 Duty to Avoid Conflict of Interest**

A director must avoid situations where there is a real possibility of conflict between their personal interests and the interests of the Company. Where a conflict does arise, full disclosure must be made to the board of directors. A director must be aware of both actual and potential conflicts of interest. This duty is designed to prevent directors from making a profit out of acting as a director and further, prevents directors from putting themselves in a position where it appears, they may be acting in their own interests. As a rule, a director breaches this duty even though they may not have made a profit, the Company may not have suffered a loss, or the terms of the contract were fair. Under the *Corporations Law* the directors of the Company must give notice of any material personal interest they have in any matter relating to the Company.

### **1.3.3 Confidential Information**

No member of the Board shall disclose or communicate any information that is acquired by virtue of his or her office as a Board Member unless:

- required to do so by law; or
- specifically, authorised to do so by the Board of Directors; or
- the information is already available to the public.

## **1.4 THE ROLE OF THE CHAIRMAN**

The Chairman is elected by the Board. The Chairman is the spokesman for the Company at the AGM and in the reporting of performance and represents the Board to government, industry and in other public forums.

The Chairman will:

1. chair Board meetings and ensure meetings run smoothly, efficiently, and effectively with maximum debate and minimum conflict
2. establish the agenda for Board meetings in consultation with the Executive Director

Key responsibilities of the Chairman are to:

1. Ensure that the Board participates in setting the strategic direction.
2. Ensure that the Board sets appropriate policies, accountabilities, and limitations to guide management in business operations.
3. Ensure the Board has access to timely information to undertake effective decision making and actions.

4. Oversee the administrative and reporting processes that support the Board in its meetings and other activities.
5. Direct Board discussion to effectively use time to address the critical issues facing the organisation.
6. Represent the Board's views in key government arenas and public forums.
7. Oversee the effectiveness of the Board, Executive Director and Artistic Director (or Music Director) performance assessment processes and play a leading role in providing feedback and negotiating for the Artistic Director (or Music Director) and Executive Director's professional development.
8. Maintain an ongoing and healthy relationship with the Executive Director
9. Oversee the Board and Management succession planning policy.

## **1.5 THE ROLE OF THE SECRETARY**

The Executive Director acts as Secretary to the Board and will:

1. ensure that the Agenda and Board papers are forwarded to directors at least five days before the Board meeting
2. write and maintain the minutes of Board meetings
3. subject to provisions for shorter notice of a Board meeting, the secretary shall notify the directors in writing at least 14 days in advance of a meeting of the Board

## **1.6 THE ROLE OF THE EXECUTIVE DIRECTOR**

### **1.6.1 Strategic**

1. Directs and is responsible for all operations of the Company within the strategic plan, approved budget, established policy and in accordance with the authority delegated by the Board of Directors.
2. Ensures and is responsible for the overall achievement of the strategic plan
3. develops and presents plans, strategies, objectives, budgets, and reports to the Board.
4. Ensure the development and presentation of appropriate policies for Board approval.
5. Directs and monitors the response to opportunities and risks
6. Establishes and maintains a sound working relationship with industry, sponsors, funders, members, suppliers, consultative bodies, interest groups and other parties.

### **1.6.2 Management**

1. Carries out the day-to-day management of the Company.
2. Manages company staff including permanent, casual, and seasonal employees
3. Minimises risk by ensuring appropriate policies, system and controls are in place and are regularly reviewed.
4. Ensures the Association complies with all internal policies, relevant legislation, the Constitution, prudential standards, and accounting standards.
5. Ensures all reporting requirements are met as required by the board and funders, and that all reports are an accurate reflection of the company's business.

### **1.6.3 Program Delivery**

1. Reviews organisational performance evaluates the effective and efficient delivery of programs, products, and services, and identifies and recommends improvements.
2. Maintains cost effective operations and improves administrative efficiency and quality of service.

