

Inclusive Governance Project – Discussion Paper 1

People with intellectual disability in governance roles

Plain English Summary

This paper has been written to help people talk about including people with intellectual disability on the Boards of community organisations.

1. Inclusion is important. People with disability have a right to be included in the decision-making of community organisations. This might be as a Board member. Having people with lived experience can help Boards make good decisions.
2. There are some rules about who can be a Board member. All Board members need to be able to use information given to them to make decisions. They then need to be able to tell people what they decide.
3. Any information should be given in a way that is easy to understand. People with disability can get support to be a Board member.

This discussion paper has been prepared to inform thinking and discussion about the inclusion of people with intellectual disability in the decision-making and governance of community organisations. It has three sections:

1. Importance and value of diversity and inclusion at a governance level
2. Governance standards for community organisations
3. How organisations can create an environment that supports the carrying out of governance duties by people with intellectual disability

1. Importance and value of diversity and inclusion at a governance level

Inclusive governance within community organisations can be thought of as both a process and an outcome. The process is inclusive when people from diverse backgrounds, and this includes people with intellectual disability, are involved in the decision-making and governance of an organisation. The

outcome is inclusive when the organisation considers and benefits a diverse group of people.

At a very broad level, the benefits of inclusive governance were noted by the Organisation for Economic Co-operation and Development (OECD) that stated “Inclusive governance has important intrinsic value that is rooted in enabling people to exercise voice and influence in the processes that concern them. Inclusive governance can also provide the basis for forging shared identity and common values and in this way, it can galvanise social cohesion” (OECD, 2020, p. 10).

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) recognises the right of people with disability to be included without discrimination, expecting signatories, including Australia, to actively promote an environment in which people with disabilities can “effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others” (United Nations, 2006, p. 22). Participation by people with disabilities in non-governmental organisations is specifically mentioned in this convention.

The Australian Disability Strategy 2021-2031 (Commonwealth of Australia Department of Social Services, 2021) recognises the need for increased involvement by people with disability in leadership roles, reflecting the diversity of the community, and enabling the perspective of people with disability to be taken into account when decisions are being made.

The Royal Commission into Violence, Abuse, Neglect and Exploitation of people with Disability (DRC), in its Public Hearing 13 report released in 2022, identifies governance and leadership as one of its key themes and findings. The findings in this report relate to the investigation of a large disability service provider in Australia. The report specifically discusses and makes recommendations about the inclusion of people with intellectual disability on the Boards of disability service providers.

The DRC found that the failure of Boards to include the perspective of people with disability is a risk to good governance.

“The risks created by having a Board heavily weighted towards directors with commercial or legal experience, but without people with lived experience of disability, are obvious. Even with the best of intentions, the focus of the Board is more likely to be on the perceived operational

requirements...rather than on ensuring that the needs of clients are being met to the highest standards...If the Board does not have the benefit of the experiences and insights of people with disability, the directors are less likely to receive all the information they require to discharge their responsibilities effectively.” (Disability Royal Commission, 2022, p.100)

Lived experience of disability was itself viewed as an important skill to include on a Board:

“...the inclusion of people with disability as directors is likely to expand the range of experience, skills and knowledge available to the Board and to improve the quality of services provided to the people with disability” (Disability Royal Commission, 2022, p. 101).

The lack of lived experience of disability was viewed as a direct cause of the Board’s failure in its duty to its clients. “While it was appropriate for the Board to include Directors with financial, commercial or legal experience, the lack of Directors with lived experience of disability significantly impeded the Board’s ability to discharge its responsibilities effectively.”(Disability Royal Commission, 2022, p.104).

The DRC is clear in its position that people with intellectual disability have a place on the Boards of disability service providers. This was highlighted in its examination of a large disability service provider, noting:

“The assumption made by [CEO, Disability Service Provider] and, presumably, the Board of [Disability Service Provider] that people with cognitive disability are incapable of serving as Directors of an entity such as [Disability Service Provider] is not well-founded.” (Disability Royal Commission, 2022, p.104).

2. Governance standards for community organisations

The Australian Charities and Not-for-profit Commission (ACNC) is the national regulator of charities, providing information, advice and guidance to help them meet their obligations. The ACNC identifies a number of standards that organisations registered as charities need to meet

(<https://www.acnc.gov.au/for-charities/manage-your-charity/governance->

[hub/governance-standards](#)). The expectations of the ACNC in regard to governance standards are similar to those of other regulators.

Two of the ACNC's standards relate to the suitability of individuals to undertake a governance role and fulfil governance responsibilities.

Governance Standard 4 is about the suitability of individuals to become Board or committee members, referred to as 'responsible people'. It states that each organisation must take reasonable steps to ensure its 'responsible people' have not been disqualified from managing a corporation under the *Corporations Act 2001* (Cth), or by the ACNC Commissioner within the previous 12 months.

Such disqualification occurs if:

- the ACNC has disqualified them from being a 'responsible person' in the previous 12 months
- the person has been convicted of certain offences
- the person is an undischarged bankrupt or is subject to a 'personal insolvency agreement' they have not followed.

