

**From:** s 22(1)(a)  
**To:** s 22(1)  
**Cc:** [Rush, Peter](#); s 22(1)(a)(ii); [Reid, John](#); s 22(1)(a)  
**Subject:** s 22(1)(a)(ii) [SEC=PROTECTED, CAVEAT=SH:CABINET]  
**Date:** Friday, 3 September 2021 9:29:29 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

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PROTECTED//CABINET

Stephanie said, Many thanks for these!

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**From:** s 22(1)(a)(ii)  
**Sent:** Friday, 27 August 2021 4:11 PM  
**To:** s 22(1)(a)(ii)  
**Cc:** Rush, Peter; s 22(1)(a)(ii); Reid, John  
**Subject:** RE: NADC Board Papers - 31 August 2021 [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Thanks s 22(1)(a)(ii), and team.

---

**From:** s 22(1)(a)(ii)  
**Sent:** Friday, 27 August 2021 3:30 PM  
**To:** s 22(1)(a)(ii)  
**Cc:** Rush, Peter <[Peter.Rush@pmc.gov.au](mailto:Peter.Rush@pmc.gov.au)>; s 22(1)(a)(ii); s 22(1)(a)(ii); Reid, John <[John.Reid@pmc.gov.au](mailto:John.Reid@pmc.gov.au)>  
**Subject:** s 22(1)(a)(ii) [SEC=PROTECTED, CAVEAT=SH:CABINET]

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s 22(1)(a)(ii)

### Board membership (in confidence)

Following the review into the NADC Board undertaken by Glenys Beauchamp, PM&C has briefed Mr Morton on three prospective new appointments:

- Ms Nikki Govan (Chair of Business SA, the South Australian Chamber of Commerce and Industry, and a Director of the Australian Chamber of Commerce and Industry)
- Ms Denita Wawn (background in law and extensive experience in advocacy and government relations at a national level)
- Mr Bao Hoang (founder and CEO of the Roll'd Group, former Director of the Centre for Multicultural Youth Board, and a former Commissioner of the National COVID Commission Advisory Board)

The brief also proposed the reappointment of Ms Danni Roche OAM as Chairperson until 31 March 2023.

The proposed appointments are yet to be considered by Cabinet.

The brief includes a draft letter for Mr Morton to Ms Roche asking her to implement the NADC related recommendations in Ms Beauchamp's Review, publish the Review and letters from Mr Morton and Ms Roche's reply.

s 22(1)(a)(ii)

**From:** s 22(1)(a)  
**To:** s 22(1)  
**Subject:** s 22(1)(a)(ii) [SEC=PROTECTED, CAVEAT=SH:CABINET]  
**Date:** Monday, 30 August 2021 9:52:57 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

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Thank you !

s 22(1)(a)(ii) | Executive Officer to Stephanie Foster PSM

p. s 22(1)(a)(ii) | s 22(1)(a)(ii)

**From:** s 22(1)(a)

**Sent:** Friday, 27 August 2021 3:30 PM

**To:** s 22(1)(a)(ii)

**Cc:** Rush, Peter ; s 22(1)(a)(ii) ; Reid, John

**Subject:** s 22(1)(a)(ii) 1 [SEC=PROTECTED, CAVEAT=SH:CABINET]

**PROTECTED//CABINET**

Hi s 22(1)

s 22(1)(a)(ii)

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s 22(1)(a)(ii)

**From:** [Rush, Peter](#)  
**To:** s 22(1)  
**Cc:** s 22(1)(a)(ii)  
**Subject:** s 22(1)(a)(ii)  
**Date:** Friday, 27 August 2021 2:44:43 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

s 47C , s 47E(d)

**From:** s 22(1)(a)  
**Sent:** Friday, 27 August 2021 2:29 PM  
**To:** Rush, Peter  
**Cc:** s 22(1)(a)(ii)  
**Subject:** s 22(1)(a)(ii) ]

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s 22(1)(a)(ii)

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s 22(1)(a)(ii)

**From:** [Rush, Peter](#)  
**To:** [Reid, John](#)  
**Cc:** [s 22\(1\)\(a\)](#)  
**Subject:** FW: NADC report [SEC=OFFICIAL]  
**Date:** Thursday, 17 June 2021 11:17:27 AM  
**Attachments:** [image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[Review of Composition and Operations of NADC Board.pdf](#)  
[image001.png](#)  
[image005.png](#)  
[image007.png](#)  
[image012.png](#)

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For discussion

**From:** Glenys Beauchamp  
**Sent:** Thursday, 17 June 2021 10:37 AM  
**To:** Rush, Peter ; [s 22\(1\)\(a\)\(ii\)](#)  
**Subject:** FW: NADC report  
 Hi - My pre-published version, gb

**Glenys Beauchamp**

Principal Advisor

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**From:** [s 47F , s 47G\(1\)\(a\)](#)  
**Sent:** Thursday, 17 June 2021 10:34 AM  
**To:** Glenys Beauchamp <[glenys.beauchamp@proximity.com.au](mailto:glenys.beauchamp@proximity.com.au)>  
**Subject:** NADC report

Hi Glenys,  
 Here is your master document.

Regards

[s 47F , s 47G\(1\)\(a\)](#)

Manager - Executive and Business  
 Support

[s 47F , s 47G\(1\)\(a\)](#)

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# REVIEW OF COMPOSITION AND OPERATIONS OF THE National Australia Day Council BOARD

Prepared for the Department of the Prime Minister and Cabinet

25 May 2021

*Confidential*

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**This is a confidential report prepared solely for the Department of the Prime Minister and Cabinet, to be shared with the Hon Ben Morton MP, Assistant Minister to the Prime Minister and Cabinet, to assist in providing advice to the Government for consideration of appointments and any future vacancies of the National Australia Day Council and to assist in improving the operations of the Board.**

**This work was commissioned on the 16 April 2021 by Mr John Reid, First Assistant Secretary, Government Division, Department of the Prime Minister and Cabinet.**

## Executive Summary

### Background

- Undertaking a review of Board composition and performance on a regular basis reflects better practice company board governance standards. They are now commonplace for both for-profit and not-for-profit organisations.
- With the appointment of the current Chair there has been a general uplift in performance and focus of the organisation and Board on performance, governance and impact. A previous independent review of the Board in 2019 said the Chair has reset the expectations of the Board and management with respect to the performance of the Board governing the National Australia Day Council (NADC).
- This uplift in performance, a clearer set of priorities and directions from Government together with a substantial increase in new Government initiatives and associated funding, have placed substantial pressures on the Board to deliver and oversee the significant change processes required to reset the performance and practices of the Board and organisation. This has come at a time where there has been added public commentary and discussion about Australia Day and the Australian of the Year Awards.
- Reflecting the uplift in the Chair's performance expectations of the Board and the NADC, was the appointment of a new chief executive officer and management team and targeted turnover involving most staff in 2017. A new Minister appointed in May 2019 also provided a clear set of performance expectations to the Council in May 2020 with a renewed focus on the role and mission of the NADC.
- There have been three board director departures in the last eight months (a combination of completing terms and resigning) which have left significant skills, experience and competency gaps.
- This operating environment and vacant positions have highlighted some weaknesses in Board composition, leadership, governance, and operations to effectively continue to lead and deliver on the Board's core mission to "actively promote our national day to all Australians with a view to inspire national pride and unity through participation and engagement across all sectors of the community on 26 January each year."<sup>1</sup>
- The NADC Constitution establishes a minimum number of five directors and does not specify a maximum number. By convention there has generally been 10 directors and under this convention there are currently two vacancies on the NADC Board, and the Chair completes her term at the end of June 2021. Urgent board competency gaps have emerged such as corporate governance and financial and risk acumen. Other potential gaps have been identified such as broad-based consumer engagement skills and strategic leadership and representational skills.

### Issues

- There has been a substantial increase in workload due to an increased program of work from the Government to implement the *Story of Australia* campaign and deliver several grants to strengthen community engagement in Australia Day activities.
- The pace of delivering this work program has resulted in, for example, 17 Board meetings in 2020-21 (14 in 2019-20), seven Finance, Audit and Risk Management meetings in 2020-21

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<sup>1</sup> The Hon Ben Morton MP, Assistant Minister to the Prime Minister and Cabinet, Statement of Expectations letter of 27 May 2020.



(seven in 2019-20), and three Sponsorship Committee meetings in 2020-21 (two in 2019-20). In addition, several Board resolutions have been required outside of these formal meetings.

- Some meetings have been called at late notice, not all directors have felt engaged in board decision making processes and there have been reports of some directors not being listened to and some have reported unprofessional behaviours within meetings.
- s 47G(1)(b)  

- Board governance structures are being further developed and not yet finalised. The Board Constitution and Charter is on the program to be reviewed by the Finance, Audit and Risk Management Committee. This Committee urgently requires an appropriately skilled, preferably board director, chair. The charter for the Sponsorship Committee is to be finalised and the Board is establishing a Human Resources Committee to oversight workforce issues, remuneration arrangements, succession planning, and review performance arrangements, including consideration of performance incentives for the management team.
- Associated with strengthening Board governance arrangements, there is a need to reinforce the understanding by directors of their unique roles and responsibilities and fiduciary obligations – through more effective training, mentoring and induction processes, and empowering and delegating management with operational responsibilities for which they need to be accountable.
- This understanding will also support NADC staff with more guidance and oversight and less Board involvement in operational management issues which has been common. Balancing the high servicing needs of the Board and meeting operational requirements to deliver on the Statement of Expectations has been a challenge for NADC staff.
- Recent departures of board members have left gaps, both in terms of skills and experience and leadership competencies. These previous members were actively involved in the development of good governance and oversight, for example, of NADC's finances and procurement arrangements. Leadership skills as well as the skills and experience gaps identified above will support a more collaborative, unified Board to focus more on governing and strategic direction and less on operational matters.
- Additional effort and attention should be allocated by the Board to strategy, Board planning and actively addressing the Statement of Expectations. This will support the momentum required to continue the substantial achievements gained over the past two years in relation to leading the evolving way Australia's national day is celebrated and improving the National Australian of the Year awards process.

## Recommendations

### Board Composition

1. The Department of the Prime Minister and Cabinet (PM&C), with input from the Board, develop a skills matrix to support the provision of advice to the Minister on the composition of skills, experience and competencies of board directors to fill future vacancies and address current gaps.

2. PM&C provide advice on filling the current urgent gaps of a board director to chair the Finance, Audit and Risk Management Committee. Ideally the person should have strong corporate governance skills, and financial and budget experience and knowledge equivalent to a Certified Public Accountant. Early advice is also required to fill the position of Deputy Chair who should ideally have strong governance and leadership skills to support the Chair.
3. PM&C consider other gaps covering general understanding of corporate governance and board fiduciary duties under the *Corporations Act 2001* and the *Public Governance, Performance and Accountability Act 2013* requirements, strategic communications and broad-based consumer engagement experience. Maintaining diversity of backgrounds is important with a focus on diversity of views and reflecting the broader population including younger people and different professional groups.
4. PM&C provide advice to the Minister to ensure the Chair (current appointee term finishes on 30 June 2021) has the necessary business management and corporate governance experience required of a director of a Board and displays the high-level leadership skills and characteristics required to build Board consensus around the NADC's mission and performance expectations, to engage productively with all stakeholders including delivery partners, and take the Board and staff through change.

#### **Governance**

5. The NADC Board should review progress and ensure timely implementation of outstanding actions in relation to the independent *Board and Operational Review Final Report of June 2019*. Some of the outstanding actions (also addressed in this process) include:
  - Take the lead on priority setting, and regularly address the development of strategy for the NADC;
  - Conduct periodic reviews of Board performance and monitor organisational policies, including the need to have a "statement about its expectations of behaviours for people involved in the NADC;"<sup>2</sup>
  - Improve Board member engagement and participation;
  - Agreeing on and codifying Board member responsibilities;
  - Establishing a Nominations Committee for evaluation and planning purposes, including creating a Board skills matrix and developing capabilities of Board members.
6. The NADC Board should finalise the governance structures for the Board, including the already signalled review of the Constitution, the Charter, and formalising the Sponsorship Committee and Human Resources Committee (Nominations Committee). Consider establishing time limited committees for high priority projects and/or substantial new lines of business the Government may look to the NADC to deliver.
7. The NADC Board and management team revisit roles and responsibilities between the Board and Management for the Board to focus on governing by leading the strategy (with the Chair taking the leading role) and setting the direction and performance requirements of the NADC

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<sup>2</sup> Board and Operational Review Final Report 2019 - Appendix A

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as an organisation; and for the Management team to be held accountable for operations and performance.

8. The NADC Board and management to consider strengthening Board director induction processes. Governance and professional development training should be provided and reinforced for directors on how to be an effective Board director who understands their obligations as Board members of a Commonwealth owned company and operate in the best interests of the Council.
9. The NADC Board evaluates its performance regularly with an independent review every two to three years.

### **Dynamics of Board Meetings**

10. The NADC Board schedules meetings consistent with the Board Charter and involves Board directors in planning a calendar of meetings to ensure improved attendance of directors at Board meetings and committees of the Board.
11. The NADC Board (with input from the Management team) develops a protocol for the conduct and behaviours expected of Board directors both in Board meetings and with stakeholders, sponsors and delivery partners. Examples of issues to cover would be preparation for Board meetings, how to ensure the participation and engagement of all directors in meetings, defining and requiring respectful behaviour and how to resolve conflicts of opinion and call out inappropriate conduct.
12. The NADC strategic planning sessions to address strategy and risk, culture, performance measures, and the Minister's Statement of Expectations (SoE). Regular consideration, discussion and planning the delivery of the response to the SoE outlined in the Board's Statement of Intent and reporting against the Minister's Statement of Expectations, should be undertaken. While being led by the Chair and the Board, such sessions should include the Management team.

### **Culture and Conduct**

13. While the NADC Board continues to model and instil a culture of integrity, honesty and trust, the Board should expressly outline its commitment and actions expected for the performance, conduct and behaviour of Board members. This will further demonstrate the Board and each director lives by the values articulated in the Corporate Plan. This also sets the example for Council staff and shows culture being led from the top.
14. The Board should ensure conflicts of Interest, such as Board directors being members of state or territory Australia Day committees or selection processes for the Australian of the Year Awards process, are actively avoided and any other potential conflicts are transparent and managed.

### **Funding arrangements**

15. PM&C to consider the timeliness of Government funding to the Council to support a more structured approach to planning and delivering initiatives such as grants and procurements to ensure they are delivered in accordance with better practice processes.

16. PM&C work with other relevant agencies to consider the removal of ASL caps as NADC employees are not employees under the *Public Service Act 1999*.

## Introduction

The National Australia Day Council (NADC) is a not-for-profit Commonwealth owned company operating under the *Corporations Act 2001* and is a company limited by guarantee. It is also required to meet the *Public Governance, Performance and Accountability Act 2013* (PGPA) requirements for Commonwealth companies. The NADC is an agency within the Prime Minister and Cabinet's portfolio.

The company's objects are set out in its Constitution and states the Company's Objects are to:

- a. unite all Australians through celebration with a focus on Australia Day;
- b. promote the meaning of Australia Day through activity, education, reflection, discussion and debate; and
- c. promote good citizenship, values and achievement by recognising excellence and service to communities and the nation.

The NADC Corporate Plan 2020-24 outlines key priorities with a purpose of inspiring 'national pride and unity through participation and engagement through its key message of Reflect, Respect celebrate – we're all part of the story.'

## Background

There have been three Ministers since July 2018, four chief executive officers since 2017 (while there were four chief executive officers across 2017 and 2018, the current CEO has been in the position for the past three years) and the current chair has been in place since 2017. Over this period there have been significant changes in direction, priorities and Government initiatives for the NADC. There was a turnover of over 90% of NADC staff including a new executive team in 2017-18. Three board appointees have left (resigning and/or completing terms) over the past eight months.

A previous independent review *Board and Operational Review Final Report of June 2019 (Appendix A)* stated "the Chair has reset the expectations of the Board and management with respect to the performance of the Board governing the National Australia Day Council. The Chair has led the establishment of a strategy development process by the Board and actively facilitated the creation of the Financial, Audit and Risk Management Committee and the Sponsorship Committee which are focused on key areas of risk."

In addition to these substantial changes, the performance expectations of the NADC have also been clearly set out by the Hon Ben Morton MP, Assistant Minister to the Prime Minister and Cabinet, in his *Statement of Expectations*. It is important to ensure the NADC Board has the required skills, experience and diversity of backgrounds to continue the momentum of change and direction and to lead and build on the performance and reputation of the organisation.

## Scope of the Review

Minister Morton wrote, on 30 March 2021, to Ms Roche (Chair of the National Australia Day Council), and copied to all Directors, indicating the focus of this review was to look at the



“operations, dynamics and composition of the Board, to ensure the Board is equipped with relevant skills, expertise and robust governance to continue to lead and build on the work undertaken by the National Australia Day Council Board and staff for Australia Day 2020 and 2021.”

The purpose of the review is to ensure the board is equipped with the relevant skills and expertise to successfully deliver the business of the NADC, including the Australian of the Year Awards, and to continue to lead the evolving way Australia's national day is celebrated. The Board currently has two vacancies, including the Deputy Chair position. Conducting the review prior to considering any new appointments will identify potential gaps in appropriate skills and experience, acknowledging the importance of maintaining the necessary diverse range of backgrounds currently on the Board.

This review focused on the function and dynamics of the board; internal and external communications; represented skillsets and backgrounds, including any gaps; relationship between Board members with staff and stakeholders; and the Board's history and future challenges. The scope of the review expected 15 interviews to be conducted, including all current and recent board members and senior staff of the NADC as well as other significant stakeholders, including the Hon Ben Morton MP, Assistant Minister to the Prime Minister and Cabinet and senior executive staff in Government Division of the Department of the Prime Minister and Cabinet (PM&C). The full scoping document can be found at [Appendix B](#).

## Approach

On 18 April 2021, before the review interviews commenced, the reviewer emailed each potential interviewee the set of questions which would form the basis of enquiries to all interviewees so they would have adequate time to consider their responses. The interviews were conducted over the period 19 April 2021 to 27 April 2021.

The **interviews** were guided by the questions supplied and allowed for an open dialogue between the reviewers and interviewee about their experiences and observations on how the Board was operating and ideas to strengthen performance and meet future challenges. These discussions aided with the conclusions made in this report. In summary, 17 people were interviewed, including 8 current board directors, 3 previous board directors, Minister Morton and the Chief Executive Officer and Chief Operating Officer of the Council and senior personnel from PM&C.

To **benchmark** Board operations and practices, the review used: a range of the *Australian Institute of Company Directors (AICD)'s Director Tools series*<sup>3</sup>; and drew on publicly available information of reviews undertaken of other Government entities; governance and board practices of other Commonwealth-owned companies.

The operations of the board were also reviewed in the context of existing **Board and National Australia Day Council documents** such as the Board Constitution, Board Charter and the Finance and Risk Management Board sub-committee Charter.

The review also drew on **previous independent reviews** of the NADC Board and management – the *Functional Review Final Report June 2018* and the *Board and Operational Review Final Report of June*

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<sup>3</sup> Australian Institute of Company Directors *Director Tools Series* covers practical guidance on the operations of company boards, directors' responsibilities, accountability requirements and a range of other matters impacting on board performance and dynamics. The review also drew on ASX Corporate Governance Council, 2019, *Corporate Governance Principles and Recommendations*.



2019. These reviews provided information on whether there were ongoing or recurring matters affecting the performance of the Board.

Given the limited timeframe, further interviews or consultation was not undertaken with other key stakeholders, including sponsors or state and territory Australia Day committees.

Although the limited timeframe posed some challenges, an adequate understanding of the NADC Board dynamics and its operations was obtained through the above approach, primarily supported by the willingness and cooperation of current and former members to provide considered and comprehensive comments during the interview process.

## About the Board

To review the Board and its operations, and like the *Board and Operational Review Final Report of June 2019*, the AICD Tools Series provided a reference point to assess whether the Board has all the necessary frameworks and processes in place to support the effective performance of the Board and its operations and whether these were playing out in practice through feedback from the interview process. Key elements covered:

- a. roles and responsibilities of the Board;
- b. board size;
- c. composition of board and mix of skills, experience, competencies and backgrounds;
- d. terms of appointment;
- e. governance arrangements and structures; and
- f. culture and board dynamics.

