



THE CO-OP FEDERATION

fed.coop

Co-operative Governance Professional Development Session

Goolawah Co-operative

24 April 2021

Questions

- Please ask questions at any time during the session.
- Where I don't know the answer, I will park the question and get back to you with the answer at a later stage.
- Chatham House Rules: “What’s said on tour stays on tour!”



Topics

1. National and International Co-operative Context
2. Co-operative Principles and Values
3. Co-operatives National Law and Regulations
4. Directors' Roles and Responsibilities
5. Good Governance Principles and Conduct
6. Conflict Resolution

Expectations

What do you want to get out of this session?



1. National and International Co-operative Context

Features of Co-operatives

- Minimum five members
- One member - one vote
- Members can be people or any type of organisation
- Limited liability for members (but not directors)
- Board of directors (minimum 3)
- Active membership rule
- Distributing/non-distributing
- Share capital

Types of Co-operatives

- Consumer
- Producer
- Worker
- Service
- Multi-stakeholder

(Manual pages 14-19)

The Co-operative Circle



Co-operatives Compared to Other Businesses

Co-operatives:

- Face the same economic challenges
- Often provide the same goods or services
- Must have robust business practices
- Must follow the law

(Manual pages 12-13)

Registration of Co-operatives

- Registration of co-operatives in Australia is a responsibility of the states and territories.
- Registration in NSW is managed Fair Trading.
- There are also organisations registered under the Federal Corporations Act that run according to co-operative principles.

Co-operatives in NSW

- There are approximately 600 co-operatives in NSW.
- Co-operatives are in almost every sphere of endeavour.
- Key sectors where co-operatives are active include: Aboriginal enterprise, agriculture, arts, clubs, child care, community radio, cultural services, education, environment, fishing, housing, medical, retailing, social services, professional services, ski lodges and taxis.

Co-operatives in NSW

Sector	Approximate Numbers
Agriculture/Fishing	90
Arts	25
Child Care	25
Clubs	75
Community Radio	10
Cultural Services	20
Aboriginal Enterprise	25
Food Retailing	15
Housing	60
Ski Lodges	55
Social Services	25
Taxis	30

Some NSW co-operatives



Co-operatives in Australia

- There are approximately 1,700 registered co-operatives across Australia.
- The largest co-operative by turnover in Australia is Co-operative Bulk Handling Limited (CBH Group) with over \$4 billion turnover in 2018/19.
- Largest 100 Australian co-operative and mutual enterprises (CMEs) had turnover of \$31.9 billion in 2017/18.
- CMEs represent more than 8% of GDP.

Co-operatives Across the World

- Largest 300 co-operatives in the world have a combined turnover of more than US\$2,100 billion.
- The International Co-operative Alliance (ICA) is the global peak body that is responsible for the International Co-operative Values and Principles.
- The Alliance has regional organisations, including one for Asia-Pacific, and 8 sectoral organisations including ones for housing and agriculture.



2. Co-operative Principles and Values

How are Co-operatives Different from Other Structures?