The purpose of this standard is to make sure registered charities are not controlled by people who may pose a risk to the charity's financial position or the undertaking of its charitable work. The lived experience of intellectual disability does not exclude a person from fulfilling these duties.

For full details of this standard see <https://www.acnc.gov.au/for-charities/manage-your-charity/governance-hub/4-suitability-responsible>)

Governance Standard 5 relates to ensuring 'responsible people' are able to carry out their duties. The duties as detailed on the ACNC website are as follows:

- to act with reasonable care and diligence
- to act honestly and fairly in the best interests of the charity and for its charitable purposes
- not to misuse their position or information they gain as a Responsible Person
- to disclose conflicts of interest
- to ensure that the financial affairs of the charity are managed responsibly, and
- not to allow the charity to operate while it is insolvent.

The purpose of this standard is to make sure an organisation meets its legal duties and that the ‘responsible people’, such as Board members, act in the best interest of the organisation. Acting in good faith for the benefit of, or in the best interests of an organisation, is also called fiduciary duty.

The lived experience of intellectual disability does not automatically exclude a person from fulfilling these duties. There is no single legal definition of mental capacity, and it is important to always presume a person has mental capacity, checking that the person is able to understand the general nature of what they are doing (Law Society of NSW, 2016). A functional test of competence by health professionals includes whether the person can understand and retain information, use this information to reach a decision and then communicate that decision (Stewart et al., 2007).

For full details of this standard see <https://www.acnc.gov.au/for-charities/manage-your-charity/governance-hub/5-duties-responsible-people>

Financial Management of organisational finances is a key responsibility of Boards. The ACNC recommends:

- Board members must have a level of financial understanding that will enable them to make informed decisions about their charity’s finances.
- While many Boards appoint treasurers and Board members with financial expertise, every Board member must be able to read and understand a charity’s financial information.
- Training to improve your understanding of financial concepts is important.
- At the very least, you should be able to determine whether your charity is solvent, that is, able to pay its debts when they are due. Also have an understanding of the financial impact of decisions being made.

Board members with intellectual disability may require support to understand financial reports. The ACNC makes it clear that financial reports should be presented in a way that is easy for everyone to understand, not just financial experts. This allows all stakeholders, both Board members and other stakeholders, to understand an organisation’s financial position. It helps to create a culture where Board members, or other interested people, can ask questions about the finances.

For full details see <https://www.acnc.gov.au/tools/factsheets/establishing-strong-financial-controls-your-charity> .

It is acknowledged that to comply with the ACNC standards, an organisation needs to practice good governance processes, including risk management. This is true whether there is a person with intellectual disability on the Board or not. Some examples of good governance practice to help ensure good decision-making include:

- Knowing the skills and experience within your Board
- Providing suitable training to fill skill gaps
- Use of expert advice to provide specific advice when needed (e.g., human resources, legal, accounting).

3. How organisations can create an environment that supports the carrying out of governance duties by people with intellectual disability

Where it has occurred, the inclusion of a people with lived experience of intellectual disability has not stopped Boards from meetings their obligations. There are several organisations, listed under the ACNC, that have people with intellectual disability on their Boards and have done so for many years. Some examples are the Council for Intellectual Disability (NSW), VALID (Victoria), and the Intellectual Disability Rights Service (NSW).

Effective inclusion of people with intellectual disability at a governance level requires an organisation to proactively create a supportive environment. This was identified by the Disability Royal Commission that stated:

“Many people with cognitive disability are able to manage their own affairs and to participate in professional activities including corporate governance. The question of whether a particular person with disability can serve as a director has to be considered in the light of the supports that can and should be provided to that person” (Disability Royal Commission, 2022, p. 102).

Organisational responses that support inclusion have been identified by the current research being undertaken by the Inclusive Governance Project. A summary is presented below. Further details and resources are available, as developed, at <https://sidebysideadvocacy.org.au/inclusive-governance/>

- Value the contribution of people with intellectual disability can make to your organisation.
- Create a pathway to governance through provision of opportunities to develop skills and experiences for people with intellectual disability. This may include membership of the organisation, involvement in focus groups, taking part in co-design of programs, or membership of advisory groups, sub-committees or the Board.
- Ensure accessibility of Board processes and activities – for example developing an inclusive Board culture, use of plain English communication, giving people time to voice thoughts or concerns in meetings, and respecting different opinions.
- Provide individualised support to Board members with intellectual disability (e.g., preparation to read and understand reports, support during meeting to ensure voice is heard and Board processes are understood).
- Commit to making inclusive governance work.

The disability sector can assist organisations by developing and providing accessible governance training.

Conclusion

Good governance is important for all community organisations and charities. The inclusion of people with intellectual disability at a governance level provides a valuable perspective and insight to Board discussions. To ensure a person with intellectual disability can undertake their duties, it is important that they are given opportunities to increase their governance skills and experience, that they are provided with individualised support, and that they are welcomed onto a Board that has an inclusive culture and accessible processes.

References

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