

Integrating the Corporate & Organisational Governance Roles & Responsibilities of the Board

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& ensuring their alignment with organisational systems, policies and work practices



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Section One: Overview

Acknowledgement Of Country

- ◆ I acknowledge the Traditional Custodians of the land from where I am presenting this session, the Woiworung, and also those Traditional Custodians of the lands from where you are accessing this session.
- ◆ I pay my respects to Elders past, present and emerging, and recognise and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of Australia.

Presentation Acknowledgements

- ◆ In presenting this information I acknowledge that:
 - * directors, chief executive officers and executives will be at different stages in their understanding of the board's roles and responsibilities under ACQS Standard 8, and how it is aligned to traditional corporate governance
 - * boards, and individual directors, will be in different positions in regards to meeting or exceeding their roles and responsibilities under ACQS Standard 8 and therefore the improvements they are or must make to the board's governance framework, processes and outcomes
 - * your board and its directors may have additional governance roles and responsibilities dependent on the framework created by the type of legal entity you govern and its constitution, relevant legislation and regulation, standards and accreditation, and contracts and service agreements.

Presentation Disclaimer

- ◆ This presentation only provides an overview of:
 - * the governing body's (board's) responsibilities under Aged Care Quality Standards (ACQS), Standard 8, Organisational Governance
 - * the board's more traditional corporate governance roles and responsibilities and how Standard 8, Organisational Governance is consistent with these
 - * how strong contemporary corporate governance is a pre-requisite to meeting ACQS Standard 8, Organisational Governance
 - * a practical and integrated approach that can be used by a board to put in place a contemporary governance model, structure, policies and procedures, practices and reporting that should meet or exceed the Requirements ACQS Standard 8, Organisational Governance

Presentation Disclaimer

- * the importance of directors continuing to apply a wide lens when assessing whether they have fulfilled their governance roles and responsibilities; the ACQS being but one piece of regulation imposing governance obligations on boards.
- ◆ This presentation is general in nature only and is not intended to provide specific governance, leadership or management advice tailored to your board, executive or organisation.
- ◆ This presentation does not constitute legal advice.

Presentation Objectives

- ◆ Provide attendees with new or enhanced understandings of:
 - * a board's responsibilities under ACQS Standard 8, Organisational Governance
 - * how these responsibilities are consistent with a board's more traditional corporate governance roles and responsibilities
 - * how strong contemporary corporate governance is a pre-requisite to meeting ACQS Standard 8, Organisational Governance
 - * a practical and integrated approach that can be used by a board to put in place a contemporary governance model, structure, policies and procedures, practices and reporting that should meet or exceed the Requirements ACQS Standard 8, Organisational Governance
 - * the importance of directors continuing to apply a wide lens when assessing whether they have fulfilled their governance roles and responsibilities.

A Note On Language

Who is the governing body? Use of the word board?

- ◆ The ACQS uses the term governing body and defines it as “the individual or group of people with overall responsibility and ultimate accountability for the organisation ...”¹.
- ◆ This most commonly equates to the board of directors, committee of management, trustees, council or similar. I will use the term board as a general reference to all of these.

1 ‘Aged Care Quality and Safety Commission Glossary of Terms, https://www.agedcarequality.gov.au/sites/default/files/media/aged_care_quality_and_safety_commission_glossary_final_may_2020.pdf’

A Note On Language

Use of the word directors?

- ◆ A board is typically made up of people with the title directors (term is defined in s9, Corporations Act 2001)
- ◆ Director equivalents use different terms, eg. Committee Members for those on a Committee of Management
- ◆ I will use the word director in a general sense to mean directors and people in similar positions, eg: Committee Members of a Committee of Management, trustees, council members