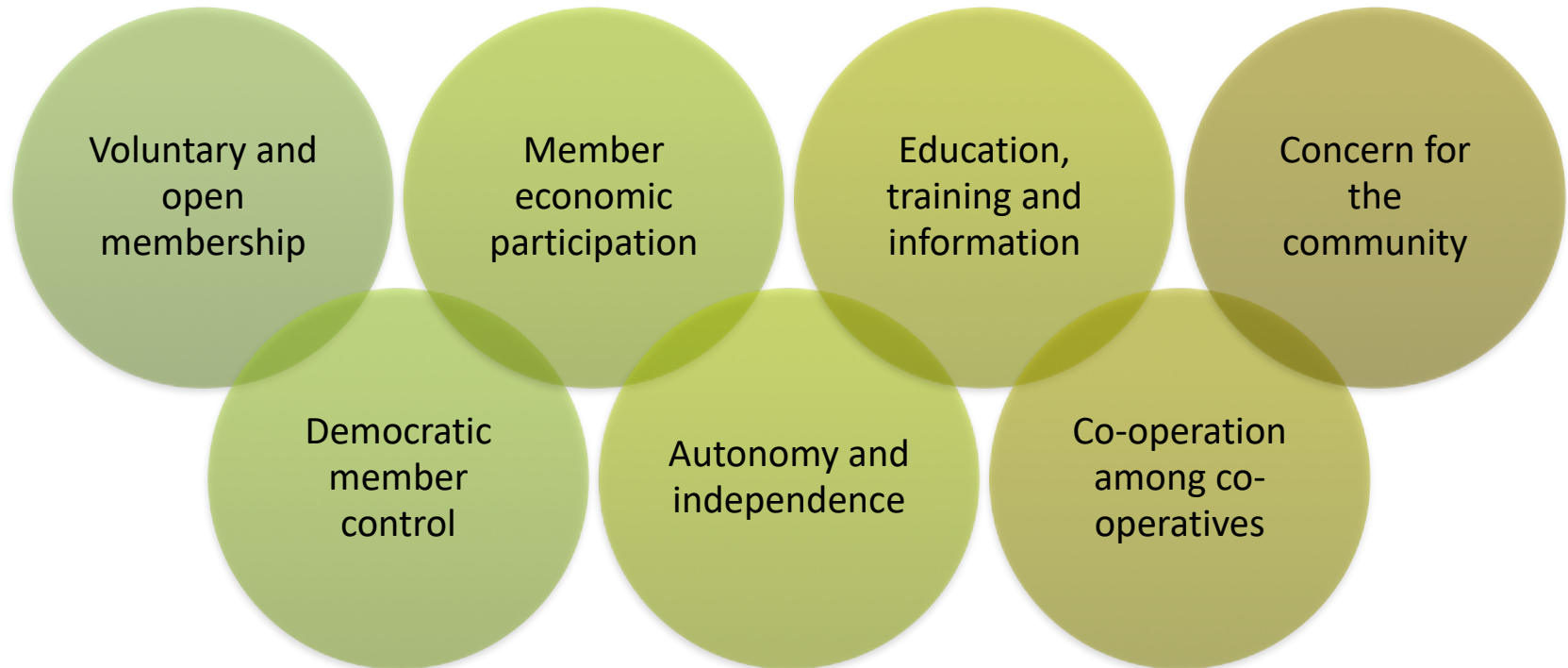
- What makes co-ops different is their balancing of business and social purpose through the International Co-operative Values and Principles.
- These values and principles are common to all co-ops globally.



International Co-operative Values



International Co-operative Principles



(CNL Sect 10)

1. Voluntary and open membership

Co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, **without** gender, social, racial, political or religious **discrimination**.

2. Democratic member control

Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (**1 member, 1 vote**) and co-operatives at other levels are organised in a democratic way.

3. Member economic participation

Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of the capital is usually the common property of the co-operative. They usually receive limited compensation (if any) on capital subscribed as a condition of membership. **Members allocate surpluses** for any or all of the following purposes:

- (a) developing the co-operative, possibly by setting up reserves, part of which at least would be indivisible;
- (b) benefiting members in proportion to their transactions with the co-operative;
- (c) supporting other activities approved by the membership.

4. Autonomy and independence

Co-operatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

5. Education, training and information

Co-operatives provide education and training for their members, elected representatives, managers and employees so they can contribute effectively to the development of their co-operatives. They inform the general public, particularly young people and opinion leaders, about the nature and benefits of co-operation.

6. Co-operation among co-operatives

Co-operatives serve their members most effectively and strengthen the co-operative movement by **working together** through local, national, regional and international structures.

7. Concern for the community

While focusing on member needs, co-operatives work for the sustainable development of their communities through policies accepted by their members.

Activity: Values and Principles

Discuss the following:

- How are the values and principles reflected in your co-operative's activities?
- How does your co-op promote or 'trade' on the 'co-operative difference'?





3. Co-operatives National Law and Regulations

Co-operatives National Law

- Harmonised legislation for co-operatives is now in force in all Australian states and territories
- NSW was the lead jurisdiction and the CNL commenced there in 2014
- The other states and territories followed
- The Queensland legislation just commenced on 1 December 2020

Key Benefits

- Removes requirement for 'small' co-operatives to lodge financial reports with the Registrar and be audited
- 'Foreign' registrations no longer needed
- Most rule changes no longer need pre-approval
- Simpler, shorter and stronger rules possible

Is your co-operative small?