### a. Roles and responsibilities of the Board

The AICD states a board of a company has four key roles:

- 1. to oversee the organisations' performance and act in the best interests of the organisation as a whole;
- 2. to ensure the organisation meets the Shareholder's expectations while managing risk and ensuring legal and regulatory compliance;
- 3. to bring skills, expertise, an independent perspective and judgement to organisation decision making; and
- 4. to guide and support the CEO and management team and hold them accountable for organisational performance.

The *Corporations Act 2001* defines the roles and responsibilities of a company board and its board members and is outlined in the AICD Guide. The NADC Board is governed by the organisation's Constitution and the NADC Board Charter. The NADC Board Charter states what the Board is responsible for and is consistent with the AICD Guide. In some areas, however, it can be confusing. For example, it states the Board is responsible for strategic direction to the NADC by working with management to establish and monitor the strategy, at the same time stating the chief executive officer is "responsible to the Board for the overall development of strategy, management and performance of the National Australia Day Council."

The 2019 independent review concluded the NADC purpose was not clear, the Board had not put in place a focus on strategy and did not have a strategic plan in place and this impacts on the views of directors about their role. The NADC has a Corporate Plan 2020-2024 in place, and it highlights the Minister's Statement of Expectations and strategic themes and performance indicators for the NADC. The Board has set aside time for periodic strategic planning sessions. Even with a strategic plan, there were issues with clarity around performance expectations. There were views from some directors that their priority and contribution to the Board was about the National Australian of the Year selection process and the associated event, and for others it was about what Australia Day should look like. That is, there still is not a united view on what the role of the Board is, and that each director is to be contributing to the overall best interests of the NADC.

The NADC Board currently has eight directors and based on convention, two vacancies. There are 12 full time equivalent employees of the NADC. With a general membership of 10 directors, similar to the number of employees, it is important to clearly articulate the roles of the Board and management team to avoid the Board becoming overly involved in operational matters. In general, the board should do more of the oversight role such as developing the strategy, setting priorities, establishing and developing the management team, setting the risk appetite, ethical tone and culture and ensure regulatory compliance of the organisation. The management team is to manage the organisation in an ethical manner in line with the Board's direction, keep the Board informed and ensure the Board has the necessary information to make informed decisions. s 47G(1)(b)

Improvements could be made to the Board Charter and clear protocols put in place to clarify and reflect the distinct roles and responsibilities.

#### b. Board size

The ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations* provides practical guidance in relation to the size of the Board. Even though it relates to ASX companies, it is relevant to Government and not for profit companies. It states:

"The board should be of sufficient size so that requirements of the business can be met and changes to the composition of the board and its committees can be managed without undue disruption. However, it should not be so large as to be unwieldy."

There is no perfect or optimal size and size is influenced by the size and complexity of the organisation, the diversity and business lines, and the norms in which the organisation operates. For companies under the *Corporations Act 2001* there is no prescribed maximum number of directors (there are minimum requirements for proprietary and public companies.)

On Board size, the AICD says that an organisation's board should be large enough that there are sufficient board members to ensure that there is a good mix of skills and backgrounds, the workload can be distributed, and all subcommittees and board roles are fulfilled. However, there should not be so many members to prevent good discussions and relationships between board members and the Board becomes cumbersome.

The Constitution of the NADC states there will be not less than five Directors of the Company. It does not prescribe a maximum. A quorum for a Board meeting is five and the quorum must be always present during the meeting. Recent practice has been to have 10 directors which is consistent with public sector boards (AICD – *Number of directors – board size*).

Currently, there are seven directors plus the Chair, with two vacancies, including a Deputy Chair. It should be noted the Chair's appointment is due to expire on 30 June 2021. Ten directors is a suitable number reflecting the need to have a range of key governance and fiduciary skills and to reflect the diversity of directors needed to undertake the Board's roles and responsibilities. Resolutions must be passed by a majority of directors and the chair has a casting vote, if necessary, in addition to their vote as a director. While the Chair has not been required to exercise this casting vote, having an odd number of directors could avoid this requirement.

c. Composition of board and mix of skills, experience, competencies and backgrounds

The Directors, including the Chairperson and the Deputy Chairperson are appointed by the Minister.

The ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations*<sup>4</sup> recommend companies should have and disclose a board skills matrix that sets out the mix of skills the board currently has or is looking to achieve. The disclosure element primarily relates to ASX companies for the benefit of shareholders.

A board skills matrix can be used to assess the current skills, background, and experience of those on a board and to identify any gaps that may exist or arise as director terms end.

Board composition and numbers is an issue for the Australian Government and the Minister. The Minister selects the Board directors, including the positions of Chair and Deputy Chair. For a board to be effective, appointments should consider the composition of the Board to ensure it is both fit for its current purpose and to address and meet future challenges, not only individual skills, experiences and backgrounds but competencies and characteristics to ensure board directors operate in the best interests of the Board and the organisation. The combination of high-level board and governance skills and experience together with a Board which represents the broad diversity of Australians – including cultural diversity, gender, geographic diversity, diversity of professions and indeed the diversity of views (e.g. through different age groups and lived experiences) are also important considerations for a reputable and effective board. Balancing and prioritising these requirements is challenging and needs to consider the Government's overall expectations.

There is currently a diverse range of backgrounds and experience on the board, including not-for-profits, the community sector, public sector (long-standing practice is that the Deputy Secretary, Governance, Department of the Prime Minister and Cabinet is appointed as a director), business, the law, and academia. Two members of the board are Indigenous Australians. There is a good spread of geographic representation, the gender ratio is 50:50 and there is good multi-cultural representation.

Given the task of the NADC in representing the views and makeup of the Australian population, as well as running a multimillion-dollar organisation, there is a strong need for a breadth of perspectives and skills on the board to successfully achieve these goals. This diversity also needs to be balanced with the required skills and experience of fiduciary requirements under the *Corporations Act 2001* and running a complex business.

While some directors have MBA/economic tertiary qualifications and some have worked in the financial sector and run businesses, there is a need to strengthen corporate skills and experience. Strengthening financial and risk acumen, corporate governance, legal and business management skills and experience is required to ensure effective oversight and compliance with fiduciary obligations of directors. Ensuring board members have the skills necessary to meet their fiduciary obligations as

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<sup>4</sup> Fourth Edition



Board directors should be a key consideration of board composition during the appointment stage, as well as through induction and ongoing training and development and “regular and rigorous assessments”<sup>5</sup>. As an example, while it is preferable for a director who would chair the Finance, Audit and Risk Management Committee to have Certified Public Accountant-equivalent skills, following the *Centro*<sup>6</sup> case it was considered all directors should have sound financial and accounting knowledge. The CEO and COO do have accredited AICD qualifications and the current external member (currently chair of the Finance, Audit and Risk management Committee is a GAICD). Other Board members do have experience in financials.

Other skills and experiences are also required to reflect the business of the NADC and its future priorities. For example, strategic marketing and/or consumer facing communications experience to oversee and support the NAADC in engaging all Australians and inspiring national pride and unity on our national day. Competencies, leadership and personal characteristics which contribute to a collaborative and unified Board and to effectively interact with stakeholders are important - such as operating with integrity, being an active contributor (being curious and innovative), having high level interpersonal skills (good listener, tactful and timely in communicating and working as part of a team) and being able to commit time to Board business.

The use of a board skills matrix to assess the capabilities of current members and identify areas of potential weakness would assist in Board evaluation processes (including training and development) and provide guidance to the Minister for considering Board appointments.

#### d. Terms of appointment

As stated in the Board’s Constitution, the term of office of a director is two years or any other period as determined by the Minister and stated in the notice of appointment.

Improvements were recently made to address peaks of activity of the NADC such as the lengthy process for nominations and selection of the National Australian of the Year Awards. Instead of being appointed throughout the year, new directors will begin their terms in March, which will allow them to participate in the strategic planning for the year and be involved from the start of the cycle for running of Australia Day activities and awards. The appointments of current directors have been amended to reflect this change.

Changes to appointment terms were also recently made to stagger appointment periods. Current practice has seen Board members appointed for a period of three years and the staggering of these appointments will allow the Minister the opportunity to consider two to three appointments per year, acknowledging the Minister can also renew appointment terms of current Board members.

In line with current practice, the tenure of directors should continue to be limited to encourage renewal and the staggered approach will retain corporate knowledge and facilitate business continuity.

From the Australian Institute of Company Directors:

“It is a good idea for a director’s tenure to be limited to encourage renewal. Although there may be good reasons for a director to serve for an extended period in certain circumstances, there are many benefits to bringing fresh perspectives onto a board. A director’s tenure may

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<sup>5</sup> AICD Checklist for assessing board composition, Policies and Practices

<sup>6</sup> ASIC v Healey (2011)196 FCR 291; [2011] FCA 717

impact their performance, particularly if serving for ten years or longer. Even if a director does serve for an extended period, limiting tenure will encourage regular review about whether their appointment continues to be in the best interest of the organisation.”<sup>7</sup>

e. Governance arrangements and structures

To oversee business performance and compliance, the Board must put in place a system of processes to communicate, control and oversee, or govern the organisation.

For Commonwealth not-for-profit companies, robust governance arrangements are important. While the Board is responsible for the overall corporate governance and successful operation of the NADC, it is accountable to the Assistant Minister to the Prime Minister and Cabinet. As a Commonwealth owned entity it is also subject to the requirements of the *Public Governance, Performance and Accountability Act 2013* (the PGPA Act) and is subject to the scrutiny of Australian Parliament. This requires transparency and performance and compliance with all relevant policies and laws, and it operates in an ethical and professional manner.

Governance covers all the fundamentals required to ensure the effective performance and compliance of an organisation. As a package, good governance for a board means having clarity of roles and responsibilities, a focus on strategy and risk management, necessary financial management, and disciplined accountability and transparency to the Minister. The Board should ensure the organisation’s activities are aligned to its purpose and strategy. Effective governance requires a Board composition to enable it to fulfil its role effectively and the Board should be periodically evaluated. The Board should have in place clear board decision-making arrangements which are informed by an understanding of risk and how it is managed; and ensuring the NADC uses resources appropriately and performance is monitored.

Some of these governance building blocks are addressed throughout other parts of the report.

The NADC Board Charter states the Board “aspires to be a leader in Board governance policy and practice.” Overarching, the NADC Board is governed by the organisation’s Constitution and the NADC Board Charter. Roles and responsibilities are set out in the Charter but as mentioned in the example above they may not be clear enough.

In terms of structures to assist with good governance practices, the NADC Board still has only one committee - the Finance, Audit and Risk Management Committee and its associated Charter. One committee, the Sponsorship Committee, has been in gestation for quite some time. It meets quarterly and a Charter for its operations has not yet been finalised. Remuneration and performance processes for key staff have been considered on an ad hoc basis without the full engagement of the Board and similarly there has been little in the way of succession planning for key staff including the chief executive officer. A human resources committee is in the process of being established and should undertake these and other functions. It may also be useful to consider having a formal stand-up capacity for other high priorities for overseeing new initiatives such as grants programs (with co-opted expertise and experience). Such structures could relieve pressure on the Board and NADC staff and assist with clarifying roles and responsibilities.

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<sup>7</sup> AICD Not for Profit Governance Principles, Principle 3: Board Composition



f. Culture and board dynamics

Taken from the AICD,<sup>8</sup> culture represents the shared values, assumptions and beliefs that shape the behaviour of the people involved in an organisation. It is not only the board's decisions that have the potential to influence culture, but also its behaviours and attitudes. How board members interact with one another, the questions that they ask of management and the way they conduct their meetings can all influence culture.

This is called setting the 'tone from the top.' Honesty, integrity, and ethical behaviour by the Board shapes a robust, resilient and ethical culture for the organisation which is critical to the performance of the NADC. Because culture can significantly influence an organisation's ability to achieve its purpose, it is important that the Board form a view on what kind of culture will best support the achievement of their purpose and take steps to develop or maintain it. The Board should model a culture that supports the organisation's purpose and strategy. The NADC Corporate Plan 2020-2024 lists its values as 'transparency, integrity, accountability, excellence, trust and respect' and requires staff to focus on respect, collaboration and accountability. The Board has a key role in exhibiting professional behaviours and conduct to reflect these values. Elements of culture include how directors behave, the quality and character of their discourse, the decisions they make in meetings including their risk appetites and compliance with laws and ensuring staff remuneration frameworks. Having a good culture addresses risks and improves employee morale and wellbeing and enhances productivity.

Some of the behaviours impacting on culture seem like common sense and include acting ethically and managing any conflicts of interest, being respectful, valuing differences of opinion, listening to others who may have different views, not talking over others, engaging constructively in debate, and being self-aware of the impact of what you do and say has on others. Many comments through the interviews have been made about elements of these behaviours and the term "robust" discussions was used on many occasions. The word 'robust' has been used to describe some positive but mostly negative behaviours within the Board. Further comments of directors about these required behaviours and influencing the culture of the NADC are included in comments made in the *Observations from Interviewees* section of this report.

NADC has an employee handbook outlining expected codes of conduct. There are no arrangements for Board members or protocols, for example for managing conflicts of opinions or for how meetings or decision-making processes for large or high-risk activities should operate. Some elements of behaviour and culture are set out in the NADC Board Charter. It would be beneficial to draw these out in a statement and commitment from the Board about its expectations of behaviours which should include processes for managing conflicts of opinions between directors and providing a protocol for meeting behaviours to respect all viewpoints and where all board directors can provide input. This was also recommended in the 2019 Board review.

Ongoing reflection of Board culture and ongoing measurement through such activities such as staff surveys and turnover, stakeholder surveys, workplace health and safety monitoring and complaints to the NADC, including the Board, are some examples of how to monitor and address culture.

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<sup>8</sup> AICD Not for Profit Principles – Principle 10: Culture

## Policies and Practices impacting on the Governance and Performance of the Board

With the substantial changes highlighted above over the last few years, comments have been made about a sense of instability within the Board and leadership group of the NADC. Future appointments, and filling skills and experience gaps in the Board, along with other measures to improve Board operations and governance will go some way to address this instability and improve the effectiveness of the Board and overall performance of the NADC.

There are other practices and procedures which will support the performance of the Board and for the Board to be seen to be in control and discharging its oversight and direction obligations in a more planned and co-ordinated way.

### a. Evaluation

The Board should periodically evaluate its performance. The *Board and Operational Review Final Report of June 2019* was a good first step in achieving this. Such evaluation would provide the basis for improving board performance, addressing governance framework gaps, unifying team members so all directors are on the same page, improving the effectiveness of meetings and gaining greater clarity of roles, as well as identifying and addressing ongoing issues in Board operations.

Improvements in the Board's effectiveness and the way it operates will also provide the foundation to be clearer about the performance and accountability expectations of the chief executive officer and the management team.

### b. Board meeting schedule and number of meetings

The NADC Board Charter states that practice has been to hold at least six meetings per year and this will vary according to circumstances. It also states the dates of meetings are developed in consultation with directors in advance and sufficient notice is provided to directors. Over the course of 2020-2021 there have been 17 Board meetings (including seven out of session meetings), five circular resolutions, seven Finance, Audit and Risk Management meetings and three Sponsorship Committee meetings. Some meetings have been called with one to two hours' notice.

Many comments were made about the pace of activity, workload and paperwork, the number of meetings and late notices (see *Interviewee Observations*).

Keeping to an annual calendar of meetings unless there are extenuating circumstances is important. This will assist in transparency of decision-making, preparation of papers and ensuring timely Board decisions – particularly in meeting delivery schedules and reporting requirements of the PGPA and Corporations Acts. As mentioned above, planning the schedule of meetings with board directors will improve attendance at Board and Committee meetings. As an example, the Chair was a formal member (by choice) of the Finance, Audit and Risk Management Committee. Given the workload and competing pressures, she was, however, only able to attend three meetings out of eight in 2019-2020. For Board meetings there was only one member who attended all Board meetings they were eligible to attend<sup>9</sup>. It is acknowledged that many extra board meetings were called to meet the compressed timelines in delivering and overseeing the additional grants processes, some of which were called at extremely late notice. This could be avoided with early advice on initiatives to be delivered within a particular budget year, noting that most of the initiatives relate to the 26th of January.

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<sup>9</sup> National Australia Day Council Annual Report 2019-20

c. Board strategy and planning

Some improvements have been made in relation to Board planning and strategy since the *Board and Operational Review Final Report of June 2019* which identified several gaps between *AICD Not For Profit Board Best Practice* and current practices of the Board. Gaps still exist such as the Board taking a leadership role in strategy development and monitoring, rather than management (including now against the Statement of Expectations). s 47G(1)(b)

Managing risk and identifying the risk appetite of the Board is not clearly linked to the strategic planning role of the Board. The Board should be scenario planning in relation to possible annual Government budget changes and implications, possible new initiatives and improving the effectiveness and efficiency of current core business as well as considering innovative options to achieve its mission.

d. Transparency of the Council and Board's governance framework and policies

There is some governance information on the NADC website and the Department of Finance's Transparency Portal. Looking at other Commonwealth corporations like NBN Co or Commonwealth Superannuation Corporation (CSC) there are visible consolidated areas on their websites which outline their governance framework and policies approved by the Board. Key governance documents such as, for example (the CSC), the board performance framework, diversity policy, conflicts of interest management policy, whistle-blower policy, fraud and corruption control plan and many other documents including board committee charters, which constitute the overall governance framework guiding the performance and culture of the organisation are all available.

The NADC Board might consider a similar governance package and visibility of governance arrangements on their website which will provide transparency, a commitment from the organisation to its commitment stated in the Charter for "the Board to be a leader in Board governance policy and practice." It will also contribute to the trust and reputation of the NADC and provide reassurance to stakeholders and the Government that the organisation is professionally managed in line with its corporate governance values.

## Observations from Interviewees

### Broad Themes from the Consultation Process

Seventeen people provided input to the interviews, including all current and recent members of the NADC Board and senior staff of the NADC. The Hon Ben Morton MP, Assistant Minister to the Prime Minister and Cabinet and senior executive staff of Government Division in the Department of the Prime Minister and Cabinet were also consulted and are included in the 17. To guide the discussion with current and recent directors a list of proposed questions ([Appendix C](#)) was provided to interviewees beforehand. Interviews were undertaken from 19 April 2021 to 27 April 2021.

Observations have been grouped under each of the key headings included in the Scoping Document at [Appendix B](#).



a. Functions and Dynamics of Board Meetings

i. Roles and responsibilities of the Board

Prior to the current chair's term there was a view from some directors that the primary focus of the Board was just on the Australian of the Year awards. The current chair has re-energised the Board around its mission/objects, and these have been reinforced in the first Statement of Expectations for the NADC issued by Minister Morton on 27 May 2020. He expects the NADC to pursue its core mission to "actively promote our national day to all Australians with a view to inspire national pride and unity through participation and engagement across all sectors of the community on 26 January each year." This has provided clarity for the role of the Board in providing guidance and oversight to achieve these objectives.

Some directors do not understand the significance of the NADC being a Commonwealth-owned company, particularly their fiduciary duties under both the Corporations Act and the requirements of the PGPA Act.

Some directors commented as paramount the role of the Board was to help clarify and strengthen our national identity and the Board needed to do more research to underpin this objective.

'What are we here to do and how do we take the organisation forward?' was a key question which emerged from the interviews. Some thought the Board was not well equipped to deal with this question or be able to speak with confidence about the position of the NADC (within its role and scope) in relation to the emerging, and at times contentious, issues. From the interviews planning is a gap and the Board was primarily transacting its current business and reacting to issues as they arose.

Some were of the view that there was only a minority of directors who understood strategy, oversight and good governance (many commented on the hole which had been left in this area with recent Board departures) and others did not understand good governance and what was required in discharging their fiduciary duties. s 47G(1)(b)

There was a view the Board, as some mentioned coming out of a recent strategy day, did not address the many aspects of the strategy of the NADC going forward including the priorities expressed in Minister Morton's Statement of Expectations. s 47G(1)(b)

ii. Role and functions of Directors

Some Board members are clearly operating as representatives of their 'communities of interest' and have been advocates for nominees, taking pride in the number of awards they had gained for 'their community.' Comments were provided about the role of board members as being multifaceted – representing communities of interest, geographic areas and advocating for nominees for the Australian of the Year Awards. Some directors clearly see this as being partisan/parochial and not operating in the best unified interests of the NADC. One example, however, was provided by an interviewee that some of these views are indeed addressed in a robust way in the Board meetings and directors advocating or having biases have changed their positions, on occasions, to reach a majority view.