Reflecting On The Conference Theme

**“A New Age
for Aged Care”**



Section Two: Corporate Vs Organisational Governance

Corporate Governance, Its Definition

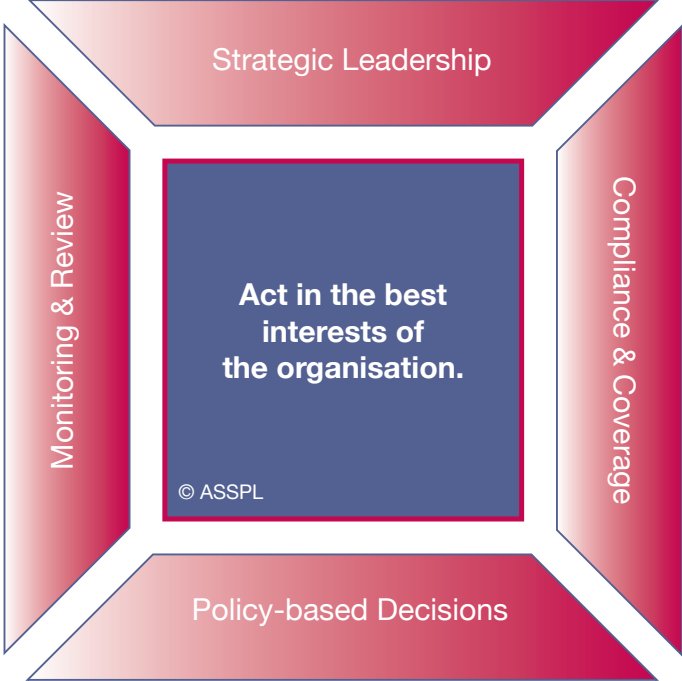
Corporate governance is typically defined as:

- 1. the system of rules, practices and processes by which an organisation is directed and controlled by the governing body...*
- 2. the framework of rules, relationships, systems, practices and processes within which and by which the governing body's authority is exercised, thereby enabling it to govern and lead the organisation.*

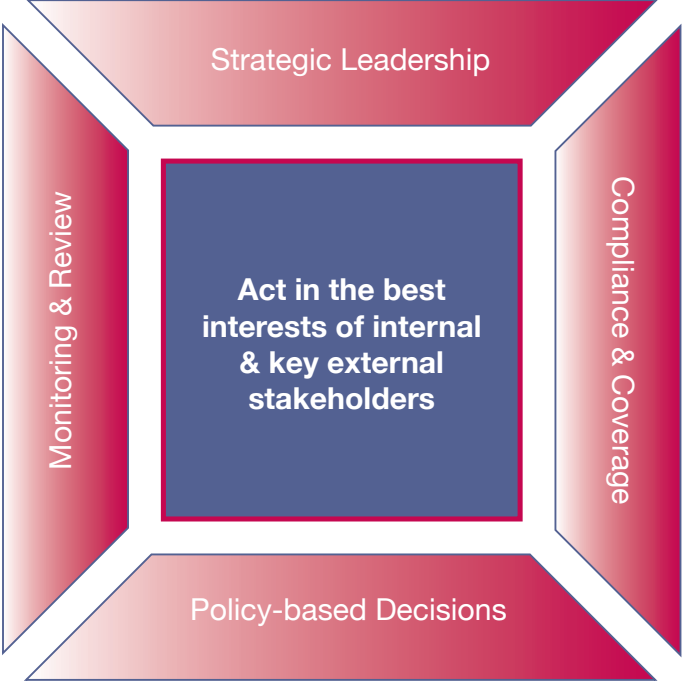
Good corporate governance is fundamental to fulfilment of director's duties.

Corporate Governance Roles & Responsibilities

First & Foremost:



Secondly & Importantly:

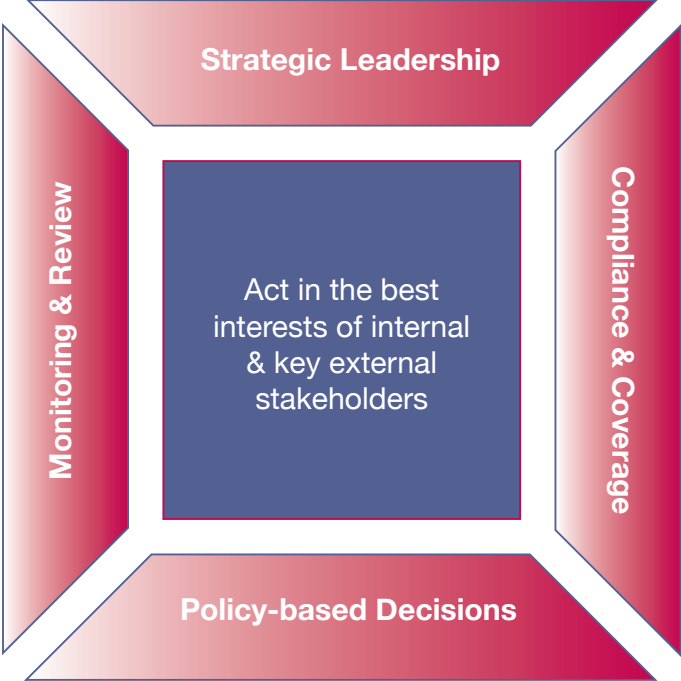


Corporate Governance Roles & Responsibilities

First & Foremost:



Secondly & Importantly:



Genesis of Corporate Governance

- ◆ Debates about how companies should be run have been traced back as far as 1602 with the creation of the Dutch East India Company¹
- ◆ The last 120 years – in the wider sphere of how corporations are governed a debate has bubbled away for over a century about the role of corporations:
 - * are they a ‘legal fiction’ for facilitating private agreements among shareholders (focus is on shareholders); or
 - * are they a ‘real entity’ enabled by law to serve the wider needs of society²

1 See https://en.wikipedia.org/wiki/Isaac_Le_Maire#Shareholder_of_the_Dutch_East_India_Company

2 For example see Lynn Paine and Suraj Srinivasan, A Guide to the Big Ideas and Debates in Corporate Governance, Harvard Business Review, 14 October 2019; accessed at <https://hbr.org/2019/10/a-guide-to-the-big-ideas-and-debates-in-corporate-governance>

Genesis of Corporate Governance

- ◆ Much of the focus of corporate governance throughout the 20th century was on the separation of ownership (shareholders) and control (managers)³ and therefore:
 - * the conflict between shareholders interests (return on investments) and managers interests (managing in self interest);
 - * the agency costs created because of these differing interests; and
 - * how to reduce these costs by aligning shareholder and managers interests

3 See Edward Rock, America's Shifting Fascination with Comparative Corporate Governance, Washington University Law Review 74 2; accessed at https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1608&context=law_lawreview

Genesis of Corporate Governance

- ◆ The last 30 years in Australia – the focus on corporate governance stemmed from a number of major scandals involving the collapse of large national or multi-national corporations, eg.: collapse of HIH Insurance, which at the time of collapse was Australia's second largest insurer.
- ◆ Traditionally the shareholder focus of corporate governance has meant a strong financial focus (which is further driven by the personal liability directors can attract for allow an entity to trade whilst insolvent).
- ◆ Other key foci of corporate governance traditionally included setting and monitoring the strategic direction/strategy of the organisation, over-sighting the performance of the chief executive officer and executive/senior management, identifying and managing risk, how the board structured itself and committees and how the board was responsible to members (shareholders).

The Rise Of Organisational Governance

- ◆ Over the years there has been an expansion of the governance role to include:
 - * a greater variety of risks within the ambit of directors;
 - * establishing and maintaining safe environments for staff, volunteers and third parties to an organisation's premises (eg: contractors and customers)
 - * setting and monitoring culture
 - * ensuring the safety and quality of products and services, especially in the health context
 - * ensuring clients/customers in human service environments are provided with opportunities to inform product and service design and delivery.

The Rise Of Organisational Governance

- ◆ Many of these areas were typically considered the domain of management, however governments and regulators are increasingly legislating and regulating these as the responsibility of boards, eg: Work, Health & Safety Acts, Aged Care Quality Standards, NDIS Practice Standards.
- ◆ These expanded governance roles and responsibilities are often referred to as organisational governance.
- ◆ In the healthcare and aged care contexts where a number of high profile care failures/sub-standard care delivery has put the focus on the extent to which boards were, via systems, frameworks or monitoring, over-sighting the delivery of care and services to ensure it was safe and of an appropriate quality.

Organisational Governance, Its Definition

Organisational governance, in the context of Standard 8, is typically defined as:

1. the system of rules, practices and processes by which an organisation is directed and controlled by the governing body and how that direction and control, and associated authority:
 - * is applied by the chief executive officer, executives and managers; and how it
 - * results in organisational performance, including the delivery of safe and quality products and services.
2. how the governing body:
 - * ensures organisational performance, including the extent to which products and services delivery is safe and of appropriate quality
 - * measures these activities against legislation, standards, quality frameworks, organisational KPIs/metrics or industry benchmarks.

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Corporate & Organisational Governance, The Iceberg

- ◆ The adjacent model, “The Iceberg”, represents the currently accepted position and definition of corporate governance.
- ◆ Currently it is expected that “boards govern an organisation and managers manage an organisation” often stated as “govern above the line, manage below the line”.
- ◆ Therefore if corporate governance is “The Iceberg”, organisational governance (therein the organisational systems) is a sub-set or enabler of corporate governance.