A co-operative is small if it satisfies at least two of the following criteria:

- the consolidated revenue of the co-operative and the entities it controls (if any) is less than \$8 million for the financial year
- the value of the consolidated gross assets and the entities it controls (if any) is less than \$4 million at the end of the financial year
- the co-operative and the entities it controls (if any) has fewer than 30 employees at the end of the financial year

The co-operative must also have:

- no securities on issue to non members during that year other than securities issued to former members on the cancellation of their membership; or
- not issued shares to more than 20 members in a financial year; or if it is has done this, the amount raised by issuing those shares does not exceed \$2 million.

All other co-operatives are large co-operatives.

Co-operatives National Regulations

- Provides a number of more detailed requirements under the CNL
- Contains the model (but not compulsory) rules that are a basic model for good governance of a co-operative

Co-operative Rules

- A co-operative's rules are its constitution
- The legislation provides for many aspects of a co-operative to be defined in the rules
- If rules conflict with the legislation, the legislation prevails

Senate Inquiry

- In March 2016, the Senate Economics References Committee handed down a unanimous report with 17 recommendations to address barriers for co-operatives, mutuals and other member-owned firms.
- The Government's response in November 2017 delivered very little for Australia's co-operatives.

Senate Inquiry

The recommendations cover:

- National collection of statistics
- Better representation in policy discussions and promotion for service delivery
- Support programs for new co-operatives
- Improved education on co-operatives
- Removal of barriers to access to grant funding and capital raising.



4. Directors' Roles and Responsibilities

Boards and Governance

- Members need a group to be responsible for the day-to-day running of the co-op
- To thrive and survive, the co-op needs a group committed to and focussed on what's best for the co-op
- The board as a group is collectively responsible

The Board of Directors

- The business of a co-operative is managed by its board of directors.
- The board may exercise all powers that are not required to be exercised by a members' meeting.

(CNL Sect 172)

Directors' Duties

- Care and Diligence – ‘A director...must [act] with the degree of care and diligence that a reasonable person would exercise...’

(CNL Sect 192(1))

Directors' Duties

- Business Judgment Rule – A director must:
 - make judgments ‘in good faith for a proper purpose (taking into account the co-operative principles where relevant...)’
 - ‘not have a material personal interest in the subject matter of the judgment’
 - ‘inform themselves about the subject matter of the judgement to the extent that they reasonably believe to be appropriate’
 - ‘rationally believe that the judgment is in the best interests of the co-operative.’

(CNL Sect 192(2))

Directors' Duties

- Good Faith – A director must act:
 - 'in good faith in the best interests of the co-operative'
 - 'for a proper purpose.'

(CNL Sect 193)

Directors' Duties

- Use of Position – ‘A director must not improperly use their position to:
 - gain an advantage for themselves or someone else
 - cause detriment to the co-operative.’

(CNL Sect 194)

Directors' Duties

- Use of Information – ‘A person who obtains information because they are, or have been, a director...must not improperly use the information to:
 - gain an advantage for themselves or someone else
 - cause detriment to the co-operative.’

(CNL Sect 195)

Solvency

- An insolvent co-operative is one that is unable to pay its debts when they fall due for payment
- Co-operatives are basically subject to the same insolvency law as entities registered under the Corporations Act
- Penalties can be significant

(CNL Sect 451)

Asking Questions

- A major part of the role of a director is asking questions of the organisation through its management
- Asking the right questions, challenging information provided that you don't understand or doesn't seem right, and drilling down deeper when needed
- Directors must conscientiously test the information and proposals put to them

Directors' Responsibilities

- Reviewing operating results
- Renewing or changing contracts
- Approving salary and human resource management policies
- Preparing annual report
- Budgeting for operations
- Implementing policies and procedures

(Manual pages 68-69)

Secretary Responsibilities

- Ensuring all paperwork is completed and submitted to the Registrar
- Ensuring the co-operative's name appears on all publications and advertising
- Safekeeping of all registers and financial reporting
- Ensuring meetings are minuted

(Manual page 70)

Some other thoughts

- Allocate portfolios
- Director turnover
- Policies: preparing, adopting, monitoring and reviewing

Why have policies?

