

Governance policy for FACS funded disability service providers

Summary: This policy outlines the governance requirements for funded disability service providers as set out in the FACS Funding Agreement for the Provision of Disability Supports and Services under the *Disability Inclusion Act 2014* – also referred to as the “FACS Disability Funding Agreement”.



Document approval

The Governance Policy for FACS funded disability service providers has been endorsed and approved by:

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Deputy Secretary

Approved: <insert date here>

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1 Overview

This policy replaces the Governance Policy for ADHC funded services (Version 1.0). Most of the changes to the previous policy relate to the inclusion of information regarding additional requirements for funded disability services arising from additional safeguards for people with disability introduced by the *Disability Inclusion Act 2014* (DIA). The changes that have been made are outlined in the following table:

Change / Addition	Section Reference
Update of content regarding governance principles to reflect the Australian Securities Exchange (ASX) Corporate Governance Principles and Recommendations (3rd Edition) 2014	Subsection 2.2
The inclusion of information regarding the new probity requirements with regard to the engagement of individuals who work directly with people with disability introduced by the DIA.	Subsection 2.4.1
The inclusion of information regarding the Disability Reportable Incidents Scheme administered by the NSW Ombudsman Office introduced by the DIA.	Subsection 2.4.2

This policy outlines the governance requirements for funded disability service providers as set out in the FACS Funding Agreement for the Provision of Disability Supports and Services under the *Disability Inclusion Act 2014* (FACS Disability Funding Agreement).

Note: “funded disability services” includes services funded under the Community Care Supports Program (CCSP).

Under this policy, it is the responsibility of the corporate governing body to:

- Demonstrate that they are familiar with the constitution of the organisation and the associated legal and regulatory obligations;
- Assure that they document governance systems and practices in accordance with the requirements in this policy;
- Build the organisational capacity of the service and ensure members of the corporate governing body have the skills required to effectively perform its role both operationally and strategically; and
- Act as a key change manager to guide and deliver on the reform agenda in disability services under the Ready Together initiative.

The governance requirements in this policy support the shift to person centered and individualised funding arrangements and the implementation of the National Disability Insurance Scheme (NDIS) in NSW. These changes mean that service providers will need robust governance arrangements appropriate to the size of the organisation to ensure sustainability, viability, efficiency and productivity.

Good governance practices can also assist funded disability service providers to take advantage of growth opportunities planned as a part of the NDIS implementation.

FACS recognises the importance of good governance in the delivery of high-quality services that assist people with disability to live the life they want. Through the range of initiatives delivered through the Industry Development Fund (IDF), ADHC provides significant investment in tools and resources to build the capacity of non-government organisations in governance related matters.

The requirement for effective and efficient governance practices is a concept included in the NSW Disability Service Standards - Standard 8 'Service Management'.

2 Performance Requirements

2.1 Legislation

Funded disability service providers are required to comply with a set of legislative requirements that differ depending on the legislative framework the service operates under.

The legal entity that a service provider operates under depends on a range of factors such as size, structure, function and history of the organisation. For instance, a service provider may choose to establish itself as a proprietary or public company under the Corporations Act 2001 (Commonwealth), which is administered by the Australian Securities & Investment Commission (ASIC), or as an incorporated association under the Associations Incorporation Act 2009 (NSW), which is administered by NSW Fair Trading.

Aboriginal and Torres Strait Islander organisations may choose to form a corporation under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act) and operate under the administration of the Office of the Registrar of Indigenous Corporations (Australian Government).

It is the responsibility of the corporate governing body to ensure that they are familiar with the constitution of the organisation and the associated legislative obligations. The corporate governing body is also responsible for ensuring that the constitution is appropriate to the size and functions of the organisation as the organisation grows, including reviewing the legal status against those changes.

2.2 Principles

In recognition of the different legislative and constitutional arrangements of funded disability service providers the following governance principles have

been adapted from the Australian Securities Exchange (ASX) Corporate Governance Principles and Recommendations (3rd Edition) 2014.

Whilst the ASX principles and recommendations are specifically directed at, and are intended to apply to, ASX listed entities other bodies may find them useful in formulating their governance rules or practices as they reflect a contemporary view of corporate governance standards.

In keeping with the ASX recommendations funded service providers should adopt these principles on an 'If not, why not' basis.

The ASX Corporate Governance Principles are summarised below:

2.2.1 Lay solid foundations for management and oversight

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

2.2.2 Structure the corporate governing body to add value

An organisation should have a corporate governing body of an appropriate size, composition, skill and commitment to enable it to discharge its duties effectively.

2.2.3 Act ethically and responsibly

An organisation should act ethically and responsibly.

2.2.4 Safeguard integrity in corporate/financial reporting

An organisation should have formal and rigorous processes that independently verify and safeguard the integrity of its corporate reporting.

2.2.5 Make timely and balanced disclosure

An organisation should make timely and balanced disclosure of all matters that affect its legal and compliance obligations.

2.2.6 Respect the rights of stakeholders

An organisation should respect the rights of its stakeholders by providing them with appropriate information and facilities to allow them to exercise those rights effectively. For example, the corporate governing body should make available information regarding its decisions and activities to all members of the organisation and other significant stakeholders.