Corporate & Organisational Governance, The Iceberg

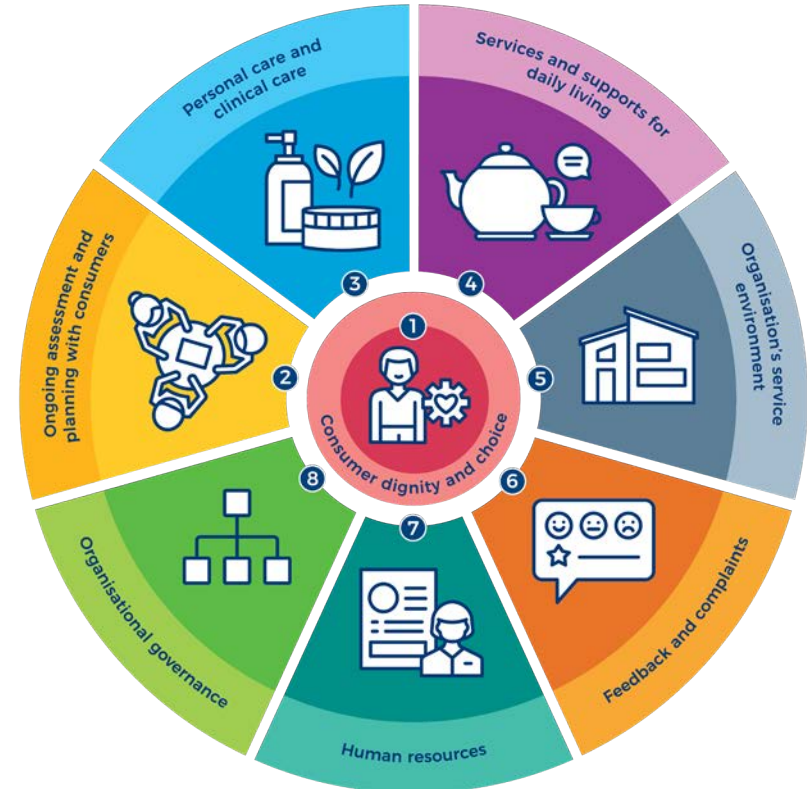
- ◆ Corporate governance is supported by organisational governance thereby creating an alignment between the two forms of governance.
- ◆ It is important to note that the principles and practices, systems and processes of organisational governance are not in conflict with those of a governing body's corporate governance roles and responsibilities.



Standard 8, The Purpose & Scope Of This Standard

Standard 8, Purpose & Scope

- ◆ The intention of Standard 8 is to hold the governing body of the organisation responsible for the governance, organisational and service delivery of both safe and quality care and services.
- ◆ Whilst the governing body sets the strategic priorities for the organisation, it is also expected to promote a culture of safety and quality care and services and to reflect this in the organisation's governance systems and processes (organisational systems), eg: clinical governance system.



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Standard 8, The Purpose & Scope Of The Standard

- ◆ The governing body is expected to strategically drive and monitor (not operationally drive or deliver) improvements that ensure the organisation is committed to safe and quality care and services and the best interests of consumers.
- ◆ Standard 8 is focused on how the various organisational systems (referred to as governance systems by the ACQSC) support the delivery of safe and quality care and services, eg: clinical governance framework.
- ◆ It is expected that the organisation has organisational systems in place to assess, monitor and drive improvement in the quality and safety of the care and services they provide, eg: human resource management system.
- ◆ The purpose and scope of Standard 8 is also focused on making sure consumers have a quality experience.

Standard 8, Consumer Outcome & Organisation Statement

Consumer Outcome

- ◆ I am confident the organisation is well run. I can partner in improving the delivery of care and services.

Organisation Statement

- ◆ The organisation's governing body is accountable for the delivery of safe and quality care and services.

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Standard 8, The Requirements

Requirements

- ◆ The five requirement categories of Standard 8, Organisational Governance are:
 - * consumers
 - * governance culture
 - * governance systems (organisational)
 - * risk management
 - * clinical care.
- ◆ That is not to say additional requirement categories will not be introduced in the medium future.

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Standard 8, The Requirements

Requirements – Consumers

- ◆ Consumers are engaged in the development, delivery and evaluation of care and services and are supported in that engagement.
- ◆ It is important to note that consumer choice and control when fully implemented will drive a significant re-engineering of traditional residential aged care and home care service and business models.