- Co-operative has an agreed framework for actions and decisions
- You don't keep "reinventing the wheel"
- Legal, constitutional and compliance requirements can be met
- The co-operative has a quality improvement tool

Activity: Policies and Procedures

Think of a challenging situation you have experienced at your co-operative.

- Did you have a clear policy in place to deal effectively and transparently with the situation?
- Was the policy or procedure followed?
- How did the policy (or lack of one) influence the outcome?



5. Good Governance Principles and Conduct

Governance is...

- the processes, activities and relationships that ensure your co-operative is effectively and properly run.

Ten Good Governance Principles

- Purpose and Strategy
- Roles and Responsibilities
- Board Composition
- Board Effectiveness
- Risk Management
- Performance
- Transparency and Accountability
- Stakeholder Engagement
- Conduct and Compliance
- Culture

Not-for-Profit Governance Principles
(Australian Institute of Company Directors, 2019)



1. Purpose and Strategy

The organisation has a clear purpose and a strategy that aligns its activities to its purpose.

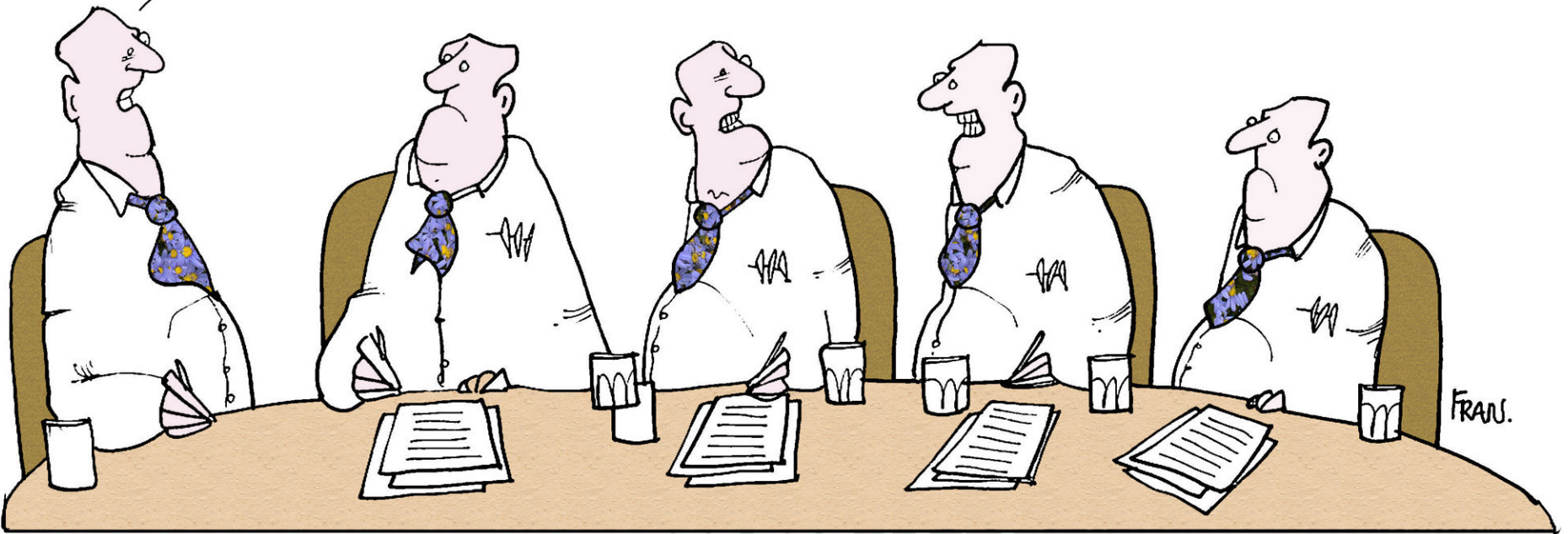
- The organisation's purpose is clear, recorded in its governing documents and understood by the board
- The board approves a strategy to carry out the organisation's purpose
- Decisions by the board further the organisation's purpose and strategy
- The board regularly devotes time to consider strategy
- The board periodically reviews the purpose and strategy

2. Roles and Responsibilities

There is clarity about the roles, responsibilities and relationships of the board

- Directors' roles are clear and understood by the board
- Directors understand and meet their duties under the law
- Directors meet any eligibility requirements relevant to their position
- Delegations of the board's authority are recorded and periodically reviewed
- The role of the board is clearly delineated from the role of management

HR SAY WE SHOULD BE LOOKING FOR A LITTLE FRESH BLOOD
ANY IDEA WHAT THEY'RE TALKING ABOUT?