More generally it was surprising how many Board members lacked awareness and familiarity of their fiduciary duties, the Statement of Expectations (which has been on the agenda twice since June 2020) and the underlying governance framework for the Board to ensure integrity in decision making processes, and the obligations to oversee the performance of the Council and the requirement to operate in the best interests of the Board and the NADC. It was also clear some directors relied on the views and work of others to guide their own views and decisions in Board meetings.

This lack of clarity about the role of the Board and the role and functions of Board directors was highlighted in the *2019 Board and Operational Review*.

### **iii. Role of the Chair**

The Chair has lifted aspirations and indeed expectations of Board members and key stakeholders such as key media partners for the Australian of the Year Awards. A substantial change agenda was required with the new Chair's appointment to lift the performance of the Board and indeed the NADC. Some directors have described a 'crash and crash-through' approach was adopted, and others saw this as necessary to lift performance.

At times, given the pace of work, the substantial new initiatives and programs of the Government and the raising of performance expectations, the style of the Chair was seen as overwhelming compared to what some Board directors, who had been there for longer periods, had previously experienced.

There is a need for balance between passion and enthusiasm (and energy to get things done quickly) and the leadership required to form a consensus, take people with you and bring out the best in the Board and executive team. There is a general view "the Chair has done an excellent job in re-establishing the importance of the role of the National Australia Day Council and externally has generally managed stakeholders and sponsors well."

s 47G(1)(b)

### **iv. Governance arrangements**

In reference to section ii above, it was clear there was a lack of understanding for quite a few directors of what governance arrangements were in place or should be in place for the Board and each director to effectively carry out its functions and discharge their obligations. The added complexity of being a company and needing to operate in accordance with the PGPA Act, the *Corporations Act 2001* and consistent with Government policy priorities may have contributed to the complexity and lack of comprehensive knowledge of the many frameworks, regulations, and policies applying to a Commonwealth owned company. While there is a 'governance pack' for new appointees, more effort is required to support directors to better understand their obligations. There needs to be a focus on induction, ongoing education and training and ensuring transparency to the board directors and others of what governance arrangements are in place and how they are applied to the organisation with a commitment to review and evaluate the Board's operations against the arrangements.

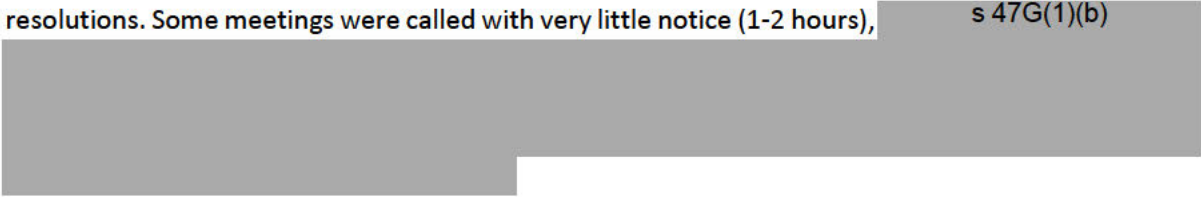
Formalising the Sponsorships Committee will be of benefit as there is not much visibility about the NADC having a sponsorships policy and some commented that sponsorship funding is a sensitive issue. The Finance and Risk Management Committee has been managing many of the governance issues for the Board such as a review of the Board Charter and Constitution. The Human Resources Committee



also needs to be established. These governance issues were raised in the *2019 Board and Operational Review*.

**v. Operations of board meetings**

There was an acknowledgement of the fast pace of activity and peaks of workload for the Australian of the Year Awards, activities on Australia Day and administering key grants programs. The fast pace and workload resulted in many meetings over the past 12 months – 17 Board meetings, seven Finance, Audit and Risk Management meetings and three Sponsorship meetings, plus six circular resolutions. Some meetings were called with very little notice (1-2 hours), s 47G(1)(b)



Comments were also made about behaviours within the Board meetings not meeting professional standards – such as shouting, not listening or respecting viewpoints of others and being dismissive of views and ideas put forward. Some mentioned this resulted in an atmosphere of not speaking up and of being “compliant.”

Comments were also made by some interviewees about a lack of understanding of some directors of financial information presented to the Board and views were also expressed about some directors not keeping up with workload and paperwork required to prepare for discussion in the Board meetings and the Finance, Audit and Risk Management meetings.

**b. Internal and External Communications**

There were views expressed, to meet the NADC’s mission, about engagement with ordinary Australians and stakeholders outside board directors’ communities of interest. The need to address certain target groups, such as young people, was consistent throughout the interviews, however opinions differed on how this should be done and what kind of messages would be most effective. This is an area where the NADC can continue to use the research which they have commissioned to develop and strengthen their public campaigns and engagement with broader communities.

In terms of internal communications, there is a need for respectful discussions between Board members on priorities and strategy with some directors commenting about the need to listen to the diversity of viewpoints and acknowledge the lived experiences of members. Some directors wanted more time to consider issues to allow more effective contributions to strategic discussions. Views were also expressed about conversations being side-tracked (including on strategy days) and not being within the scope of the NADC’s operations. It is the role of the Board and leadership of the Chair to develop protocols on how the Board should operate and use time wisely to ensure the NADC is addressing its core business.

Clarity and clear processes with state and territory committees have been improved significantly and this was a general view of many of the interviewees. With the review timeframe the scope did not require a comprehensive examination of the relationship with key stakeholders including looking at each of the state and territory National Australia Day arrangements. Board directors acknowledged significant work has been done over the last few years on matters to improve these relationships, like standardising the Australian of the Year voting system across jurisdictions and board members being

involved on state and territory committees (that they did not reside). Work is ongoing to ensure all state and territories visibly support and acknowledge the branding of the National Australian of the Year awards.

**c. Skills, Experience and Competencies**

During the interview process and with recent Board director departures, skills and experience gaps were highlighted by all interviewees and included comments on the following areas:

- Strategic skills and corporate governance skills (skills needed such as being a graduate of the Australian Institute of Company Directors) or person who has Board experience on company boards covered by the *Corporations Act 2001*;
- Recent departures have left what colleague directors say is a gap in strategic communications/marketing skills. There were some views, however, that such a gap could be filled through supplementing staff expertise;
- Financial/budget: there was a consensus view for the need for a well-qualified risk and audit chair. There was an overwhelming view with Maj Gen (Ret'd) Maurie McNarn completing his term that a significant and urgent gap in this area presented risks to the effective governance of the Finance, Audit and Risk Management Committee and the Board. Comment was made about the lack of financial and budget literacy and skills and experience of others on the Board. Some said that there was an over-reliance by some directors on the Chair of the Finance, Audit and Risk Management Committee;
- Young people – many directors thought this would be of benefit, others thought a young person would not have requisite skills and experience;
- A strong deputy chair is a gap to be addressed. The previous Deputy Chair was in the role for about 10 years with much knowledge and provided continuity and historical understanding of issues and was seen as a steady and calming hand in Board meetings. She was also seen to be skilled at negotiating consensus views within the board and diligently followed up on actions outside of board meetings;
- Leadership skills were mentioned on occasions to bring the Board together in a more unified way and be more focussed on the Council's strategic planning and actively addressing risks; and
- 'Orderly thinkers' was a term used about the skills now lacking on the board.

**d. Relationships between Board Members with Staff and Stakeholders**

Comments were made by most directors about senior staff stability as a risk to be managed. Due to the high number of board meetings per year, much resourcing effort is used to support and service the Board. Most directors commented that more resources were required to support the senior leadership team of the NADC – they felt the team is placed under quite a bit of pressure and comments were made about addressing the key risks of losing such talented personnel.

Views were also expressed about conflicting messages being provided to key delivery partners for Australian of the Year Awards – resulting in late changes to decisions already made and potential disruption to delivery deadlines. These messages and changes to decisions also reflected the view that some Board directors were too involved in operational matters.

Others commented about the much-improved relationship with agencies across Government who sponsor the National Australian of the Year awards. The Chair has been active in developing these relationships.

e. The Board's history and projected challenges

The National Australia Day Committee was established in 1979 with a vision to make future Australia Day celebrations 'truly national and Australia-wide'. In 1984 the Committee became the National Australia Day Council, and since then Australia's Bicentenary in 1988 and the Centenary of Federation in 2001 - as well as a much better understanding and knowledge of Australia's Indigenous history - has shaped today's focus on encouraging Australians to participate in and reflect on the meaning of Australia Day. The National Australia Day Council was incorporated as a company under the *Corporations Act* in October 1990 and remains owned by the Commonwealth. The NADC Corporate Plan 2020-24 outlines key priorities with a purpose of inspiring 'national pride and unity through participation and engagement through its key message of Reflect, Respect celebrate – we're all part of the story.'

The last few years have seen substantial changes. The current Chair has initiated many changes since her appointment in 2017 in uplifting the performance of the NADC and Board operations, including starting discussions around the NADC's strategic direction, initiated independent reviews (a functional review in 2018 and board review in 2019) of its operations and commenced improving Board governance arrangements with a focus on all its objectives. Other changes followed including the appointment of Minister Morton in May 2019 as Assistant Minister to the Prime Minister and Cabinet. Minister Morton provided a first Statement of Expectations to the NADC Board in May 2020 setting out performance expectations and future priorities of the Council. Substantial new Government initiatives and investments were provided to support the work of the NADC in the lead up to, and on, Australia Day 2021.

The current Chair and chief executive officer implemented a targeted turnover of most staff to meet the raised expectations and level of performance required to deliver new initiatives and a more focussed direction for the Council. There were also financial and budget issues which had been inherited and were now more visible. Some Board members felt challenged by the change management agenda and potential additional requirements to support the change. s 47G(1)(b)

The Board of directors and others are positive about the Council's future. Mention was made of the significant positive gains and positive messages resonating with Australians about being Australian and the *Story of Australia* Campaign delivered by the NADC has been a primary contributor. Most interviewees commented that a key challenge is to keep the momentum going within currently available resources, including staffing resources – in this context some directors suggested strengthening the ambassador role in local communities, as well as being innovative and considering other ways to maintain momentum. Some interviewees commented on the need to be innovative with the Australian of the Year Awards to involve and engage more of Australia's population, particularly younger people. There was less commentary on how this might be done - some suggested more research be undertaken to identify areas that needed more work to unify the population around the key themes of *the Story of Australia*. Some interviewees thought an overhaul of the awards process might be warranted to address the confusion of the different awards processes occurring on Australia Day.



f. Other issues raised during interviews

i. The National Australian of the Year awards

Much comment was made about whether the National Australia Day Awards are for individual achievement and/or for the cause the recipients are being nominated or receiving the awards for, and whether the recipients of the awards should be supported to provide a platform for the cause.

Some directors also received many enquiries about the confusion of the NADC's role in the Australian of the Year Awards process and the Australia Day Honours list (which recognise the outstanding service and contributions of Australians). s 47G(1)(b)

There were mixed understandings by some directors of the National Australian of the Year Awards process (even though there is a process map on the website), particularly in the initial stages of the call for nominations. Only some directors were aware the national nominations had an initial assessment or screening process by NADC staff against the eligibility criteria only, which is provided on the website, before providing to the state and territory Australia Day awards committees. The Board does not see any nominations until December of which the only nominations they see are the 32 being the recipients of the state and territory awards. They do of course have some knowledge as they observe on a state and territory committee process for selection (for a state or territory they do not reside in).

ii. Remuneration

There were diverse views and a lack of understanding of what was available about remuneration of Board directors.

s 47G(1)(b)

Many suggested that more structured planning and discussion around board agendas, including the number of meetings, clearly focussing on strategy and oversight would alleviate matters of workload (including for the staff servicing the needs of the Board). Suggestions in the report above about forming committees of the Board to assist with new initiatives may also provide a more effective system to manage priorities and workloads.

It should be noted there is flexibility within current arrangements to cover costs and provide for additional financial support should a Board member be disadvantaged through meeting their Board obligations and these flexible arrangements should be further emphasised.

iii. Resourcing

One key issue raised consistently in the interviews was the funding of the NADC. While the funds to run the organisation and manage the Australian of the Year Awards has been consistent, the additional funds recently provided by the Government to pay for research, deliver several grants programs (in effect within six months), and the Australia Day campaigns like *Story of Australia*, are not.

## OFFICIAL: SENSITIVE

NADC revenue from Government is in the order of \$4 million, plus sponsorship funding in the order of \$2.7 million to a total of \$6.8 million. This provides for a base level staff of 12 full time equivalents and allows for the contracting of \$4 million in services (including payments to network affiliates which is expertise that can be quickly mobilised).

In addition to the general funding in the order of \$4 million over the financial year ending 30 June 2021, an additional \$12.4 million from Government has been provided to the NADC to undertake the *Story of Australia* campaign as well as over \$14 million to deliver the Australia Day Grants Program. The agreement to provide the Australia Day Grants Program was entered into on 9 September 2020 with the first grant round being opened on 15 September 2020.

Through the NADC 3 types of grants were available for Australia Day 2021:

- Australia Day Branding Grant (\$1k) – 352 applications approved across 2 funding rounds commencing 15 September 2020;
- COVID Safe Australia Day Grant (up to \$20k) – 416 applications approved across 2 funding rounds commencing 15 September 2020; and
- Iconic Australia Day Grant Program (up to \$1 million) – 9 applications approved across 2 funding rounds commencing 25 September 2020.

It appears the issue is not the quantum of funding but the recent irregular timing and the availability and timing of the additional funding to the Council, particularly in relation to the delivery of campaign expenditure and delivery of grants to ensure compliance with the Government's better practice grant funding arrangements.

Most of the views were about the lateness of funding placing significant stress on both the organisation's staff and Board to rapidly organise, sort, and approve grants, and other administratively intensive funding activities.

The NADC currently employs 12 permanent staff and 1 short term employee whilst the revenue and overall activity level has increased substantially - \$6.6m - 2019, \$16.8m – 2020, \$33 m - 2021 forecast). Within this staffing cap the NADC outsources financial management, event management, strategic communications and media and support to Australian of the Year awardees.

This has been one of the reasons expressed for the sizeable number of board meetings at late notice which occurred this year, as the Board was required to meet to approve the grants as they were made to meet implementation schedules, rather than as a more considered process. The combination of a rapid turnaround time for the delivery of significant funding initiatives together with the need to support the Board decision making processes also put significant pressure on the NADC staff and was a major contributing factor to some of the comments about risks of senior staff potentially leaving.

Consideration of alternative arrangements to oversight grants processes might alleviate some pressure on Board directors, for example, through an additional (when required) committee, with co-opted experience and expertise, of the Board. In addition, it would be useful for the Board and management to discuss how to improve and streamline some of their internal processes including having clearly mapped out processes for managing the big activity items and consider within a risk management framework, delegating authority where appropriate.

Comments were made about the staffing cap impacting the development of the NADC capability, succession and workforce planning. There is a need to balance full-time staff with outsourced arrangements particularly to mobilise specific expertise and for peaks and surge capacity when

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required. While staff are not engaged under the *Public Service Act 1999*, the Government places a cap on Average Staffing Level (ASL). This is applied across the General Government Sector, which includes NADC. ASL caps are published in *Budget Paper Number 4, Agency Resourcing* each year and has highlighted an ASL cap of 12 for the National Australia Day Council in 2020-21. The Department of the Prime Minister and Cabinet may be able to seek an increase to ASL in future years. Comments were also made about the resilience of the team and coping strategies they had adopted to manage the workload and what some said were unreasonable demands placed upon them.

Directors commented the lack of certainty about future funding may also constrain planning and strategy development and may impact the momentum and gains made in relation to the *Story of Australia* campaign.

## Appendixes

### Appendix A

#### **Board and Operational Review Final Report of June 2019**





National Australia Day  
Council Ltd

Board and Operational  
Review

FINAL REPORT

June 2019

  
special assignments  
**bull&bear**



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## **BASIS OF PROVISION OF REPORT - INDEMNITY AGAINST LEGAL ACTIONS**

This report is in accordance with the proposal put to and accepted by the National Australia Day Council (NADC) on 7 May 2019 from Bull & Bear Special Assignments Pty Ltd (BBSA). BBSA has provided this report specifically for the Board of the NADC and it is not published by BBSA for any other parties.

While every professional care has been taken in assembling the information upon which this report is based, and preparing this report accordingly, the findings and recommendations contained within it are to be viewed as resultant conclusions drawn upon the balance of probabilities rather than beyond a reasonable doubt.

NADC, as the owner of the report, is of course at liberty to accept the report in part or in whole, or to reject it in part or in whole - to implement whatever actions deemed necessary by it in the future, either as a result of this report, or otherwise – to publish any part or parts of this report. In so doing any of these, NADC is the author of its own choices and is the only party entitled to publish the findings of this report, or any of them, or any of its constituent parts to whichever persons or audience it may choose, PROVIDED THAT in such publication or publications is deemed and agreed an indemnity given by NADC to BBSA for and against any costs, expenses, and or damages arising from any suits, writs or causes of action, brought by any third party or third parties against BBSA, or against any of its statutory officers or employees, available by virtue of, or due to, such publication or publications.

BBSA specifically excludes responsibility for any actions arising from the publication of this report and passes that responsibility to NADC and its officers.

## EXECUTIVE SUMMARY

The National Australia Day Council (NADC) engaged Bull & Bear Special Assignments Pty Ltd (BBSA) to assess and report on the performance of the Board and the management team in supporting the Board set the strategic direction of the NADC following the introduction of a new operating model in July 2018 (the Review). The Review consulted with Board members, members of the management team and key stakeholders, refer **Appendix A**.

The Review of the Board and management's performance since June 2018 found that overall the performance of both is much improved. The NADC conducted a very successful Australia Day Awards selection process during 2018. This was due to the effective roles played by the Chair and CEO in overseeing the implementation of the new operating model, which included resetting relationships with key stakeholders such as the State/Territory Network (the Network).

The new operating model involved a substantial refresh of the NADC staffing profile. This together with the timeframe in which the Board and management team delivered the NADC's key output - the Australia Day Awards saw a highly streamlined approach to its business adopted.

The discussion of the Board's and management's performance is in section 2.2. **Appendix B** is the assessment of management's implementation of the new operating model. The Board Evaluation Detailed Report Card is at **Appendix I**.

The key findings of the Review about Board governance, cohesion, commitment, skills and capability are as follows:

- The financial transparency and governance of the NADC has improved.
- Positive working relationships have been created between the Board and management; the Chair and the Network Chairs; the CEO and the Network.
- The 2019 Australia Day Award recipient selection committee meeting/s achieved equity of input from participants and equality in the value placed on inputs.
- More generally there is scope to improve the quality and transparency of Board decision making.
- There is not a common understanding of, or agreement about the purpose of the NADC.
- The lack of consensus about the purpose of the NADC is inhibiting the cohesion, commitment and overall effectiveness of the Board particularly as the Board has not set the NADC's strategic direction. This means time and energy is being spent on what may or may not be the priorities.
- There is a lack of clarity about the role and responsibilities of the Board, Board members, and CEO. This is evidenced by an unclear delineation between the roles of directing and managing at the NADC.
- There is a lack of clarity about the Board's risk appetite, which based on the current Board governance arrangements appears to be very low.
- The Board is not engaged in advising on Board succession and it has not captured the skills and abilities of existing Board members. This is inhibiting Board performance as evidenced by some Board members not understanding their roles and responsibilities. This is due in part to a lack of agreement about the role of the Board and the Board members and in part it is a development issue.
- The Board's most pressing skill gap is a lack of indigenous input. The pathway to addressing this appears to be engagement with government about Board appointments.
- There is currently no explicit consideration about the culture of the NADC, what it is or what it should be.

The key findings of the Review about the performance of the management team in supporting the Board set the strategic direction of and effectively governing the NADC are below. The management team:

- Is relatively inexperienced when it comes to reporting to a Board and the expectations are not aligned to its resources or its level of maturity as an executive team.
- Successfully implemented the key priorities identified in the Functional Review Final Report June 2019 draft Implementation Action Plan, refer **Appendix B**.
- Now needs to focus on documenting (in order to embed them) the successful processes that supported the delivery of the 2019 Australia Day Awards.