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★ Review presentation titled: *The Board, CEOs, & Execs Roles & Responsibilities In Strategically Transforming Their Organisation...The Principles, Practicalities & Processes Of Transforming Your Organisation, Re-engineering Your Business Model & Reinventing Your Culture*



Standard 8, The Requirements

Requirements – Governance Culture

- ◆ The organisation's governing body promotes a culture of safe, inclusive and quality care and services and is accountable for their delivery.
- ◆ It is important to note that the governing body should be the developer, keeper and promoter of the vision, mission, values, philosophy and core business statements which create the organisational platform that defines both the governing body's culture and organisation's culture.

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Standard 8, The Requirements

Requirements – Organisational Wide Systems

- ◆ Effective organisational systems are required in a number of areas, eg:
 - * information management
 - * continuous improvement
 - * financial governance
 - * workforce governance, including the assignment of clear responsibilities and accountabilities
 - * regulatory compliance
 - * feedback and complaints.

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Standard 8, The Requirements

Requirements – Risk Management

- ◆ An effective risk management system, practices and processes are required, including but not limited to the following:
 - * managing high impact or high prevalence risks associated with the care of consumers
 - * identifying and responding to abuse and neglect of consumers
 - * supporting consumers to live the best life they can
 - * consumer security and safety.

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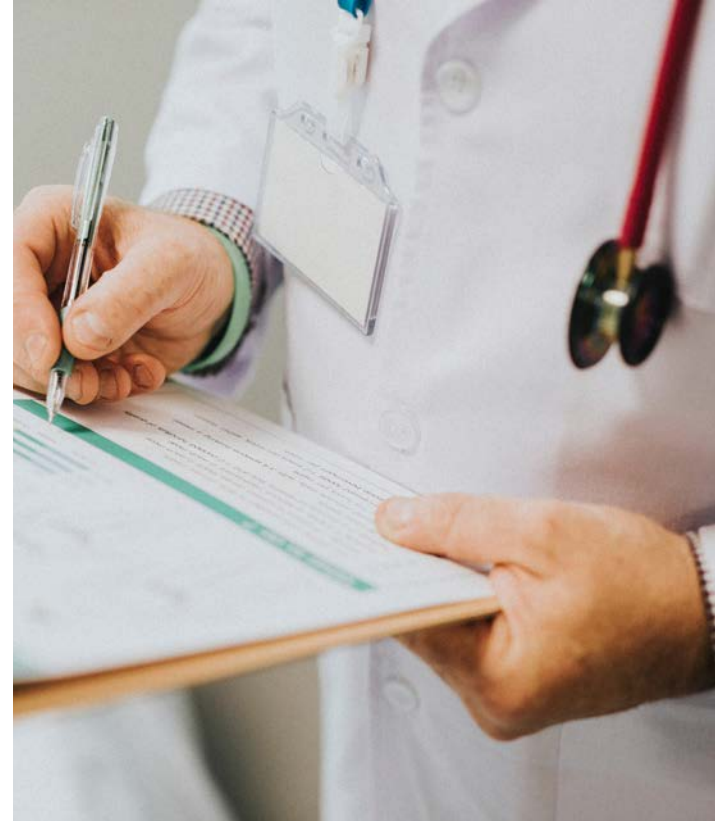


Standard 8, The Requirements

Requirements – Clinical Care

- ◆ Where clinical care is provided, a clinical governance framework is required, including but not limited to, eg:
 - * antimicrobial stewardship
 - * minimising the use of restraint
 - * open disclosure.
- ◆ It is important to note that clinical care and clinical governance are a major focus of the new Aged Care Quality Standards.
- ◆ A governing body should establish and operate a Clinical Governance Committee, guided by terms of reference, policies, procedures, documents and tools.

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Standard 8, All Encompassing

- ◆ Standard 8 is an all encompassing standard and is about how the board oversees the delivery of safe and quality care and services, and therein the other Standards 1 – 7.
- ◆ The adjacent model is provided to reflect this role of Standard 8; removing it as a slice from the ACQSC Standards Model and placing it around all the other Standards, including the customer in the middle.