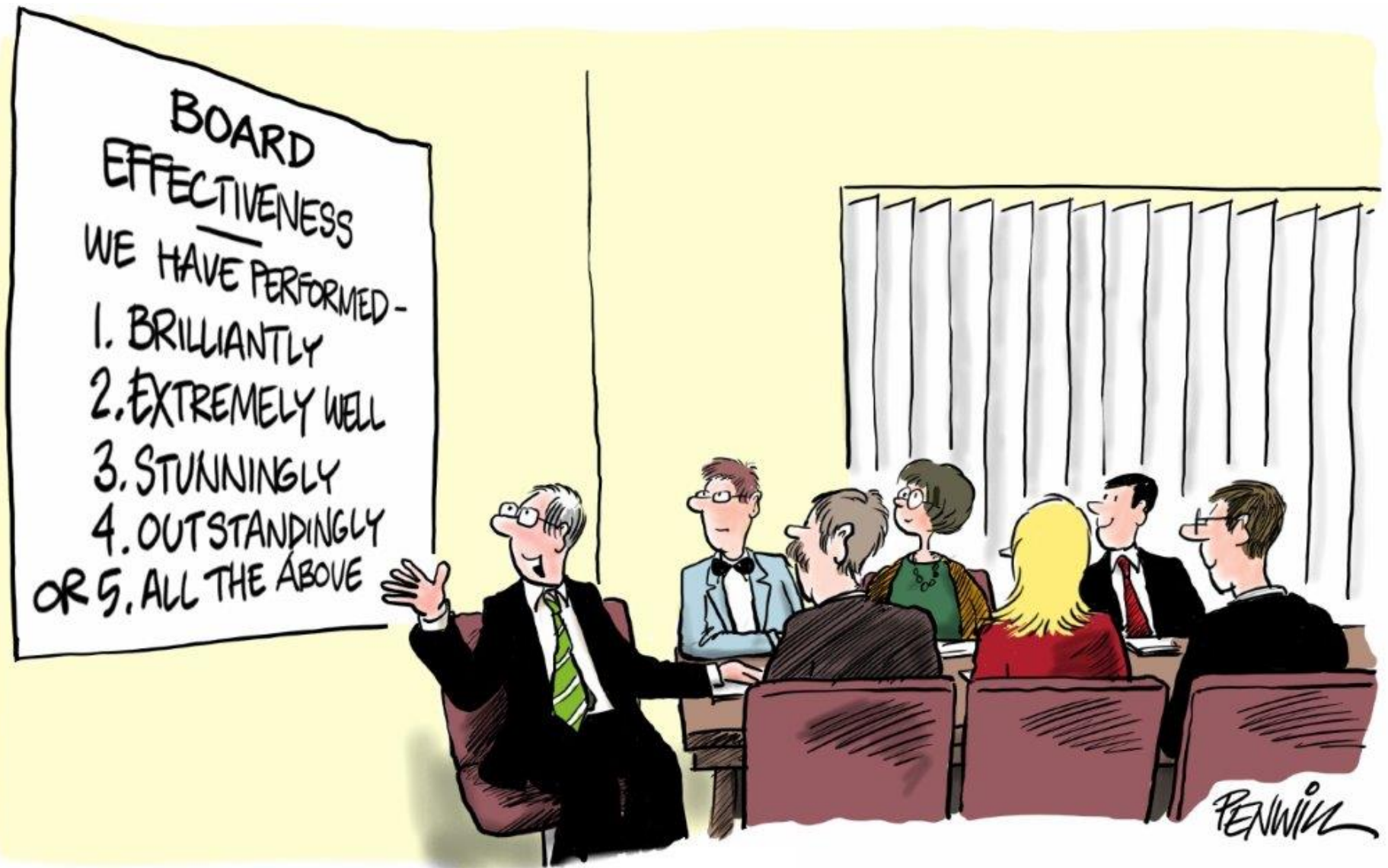


CartoonStock.com

3. Board Composition

The board's structure and composition enable it to fulfil its role effectively.