The key findings summarised above highlight that there is an opportunity for the Board to further improve its performance by addressing some of the fundamentals of Board and management operations. The Board's performance would be improved by:

- Board members having a common and agreed purpose which they can reflect in their contributions, which sets their expectations and guides their engagement with each other; with management and as a Board.
- Clarifying where responsibility for setting the NADC's strategy lies i.e. with the Board or with management.
- The Board by adopting a disciplined approach to governance of the NADC that recognises the significant gap between the expectations that they, the shareholder and stakeholders have and the resources available to meet those expectations.
- Board decision making:
  - Involving all Board members in the decision-making processes
  - Focussing on processes to improve the achievement of consensus-based decision making
  - Making decisions more transparent particularly if the process did not involve all Board members
  - Addressing the logistical challenges faced by Board members that is inhibiting their ability to participate fully in the Board deliberations and decision making.
- Avoiding unscheduled Board meetings which place the Board in a position of having to make decisions without the full Board deliberating.
- The Board restructuring to enable it to provide advice to government about the skills, qualifications and attributes that the Board needs.
- Board members developing a better understanding of their role and management undertaking development focussed on how to report to a Board.
- The Board and management team agreeing about the desired culture of the NADC and by the creation of artefacts that assist embedding it.

These actions are captured in the Board and Organisational Improvement Plan refer **Appendix C**. Detailed recommendations are outlined in section 4 of this report with BBSA recommending the National Australia Day Council endorses the:

1. NADC Functional Review Implementation Report at **Appendix B**.
2. Board and Organisational Improvement Plan at **Appendix C**.
3. Board Evaluation Report Card Summary at **Appendix D**.
4. Board Action Plan Summary at **Appendix E**.
5. Board Organisational Report Card Summary at **Appendix F**.
6. Board Evaluation Detailed Report Card **Appendix I**.



# 1. PROJECT OVERVIEW

The NADC engaged BBSA to undertake an evaluation of the performance of the Board in terms of its:

- Governance of the NADC
- Cohesion and commitment
- Skills and capability.

BBSA was also asked to assess the performance of the management team in supporting the Board set the strategic direction of and effectively governing the NADC, ensuring the methodology for the Review included:

1. Feedback from:
  - a. Current Board members including those whose terms expired during the Review;
  - b. The NADC CEO, Chief Operating Officer (COO) and Director Events and Communication;
  - c. At least two representatives from the Network; and
  - d. Representatives from two stakeholder organisations or agencies.
2. An assessment of performance of the Board and management since the receipt of the Functional Review Final Report in June 2018.
3. The development of a Board and Organisational Improvement Plan.

## 1.1. Background

BBSA developed a project methodology mindful of one of the NADC's objectives, which is to have a conversation with government about what types of skills the Board needs. A further objective is to consider what Board and organisational improvements should be made as they prepare for the Australia Day Awards 2020.

The Review is based on a qualitative assessment of the performance of the Board and organisation. The Review consulted with Board members, members of the management team and key stakeholders, refer **Appendix A**.

The assessment utilised the Australian Institute of Company Directors (AICD) recommended approach to Board evaluation and director appraisal. It correlated the results from this assessment with the AICD Not for Profit Principles released in March 2019.

The assessment of the performance of the management team is based on a qualitative assessment of management's progress implementing the draft Action Plan included in the Functional Review Final Report in June 2018.

## 1.2. Project methodology

This section of the report provides an overview of the methodology, deliverables, engagement, data collection and analysis undertaken. This provides the context for the assessment of the performance of the Board and management team and subsequent recommendations in this report.

BBSA developed the following methodology for the development of the agreed deliverables:

1	
ASSESS THE CURRENT STATE	<ul style="list-style-type: none"><li>• Identify a question set to support a current state Board evaluation.</li><li>• Extract the proposed Implementation Action Plan from the Functional Review Final Report June 2018, which recommended a new operating model. This was used as the baseline for measuring management performance since June 2018.</li><li>• Utilise one on one interviews to collect data about the current performance of the Board to identify the performance of the Board in terms of:<ul style="list-style-type: none"><li>• Governance of NADC</li><li>• Cohesion and commitment</li><li>• Skills and capability</li><li>• Skills and capability gaps</li><li>• Opportunities for improvement.</li></ul></li><li>• Utilise one on one interviews to collect data about the current performance of the management to identify the performance of management in terms of:<ul style="list-style-type: none"><li>• Supporting the Board set the strategic direction of the NADC</li><li>• Supporting effective governance of the NADC</li><li>• Opportunities for improvement.</li></ul></li></ul>

Key outputs from this stage include:

- *NADC Functional Review Implementation Report* – this document reports on the performance of management implementing the Functional Review Final Report June 2018 draft Implementation Action Plan (**Appendix B**). It was used to identify key priorities for an operational improvement plan.
- *Board Evaluation Report Card Summary* – this document outlines the performance of the Board against the Australian Institute of Company Directors (AICD) Board evaluation and director appraisal model (**Appendix D**). It provides an overview of how the Board has performed since June 2018.
- *Board Action Plan Summary* – this document compares the current performance of the Board to the AICD best practice model for Not for Profit Boards (**Appendix E**). It can be utilised by the Board to assist it prioritise areas for Board improvement; to identify skill and capability gaps; and to inform the recruitment of future Board members and the development needs of existing Board members.
- *NADC Board Organisational Report Card Summary* – this provides an overview of the performance of the NADC against the AICD Not for Profit Principles (**Appendix F**). This will assist the Board and management prioritise organisational improvements as they prepare for the Australia Day Awards 2020.

<p>2</p> <p><b>ASSESS BOARD AND MANAGEMENT PERFORMANCE</b></p>	<ul style="list-style-type: none"> <li>• Develop a Board evaluation question set drawing on the recommendations of the AICD Board evaluation and director appraisal handbook.</li> <li>• Using one on one interviews assess the performance of the Board in terms of: <ul style="list-style-type: none"> <li>• Governance of the NADC</li> <li>• Cohesion and commitment</li> <li>• Skills and capability</li> </ul> </li> <li>• Using one on one interviews assess the performance of management in terms of: <ul style="list-style-type: none"> <li>• Supporting the Board set the strategic direction of the NADC</li> <li>• Supporting effective governance of the NADC.</li> </ul> </li> <li>• Assess actions taken by management to improve the performance of the NADC against the proposed Implementation Action Plan in the Functional Review Final Report June 2018.</li> </ul>
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Key outputs from this stage will include:

- Analysis of skill and capability gaps on the Board.
- Analysis of the performance of the Board governing the NADC, this includes identifying the degree of cohesion and commitment of the Board members.
- Analysis of the performance of management supporting the Board set the strategic direction and governing the NADC.
- Assessment of the progress implementing the Functional Review Final Report June 2018 draft Action Plan. This is captured in the NADC Functional Review Implementation Report at **Appendix B**.
- Board and Organisational Improvement Plan at **Appendix C**.

<p>3</p> <p><b>REPORT ON FINDINGS</b></p>	<ul style="list-style-type: none"> <li>• Develop a report with recommendations about the performance of the Board and management governing the NADC and achieving its goals and objectives.</li> </ul> <p>• Key outputs from this stage will include the final report of the project.</p>
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### 1.3. Acknowledgements

This Review would not have been possible without the commitment and support from the Chair and Board members (current and past) of the NADC and the staff of the NADC who agreed to be interviewed.

## 2. PROJECT ACTIONS

### 2.1. Consultation and engagement

Subsequent to its engagement BBSA met with the NADC Board on 7 May to outline the approach to the Review, refer **Appendices G and H**. The meeting with the Board was an opportunity to:

- Outline the activities that would be undertaken as part of the project
- Provide an overview of the agreed timeframes
- Confirm the project deliverables
- Discuss any concerns.

This meeting ensured that those Board members present received the same information about the project.

This was followed by one on one meetings with members of the Board, management team, and stakeholders. The purpose of the one on one interviews was to:

- Discuss the performance of the Board; and
- Discuss the performance of management since the completion of the Functional Review Final Report June 2018.

The findings from these discussions are detailed below in [Section 2.2](#).

BBSA met with the Board again on 6 June at which it presented its key findings. The purpose of this meeting was to inform the Board's strategic plan development deliberations also being conducted on 6 June.

### 2.2. Assess the current state

To assess the current state BBSA invited Board members, staff and stakeholders to provide their feedback. The list of people with whom BBSA consulted is at **Appendix A**. A summary of the matters raised during these discussions is outlined below.

#### 2.2.1. Purpose and strategy of the NADC

There is a lack of clarity about the purpose of the NADC. In response to questions about the NADC's purpose it was described variously as:

- Australia Day Award recipient selection committee and event organiser
- Australia Day Award recipient selection committee and event organiser plus shaper of Australia Day celebrations
- Australia Day Award recipient selection committee and event organiser plus shaper of Australia Day celebrations plus leader of a national conversation about the meaning of Australia Day.

It was noted that there is no consensus about what the purpose of the NADC is or should be. It was agreed that the NADC only sufficient resources to deliver the Australia Day Award recipient selection committee and the associated event.

The lack of clarity about the purpose of the NADC was linked to the transformation of the organisation during 2018 where the focus was on improving financial transparency and governance.



The lack of consensus about the purpose of the NADC is inhibiting the effectiveness of the Board particularly in the context of the Board having not set the strategic direction of the NADC. This means time and energy is being spent on what may or may not be the priorities.

It is also impeding Board cohesion and commitment because Board members do not have a common and agreed purpose which they can reflect in their contributions, which sets their expectations and guides their engagement with each other; with management and as a Board. A consequence is that the decision making is of a lower quality than it might otherwise be.

The Review concluded due to a range of historical and practical reasons strategy development within the NADC is immature. The Review established the following:

- A strategy to deliver Australia Day Awards 2019 was in place and effectively implemented.
- The process for developing with the Network the strategy to deliver the Australia Day Awards 2019 was effective.
- The NADC budget is aligned to strategy to deliver Australia Day Awards 2020.
- There is an annual budget development process, which is well regarded. To date the development of the NADC budget has been aligned to strategy for the delivery Australia Day Awards and an associated event.
- The Board has not developed an organisational strategy. The Review found that:
  - The Board and CEO are not of one mind about who leads the setting of organisational strategy.
  - There is a lack of consensus amongst directors about the need for the Board to set the organisational strategy.
  - Previous Chairs have sought to develop an organisational strategy for the NADC without success.
  - The Board scheduled a strategic planning day on 6 June, which is a good first step.

## 2.2.2. Roles and responsibilities

The Review found amongst the Board members and management that there is a lack of clarity about the roles and responsibilities of the:

- Board
- Board members
- Chair
- CEO.

The NADC is a not-for-profit, government-owned company which is governed by the [Public Governance, Performance and Accountability Act 2013 \(PGPA Act\)](#) and the *Corporations Act 2001*. The latter defines the responsibilities of Board members.

Board members understanding of their roles and that of the Board is variable. The Review found that not all Board members appear to understand that their director's duties are defined in the *Corporations Act 2001*.

The Review concluded that there is a need for the Board as a whole to have a common understanding of the responsibilities for the:

- Governance of NADC under the PGPA Act and Corporations Law; and
- Selection of awards recipients and the oversight of the event as which the award winners are announced.



It also concluded that the lack of understanding of current Board members of their roles and responsibilities is primarily a Board member development issue. It is also due to Board members not having a common understanding about the role and purpose the Board as noted above.

Related to which there was a lack of clarity about the role of individual office holders such as the Chair and CEO and management more generally. For example, the Board is responsible for the evaluation of the CEO and it appears that there is no process for an annual review of the CEO in place.

It was consistently observed in the Review that there are more Board members than staff. The Review found that issues arising from this is that there is not a clear delineation between directing and managing the NADC, and it is not clear what role Board members were expected to play for example in attracting and retaining sponsors. This lack of clarity could be enhanced if the Board documented the skills and capabilities of Board members and considered what contributions the Board needed them to make.

The Review concluded that Board members need a good understanding their responsibilities for solvency and governance, including:

- Delivery and evaluation of the Board strategy
- Evaluation of the CEO
- Board succession planning.

The Review also concluded that there would be value in Board members discussing and agreeing their responsibilities for:

- The Awards Selection processes and outcomes
- Overseeing the organisation of, and conduct of the Australia Day Awards event
- Stakeholder engagement
- The attraction and retention of sponsors
- Revenue raising.

### 2.2.3. Board governance

The Review found that Board members and management are working to improve governance. The focus to date has been on improving internal controls. The outcome of which is improved financial transparency and governance.

The creation of the Finance, Audit and Risk Management Committee (FARMC) is part of this change and was warmly welcomed. The Review found that the FARMC is performing well.

In contrast the establishment of the Sponsorship Committee has been less smooth. The Review found that there is some confusion about who the Chair of this committee is. This confusion was resolved during the course of the Review. It pointed however to issues associated with Board processes and decision making that are discussed below.

The Review found that the governance of the Board is still somewhat immature. This reflects the following.

- There are Board members that have never attended a Board meeting.
- Some Board members are consistently unable to attend Board meetings due to logistical challenges associated with their remote location, which have not been addressed.
- Some Board members reported that there is a level of disengagement from Board members serving three terms as the end of their term nears. This raised the question of whether three terms of three years i.e. 9 years is too long for the ultimate period of service on the NADC Board.

The Review also found that while the governance is perceived to have improved it does not appear to be aligned to the size, scale or risks facing the NADC.

- It was noted that there are more Board members than staff.
- Currently the Board is meeting 10 times a year and the FARMC 8 times a year.
  - The number of Board and Board sub-committee meetings to be arranged and serviced will increase when the Sponsorship Committee becomes operational.
- The NADC has a significant reporting burden associated with PGPA Act entity requirements; servicing the needs of the shareholder - the Minister; and the portfolio department – Prime Minister and Cabinet.

This together means one staff member – the COO is essentially fully occupied servicing the Board, and its sub-committees and fulfilling reporting requirements.

The Review found the key risks facing the NADC faces are:

- **Strategic risks**
  - NADC is not currently positioned to address the risks to the reputation of the Australia Day Awards from the *Change the Date* campaign and associated social movements. This includes not addressing sponsors concerns about the NADC's management of this challenge.
  - The NADC lacks input for the first nation's people. Its current indigenous Board member has not attended a meeting for the duration of their term which is to conclude shortly.
  - The NADC and what it offers needs to evolve such that it continues to reflect Australian's aspirations and societal expectations otherwise it may struggle to remain relevant. It has limited capacity to do so with its current resources.
- **Key person risk**
  - The NADC processes and procedures implemented to deliver the Australia Day Awards in 2019 have not yet been fully documented and embedded. This together with the positive working relationship the CEO has developed with stakeholders makes the unanticipated departure of the CEO a key risk.
- **Financial risks**
  - The recent loss of a key sponsor has highlighted the financial risks faced by the NADC.
  - Lack of clarity about the purpose of the NADC poses a risk where it makes 'selling the NADC story' to secure additional sources of revenue more challenging.
  - The cost of servicing sponsors is not aligned to their financial contribution.
  - The withdrawal of sponsor support and the lack of a sponsorship pipeline continue to pose an ongoing risk.
- **Governance risks**
  - Lack of indigenous representation on the Board
  - The Board is under performing in terms of Board member participation due to:
    - Bi-partisan decision-making processes
    - Lack of engagement
      - Evidenced by one Board member not attending a meeting for the duration of their appointment
      - Because roles and responsibilities are not fully understood
      - Due to logistical constraints that have not been effectively addressed or resolved
      - Due to the nearness of the completion of Board service.

- Current Board member selection process are not informed by a skill or capability gap analysis.
  - Board members need to come from diverse background this may mean recruiting members that are not skilled Board members, if this is the case then the governance of the NADC is at risk.
- Lack of Board director development
  - The NADC does not have a director develop plan to address the selection of directors unskilled in corporate governance.
- CEO and management's lack of Board experience
  - The Review found that management team is relatively inexperienced when it comes to reporting to a Board. In this context they would benefit from development focussed on this capability as it will enable the team to mature its relationship with the Board.

## 2.2.4. Board processes

Board decision making is reported as being in the main collegiate. Nonetheless the Review found the following.

- Not all Board members are consulted about decisions.
- If the Board does not agree the Chair decides.
  - This mode of operation was seen as having been necessary during the 2018 transition.
  - This operating model is evolving toward more collegiate Board decision making.
- An increased focus on internal controls has not coincided with increased transparency amongst Board members about what actions and decisions are being taken.
- There is a lack of transparency about interactions between:
  - Chair to Board members;
  - Board members to Board members; and
  - Board members and management.
- Ideally management and members of the Board involved in decisions should over report decisions. At the moment there appears to be under reporting of actions/decisions.
  - The NADC Board does not have a protocol for resolving conflict between Board members and/or Board members and members of the management team.
- The Review found that more normally at Board meetings there are dominate voices. It is less clear that minority views are heard / considered. The Review noted the consequence of this is that:
  - There is not an equity in Board input
  - There is not equality in the value placed on input.
- The 2018 award selection committee process was commended as an exception to this. It was provided to the Review as an ample of a Board meeting where there was:
  - Equity of input; and
  - Equal value accorded all inputs.
- The challenge the NADC faced in establishing the Sponsorship Committee provided an example of:
  - Poor decision making such that while it was clear a sub-committee was to be established it was not clear who the Chair was to be
  - The decision-making processes not being as transparent as would be ideal.

### 2.2.5. Board performance

The Review found that Board performance has improved. This is evidenced by the conduct of the very successful Australia Day Awards selection process during 2018 while also implementing a new operating model and achieving improved financial transparency and governance arrangements.

The Review concluded that much of the credit for the improvement is due to the effective roles played by the Chair and CEO in resetting relationships with key stakeholders such as the Network and the sponsors.

The leadership of the Chair has been critical. The Chair has reset expectations of the Board and management with respect to the performance of the Board governing the NADC. The Chair has led the establishment of a strategy development process by the Board and actively facilitated the creation of the FARMC and the Sponsorship Committee which are focused on key areas of risk.

The implementation of the new operating model involved a substantial refresh of the NADC staffing profile. This together with the timeframe in which the Board and management team delivered the NADC's key output - the Australia Day Awards saw a highly streamlined approach to its business adopted.

This approach has led to some of the gaps and areas for improvement identified with respect to:

- Defining the NADC purpose
- Developing a long-term strategy
- Decision making which in turn is affecting Board cohesion and commitment.

The Review also found that the Board has not been engaged in advising on Board succession. It has not in this context captured the skills and abilities of existing Board members. The Review concluded that there is an opportunity for the Board to better understand the value add that its members offer and to better leverage this.

The Review identified skills gaps in the following areas:

- Indigenous input and engagement
- Legal skills
- CPA qualifications
- Major event planning and promotion/community engagement.

The lack of indigenous input has been identified as a key strategic risk to the NADC.

In light of the challenges the Board faces responding to the *Change the Date* campaign the pathway for addressing the lack of indigenous input is through consultation with government.

The Review found that not all Board directors are engaged. This has inhibited the performance of the Board. It has also in this context been identified as an issue and risk to the NADC.

The Review found that the Board is 'east coast' centric and that there is a lack of diversity in the backgrounds of the Board members. This coupled with the fact that the Board members tend to be high performers in their own rights appears to be inhibiting the performance of the Board. The way in which Board members have been appointed to date has not supported establishing good Board governance. In part because of the assumptions that Board members made about their roles and responsibilities in the absence of a proper induction.

The Review concluded that there would be value in establishing a Board Nominations Committee. The committee could be responsible for:

- Establishing a Board member induction process



- Succession planning (Board and management)
- Establishing an annual Board evaluation process
- Establishing an annual CEO evaluation process
- Documenting Board skills and capabilities and establishing a Board skills matrix
- Advising on Board member development needs and the strategies to address them
- Advising Government on Board member selection.

The Review concluded that it is necessary for the Board to perform these functions as part of a plan to improve its performance. This includes positioning the Board to be to advise government on the skills and abilities the Board needs.

### 2.2.6. Management performance

The Review found that stakeholders were very positive about the performance of the CEO. The stakeholders were complementary about the management and execution of the Australia Day Awards 2019 and associated activities. The Review concluded that positive working relationships have been created between the:

- Board and management
- CEO and the Network
- Management and the shareholder and the department of Prime Minister and the Cabinet.

The Network are particularly pleased with how the CEO led and implemented changes to the award nomination process. They also reported that the engagement by the NADC Chair has been very welcome.