Section Three: Integration Of Corporate & Organisational Governance

The Board Charter Vs A Governance System

Board Charter

- * A document setting out the respective roles, responsibilities and authorities of the board.
- * Whilst the literature regularly talks about the ability for them to be used to document board / governance policies concerning the way the board works, this aspect is often very brief, eg. short policy statements, with little actual procedure setting out how to fulfil the policy (that is not very prescriptive).
- * Often focused on roles central to all boards and do not account for roles & responsibilities placed on boards by industry specific standards, quality systems or contractual obligations.
- * Typically no alignment to the organisation's policy framework or vice versa.



The Board Charter Vs A Governance System

A Governance System

- * Strong structure centred around:
 - governance principles (eg. TAGS™ Principles, AICD Guiding Principles of Good Governance, ACNC Governance Standards [for registered charities])
 - governance policies and procedures (policy statement, specific procedures to fulfil that policy and KPIs to measure implementation of policy and procedures)
 - a range of tools and documents to implement policy and procedure.
- * Tend to be more prescriptive, providing clear direction for the board and management on the board's governance.
- * Strong structure and greater prescription provides for ability to align/connect governance policy and procedure (how the board works) with the organisational policy framework/policy and procedure (how the organisation and service delivery works).
- * The combination of clear direction and alignment/connection to organisation's policy framework provides clear evidence of how the board undertakes and fulfils its governance obligations placed on it by industry specific standards, quality systems or contractual obligations, eg. ACQS Standard 8, Organisational Governance.

The Board Charter – Risk Management Example

- ◆ The following example is taken from the Board Charter of a \$90m+ human services organisation. There were no other further Board Policies to support the Board Charter or implementation of the Board's roles and responsibilities.
- ◆ "The key responsibilities of the Board are as follows:
 - (k) Establishing and monitoring the performance of the Company's compliance, risk management and control systems, and ensuring they are operating effectively".
- ◆ "The Chief Executive Officer's core responsibilities include the following:
 - (g) Leading the senior management in designing and implementing the Company's compliance, risk management and control systems approved by the Board".

A Governance System – Risk Management Example

TAGS™ Principle 6: Organisational Systems

The governance system and key organisational systems should provide the board with timely and accurate strategic and organisational data, information and knowledge. The governance system and key organisational systems should assist the board to undertake the work associated with its two roles, acting in the best interests of the organisation and stakeholders, and its four responsibilities of strategic leadership, policy-based decisions, monitoring and reviewing and ensuring compliance and coverage.

Such an approach assists in creating and maintaining a linkage between the practical governance functions and tasks of the board and the leadership and management functions of the chief executive officer and executives/senior managers.

- 6.1 Governance System
- 6.2 Financial Management System
- 6.3 Quality Management System
- 6.4 Strategic Planning System
- 6.5 Risk Management System
- 6.6 Human Resource Management System
- 6.7 Asset Management System
- 6.8 Client/Customer Management System
- 6.9 Amalgamation, Merger, Partnership or Joint Venture System
- 6.10 Information Management System
- 6.11 Clinical Care & Management System

6.5 Risk Management Policy, eg:

- Recognises the board has ultimate responsibility for risk management
- Requires the board or a committee of the board, to establish a risk management system and ensure robustness and effectiveness of the risk management system
- Requires the board, or a committee of the board, to identify, analyse, plan for, action and monitor strategic and organisational risks, consistent with the board's risk appetite statement
- Requires the chief executive officer and executives to utilise the risk management system to manage organisational and operational risks.

- Organisational policies and procedures, documents and tools typically assist in the implementation of the board's governance policies and procedures above
- The chief executive officer and executive/s will in whole or in part be guided in their work by both governance policies and procedures and organisational policies and procedures.