- Directors are appointed based on merit, through a transparent process, and in alignment with the purpose and strategy
- Tenure of directors is limited to encourage renewal and staggered to retain corporate knowledge
- The board reflects a mix of personal attributes which enable it to fulfil its role effectively
- The board assesses and records its members' skills and experience, and this is disclosed to stakeholders
- The board undertakes succession planning to address current and future skills needs in alignment with the purpose and the strategy



"NEXT ITEM - CARRYING OUT OUR OBJECTIVE SELF-ASSESSMENT"

4. Board Effectiveness

The board is run effectively and its performance is periodically evaluated.

- Board meetings are chaired effectively and provide opportunity for all directors to contribute
- Directors seek and are provided with the information they need to fulfil their responsibilities
- Directors are appropriately inducted and undertake ongoing education to fulfil their responsibilities
- The board's performance, as well as the performance of its chair and other directors, is periodically evaluated
- The relationship between the board and management is effective



"Well he certainly does a very thorough risk analysis."

5. Risk Management – Board decision-making is informed by an understanding of risk and how it is managed.

- The board oversees a risk management framework that aligns to the purpose and strategy
- Directors seek and are provided with information about risk and how it is managed
- The board periodically reviews the risk management framework

6. Performance – The organisation uses its resources appropriately and evaluates its performance.

- The board oversees appropriate use of the organisation's resources
- The board approves an annual budget for the organisation
- The board receives and considers measures which evaluate performance against the strategy
- The board oversees the performance of the CEO
- The board monitors the solvency of the organisation

7. Transparency and Accountability

The board demonstrates accountability by providing information to stakeholders about the organisation and its performance.

- The organisation's governing documents and policies relevant to its governance are available to stakeholders
- The board oversees appropriate reporting to stakeholders about the organisation's performance and financial position
- Transactions between related parties, if any, are disclosed to stakeholders
- Directors' remuneration and other benefits, if any, are disclosed to stakeholders
- Members have the opportunity to ask questions about how the organisation is run and to hold the board to account for their decisions

8. Stakeholder Engagement – There is meaningful engagement of stakeholders and their interests are understood and considered by the board.

- The board understands who the organisation's stakeholders are, their needs and their expectations
- The board oversees a framework for the meaningful engagement of stakeholders
- Stakeholders are considered in relevant board decision-making
- There is a process for gathering and responding to complaints and feedback from stakeholders
- The board oversees a framework for how the organisation works with and protects vulnerable people

9. Conduct and Compliance – The expectations of behaviour for the people involved in the organisation are clear and understood.

- The board articulates its expectations of conduct, and the consequences for misconduct, for the people involved with the organisation
- The board oversees compliance with relevant laws, regulations and internal policies
- Conflicts of interest are identified, disclosed and managed
- There is a process for investigating misconduct and relevant instances are brought to the attention of the board

10. Culture – The board models and works to instil a culture that supports the organisation's purpose and strategy.

- The board defines and models a desired culture that aligns to the purpose and strategy
- The board oversees a strategy to develop and maintain the desired culture
- The board oversees mechanisms to monitor and evaluate organisational culture
- The organisation's values are clear, periodically reviewed and communicated to stakeholders
- The board oversees a framework for the reward and recognition of workers

Activity: Meeting Challenges

- Discuss the likely challenges in governing your co-operative.
- Outline some possible ways of meeting or overcoming these governance challenges.



6. Conflict Resolution

Conflict resolution

- In co-operatives, the conflict 'stakes can be high – emotionally, financially and socially.'
- An assertive, co-operative approach
- Techniques of Principle Negotiation:
 - Separate the people from the problem
 - Focus on interests, not positions
 - Invent options for mutual gain
 - Insist on using objective criteria.

Conflict resolution

- Outside mediation
- Timeframes are important
- Board has an important role
- Ground rules:
 - A commitment to mutual respect
 - A commitment to solve the problem
 - A commitment to non-violent communication.

Resources

- Conflict Resolution Policy kanjini.org/conflictresolutionpolicy.htm
- Managing Co-operative Disputes
fairtrading.nsw.gov.au/associations-and-co-operatives/co-operatives/running-a-co-operative/managing-co-operative-disputes

Conclusion

- Summary
- Any questions?



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