Board members commended the management team for the delivery of the Australia Day Awards 2019.

The Review found that the management team is relatively inexperienced when it comes to reporting to a Board. It would benefit from development focussed on how to report to a Board. It faces a number of challenges due to its relative inexperience and resourcing. The latter does not reflect the expectations of it. This means that it has not been as effective as it might be in supporting the Board set the strategy and govern the NADC.

The Review concluded that the Board does need to play an active role in managing this. In particular there is a need for the Board to recognise the gap between expectations being placed on the management team by the Board, shareholder and stakeholders and the resources available. The Board can assist management improve its performance by adopting a disciplined approach to governance that reflects the size and scale of the NADC.

The Review found that the management team successfully implemented the key priorities identified in the Functional Review Final Report June 2019 draft Implementation Action Plan, refer **Appendix B**.

This assessment highlights that a key priority for the management team over the medium term is to document (in order to embed them) the successful processes that supported the delivery of the 2019 Australia Day Awards.

## 2.3. Data Collection

At the facilitated interviews with the members of the Board, management team, and stakeholders BBSA obtained information about the current state. This was correlated against the:

- AICD Board evaluation and director appraisal model.

- The resulting assessment is captured in the Board Evaluation Report Card Summary at **Appendix D**. It provides an overview of the evaluation of the Board that has been discussed in detail above.
- The Board Action Plan Summary at **Appendix E** compares the current performance of the Board to the AICD best practice model. It provides a commentary about areas of concerns and/or for improvement. This assessment has been reflected in the Board and Organisational Improvement Plan at **Appendix C**.
- AICD Not for Profit Principles.
  - The resulting assessment is captured in the:
    - NADC Board Organisational Report Card Summary at **Appendix F**; and
    - NADC Board Evaluation Detailed Report Card at **Appendix I**.
    - Together they reflect on the performance of the NADC Board against the AICD Not for Profit Principles discussed above.
- Action Plan from the Functional Review Final Report June 2018. The assessment of management's implementation of the Action Plan is at **Appendix B**. It confirms that the actions needed to implement the new operating model for the NADC are largely complete. The outputs of this assessment are captured in the Board and Organisational Improvement Plan at **Appendix C**.

From this data collection and assessment of the qualitative performance of the Board and management, the Review found that the performance of the Board and the organisation has improved markedly since the completion of the functional review in 2018. The successful delivery of the Awards and the event at which they were announced in 2019 by the Board and management was a tremendous achievement following the adoption of the new operating model.

The Review found given the timeframes and resources available that the need to manage the delivery of the Australia Day Awards in 2019 led to the adoption of expedited decision making within the Board. For management it meant delivery of many functions without the processes that underpinned them being documented.

In terms of the governance, cohesion, commitment, skills and capability of the Board while improvements have been made in many areas the key findings of the Review are that there is a:

- Lack of clarity about the purpose of the NADC
- Lack of role clarity amongst some Board members and staff
- Lack of unity of purpose within the Board
- Lack of transparent decision making within the Board
- Lack of equity in, and the value ascribed to the, input of Board members
- Board governance is not aligned to the size, scale and risk profile of the NADC
- Heightened organisational risk associated with the lack of indigenous input to the Board
- Key person risk
- Need for Board and management development about Board and Board member roles and responsibilities
- Need for a Board selection process that is informed by a skills and capability gap analysis
- Need to align the expectations of the Board of the management team to the resources available to it.

In terms of the management team's support of the Board in setting the strategic direction of the NADC and the effective governance of the NADC the Review found that the management team is not as well positioned to do this as it could be. In addition to the points identified above this is also due to the:

- Resource constrained environment
- Lack of director support (other than from the Chair) for attracting new sponsors
- The governance mechanisms the Board as implemented
- The relative inexperience of the team working with governing Boards.

At **Appendix I** is the NADC Board Evaluation Detailed Report Card. It provides a detailed assessment of the evaluation of the Board against the AICD Not for Profit Principles.

The key findings summarised above highlight that there is an opportunity for the Board to further improve its performance by addressing some of the fundamentals of Board and management operations.

## 3. DEVELOPING THE BOARD AND ORGANISATIONAL IMPROVEMENT PLAN

### 3.1. Key action items

The key findings of the current state assessment of the performance of the Board and management gives rise to a series of key action items for the Board and management that are outlined below:

- The Board to agree the purpose of the NADC and this includes the degree to which its purpose is aspirational.
- The Board to lead the strategic development process of the NADC with input from the CEO and management.
  - As the Board and management team matures the Board should look to discuss and document the desired culture of the NADC. This would include the creation of the necessary artefacts to embed the desired culture.
- The Board to discuss and agree the role and responsibilities of the:
  - Board
  - Board members
  - Chair
  - CEO.
- The Board to discuss and agree Board members responsibilities for:
  - The Australia Day Award recipient selection processes and outcomes
  - Overseeing the organisation of, and conduct of the Australia Day Awards event
  - Stakeholder engagement
  - The attraction and retention of sponsors
  - Revenue raising.
- Clarifying the roles and responsibilities of the Board and Board members should inform the development of a clearer delineation between the roles of the Board and management.
- It is suggested that the Board conduct a risk review informed by the current review of the NADC Charter; develop a risk framework; agree its risk appetite and its risk mediation and management strategies. This work would also inform how the roles of directing and managing within the NADC are operationalised.
- The Board review the governance of the NADC in light of its review of risk and align the number of Board and sub-committee meetings to the agreed risk tolerance.
- The Board review what steps can be taken to increase the engagement and participation of its Board members. This would include identifying and addressing the development needs of Board members, the CEO and management.
- The Board consider arranging for the management team to attend the AICD Reporting to the Board Course.
- The Chair and Board move to normalise Board decision making by developing a:
  - Board Charter that defines the role of the Board and the roles and responsibilities of Board members. This would be reviewed annually.



- Board Protocol that defines the expectations of Board members and sets out how Board members agree to behave and conduct themselves. This could include how conflicts will be resolved.
- Terms of reference for each Board sub-committee.
- Transparent process for selecting specific positions such as sub-committee Chairs.
- Embed an annual Board review process.
- Establish a CEO evaluation process. Allied to which it is suggested that the Chair and CEO agree what development opportunities the CEO can access.
- It is suggested that the Board create a Board skills matrix based on Board members identifying their skills and capabilities and the value add they offer the NADC. This would inform the thinking of Board members and preparation of advice to government about the skills, qualifications and attributes that future Board members should possess.
- It is suggested that the Board formally create a Nominations sub-committee responsible for identifying director development needs and strategies to address them. The committee would also be responsible for the development of the proposed skills matrix; a Board succession plan; and advice to government about the selection of future Board members.
- The completion of the strategic plan by the Board should be followed by the management development of a business plan aligned to the budget.
- Management to document the processes that support the delivery of the NADC business and operational plans.

The proposed Board and Organisation Plan to support the completion of the action items above is at **Appendix C**.

## 4. RECOMMENDATIONS

It is recommended that the NADC Board:

- 4.1 Endorse the NADC Functional Review Implementation Report at **Appendix B**.
- 4.2 Endorse and implement the Board and Organisational Improvement Plan at **Appendix C**, which calls for:
  - 4.2.1 The Board to:
    - a. Agree the purpose of the NADC and the degree to which its purpose is aspirational.
    - b. Conduct a Board lead the strategy development process input from the CEO and management.
    - c. Agree to regularly consider strategy as part of Board deliberations.
    - d. Agree to periodically review the NADC's purpose and strategy.
    - e. Agree the role and responsibilities of the Board
    - f. Agree to develop and monitoring organisational policies
    - g. Consider the actions needed to increase Board member engagement and participation
    - h. Consider and agree Chair, Board members and CEO responsibilities
    - i. Consider and agree Board members responsibilities for:
      - i. The Awards Selection processes and outcomes
      - ii. Overseeing the organisation of, and conduct of the Australia Day Awards Event
      - iii. Stakeholder engagement
      - iv. The attraction and retention of sponsors
      - v. Revenue raising
      - vi. Facilitating input from indigenous communities.
    - j. Agree to establish a Nominations Committee responsible for:
      - i. Establishing a Board member induction process
      - ii. Succession planning (Board and management)
      - iii. Establishing an annual Board evaluation process
      - iv. Establishing an annual CEO evaluation process
      - v. Documenting Board skills and capabilities
      - vi. Establishing a Board skills matrix
      - vii. Advising on Board member develop needs and strategies to address them
      - viii. Advising Government on Board member selection
      - ix. Establishing an annual CEO evaluation process
    - k. Agree to development of a:
      - i. Board Charter that defines the role of the Board and the roles and responsibilities of Board members. This would be reviewed annually.
      - ii. Board Protocol that defines the expectations of Board members and sets out how Board members agree to behave and conduct themselves. This could include how conflicts will be resolved.
      - iii. Terms of reference for each Board sub-committees
      - iv. Transparent process for selecting specific positions such as sub-committee Chairs.

- l. Agree to conduct a risk review to:
  - i. Develop a risk framework
  - ii. Agree its risk appetite
  - iii. Align the Board structure to the risk appetite
  - iv. Align the number of Board and sub-committee meetings to an agreed risk tolerance.
- m. Determine and implement changes to increase the incentives for, and ability of, Board members to participate in the business of the NADC Board
- n. Agree to support for the management team attending the AICD Reporting to the Board course or similar development opportunities.
- o. Agree to develop an organisational culture aligned to the NADC purpose and strategy
- p. Agree to document the NADC values and communicate them to stakeholders.

4.2.2 Management to:

- a. Create a business plan aligned to the strategic plan and budget
- b. Prepare a plan for documenting processes within the NADC organisation and commence documenting those processes.

4.3 Endorse the Board Evaluation Report Card Summary at **Appendix D**.

4.4 Endorse the Board Action Plan Summary at **Appendix E**.

4.5 Endorse the NADC Board Organisational Report Card Summary at **Appendix F**.

4.6 Endorse the NADC Board Evaluation Detailed Report Card **Appendix I**.



## APPENDIX A – NADC CONSULTATION LIST



## APPENDIX A










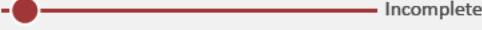



### NADC Consultation List

	NAME	POSITION	DATE
✓	Janet Whiting AM	Board member. Term ceased on 31 May	27 May 2019
X	Jason Glanville	Board member	Not interviewed
X	Norman Schueler OAM	Board member	Not interviewed
✓	Jane McNamara	Board member	22 May 2019
✓	Richard Rolfe AM	Board member	27 May 2019
✓	Robbie Sefton	Deputy Chair / Board member	27 May 2019
✓	Naseema Sparks	Chair Sponsorship Committee / Board Member	23 May 2019
✓	Stephanie Foster PSM	Board member	23 May + 31 May 2019
✓	Maurie McNarn	Chair Finance, Audit, Risk Management Committee / Board Member	23 May 2019
✓	Danni Roach OAM	Chair / Board Member	27 May 2019
✓	Karlie Branch	CEO NADC	31 May 2019
✓	Karen Wilson	Chief Operating Officer, NADC	21 May 2019
✓	Vern Taber	Director, Events and Communication, NADC	31 May 2019
✓	Ria Charles	CEO Victoria State Network	30 May 2019
✓	Kath Earle	Head of Regional Local Production, Sports & Events ABC	29 May 2019
✓	Morgan Lewis	CEO WA State Network	22 May 2019
X	Lorretta Arista	Woolworths	Not interviewed



## **APPENDIX B – NADC FUNCTIONAL REVIEW IMPLEMENTATION REPORT**

NADC FUNCTIONAL REVIEW IMPLEMENTATION REPORT

Action Item	Action Description	Status as May 2019	Comments	Next Steps
1	SETTING STRATEGIC AGENDA			
	Establish a clear statement of the role and purpose of the NADC	Complete  Incomplete	NADC have a statement of role and purpose but it is not clearly understood at board level	Board to define purpose of NADC
	Draft and implement a strategic plan	Complete  Incomplete	Board approved strategy in place for the delivery of the Australia Day Awards 2019. Australia Day Awards 2019 programs were successfully delivered	Board to define the future strategy of the NADC
	Communicate strategic plan to shareholder and stakeholders (sponsors, the Network, Recipients, Nominees, Alumni, Ambassadors and the broader community)	Complete  Incomplete	Stakeholders reported that the Australia Day Awards 2019 strategy was clearly communicated. This was reflected in the successful delivery of the awards, the event and the programs	NADC management to document award communication and marketing and event management processes
	Communicate strategic plan to staff	Complete  Incomplete	Staff were involved in the development of the Australia Day Awards 2019 strategy.	NADC management and staff to document award development and event management processes
2	IMPLEMENT NEW OPERATING MODEL			
	Board Review undertaken	Complete  Incomplete	Board evaluation commissioned in May 2019	Board to implement regular board evaluation process
	Define the Governance Framework & Risk Management Strategy for the new operating model	Complete  Incomplete	This work has commenced with the CEO and COO reviewing NADC policies. The board established a Finance, Audit and Risk Management Committee (FARMC) in January 2019	FARMC to guide the work program of management in order to refine and finalise the Governance & Risk Management Framework for the NADC and to determine the Risk Appetite of the Board
	Document high level process	Complete  Incomplete	Work is underway to document high level process	Document processes for each aspect of NADC’s business operations
	Examine all existing service provider contractual arrangements for strategic value and alignment	Complete  Incomplete	The first phase of this work was completed as part of the work program implemented to delivery the Australia Day Awards 2019	Once the board has set the future strategy of the NADC review of arrangements to align contracts and services to the strategic plan will be required
	Develop and implement business plan	Complete  Incomplete	Management operationalised the Australia Day Awards 2019 strategy to successfully deliver the awards	Development of a business plan aligned to the future strategic plan
	Determine KPIs and method or measurement	Complete  Incomplete	Management set KPIs as part of operationalising the Australia Day Awards 2019 strategy to successfully deliver the awards	Development of a KPIs as part of development of a business plan aligned to the future strategic plan
	Review Business Processes	Complete  Incomplete	Process as required to operationalise the Australia Day Awards 2019 strategy to successfully deliver the awards. The recipient selection process was successfully refined. The ambassador program was also reviewed	Opportunity to review processes considering lessons learnt from the delivery of the Australia Day Awards 2019 strategy
3	IMPLEMENT NEW ORGANISATIONAL STRUCTURE			
	Determine the selection process for staffing NADC - with legal input	Complete  Incomplete	Incoming CEO, COO and Director of Events and Communications reviewed the organisation staff profile and implemented retrenchments and recruitment as required within budget	Alignment of the staff profile of the NADC to the functions required to deliver the future strategic plan
	Overall assessment of operational performance June 2018 – June 2019	High performing  Not performing	Stakeholders use terms such as: monumental, fantastic, excellent to describe the performance of management in delivering the Australia Day Awards 2019 strategy	Board and management to more clearly define CEO/management and the board’s roles and responsibilities CEO to work with board to develop future strategic plan Management to develop business plan to operationalise strategic plan. Board and CEO to better align board governance to the size, scale and risk profile of the NADC Board to streamline reporting requirements Document processes used to delivery Australia Day Awards 2019 strategy



## **APPENDIX C – BOARD AND ORGANISATIONAL IMPROVEMENT PLAN**



## APPENDIX C

### Board and Organisational Improvement Plan

#	ACTION Description	Period of Activity	Responsible Officer	Status updates	Comments
<b>GOVERNANCE</b>					
1	<b>Defining Purpose and Strategy</b>				
	Establish a clear statement of the role and purpose of the NADC	1st Quarter 2019/20	Board		
	Develop a strategic plan	1st Quarter 2019/20	Board/CEO		
	Consultation with the shareholder and stakeholders about the strategic plan	1st Quarter 2019/20			
	Implement strategic plan	2nd Quarter 2019/20			
	Develop mechanisms for monitoring the implementation of the strategic plan	2nd Quarter 2019/20			
	Review the strategic plan annually	Annually			
2	<b>Defining roles and responsibilities</b>				
	Define the roles and responsibilities of the: <ul style="list-style-type: none"> <li>• Board</li> <li>• Board members</li> <li>• Chair</li> <li>• CEO</li> <li>• Board sub-committees</li> <li>• Board sub-committee chairs</li> </ul>	1st Quarter 2019/20	Board/CEO		

#	ACTION Description	Period of Activity	Responsible Officer	Status updates	Comments
	Agree Board members responsibilities for: <ul style="list-style-type: none"> <li>The Awards Selection processes and outcomes</li> <li>Overseeing the organisation of, and conduct of the Australia Day Awards Event</li> <li>For stakeholder engagement</li> <li>The attraction and retention of sponsors</li> <li>Revenue raising</li> <li>Facilitating input from indigenous communities.</li> </ul>	3 <sup>rd</sup> quarter 2019/20	Board		
	Define the Board's policy development and monitoring role				
<b>3 Board Governance</b>					
	The Board to oversee a risk review informed by the current review of the NADC charter and develop a: <ul style="list-style-type: none"> <li>Risk Framework</li> <li>Define the Board's risk appetite</li> <li>Develop a Risk Management Strategy and Plan</li> </ul>	2nd Quarter 2019/20	Board/CEO/COO		

#	ACTION Description	Period of Activity	Responsible Officer	Status updates	Comments
	Review the Board structure and align the number of Board and board Sub-Committee agenda and meetings to its agreed risk tolerance and the Risk Management Plan	2nd Quarter 2019/20	Board		
	Determine and implement changes to increase the incentives for, and ability of, Board members to participate in the business of the NADC Board	1st Quarter 2019/20	Board/CEO/COO		
	Consider the management team's development needs <ul style="list-style-type: none"> <li>Consider support for the management team attending the AICD Reporting to the Board course or similar development opportunities</li> </ul>	2nd Quarter 2019/20	Board/CEO		
<b>4 Board processes</b>					
	Consider developing a: <ul style="list-style-type: none"> <li>Board Charter that defines the role of the Board and the roles and responsibilities of Board members. This would be reviewed annually.</li> </ul>	3rd Quarter 2019/20	Board		
	<ul style="list-style-type: none"> <li>Board Protocol that defines the expectations of Board members and sets out how Board members agree to behave and conduct themselves. This could include how conflicts will be resolved.</li> </ul>	3rd Quarter 2019/20			
	<ul style="list-style-type: none"> <li>Terms of reference for each Board sub-committees</li> </ul>	As needed			

#	ACTION Description	Period of Activity	Responsible Officer	Status updates	Comments
	<ul style="list-style-type: none"> <li>Transparent process for selecting specific positions such as sub-committee Chairs.</li> </ul>	As needed			
	Implement an annual Board Review	3rd Quarter 2019/20	Board		
	Establish a CEO evaluation process	3rd Quarter 2019/20	Board		
	Evaluate the CEO annually	Annually	Board		

## SKILLS & CAPABILITIES

### 5 Skills gaps

Board members identify their skills and capabilities and the value add they offer the NADC	2nd Quarter 2019/20	Board		
Create a Board Skills Matrix	2nd Quarter 2019/20	Board/COO		
Confirm existing skills gaps <ul style="list-style-type: none"> <li>Indigenous input and engagement</li> <li>Legal skills</li> <li>CPA qualifications</li> <li>Major event planning and promotion/community engagement.</li> </ul>	2nd Quarter 2019/20	Board		
Establish a Board nominations sub-committee	1st Quarter 2019/20	Board		
Create a Board succession plan	4th Quarter 2019/20	Board		

#	ACTION Description	Period of Activity	Responsible Officer	Status updates	Comments
	Provide advice to government of Board member selection	As required	Board Chair/ Board		
	Develop a board induction	4th Quarter 2019/20	Board		

## ORGANISATIONAL ACTION PLAN

### 6 Organisational Improvements

Create a business plan aligned to the strategic plan (once settled) and budget	2nd Quarter 2019/20	CEO/COO		
Develop a plan for the documentation of processes within the NADC organisation <ul style="list-style-type: none"> <li>Document the processes</li> </ul>	2019/2020 – 2020/2021	COO/Director Events and Communication		
Staff development on role and purpose of Boards	2019/2020	CEO/ COO/ Director Events and Communication		
Clarification of roles particularly Board and management and CEO and Board	2nd Quarter 2019/20	Board/CEO/COO		