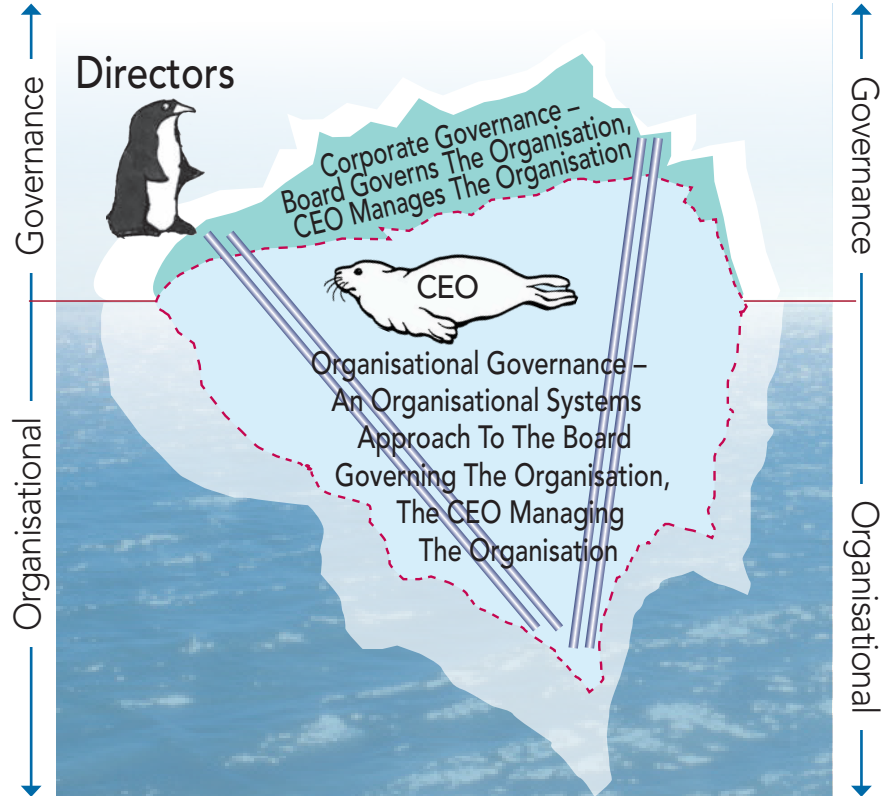
Aligned Organisational Policies & Procedures or Documents & Tools, eg:

- Risk Management Plan or similar that describes the organisational-wide risk management system, eg: risk Appetite Statement, Categories of Risk, Processes and Controls
- Other documents and tools the organisation develops to establish or support a risk management system, eg: Risk Register, operational policy and procedures to manage specific risks.

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Alignment Of Corporate & Organisational Governance & Organisational/Operational

- ◆ Standard 8, Organisational Governance is an organisational systems (governance systems) approach to connecting the corporate governance domain and organisational domain, like vertical steel rods through our iceberg.



Standard 8, Connects Governance & Organisational Domains

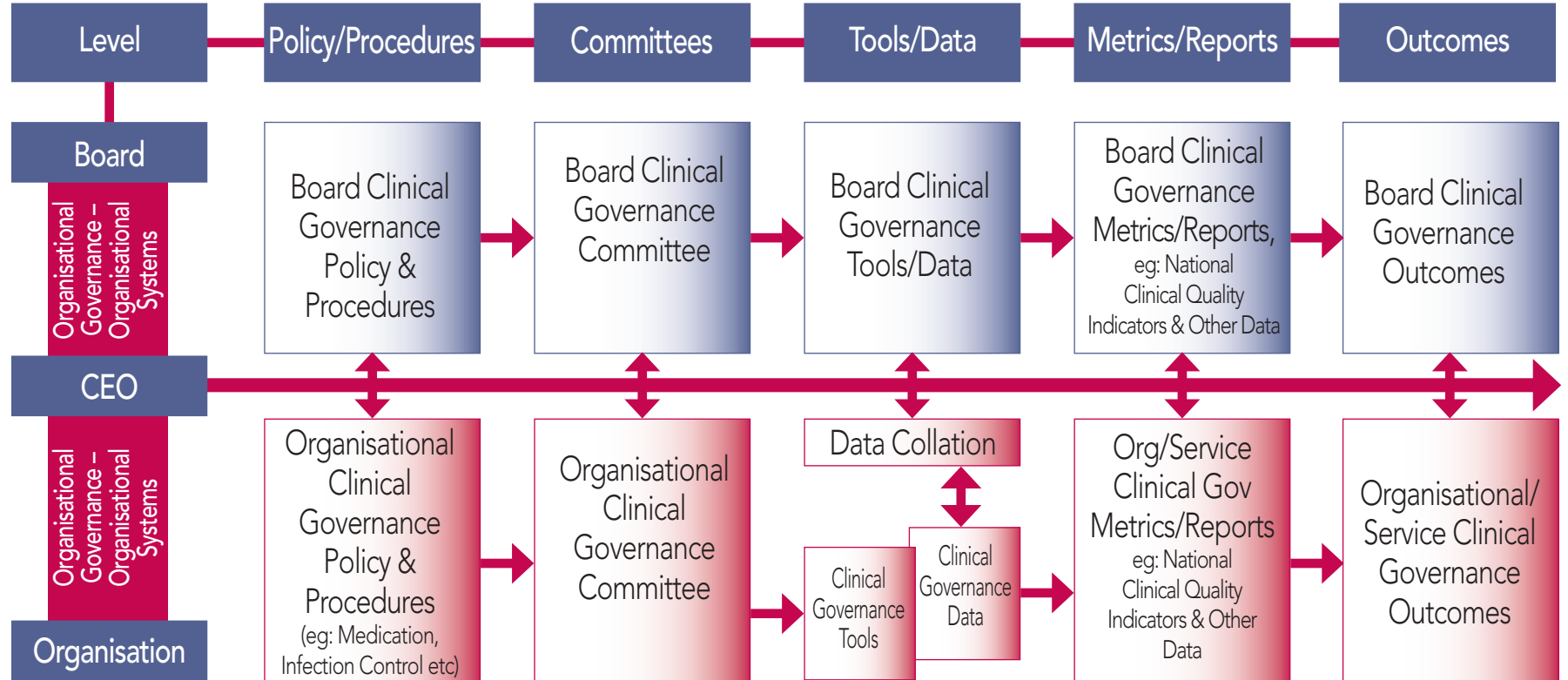
1. Governance Domain – Corporate Governance