2.2.7 Recognise and manage risk

An organisation should establish a sound risk management framework and periodically review the effectiveness of that framework.

2.2.8 Remunerate fairly and responsibly

An organisation should pay director remuneration or reimbursement (in the case of unpaid volunteer directors) sufficient to attract and retain high quality directors and should design its remuneration to attract, retain and motivate high quality senior executives and staff. An organisation should have a formal and transparent process in determining its remuneration or reimbursement policies.

Further information regarding the principles and the 29 recommendations that give effect to the principles can be found at:

<http://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-3rd-edn.pdf>

2.3 Reporting

FACS is committed to exploring proportionality and reduction of regulation where good governance can be demonstrated as part of the NSW Government's Red Tape Reduction Agenda. To this end, service providers are expected to demonstrate their governance arrangements through existing reporting mechanisms, including but not limited to, the service provider Annual Compliance Return and third party verification.

Where gaps in governance arrangements are identified service providers are expected to take corrective action, for instance by developing a good governance capacity building plan. The corrective action is intended to outline the steps to be taken by the corporate governing body to address identified gaps in governance and to build the capacity of the service provider to put in place appropriate governance systems.

2.4 Disability Inclusion Act Requirements

The DIA introduces additional safeguards for people with disability. These additional safeguards place additional requirements on funded disability services in the areas of probity in employment and the reporting of serious incidents to the NSW Ombudsman.

Funded service providers need to be aware of these additional requirements, and incorporate them into their organisation's policies and procedures, including their risk management procedures. Funded organisations may even consider developing implementation or action plans for these new requirements.

2.4.1 Probity Requirements

The DIA requires all persons involved in the provision of supports and services to people with disability that have face to face or physical contact with individuals from that group, to undergo a criminal record check, and that further checks are carried out at least every 4 years. This requirement applies to:

- Employees (whether casual, temporary, or permanent);
- Self-employed persons, contractors, sub-contractors or consultants;
- Volunteers;
- Persons undertaking training as part of an educational or vocational course or program (other than a school student on work experience); and
- Members of the governing body of the organisation who work, or are likely to work, directly with people with disability, in a way that involves face to face or physical contact with those persons.

Under the DIA, a funded service provider is prohibited from engaging, or continuing to engage, a person who has been convicted of certain criminal offences. Further guidance on the probity requirements of the DIA can be found in the Probity in Employment Policy for FACS funded disability service providers at:

http://www.adhc.nsw.gov.au/_data/assets/file/0003/303465/Probity-in-Employment-Policy.pdf

2.4.2 The Disability Reportable Incidents Scheme

The DIA also enhances the role of the NSW Ombudsman in monitoring and protecting the wellbeing of people with disability in supported group accommodation. This role is being implemented through the NSW Disability Reportable Incidents Scheme.

Under the Scheme, funded disability service providers involved in the provision of group accommodation services are required to report to the NSW Ombudsman incidences of abuse or neglect of a client. Incidents to be reported include:

1. Any sexual offence, sexual misconduct, assault, fraud, ill-treatment or neglect of a person with a disability living in accommodation by an employee.
2. An assault of a person with disability living in the supported accommodation by another person with a disability living in the same place that is a sexual offence, causes serious injury, involves the use of a weapon, or is part of a pattern of abuse.
3. An incident involving the contravention of an apprehended violence order made for the protection of a person with disability.

4. An incident involving an unexplained serious injury to a person with disability.

“Employee” encompasses volunteers and contractors/sub-contractors.

Further guidance on the Disability Reportable Incidents Scheme can be found on the NSW Ombudsman website at www.ombo.nsw.gov.au.

3 Further information

3.1 Resources

The Industry Development Fund (IDF) provides a range of corporate governance resources for non-government organisations which are available at <http://www.idfnsw.org.au/corporate-governance>.

The Probity in Employment Policy can be found at http://www.adhc.nsw.gov.au/_data/assets/file/0003/303465/Probity-in-Employment-Policy.pdf

The NSW Ombudsman website re the Disability Reportable Incidents Scheme is at www.ombo.nsw.gov.au

The NSW Disability Services Standards are in the Standards in Action manual, which is available at www.adhc.nsw.gov.au/sp/monitoring_and_quality/quality/standards_in_action

The Council of Social Service NSW (NCOSS) provides information and resources for the non-government social and community services sector in New South Wales, including a guide for community organisations to the Associations Incorporation Act 2009, available to purchase from NCOSS. www.ncoss.org.au

NSW Office of Fair Trading
www.fairtrading.nsw.gov.au

Australian Institute of Company Directors (AICD)
www.companydirectors.com.au

Australian Securities and Investments Commission (ASIC)
www.asic.gov.au

4 Support and advice

You can get advice and support about this policy from the ADHC Community Inclusion Directorate who has carriage of this document and from FACS District Contract Managers.

If you are reviewing a printed version of this document, please refer to the Intranet to confirm that you are reviewing the most recent version of the policy. Following any subsequent reviews and approval this policy will be uploaded to the internet and/or intranet and all previous versions removed.

5 Monitoring, evaluation and review

It is the responsibility of the ADHC Community Inclusion Directorate to monitor and update this policy when required. This policy will be reviewed as required when any significant new information, legislative or organisational change warrants amendments to this document.