### 7 Developing an appropriate organisational culture

Board to define the attributes of the desired organisational culture <ul style="list-style-type: none"> <li>Align culture to purpose and strategy</li> </ul>	End 2019/2020	Board		
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#	ACTION Description	Period of Activity	Responsible Officer	Status updates	Comments
	<ul style="list-style-type: none"> <li>Develop artefacts to support embedding the desired culture</li> <li>Develop a strategy / plan to enable the Board to develop maintain and monitor the culture</li> </ul>				
	Board to document NADC values	End 2019/2020	Board		
	<ul style="list-style-type: none"> <li>Communicate values to stakeholders</li> </ul>				



## APPENDIX D – BOARD EVALUATION REPORT CARD SUMMARY

BOARD EVALUATION REPORT CARD SUMMARY

BOARD EVALUATION SUMMARY			
ROLES AND RESPONSIBILITIES	Roles and responsibilities of the board are understood	Well understood	Not well understood
	Board members understand their roles and responsibilities	Well understood	Not well understood
	Board members understand the roles and responsibilities of the Chair and CEO	Well understood	Not well understood
	The degree to which the delineation between managing and directing at NADC is clear	Delineation between managing and directing clear	Delineation between managing and directing is unclear well understood
	Relationship between the board and management	Respectful & productive	Challenging & unproductive
	Structure of the board	Appropriate	Needs revision
	Skills mix on the board	Appropriate	Needs reconsideration
FUNCTIONS	Strategy formulation is board led versus management led	Board led	Management led
	Board is monitoring strategy	Board led	Management led
	The annual budgeting process is overseen by board and board approves the NADC budget	Board led	Management led
	The annual budget process is aligned to strategic planning	Aligned	Not aligned
	Relationship between the board and the CEO	Respectful & productive	Challenging & unproductive
	Board mentoring of the CEO	Mentoring is in place	Mentoring is adhoc
	CEO evaluation process	Developed	To be developed
	Formal risk management system	Developed	To be developed
	Board review of the NADC policy framework	Board led	Management led
	Instrument of delegation between board and management	Developed	To be developed
	Board decision-making processes	Effective	Ineffective
	Board decision-making is collegiate	Highly Collegiate	Less Collegiate
	Board decision commitment	Fully aligned	Less aligned
	Board governance	Well developed	To be developed
	Board papers	Well developed	To be developed
PROCESSES	Board structure	Well developed	To be developed
	Finance, Audit and Risk Management Committee operations	Well developed	To be developed
	Sponsorship Committee operations	Well developed	To be developed
	Respect for minority viewpoints in board discussions	Highly respected	Challenging & unproductive
	Degree to which some directors dominate board meetings	Input equal	Challenging & uneven
BOARD DYNAMICS	Processes for managing conflict between directors	Developed	To be developed
	Capacity for boardroom contribution	Strongly enabled	Not enabled
	Information for directors	Sufficiently informed	Not informed at all
	Board engagement measured by meeting attendance and participation	Highly engaged	Disengaged
BOARD EFFECTIVENESS	Annual board evaluation	In place	To be developed
	Director selection process (Informed by a Board skills gap assessment)	Effective	Not effective
	Director induction program	Developed	To be developed
	Director induction program effectiveness	Effective	Not effective
	Director development program	Developed	To be developed
	Board effectiveness June 2018 - June 2019	High performing	Not performing

\*References: Australian Institute of Company Directors (AICD) Board evaluation and director appraisal handbook.



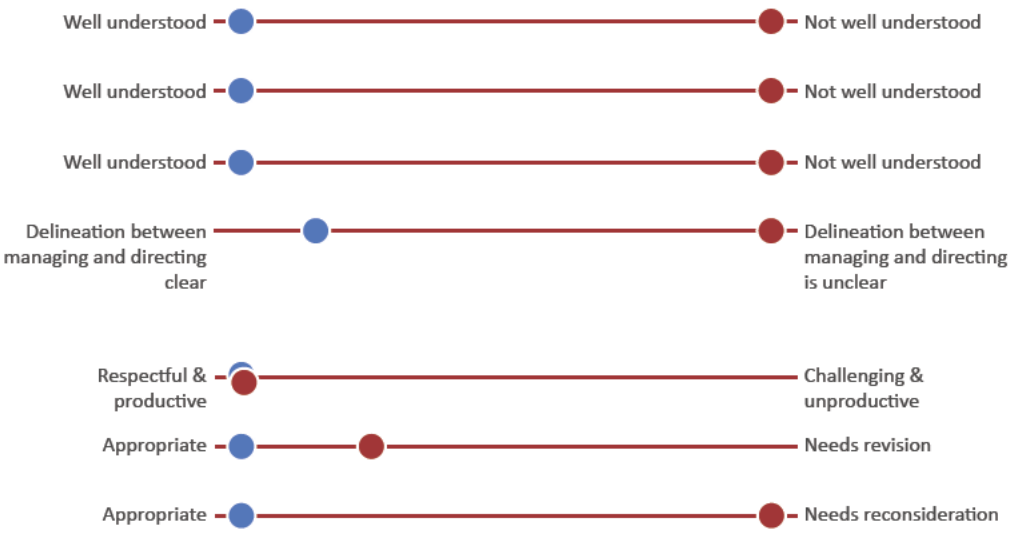
## **APPENDIX E – BOARD ACTION PLAN SUMMARY**

BOARD ACTION PLAN SUMMARY

BOARD EVALUATION SUMMARY

ROLES AND RESPONSIBILITIES

- Roles and responsibilities of the board are understood
- Board members understand their roles and responsibilities
- Board members understand the roles and responsibilities of the Chair and CEO
- The degree to which the delineation between managing and directing at NADC is clear
- Relationship between the board and management
- Structure of the board
- Skills mix on the board



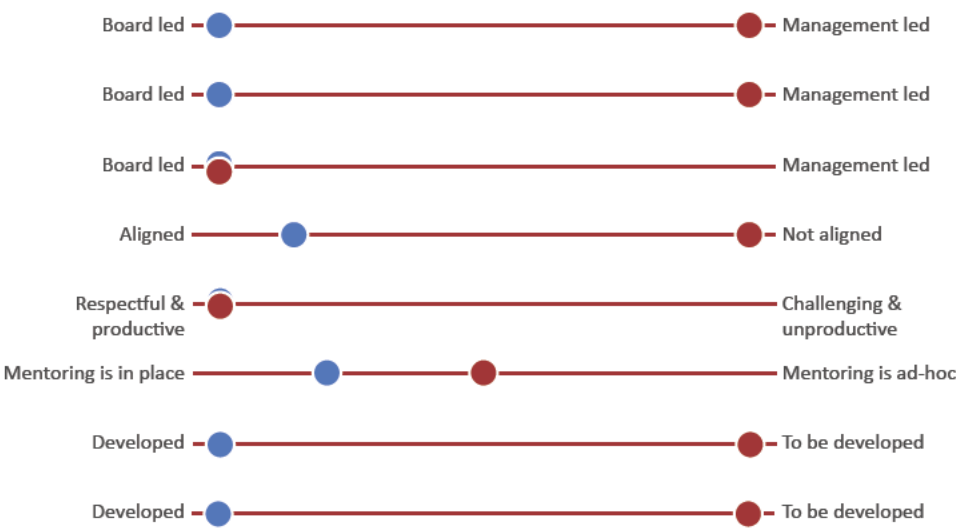
NADC as a small organisation will have some blurring in the roles of the Board and Management. This should be managed through a clear statement of roles and responsibilities together with the instrument of delegation.

Clarity is needed about the role of the Nominations Committee.

Ideally the NADC will systematize a skilled based selection process.

FUNCTIONS

- Strategy formulation is board led versus management led
- Board is monitoring strategy
- The annual budgeting process is overseen by board and board approves the NADC budget
- The annual budget process is aligned to strategic planning
- Relationship between the board and the CEO
- Board mentoring of the CEO
- CEO evaluation process
- Formal risk management system



The board in defining the NADC's strategy should give consideration to how it will monitor it.

The budget development and approval process is working well at the NADC.

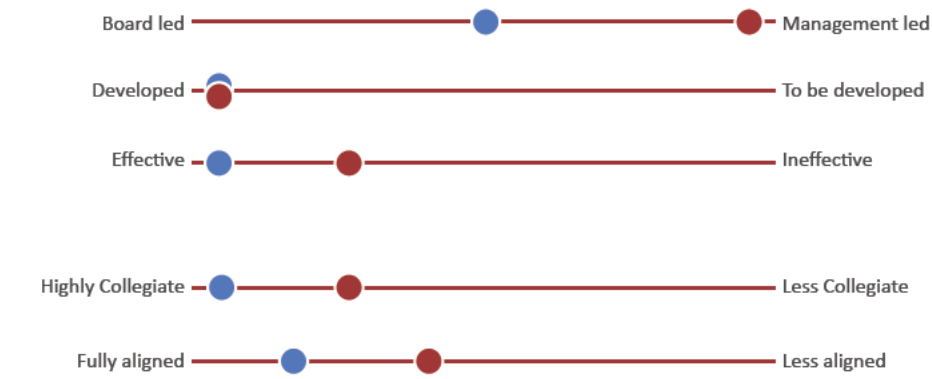
Once the board defines the NADC's strategy it will be able to align the budget to it.

Management led board should determine how the CEO will be mentored.

Establishing the risk framework should include defining the risk appetite of the board. Defining the risk appetite is important to better clarify the role and responsibilities of the CEO and management.

ROLES AND RESPONSIBILITIES

- Board review of the NADC policy framework
- Instrument of delegation between board and management
- Board decision-making processes
- Board decision-making is collegiate
- Board decision commitment



Currently management is reviewing NADC policies. Ideally the board should oversight the priority setting element of this process.

Board decision making to some degree is immature as it emerges from the organisational transition undertaken in 2018. It is suggested that moving along the maturity curve will increase the effectiveness of board decision making.

As board decision making moves along the maturity curve the aim should be to increase collegiality in decision making.

As board decision making moves along the maturity curve the aim should be to achieve full alignment of all board members to board decisions.

PROCESSES

- Board governance
- Board papers
- Board structure
- Finance, Audit and Risk Committee operations
- Sponsorship Committee operations



Review the number of board and committee meetings to better align governance to the size, scale and risk profile of NADC.

Aligned to size of NADC

BOARD DYNAMICS

- Respect for minority viewpoints in board discussions
- Degree to which some directors dominate board meetings
- Processes for managing conflict between directors
- Capacity for boardroom contribution



Clarifying the role and purpose of the board and board members should encourage mutually supportive board interactions.

Clarifying the role and purpose of the board and board members should encourage mutually supportive board interactions.





JUNE 2019

# NATIONAL AUSTRALIA DAY COUNCIL BOARD ACTION PLAN SUMMARY

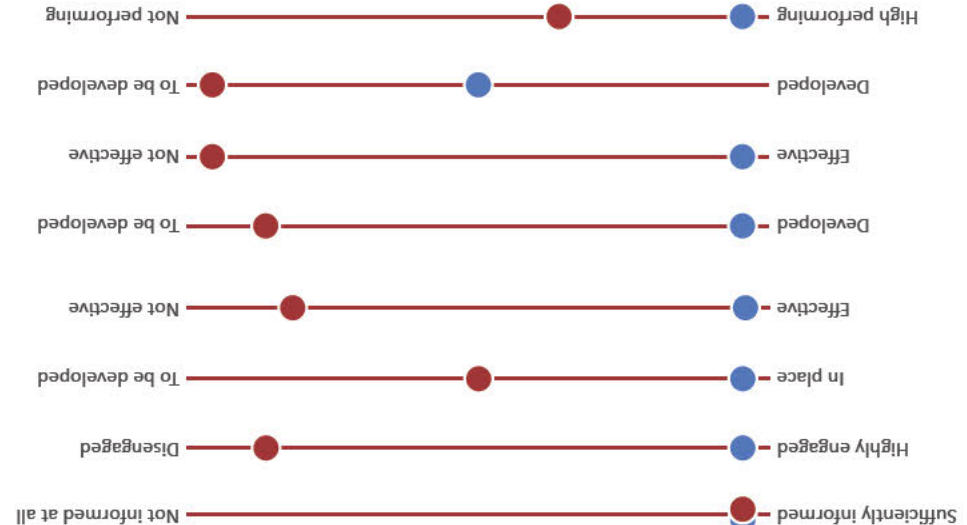
## BOARD ACTION PLAN SUMMARY

● CURRENT STATUS ● AICD NOT FOR PROFIT BOARD BEST PRACTICE

### BOARD EVALUATION SUMMARY

#### BOARD EFFECTIVENESS

- Information for directors
- Board engagement measured by meeting attendance and participation
- Annual board evaluation
- Director selection process (Informed by a Board skills gap assessment)
- Director induction program
- Director induction program effectiveness
- Director development program
- Board effectiveness post June 2019





## **APPENDIX F – BOARD AND OPERATIONAL REVIEW APPROACH**

## NADC BOARD ORGANISATIONAL REPORT CARD SUMMARY

		WELL DEVELOPED	IN PLACE	BEING DEVELOPED - WORK IN PROGRESS	IDENTIFIED AS REQUIRED	NOT IN PLACE - NOT UNDER ACTIVE CONSIDERATION
<b>1</b>	<b>PURPOSE AND STRATEGY</b> The NADC has a clear purpose and a strategy which aligns its activities to its purpose.			●		
<b>2</b>	<b>ROLES AND RESPONSIBILITIES</b> There is clarity about the roles and responsibilities and relationships of the board.				●	
<b>3</b>	<b>BOARD COMPOSITION</b> Board structures and composition enable it to fulfil its role effectively.					●
<b>4</b>	<b>BOARD EFFECTIVENESS</b> The board is run effectively its performance is periodically evaluated.			●		
<b>5</b>	<b>RISK MANAGEMENT</b> Board decision making is informed by an understanding of risk and how it is managed.				●	
<b>6</b>	<b>PERFORMANCE</b> The NADC uses its resources appropriately and evaluates its performance.		●			
<b>7</b>	<b>ACCOUNTABILITY AND TRANSPARENCY</b> The board demonstrates accountability by providing information to stakeholders about the NADC and its performance.		●			
<b>8</b>	<b>STAKEHOLDER ENGAGEMENT</b> There is meaningful engagement of stakeholders and their interests are understood and considered by the board.		●			
<b>9</b>	<b>CONDUCT AND COMPLIANCE</b> The expectations of behaviour for the people involved in the NADC are clear and understood.				●	
<b>10</b>	<b>CULTURE</b> The board models and works to instil a culture that supports the NADC's purpose and strategy.				●	

\*References: Australian Institute of Company Directors (AICD) Not For Profit Principles March 2019.



## **APPENDIX G – BOARD AND OPERATIONAL REVIEW APPROACH**



National Australia Day  
Council Ltd

Board and Operational  
Review Approach

May 2019





# ASSIGNMENT OVERVIEW

Bull & Bear Special Assignments (BBSA) welcomes the opportunity to undertake this assignment. Outlined below is an overview of the specialist services to be provided:

## 1. Assess the current state

- Review of the performance of the board, providing individual board members the opportunity to:
  - Reflect on changes to the operations of the board following implementation of the 2018 Functional Review
  - Reflect on how the board can integrate the perspective of indigenous Australians into its strategic thinking and operations
  - Highlight any issues for the future either for them as individuals or for the board as a whole
- Determine the skills and capability of the board:
  - What does each member bring?
  - How do members use their skills?
  - How well does the board perform as a team?
- Review of the operations of the National Australia Day Council (NADC), providing the CEO, and key stakeholders to:
  - Reflect on changes to the operations of the NADC following implementation of the 2018 Functional Review
  - Reflect on how management supports the board set the strategic agenda, governs the organisation and deliver the Australia Day Awards
  - Highlight any issues for the future. In the case of the CEO for themselves and the NADC staff.

## 2. Develop a Board and Organisational Improvement Plan

- Determine if there are opportunities for the board to increase its effectiveness including in terms of:
- Engagement with and from indigenous communities such that the thinking and perspectives of indigenous communities becoming integral to shaping the role of the NADC and the outcomes it seeks to achieve
- Changing the skills mix of the board
- the governance and performance of the NADC
- how management and key partners support the board.



# ASSIGNMENT APPROACH

## Engagement Points

### Board Briefing

- 7th May
- Overview of assignment approach and methods

### Board Engagement

- 1 on 1 meetings with each member of the board
- focus of discussion on roles, skills and governance

### NADC

- Meet with the CEO
- Meet with the General Manager Operations

### State & Territory Engagement

- Meet with two representatives of the State and Territory selection panels

### External Stakeholder Engagement - To be confirmed

- Meet one consultant to the organisation
- Meet two representatives of NADC sponsors

### Board Presentation

- Attend the Board Meeting on the 6th of June to present findings

## Models of Assessment Applied

The objective of the assignment is the development of a Board and Organisational Improvement Plan. In order to achieve this BBSA will apply the Maturity Assessment model, this will be deployed to determine the level of maturity of the board and CEO in terms of:

- a. Effective governance of the NADC
- b. Achievement of the NADC's key deliverable the Australia Day Awards

The assessment will primarily be qualitative based on one on one interviews and observations. Some document analysis is also assumed.



## **APPENDIX H – WHO AND WHAT WILL BE EVALUATED?**

## WHO AND WHAT WILL BE EVALUATED?

Objectives	To understand if our governance system is working	To see if our board meetings have improved since the 2018 Functional Review	To improve the board's information flow/ have the right information
Who will be evaluated?	<ul style="list-style-type: none"> <li>Board as a whole</li> <li>Skills and capability of the board</li> </ul>	<ul style="list-style-type: none"> <li>Board as a whole</li> </ul>	<ul style="list-style-type: none"> <li>Management</li> </ul>
What will be evaluated?	<ul style="list-style-type: none"> <li>Board, key governance topics to elicit what people see as the problems</li> </ul>	<ul style="list-style-type: none"> <li>Meeting efficiency</li> <li>Meeting effectiveness</li> </ul>	<ul style="list-style-type: none"> <li>Board papers</li> <li>Management presentations</li> <li>Management support of board in setting the strategic agenda</li> </ul>
Who will be asked?	<ul style="list-style-type: none"> <li>All board members individually</li> <li>CEO</li> </ul>	<ul style="list-style-type: none"> <li>Directors</li> <li>CEO</li> <li>External experts (TBC)</li> </ul>	<ul style="list-style-type: none"> <li>Directors</li> <li>Management</li> </ul>
What techniques will be employed?	<ul style="list-style-type: none"> <li>Qualitative (i.e. interviews)</li> </ul>	<ul style="list-style-type: none"> <li>Emphasis on quantitative for comparison</li> </ul>	<ul style="list-style-type: none"> <li>Emphasis on quantitative for comparison</li> </ul>
How will outcomes be broadcast?	<ul style="list-style-type: none"> <li>BBSA to report to the board on 6 June</li> </ul>	<ul style="list-style-type: none"> <li>BBSA to report to the board on 6 June</li> </ul>	<ul style="list-style-type: none"> <li>BBSA to report to the board on 6 June</li> </ul>

## OPERATIONAL REVIEW

Objectives	To review implementation of the recommendations of the 2018 Functional Review	To improve the future operations of NADC in delivering the Australia Day Awards the right information
Who will be evaluated?	<ul style="list-style-type: none"> <li>Board and CEO</li> </ul>	<ul style="list-style-type: none"> <li>Management</li> </ul>
What will be evaluated?	<ul style="list-style-type: none"> <li>Implementation of the recommendations</li> </ul>	<ul style="list-style-type: none"> <li>Opportunities for improvement</li> </ul>
Who will be asked?	<ul style="list-style-type: none"> <li>Directors</li> <li>CEO and management</li> <li>External experts (TBC)</li> </ul>	<ul style="list-style-type: none"> <li>Directors</li> <li>CEO and management</li> </ul>
What techniques will be employed?	<ul style="list-style-type: none"> <li>Emphasis on quantitative for comparison</li> </ul>	<ul style="list-style-type: none"> <li>Emphasis on quantitative for comparison</li> </ul>
How will outcomes be broadcast?	<ul style="list-style-type: none"> <li>BBSA to report to the board on 6 June</li> </ul>	<ul style="list-style-type: none"> <li>BBSA to report to the board on 6 June</li> </ul>