The governance domain incorporates the governance model, structure, system, policies, procedures, documents and tools, practices and processes that should be in place to assist the board enact contemporary governance.

2. Organisational Domain – Organisational Governance

The organisational domain incorporates the organisational structure, systems, policies, documents and tools, practices and processes that should be in place to inform management and staff, thereafter the board, about the organisation and its service performance and outcomes.

Organisational Governance In Practice, eg: Clinical Governance



Continuing To Apply A Wide Governance Lens

- ◆ Directors must be familiar with:
 - * their director's duties under the Corporations Act 2001 (Cth) or equivalent, eg: for community businesses (NFPs) as set out in the relevant State-based incorporated associations act or if a registered charity ACNC Governance Standards
 - * other industry specific standards, quality systems or contracts that create obligations/governance roles and responsibilities for the board, eg: NDIS Practice Standards.
- ◆ The ACQS, Standard 8, Organisational Governance is an industry specific standard placing obligations on the boards of organisations that deliver Commonwealth Government funded aged care services (CHSP and services under the Aged Care Act 1997 (Cth)).
- ◆ Failure to fulfil the obligations created by Standard 8 and/or ensure the organisation fulfils its obligations under Standards 1–7 and associated outcomes for the customer, eg. safe and quality care and services, can have significant adverse consequences for an organisation such as Notices to Comply or sanctions being issued by the ACQSC.



Section Four: Resources & Services

Tools, Articles & Presentations

Tools

- ◆ ACQS Corporate & Organisational Governance Assessment & Implementation Tool (T351)
- ◆ ACQS Achievements, Disappointments & Learnings Tool (T378c)
- ◆ ACQS Planning & Implementation Project GANTT Chart (T458)

Articles

- ◆ Standard 8, Embedding a Governance Culture
- ◆ Standard 8...8 Key Considerations, 8 Key Messages
- ◆ Strategy the Key Domain of Directors

Tools, Articles & Presentations

Presentations

- ◆ Standard 8, Organisational Governance ... A Call To Action For Boards, Chief Executive Officers, Executives, Executives & Managers of Aged Care Organisations
- ◆ Fundamentals of Contemporary Governance (NFPs)
- ◆ The Board, CEOs, & Executives Roles & Responsibilities In Strategically Transforming Their Organisation ... The Principles, Practicalities & Processes Of Transforming Your Organisation, Re-engineering Your Business Model & Reinventing Your Culture

Email aaron@asspl.com.au to access the resources.

Australian Strategic Services Consulting Services

- ◆ Governance & Leadership,
 - * including corporate and organisational governance reviews
- ◆ Strategic Advice & Support
- ◆ Quality & Business Excellence
- ◆ Facilitation & Project Management
- ◆ Strategy & Strategic Transformation



TAGS™ Aged Care

Standard 8, Organisational Governance & Corporate Governance = TAGS Aged Care™

Meet Or Exceed Standard 8, Organisational Governance

The only integrated corporate and organisational governance system, assisting aged care boards to govern and chief executive officers to manage.

- ◆ Governance Principles
- ◆ Governance Policies & Procedures
- ◆ Governance Documents & Tools

TAGS Aged Care™

The Australian Governance System

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