#### **1.6.4 Board Relations**

1. Keeps the Chairman and Board informed, at an appropriate level, of all the activities of the Association.
2. Consults with the Chairman on the development of the Board meeting agenda, committee work, and the preparation of minutes of Board Meetings.
3. Consults with the Chairman on matters requiring resolution of approval of the Board.
4. Ensures Board decisions are properly implemented.
5. Brings to the Boards attention any matter of material significance and risk.

## **SECTION 2 – IMPROVING BOARD PROCESS**

### **2.1 MEETING FREQUENCY, TIME, PLACE AND ATTENDEES**

The board meets six times each year. The board meetings. Attendees include all Board members, the Executive Director and any other party scheduled to give a report or presentation to the Board.

### **2.2 QUORUM**

The quorum for a Board meeting is three directors. The quorum must always be present during the meeting (refer Constitution).

### **2.2 DRAFT AGENDA**

The Executive Director in consultation with the chairman prepares the agenda for each Board and committee meeting. The Board meeting agenda will generally follow the format outlined and each meeting should allow time for informal discussion between directors.

#### **Agenda Items**

Present/Apologies

Minutes of the Previous Meeting

*including noting and approving the minutes*

*Outstanding matters arising from the minutes*

*Items requiring Board Resolution*

Financial Report

Report by the Chairman

Report by the Executive Director

Report by the Artistic Director (or Music Director)

Committee Reports

General Business

Next Meeting of the Board

### **2.4 BOARD PAPERS**

The Executive Director is responsible for the preparation and circulation of Board papers. Board papers should be circulated to directors to arrive a minimum of five days before the Board meeting.

### **2.5 MATTERS ARISING FROM THE MINUTES**

Any item from previous minutes about which the board requires further information or a progress report and which will not be raised in the main body of the meeting. Items will either be dealt with as raised, or it will be noted where in the agenda the item is planned to be discussed. Each item raised and the response will be recorded in the minutes of the meeting.

## **2.6 MAJOR CORRESPONDENCE**

Major correspondence comprises any correspondence addressed to the Board and any significant correspondence received by the Chairman, the Executive Director, or other Company correspondence about which directors should be aware and will be included in the Board papers, unless such correspondence is received within the time period between the circulation of Board papers and the Board meeting, in which case it can be tabled at the meeting.

## **2.7 EXECUTIVE DIRECTOR'S REPORT**

The Executive Director's report is a key component of the Board meeting. It is through this report that directors are kept apprised of West Australian Opera's operations and activities. It serves as documentary evidence of the extent to which directors asked to be kept informed and were kept informed of West Australian Opera's activities. The Executive Director's report is provided in a written format and expanded verbally by the Executive Director at the meeting. The written report is included with the Board papers and circulated before the meeting.

## **2.8 BOARD COMMITTEES AND WORKING PARTIES**

Where the Board has established board committees and/or working parties, the Chair of each committee will report to the Board on progress. Where a decision is required, a recommended resolution will be included with the papers.

## **2.9 BOARD MINUTES AND BOARD PAPERS**

1. Minutes will contain a brief review of the discussion plus the resolution adopted by directors.
2. All decisions will be recorded by means of a formal resolution.
3. The chairman will read the resolution before the Board and ask for all in favour and those against. The exact wording will be recorded and whether the resolution was carried or defeated but will not contain the number of votes.
4. Directors who dissent can ask to have their decision noted in the minutes.
5. Minutes will be prepared in draft by the company secretary and be provided to the Chairman for changes and approval as soon as possible after each meeting.
6. The Minutes, once approved, cannot be amended.
7. The secretary will maintain a complete set of Board papers at West Australian Opera's office.