## APPENDIX I - BOARD EVALUATION – DETAILED REPORT CARD

## APPENDIX I

### Board Evaluation – Detailed Report Card

<b>1. NADC Purpose and Strategy</b>	<p>The Review concluded that the NADC purpose is not clear.</p> <p>The board has not set a strategy at the time of the Review.</p>
<p>The NADC has a clear purpose and a strategy which aligns its activities to its purpose.</p>	
<p>Purpose is clear.</p>	<p>Feedback is that the purpose of the NADC is not clear.</p> <p>When asked people could not say what it is.</p> <p>The CEO confirmed that the NADC does have a purpose statement and noted that some of the lack of clarity about the purpose may be due to the current purpose statement not being regarded as fit for purpose.</p> <p>In this context there was no consensus about what the purpose should be. I.e. Is it to run a selection process for Australia Day Awardees and an associated event or does it have a broader purpose associated with Australia Day as a day itself and/or the Change the Date conversation?</p>
<p>Board approves strategy.</p>	<p>The board has not developed a strategy to date.</p> <p>The board has had strategy discussions.</p> <p>There was a Board approved strategy developed with the Network for the delivery of the Australia Day Awards in 2019.</p> <p>The board is holding a strategic planning day on 6 June 2019 to work on strategy.</p>
<p>Decisions of the board further the NADC's purpose and strategy.</p>	<p>See above. The decisions of the board since the Functional Review have been bounded by the NADC's financial situation and the need to deliver the Australia Day Awards and ceremony on 26 January 2019.</p>
<p>Board regularly devotes time to considering strategy.</p>	<p>The NADC does not currently have a strategic plan.</p> <p>Under different Chair's at different times consideration has been given to strategy but a plan has not resulted.</p> <p>In November 2018 management commenced a conversation with the Network about the NADC strategy but this work has not been completed.</p> <p>The board has scheduled a strategic planning day 6 June.</p>
<p>Board periodically reviews the purpose and strategy.</p>	<p>See comments above.</p>
<b>2. Roles and Responsibilities</b>	<p>The Review found that there is a lack of clarity about the role of the:</p> <ul style="list-style-type: none"><li>• Board</li><li>• Board members</li></ul>

There is clarity about the roles and responsibilities and relationships of the board.	<ul style="list-style-type: none"> <li>• Chair</li> <li>• CEO</li> </ul>
Directors' roles are clear and understood by the board.	<p>There was a lack of clarity about roles and responsibilities.</p> <p>Board members roles are not clearly understood, nor is the role of the board. There is also no consensus about board members roles or that of the board.</p> <p>This is due in part to the lack of clarity about the purpose of the NADC. It is also a development issue for board members.</p> <p>Some board members appeared to not be aware of their legal responsibilities as directors under the Corporations Law or the PGPA Act which governs the NADC as a company.</p> <p>It was also evident that there is a lack of clarity and transparency in decision making that is giving rise to a lack of clarity about roles and responsibilities. For example, a decision had been made re the Chair of a recently established Sponsorship Committee. Who was to be the Chair of this sub-committee was described differently by members of the management team and the Board. This example was one of a number described which indicated that some board members are not involved in some board decision making.</p> <p>Board members highlighted the need for transparency in board decision making and for there to be a clearer delineation between the role of the board and board members and the role of management including the CEO.</p>
Directors understand and meet their duties under the law	See above. Not all board members evidenced this either through lack of attendance at board meetings and/or in the description of their role as a board member.
Directors meet any eligibility requirements relevant to their position.	There are currently no criteria in place.
Delegations of the board's authority are recorded and periodically reviewed.	<p>It was not clear from consultation with Board members that there are delegations in place.</p> <p>The Review confirmed that an Instrument of Delegation was presented to and approved by the Board in November 2018.</p> <p>It was not evident that all board members understand what the instrument is or what it contains.</p>
Roles of the Board is clearly delineated from management.	<p>As noted above there is a lack of delineation between the board and management. In part because there are more Board members than staff.</p> <p>One of the purposes of the scheduled strategic planning day on 6 June is to enable the Board and CEO to more clearly define their roles and responsibilities and, in this context, to better delineate the roles of the Board and management.</p>

<b>3. Board Composition</b>  Board structures and composition enable it to fulfil its role effectively.	<p>There is currently a lack of transparency about the structure and membership of sub-committees. This in part reflects the lack of transparency in the Board member selection process. Selection to the board is made by the relevant Minister without a formal recommendation from the board.</p> <p>The creation of sub-committees recently has been a relatively organic process which is consistent with an agile organisation but the price of this has been a lack of transparency and a consensual board decision making process. See comments above re a lack of transparency in board decision making.</p>
Directors are appointed based on merit, through a transparent process, and in alignment with purpose and strategy.	See above. The current Chair has attempted to informally influence board member selections.
Director's tenure is limited to encourage renewal and staggered to retain corporate knowledge.	<p>Board members are appointed for 3 years with a maximum of 3 terms. Appointments are made as noted on an ad hoc basis without formal input from the board.</p> <p>Directors that participated in the Review reported that 9 years is a long time and the number of terms may not be in the best interests of the NADC.</p>
The board reflects a mix of personal attributes which enable it to fulfil its role effectively.	The board has not defined the mix of skills and attributes it needs. The selection process is not transparent including to those that are appointed. It is not clear that selection of board members is being made having regard to achieving a mix of skills and attributes necessary to have the NADC fulfil its role effectively.
The board assesses and record its member's skills and experience.	<p>The board has attempted to do this without success.</p> <p>There is no agreement amongst board members that this is required.</p> <p>There is also no agreement amongst board members as to what skills and attributes the board needs.</p>
The board undertakes succession planning to address current and future skills needs in alignment with the purpose and the strategy.	<p>See above this is not occurring.</p> <p>The current Chair has sought to influence appointments to the board with mixed success.</p>
<b>4. Board effectiveness</b>  The board is run effectively its performance is periodically evaluated.	<p>The current Chair initiated a board review/skill mix process which was not completed.</p> <p>There is no consensus amongst board members about the need to monitor and review its performance.</p>
Board meetings are chaired effectively and provide opportunity for all directors to contribute.	<p>The role of the Chair is evolving as the NADC seeks to fully operationalise the transition it went through in 2018.</p> <p>The Review found that not all Board members are consulted about decisions this includes decisions relevant to their position on the Board and sub-committees.</p> <p>The Review also found that not all directors input is valued equally.</p>

	<p>The reasons for this varied. In part it is a function of the need for decisions during 2018 to make timely decisions in order to deliver the awards; in part because some board members are not engaged; in part due logistical challenges contacting some members poses; in part due to the operating style of the Chair and some of the more influential board members. The result of the later is that the board has informally adopted a mode of operation where the Chair and one or two other directors make decisions. The board is now evolving from this to adopt more transparent and collegiate board processes.</p> <p>It was noted that with respect to the 2019 award selection process that all directors had equal input and all input was valued equally.</p>
Directors seek and are provided with information they need to fulfil their responsibilities.	Yes. Some director observed that the papers were very extensive and maybe more than was necessary.
Directors are appropriately inducted and undertake ongoing education to fulfil their responsibilities.	<p>Management advised that it is working on an induction for directors. Members of the board observed that the induction of board members was not meeting their expectations.</p> <p>In this context induction for directors was identified as something that would be beneficial for directors to guide once the strategy has been set and the roles and responsibilities of directors clarified.</p>
The board's performance including the performance of the Chair and other directors is periodically evaluated.	This was identified as something that would be beneficial to develop after the strategy has been set and the roles and responsibilities of directors clarified.
The relationship between the board and management is effective.	<p>The board members indicated that the situation is much better than it has been in the past.</p> <p>As noted, there is a need for further clarity around roles and responsibilities and for more to be done to achieve a more transparent decision-making process.</p> <p>There is also a need to better delineate the roles of the board and management. There is a need to recalibrate the governance of the NADC to better align it to the size, scope and organisational risks.</p> <p>Members of the board felt that the work in some of these areas is underway.</p>
<b>5. Risk Management</b>	
Board decision making is informed by an understanding of risk and how it is managed.	<p>The Review found that the board members are highly risk averse.</p> <p>The risk appetite of the board does not appear to have been discussed or defined. Risks are managed on a case by case basis. The response to poor governance practices of the past appear to have led to very tight (possible too tight for the size of the organisation) risk management of issues.</p>
The board oversees a risk management framework that aligns to the purpose and strategy.	<p>There does not appear to be a risk management framework. This is something the FARMC is likely to develop.</p> <p>The FARMC is reviewing the Charter of the NADC and flowing from this there is an opportunity to consider the risk profile of the NADC and the risk appetite of the board.</p>



	In this context the board will need to consider the resources of the NADC. Currently, it appears that the NADC does not have the resources to manage the risks at the level the board is requiring, if it is to also achieve its operational outcomes.
Directors seek and are provided with information about risk and how it is managed	<p>The apparent low level of risk tolerance amongst the board members is resulting in directors either individually or as a board injecting themselves into the management of risk.</p> <p>The lack of clarity about the role and responsibilities of the board and CEO gives the impression that the board is managing some of the operational risks of the organisation.</p>
The board periodically reviews the risk management framework.	The risk framework is yet to be established.
<b>6. Performance</b>	Yes. The NADC is operating in a highly resource constrained environment. Consequently, priorities and the resources allocated to them is highly refined.
The NADC uses its resources appropriately and evaluates its performance	
The board oversees appropriate use of the NADC's resources.	Yes. There is an annual budget process that is working well. The changes in governance since June 2018 have increased financial transparency.
The board approves and annual budget for the NADC.	Yes.
The board receives and considers measures which evaluate performance against strategy.	This is a work in progress for the board and management.
The board oversees the performance of the CEO.	<p>This cycle is yet to be established. The CEO has been in the role for 12months and is receiving mentoring support from the Chair and other board members as required.</p> <p>The board is conducting and in camera session at each board meeting. the next step is for the board to provide structured feedback to the CEO.</p>
The board monitors the solvency of the NADC.	Yes. The FARMC is meeting 8 times a year and it considers financial/budget matters including solvency at these meetings. The CEO provides financial reports between meetings. This ensures an actively and timely monitoring of solvency.
<b>7. Accountability and transparency</b>	Overall the NADC board is performing well against this item. The Chair and CEO are actively engaged with stakeholders in the provision of information and support.
The board demonstrates accountability by providing information to stakeholders about the NADC and its performance.	
The NADC's governing documents and policies	Stakeholders generally reported that they have access to the documents they need. Two issues were raised:

relevant to its governance are available to stakeholders	<ul style="list-style-type: none"> <li>Stakeholders reported that the budget allocations are not transparent, and they would like them to be.</li> <li>They also reported that they would appreciate the NADC developing media and communications campaigns, so they did not need to expend resources on media campaigns themselves.</li> </ul>
The board oversees the appropriate reporting to stakeholders about the NADC's performance and financial position.	<p>Yes. The board agreed to evolve its Audit Committee into the FARMC. As noted, this committee is meeting 8 times a year. At its meetings it is considering financial performance and the reporting of financial performance to the shareholder.</p> <p>As noted above, stakeholders reported that the NADC could move to make the budget allocations more transparent.</p>
Transactions between related parties, if any, are disclosed to stakeholders.	As noted above related party transactions are considered as a conflict of interest and are covered in the Procurement Policy (under ethical conduct) and the Conflicts Policy. Conflicts of interests are treated in accordance with the conflicts policy which details how conflicts are identified, disclosed and managed.
Members can ask questions about how the NADC is run and to hold the board to account for decisions.	NADC has a single shareholder who has a representative on the board. This board member is able to ask questions about how the NADC is run. The responsible Minister and the portfolio department – Prime Minister and Cabinet are also able to ask questions about how the NADC is run.
<b>8. Stakeholder engagement</b>  There is meaningful engagement of stakeholders and their interests are understood and considered by the board	<p>The Chair and CEO have been very diligent about connecting with and listening to stakeholders and engaging them with the work of the NADC is a meaningful way.</p> <p>It is less clear that other Board members are clear about their roles and responsibilities related to the meaningful engagement with stakeholders.</p> <p>The shareholder's interests are represented by a Board member that they have nominated.</p>
The board understands who the NADC's stakeholders are, their needs and their expectations.	By in large yes. The relationship with the Network is strong. The Board's lack of clarity about its purpose and its lack of financial wherewithal is inhibiting it setting a direction and acting to fully engage with its stakeholders who are ultimately all Australians.
The board oversees a framework for the meaningful engagement of stakeholders.	Yes. The Chair and CEO are leading valued engagement with the Network. The Director Events and Communications and CEO have built positive working relationships with existing sponsors and partners.
Stakeholders are considered in relevant board decision making.	<p>Yes, the CEO meets with Network CEO's regularly. The Chair meets with the Network Chairs twice a year. The feedback from this engagement is fed into board decision making and deliberations.</p> <p>The Chair is also very good at getting the best out of sponsors.</p> <p>It was noted that it is not clear if other board members have a role in engagement with stakeholders.</p>
There is a process for gathering and responding to complaints and feedback from stakeholders.	Yes, via the CEO, the Chair and the Director Events and Communications. This Review also provided stakeholders to provide input. For example, the Network would like to have a conversation about investment in media and communications and how the NADC's expenditure might be better leveraged

by the Network in order to reduce their outlays on this line item and improve the impact of the NADC' outlays.

The board oversees a framework for how the NADC works with and protects vulnerable people.	Yes.
<b>9. Conduct and compliance</b> The expectations of behaviour for the people involved in the NADC are clear and understood.	There does not appear to have been a statement from the board about its expectations of behaviours for people involved in the NADC.
The board articulates its expectations of conduct, and the consequences of misconduct, for the people involved with the NADC.	An articulation of the board's expectations of conduct and consequences does not appear to have been made.
The board oversees compliance with relevant laws, regulations and internal policies.	<p>The FARMC is taking on this role. As noted above it is not clear the degree to which all board members understand the relevant laws, regulations and internal policies for which they are accountable.</p> <p>This was evident in comments to the effect that some Board members are relying on others in order to be satisfied that this oversight is occurring. In some Board members questioned whether this oversight was something they are responsible and accountable for as Board members and as a Board.</p>
Conflicts of interest are identified, disclosed and managed.	See the comment on Related Party Transactions above. Conflicts of interests are treated in accordance with the conflicts policy which details how conflicts are identified, disclosed and managed.
There is a process for investigating misconducts and relevant instances are brought to the attention of the board.	The procedure for investigating misconduct is part of the NADC employment contract. In practice, how misconduct is dealt with will depend on the misconduct in question. For example, processes for managing misconduct relating to discrimination, bullying & harassment is codified in the Discrimination, Bullying & Harassment Policy which includes procedures for notifying the Board. Misconduct relating to social media is covered in the Media Policy etc.
<b>10. Culture</b> The board models and works to instil a culture that supports the NADC's purpose and strategy.	It has been identified that this is something the board should be examining at its strategic planning day on 6 June 2019.
The board defines and models a desired culture that aligns to the purpose and strategy.	This has been identified as something the board needs to develop.

The board oversees a strategy to develop and maintain the desired culture.	The board is considering its strategy at the strategic planning day on 6 June 2019. It has been identified that the board will also need to consider its strategy for developing and maintained the desired culture at this time.
The board oversees mechanism to monitor and evaluate the NADC's culture.	This has been identified as something the board needs to develop.
The NADC's values are clear, periodically reviewed and communicated to stakeholders.	This has been identified as something the board needs to do.
The board oversees a framework for the reward and recognition of workers.	This has been identified as something the board needs to do.

**Reference: Australian Institute of Company Directors (AICD) Not For Profit Principles March 2019.**

## **Proposal to review the composition and operations of the NADC Board<sup>10</sup>**

### **Purpose**

The Department of the Prime Minister and Cabinet is commissioning an independent review of the National Australia Day Council (NADC) Board and its operations. The purpose of the review is to ensure the Board is equipped with relevant skills and expertise to successfully deliver the annual Australian of the Year Awards and to continue to lead the evolving way Australia's national day is celebrated.

The Board is currently carrying several vacancies. Conducting the review prior to any new appointments will ensure an appropriate distribution of skills, particularly in leadership and governance, as well as professional and personal backgrounds on the Board, is maintained.

### **Expectations for the review**

The NADC Board requires strong leadership and robust governance expertise to continue to lead and build on the work undertaken by the Board and NADC staff for Australia Day 2020 and 2021.

In this context, the review will focus on analysing the operating model and composition of the NADC Board including:

- the function and dynamics of Board meetings
- internal and external communications
- represented skillsets and backgrounds, including identifying any gaps
- relationships between Board members with staff and stakeholders
- the Board's history and projected challenges.

The Reviewer will be expected to conduct approximately 15 interviews, including all current and recent members of the NADC Board and senior staff at the NADC. The Reviewer will also interview other significant stakeholders including the Hon Ben Morton MP, Assistant Minister to the Prime Minister and Cabinet and Senior Executive Staff in Government Division, PM&C.

The Reviewer will be expected to provide a report with recommendations to inform future operations and considerations of appointments. The report will be shared with Assistant Minister Morton who is responsible for making appointments to the NADC Board.

### **Expected timeframe to conduct the review and report**

We expect the review would take up to five days if conducted full-time.

The report will need to be delivered by the end of April 2021.

### **Current NADC Board**

There is currently a diverse range of backgrounds and experience on the Board, including not-for-profits, the community sector, public sector (long-standing practice is that the Deputy Secretary, Governance, PM&C, is appointed as a director), business, the law and academia. Two members of the Board are Indigenous Australians.

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<sup>10</sup> Provided by PM&C in April 2021



## **OFFICIAL: SENSITIVE**

Having diverse Board membership (in a geographic, gender and community sense) ensures the NADC's activities reflect the Australian population as a whole. Following a recent resignation, the Board's current gender balance is 60 per cent male (five) and 40 per cent female (four).

Appendix C

## **NADC Review Interview Questions – April 2021**

**The following is a guide for your input to the Review of the operations of the National Australia Day Council Board**

### **Background:**

- Name
- Current member or not
- Appointment Period
- In your own words - Skills/experience/expertise/Board experience
- Do you see yourself as an Individual on Board or representing a community of interest?
- Did you receive a briefing/induction before you joined the Board?

### **Composition of the Board:**

- Do you have views about the composition of the Board, and would you recommend any changes?
- Are there any noticeable gaps?
- What sort of skills and expertise would be useful for the future?

### **Role of the Board and Expectations:**

- Your expectations of being a Board member of the NADC and have they been met?
- Is there clarity about the Board's role?
- Do you discuss the Statement of Expectations and Response/strategy at Board meetings and how often?
- Is there a periodic evaluation of the Board's performance?
- Are you aware of the details of the Board's Charter and Constitution?

### **Board Operations/Engagement with Staff:**

- Are the right issues coming to the board at the right time? Is there an annual schedule of Board meetings and what should be considered at what meeting to meet the workplan and your compliance obligations?
- Do all members have the opportunity and are able to contribute equally? Does the Chair, supported by Board members, practise good governance in decision making and discussion?
- Transparency of decision making and reporting – are processes clear on who is doing what in terms of follow up and how it is reported?
- Is there a productive working relationship between the Board chair and the Office/CEO? Is the Office and Board all on the same page?
- Do board members interact with staff?
- Are there areas where you would like the Board to have more of a role and are there areas where the Board should be less involved?

### **Relationship with Stakeholders**

- Does the Council have a stakeholder engagement strategy – have you seen it?
- In fulfilling your role as a member of the Board, who do you consult with?
- Are there clear lines of communication between the state and territory affiliates and the Board?
- Do you think there are any gaps in who the Board is engaging with?

## **OFFICIAL: SENSITIVE**

### **Future Challenges and Key Risks for Board.**

- What do you see as the top three challenges the Board will face in future?
- What are the risks the Board is currently facing and what about future risks? Does the Board actively address the risks and emerging risks?
- Are you positive about the role and value add of the Board going forward?

**Any other comments you would like to make about the Board and its leadership role for our National Australia Day.**

End

# REVIEW OF COMPOSITION AND OPERATIONS OF THE NADC BOARD

Prepared for the Department of the Prime Minister and Cabinet

3 May 2021

Draft

*Confidential*

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**This is a confidential report prepared solely for the Department of the Prime Minister and Cabinet, to be shared with Assistant Minister Morton, to assist in providing advice to the Government on consideration of future appointments to fill the vacancies of the National Australia Day Council and future operations. It should not be quoted in whole or in part without the Department's prior consent. No responsibility to any third party is accepted as the report has not been prepared, and is not intended, for any other purpose.**

**This work was commissioned on the 16 April 2021 by Mr John Reid, First Assistant Secretary, Government Division, Department of the Prime Minister and Cabinet.**

## Introduction

The National Australia Day Council is a Commonwealth owned Company operating under the *Corporations Act 2001* and is a company limited by guarantee. It is also required to meet the Public Governance, Performance and Accountability Act (PGPA) requirements for Commonwealth companies.