## **2.10 COMMITTEES**

The Board established the following committees:

1. Finance and Audit
2. Marketing and Development
3. Artistic
4. Nominations
5. Risk (COVID19)

and any other committees or working parties which the Board agrees to establish as required from time to time

## **2.11 FINANCE AND AUDIT COMMITTEE**

### **2.11.1 Risk Management and Financial Controls**

- Review adequacy of the budgetary process
- Review the budget and performance in detail
- Monitor corporate risk and risk management
- Monitor effectiveness of financial controls
- Consider and review the scope of work, reports, and activities of the external auditor

### **2.11.2 Policies, Systems and Reporting**

- Review insurance matters and adequacy of insurance cover
- Evaluate the adequacy and effectiveness of risk management, operating and accounting policies, control systems and reports to ensure compliance with relevant legislation, accounting standards and prudential standards.
- Review annual financial reports and statements

## **SECTION 3 – BOARD FUNCTIONS**

### **3.1 DELEGATION OF AUTHORITY**

The Board has delegated responsibility for the operation and administration of the company to the Executive Director. The Board is responsible for ensuring that objectives and activities are aligned with the expectations and risks identified by Management and the Board. The Board has several mechanisms in place to ensure this is achieved and include the following:

1. Board approval of strategic plan
2. Active involvement in developing and approving initiatives and strategies designed to ensure the continued growth and success of the company
3. Approval of operational plans and budgets and
4. monitoring progress against approved budgets.

### **3.2 RISK MANAGEMENT**

The Board is responsible for ensuring that significant business risks are identified. Risk Management policies are approved by the Board for identified sources of business and operational risk.

### **3.2 STRATEGY FORMULATION**

The Board is responsible for setting and approving the strategic direction of West Australian Opera. The strategic plan is regularly reviewed.

### **3.4 MANAGEMENT ADVICE**

It is recognised that a key component of board function is providing a sounding Board for the Executive Director. The Board of West Australian Opera should provide frank and honest advice to the Executive Director. Similarly, all advice should be constructive in nature and provided in a positive manner.

### **3.5 EXECUTIVE DIRECTOR'S EVALUATION**

The evaluation is undertaken annually by the Board, with the process coordinated by the Chairman. The Chairman will prepare a brief report for the Board

## **SECTION 4 – CONTINUING IMPROVEMENT**

### **4.1 BOARD PROTECTION**

#### **4.1.1 Access to Information**

The Company will hold a set of board papers for Directors for a period of at least seven years. Directors are entitled to access these papers, for the period they were a Director, on request, even if they have ceased to be Directors.

#### **4.1.2 Directors Insurance**

The Company will maintain Directors insurance and this insurance will be reviewed annually.

### **4.2 BOARD EVALUATION**

Each year the Board will conduct an evaluation of its performance.

### **4.3 DIRECTOR INDUCTION**

New Directors receive an induction package including a letter of director appointment access to strategic plan, annual program and budget, previous minutes, and any other background information and contact information for key people in the company.

### **4.4 CODE OF CONDUCT FOR DIRECTORS (AICD GUIDELINES)**

The following information is provided for guidance only and is sourced from Articles of Association of the Australian Institute of Company Directors

1. A director must act honestly, in good faith and in the best interests of the Company as a whole.
2. A director has a duty to use due care and diligence in fulfilling the functions of office and exercising the powers attached to that office.
3. A director must use the powers of office for a proper purpose, in the best interests of the Company as a whole.
4. A director must recognise that the primary responsibility is to the Company's shareholders but should, where appropriate, have regard for the interests of all stakeholders of the Company.
5. A director must not make inappropriate use of information acquired as a director.
6. A director must not take improper advantage of the position of director.
7. A director must not allow personal interests, or the interests of any associated person, to conflict with the interests of the Company.
8. A director has an obligation to be independent in judgment and actions and to take all reasonable steps to be satisfied as to the soundness of all decisions taken by the Board.
9. Confidential information received by a Director in the course of the exercise of directorial duties remains the property of the Company from which it was obtained and it is improper to disclose it, or allow it to be disclosed, unless that disclosure has been authorised by that Company, or the person from whom the information is provided, or is required by law.
10. A director shall not engage in conduct likely to bring discredit upon the Company.
11. A director has an obligation, always, to comply with the spirit, as well as the letter of the law and with the principles of this Code.