The company's objects are set out in its Constitution and states the Company's Objects are to:

- a. unite all Australians through celebration with a focus on Australia Day;
- b. promote the meaning of Australia Day through activity, education, reflection, discussion and debate; and
- c. promote good citizenship, values and achievement by recognising excellence and service to communities and the nation.

### Background

With three changes of Chairs over seven years and substantial changes in staff (nearly 100% turnover of NADC staff including new executive team in 2017) and three board appointees leaving (resigning and/or completing terms) over the past eight months, there is a sense of instability within the Board and leadership group of the Council. Future appointments, and filling skills and experience gaps in the Board, along with other measures to improve Board operations and governance will go some way to address this instability and improve the effectiveness of the Board and overall performance of the NADC.

### Scope of the Review

Minister Morton wrote on 30 March 2021 to Ms Roche (chair of the NADC), and copied to all Directors, about the focus of the review to look at the 'operations, dynamics and composition of the Board, to ensure the Board is equipped with relevant skills, expertise and robust governance to continue to lead and build on the work undertaken by the NADC Board and staff for Australia Day 2020 and 2021.'

The purpose of the review is to ensure the board is equipped with the relevant skills and expertise to successfully deliver the Australian of the Year Awards, and to continue to lead the evolving way Australia's national day is celebrated. The Board is currently carrying two vacancies. Conducting the review prior to considering any new appointments will identify potential gaps in appropriate skills and experience, acknowledging the importance of maintaining the necessary diverse range of backgrounds currently on the Board.

This review focused on the function and dynamics of the board; internal and external communications; represented skillsets and backgrounds, including any gaps; relationship between Board members with staff and stakeholders; and the Board's history and future challenges. The scope of the review expected approximately 15 interviews to be conducted including all current and recent board members and senior staff of the NADC as well as other significant stakeholders, including the Hon Ben Morton MP, Assistant Minister to the Prime Minister and Cabinet and senior executive staff in Government Division of the Department of the Prime Minister and Cabinet. The full scoping document can be found at Appendix A.

## Approach

On 18 April 2021, the week before the review interviews started, the reviewer emailed each potential interviewee the set of questions which would form the basis of the enquiries to all interviewees so they would have adequate time to consider their responses. The interviews were conducted over the period 16 April 2021 to 23 April 2021.

**Commented [RP1]:** Check dates? Qs emailed Sunday 18 April, after interviews commenced Friday 16 April, all complete by Friday 23 April?

The interviews were guided by the questions supplied beforehand and allowed for an open dialogue between the reviewers and interviewee about their experiences and observations on how the Board was operating and ideas to strengthen its performance and meet future challenges. These discussions aided with the conclusions made in this report. In summary, 17 people were interviewed, including 8 current board directors, 3 previous board directors, Minister Morton and the Chief Executive Officer and Chief Operating Officer of the Council and senior personnel from PM&C.

To benchmark Board operations and practices, the review used: the *Australian Institute of Company Directors (AICD)'s Guide to Board and Director Evaluation* (AICD Guide); and drew on publicly available information of reviews undertaken of other Government entities; governance and board practices of other Commonwealth-owned companies; and a previous review of the NADC Board.

Given the limited timeframe, further interviews or consultation was not undertaken with other key stakeholders, including sponsors or state and territory Australia Day committees.

Although the limited timeframe posed some challenges, an adequate understanding of the NADC Board dynamics and its operations was obtained, primarily through the willingness and cooperation of current and former members to be open and frank during the interview process.

The operations of the board were also reviewed in the context of the following Board and NADC documents: Board Constitution, Board Charter and the Finance and Risk Management Board sub-committee charter.

The review also drew on a recent independent review of the NADC Board and management - the '*Board and Operational Review Final Report*' of June 2019. This review provided information on whether there were ongoing or recurring matters affecting the performance of the Board.

### About the Board

The Review using the AICD Guide looked at:

- a. The role of the board;
- b. Board size;
- c. Composition of board and mix of skills and experience;
- d. Terms of appointment;
- e. Governance arrangements; and
- f. Culture and professional conduct of the board.

#### a. Role of the Board

The AICD states a Board of a company has four key roles:

1. To oversee the organisations' performance and act in the best interests of the organisation as a whole;

2. To ensure the organisation meets the Shareholder's expectations while managing risk and ensuring legal and regulatory compliance;
3. To bring skills, expertise, an independent perspective and judgement to organisation decision making; and
4. To guide and support the CEO and management team and hold them accountable for organisational performance.

The NADC Board currently has eight directors and two vacancies, and the Council has 12 employees. With similar numbers of board directors and employees, it is important to clearly articulate the roles of the Board and roles of the management team to avoid the Board becoming overly involved in operational matters. In general, the board provides the governing i.e., it provides oversight, establishes the management team, sets the risk appetite, ethical tone and culture of the organisation. The management team runs the organisation in an ethical manner in line with the board's direction, keep the board informed and ensure the board has the necessary information to make informed decisions. **s 47G(1)(a) , s 47G(1)(b)** The Charter of the Board outlines the roles of the NADC Board and the management team and is consistent with the above.

The role of the NADC Board is to provide the strategic direction for the NADC and oversee the organisation's performance. The Board is responsible for overseeing the delivery of the Statement of Expectations provided by Minister Morton on 27 May 2020. The Board is also responsible for selecting the recipients of the Australian of the Year awards. **Mention of Constitution and Charter about role.**

#### **b. Board size**

The following practical guidance of the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations provides the following practical guidance in relation to the size of the Board:

"The board should be of sufficient size so that requirements of the business can be met and changes to the composition of the board and its committees can be managed without undue disruption. However, it should not be so large as to be unwieldy."

For companies under the Corporations Act 2001 there is no prescribed maximum number of directors (there are minimum requirements for proprietary and public companies.) There is no perfect or optimal size and size is influenced by the size and complexity of the organisation, the diversity and business lines, and the norms in which the organisation operates.

On Board size, the AICD advises that an organisation's board should be large enough that there are sufficient board members to ensure that there is a good mix of skills and backgrounds, the workload can be distributed, and all subcommittees and board roles are fulfilled. However, there shouldn't be so many members to prevent good discussion and relationships between board members and it becomes cumbersome.

The Constitution of the NADC states there will be not less than five Directors of the Company. It does not prescribe a maximum. A quorum for a Board meeting is five and the quorum must be always present during the meeting. Recent practice has been to have 10 members which is consistent with **(extract from AICD guide)** .



The Board requires a minimum of five members. Recent practice has been to have 10 members which is consistent with AICD norms (reference). Currently, there are seven directors and the Chair, with two vacancies, including the Deputy Chair.

### c. Composition of Board and mix of skills and experience

The Directors, including the Chairperson and the Deputy Chairperson are appointed by the Minister.

The ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations*<sup>1</sup> recommend companies should have and disclose a board skills matrix that sets out the mix of skills the board currently has or is looking to achieve.

A board skills matrix can be used to assess the current skills, background, and experience of those on a board and to identify any gaps that may exist or arise. [An example of how this could be composed is laid out in Appendix B, or an example from the AICD attached in Appendix C. – may not need as this is really an issue for Government]

Board composition and numbers is an issue for the Commonwealth Government. The Minister selects all the Board directors, including the Chair and Deputy Chair. The composition of the Board to ensure it is fit for purpose both currently and to achieve its future challenges are important considerations. The combination of high-level board and governance skills and experience and a Board which represents the broad diversity of Australians – covering cultural diversity, geographic diversity, diversity of professions and indeed the diversity of views (e.g. through different age groups and lived experiences) are important considerations for a reputable and effective board of the National Australia Day Council.

There is currently a diverse range of backgrounds and experience on the board, including not-for-profits, the community sector, public sector (long-standing practice is that the Deputy Secretary, Governance, PM&C, is appointed as a director), business, the law, and academia. Two members of the board are Indigenous Australians.

Given the task of the NADC in representing the views and makeup of the Australian population, as well as running a multimillion-dollar organisation, there is a strong need for a breadth of perspectives and skills on the board to successfully achieve these goals. This diversity also needs to be balanced with skills and experience of directors who have a good understanding of their fiduciary requirements under the Corporations Act and running a complex business.

Some of the company or Corporations Act skills and experience which you would expect for a company include strong financial and risk acumen, corporate governance, legal and business management are key areas to ensure effective oversight of any company both for profit and not for profit. Ensuring board members have the skills necessary to meet their obligations as Board directors should be a key consideration of board composition during the initial appointment stages, as well as through, training and development and "regular and rigorous assessments"<sup>2</sup>. To this end, the use of a board skills matrix to assess the capabilities of current members and identify areas of potential weakness would assist in

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<sup>1</sup> Fourth Edition

<sup>2</sup> Checklist for assessing board composition [05446-1-8-mem-director-tools-bc-checklist-for-assessing-bc\\_a4\\_web.ashx \(companydirectors.com.au\)](https://www.ashx.com.au/05446-1-8-mem-director-tools-bc-checklist-for-assessing-bc_a4_web.ashx)

Board evaluation processes and would also provide guidance to the Minister for filling future vacancies.

A further aspect of Board composition is the importance of leadership and other skills and experience which contribute to a collaborative and unified Board. Sometimes these are referred to as soft skills but they are about effectively managing relationships and taking people with you and high level communication skills to represent the Board and Council activities.

There is a diverse range of backgrounds, skills and experience on the Board, reflecting broadly the Australian population. Such skills and experience need to include a range of characteristics to meet its fiduciary obligations. Given the role of the Board and recent departures of Board members, areas where the skills and experience require strengthening include financial and risk acumen, corporate governance, legal and business management and strategic communications.

#### **d. Terms of Appointment**

As stated in the Board's Constitution, the term of office of a Director is two years or any other period as determined by the Minister and stated in the notice of appointment.

Improvements were recently made to address peaks of activity of the Council such as the lengthy process for nominations and selection of the National Australian of the Year Awards. Instead of being appointed throughout the year, new directors will begin their terms in March, which will allow them to participate in the strategic planning for the year and be involved from the start of the cycle for running of Australia Day activities and awards. The appointments of current directors have been amended to reflect this change.

Current practice has seen Board members appointed for a period of three years and the staggering of appointments so they do not all finish their terms in the same year. This allows for the opportunity to consider two to three appointments per year, acknowledging the Minister can renew appointment terms of current Board members. This balances the need for continuity as well as the opportunity to refresh Board membership.

The staggered appointments provide an opportunity to consider and refresh the Board when required and ensure strong continuity of Council oversight. The Government has already taken a significant step to improving their appointments by staggering the current appointment terms and ensuring all future directors will start at the most operationally appropriate time.

#### **e. Governance**

The Governance framework for the Board is generally in place. EWill mention the frameworks required and whether they are up to date.

- Should have an audit committee of at least three members and is chaired by one of the Board directors who is not the Chair who have relevant qualifications and experience.



- Board charter to set out roles of the Board and management.
- Nomination/succession planning/remuneration committee and charter
- Mention other committees e.g. sponsorship/marketing committee is it a Bd committee and where HR committee is up to – these are not yet finalised

#### f. Culture and Professional Conduct of the Board

The culture and tone of an organisation is set from the top. The Board has a key role in setting the tone and exhibiting professional behaviours and conduct. Some of the leadership behaviours seem like common sense and include being respectful, valuing differences of opinion and listening to others who may have different views, being polite and not talking over others, engaging constructively in debate and being self-aware of the impact of what you do and say has on others. Many comments have been made about “robust” discussions and the word ‘robust’ has been used to describe some positive but mostly negative behaviours in the Board (see feedback from the interview process).

I will put in here how company Boards generally oversight a productive and high performance , sustainable culture.

Policies and Practices impacting on the governance and Performance of the Board

This will be fleshed out into a narrative

- Board planning
- Board schedule / agendas
- Transparency in decision making / reporting
- Effective working arrangements with leadership team
  - Delegating performance and xxxxxx accountability
  - Priority direction
- Written agreement with each director and senior executive setting out terms of their appointment.
- Board evaluation process and process for evaluating the performance of its senior executives
- Establish a sound risk management framework and subcommittee of board to oversight and annually review. If no internal audit function, then ensure review of governance, risk management and internal control processes are effective
- Code of conduct for directors and staff
- Whistle-blower policy and fraud, corruption, and conflicts of interest policies

**SUMMARY table of Board requirements – this needs to be finished and line up with headings above. Further analysis will guide the contents of this – table will be put in after consultation feedback.**

Category	Better Practice	NADC Current	Gap to address
Board size	Ensure good discussion and skills balance, distribute workload, but not unwieldy for the organisation		Currently two vacancies including Deputy Chair
Terms of appointment	Staggered to balance continuity and refreshing Board composition.	Terms completing at end of March and on average 3-year terms	Nil
Mix of skills, experience and backgrounds	Requisite skills to meet Board obligations of Corporations Act and PGPA requirements as well as broadly reflecting Australia's population.	Diverse range of backgrounds and experience	Corporate governance, finance and risk and legal skills and experience; strategic communication and strong leadership skills to fill deputy chair and potentially chair position.
Board Governance	Requires risk and audits to be addressed through sub-committee of the Board, remuneration. Committee; and clear charters in place	Finance, risk and management committee, sponsorships committee (not yet formalised) and in process of establishing an HR committee	An appropriately skilled board director to chair finance and risk committee; and establish a remuneration committee
Board operations and practices	Clarity on roles and responsibilities of the Board and responsibilities of each of the directors.	Policies and practices in place without general awareness or a thorough understanding of the Board's role and fiduciary obligations	Induction and training of Board members; evaluation of Board performance; development of Board protocols for decision making
Culture and professional conduct	Directors work together united, professionally and respectfully	Dynamics of board not conducive to a unified approach to operate in the best interests of the Board and oversight of the performance of the Council	Code of conduct and protocols to be agreed for the Board.

## Observations from Interviewees

### Broad Themes from the Consultation Process

Seventeen people provided input to the interviews and included all current and recent members of the NADC Board and senior staff at the NADC. The Hon Ben Morton MP, Assistant Minister to the Prime Minister and Cabinet and senior executive staff in Government Division of the Department of the Prime Minister and Cabinet were also consulted and are included in the 17. To guide the discussion with current and recent directors a proposed list of questions ([Attachment xx](#)) was provided to interviewees beforehand. Interviews were undertaken from the 16 April 2021 to 23 April 2021.

Observations have been grouped under each of the key headings included in the Scoping Document.

#### a. Functions and Dynamics of board meetings

##### i. Role and functions of Board

Prior to the new chair the Board's primary focus was on the Australian of the Year awards. The new chair and the Minister's Statement of Expectations reenergised the Board and provided clarity for the role of the Board in delivering its objectives as set out in the Constitution.

Some directors do not understand the significance of the Council being a Commonwealth-owned entity or a company under the Corporations Act.

Some members commented as paramount the role of the Board was to help clarify and strengthen our national identity and needed to do more research to underpin this objective.

'What are we here to do and how do we take the organisation forward?' was a key theme which emerged from the interviews. Some thought the board was not well equipped to deal with contentious issues and plan for its future – it was stuck in the issues of the day and was being reactive to issues as they came up.

Some were of the view that some directors understood strategy, oversight and good governance and others did not understand good governance and what was required in discharging their fiduciary duties s 47G(1)(b)

There was a view the Board particularly at a recent strategy day did not address the strategy of the NADC going forward, but focussed on what Australia Day should be like s 47G(1)(b)

##### ii. Role and functions of Directors

Some Board members are clearly operating as representatives of their 'communities of interest' and have been advocates for nominees. Comments were provided about the role of board members as being multifaceted – representing communities of interest, geographic areas and advocating for nominees for the Australian of the Year Awards.

Some directors clearly see this as being partisan/parochial and not operating in the best interests of the board. s 47G(1)(b)

**Commented [RP2]:** Danni Roche has been Chair since July 2017, not really "new".

**Commented [RP3]:** Here and elsewhere in this section, statements of opinion rather than fact should be identified as such.

**Commented [RP4]:** First SoE for NADC issued by Mr Morton in May 2020; Mr Morton has been Minister responsible for NADC since May 2019.

More generally it was surprising the lack of awareness and familiarity of their fiduciary duties, the Statement of Expectations and the underlying governance framework for the Board to ensure integrity in decision making processes, oversight of the performance of the Council and the requirement to operate in the best interests of the Board and the Council.

### iii. Role of the Chair

The Chair has lifted aspirations and indeed expectations of Board members and key stakeholders such as key media partners for the Australian of the Year Awards. A substantial change agenda was required with the new Chair's appointment to lift the performance of the Board and indeed the NADC. Some directors have described a crash through approach was adopted and others saw this as necessary to lift performance.

At times, given the pace of work, substantial new initiatives and funding by the Government and raising of performance expectations the style of the Chair was seen as overwhelming compared to what some might have seen their role as selecting nominees for the National Australian of the Year awards.

There is a need for balance between passion and enthusiasm (and energy to get things done quickly) and the leadership required to form consensus, take people with you and bring out the best in the Board and executive team. 'The Chair has done a great job in re-establishing the role of the NADC and externally has generally managed stakeholders and sponsors well.

s 47G(1)(b)

### iv. Governance arrangements

I will talk about what members said and didn't say about their understanding and knowledge of the Governance framework for the Board – I am still going through my notes on this one.

### v. Operations of board meetings

There was an acknowledgement of the fast pace of activity and peaks of workload for the Australian of the Year Awards, activities on Australia Day and administering key grants programs. The fast pace and workload resulted in many meetings over the past 12 months – 17 Board meetings, 7 Financial and Risk meetings and 3 Sponsorship meetings, plus 6 circular resolutions.

s 47G(1)(b)

Comments were also made about behaviours within the Board meetings not meeting professional standards – such as shouting, not listening or respecting views of others and being dismissive of views and ideas put forward. This resulted in an atmosphere of not speaking up and being "compliant".

Comments were also made about a lack of understanding of some directors of financial information presented to the Board and views were also expressed about some directors not keeping up with workload and paperwork required to prepare for discussion in the Board meetings.

s 47G(1)(b)



#### b. Internal and External Communications

There were views expressed about engagement with ordinary Australians and stakeholders outside board directors' communities of interest. The need to address certain target groups such as young people was consistent throughout the interviews, however opinions greatly differed on how this should be done and what kind of messages would be most effective. This is an area where the NADC can continue to use the research which they have commissioned to develop and strengthen their public campaigns and engagement with broader communities. There is a need for respectful discussions between board members on priorities and strategy with an emphasis on diversity of views and lived experiences and Board directors contributing strategically and not advocating for their community of interest.

While much had been done to strengthen the relationship and processes with state and territory Australia Day committees more was required to ensure the states and territories were not in competition with the national awards but were seen to be supporting a national effort. Directors thought more support and national branding was required by the states and territories.

#### c. Skills and Experience

During the interview process and with recent Board director departures, the skills and experience gaps highlighted included:

- Strategic skills and Corporate governance skills (experience of a GAICD or person who has Board experience on company boards covered by the *Corporations Act 2001*);
- Recent departures have left what colleague directors say is a gap in strategic communications/ marketing skills. There were views however that such a gap could be filled through supplementing staff expertise;
- Financial/budget: need a well-qualified risk and audit chair. There was an overwhelming view with Maj Gen (Ret'd) Maurie McNarn completing his term that a significant and urgent gap in this area presented risks to the effective governance of the Finance and Risk Management Committee and the Board. Comment was made about the lack of financial and budget literacy and skills and experience on the Board;
- Young people – many directors thought this would be of benefit, others thought a young person would not have requisite skills and experience.
- A strong deputy chair is a gap to be addressed. Given the previous Deputy Chair was in the role for about 10 years there emerged many gaps when she left such as supporting staff outside of board meetings and negotiating consensus views within board meetings.

'Orderly thinkers' was a term used about the skills lacking on the board.

#### d. Relationships between Board Members with Staff and Stakeholders

Comments were made by most directors about senior staff stability as a risk to be managed. Due to the high number of board meetings per year (some of which were due to circumstances outside of the NADC's control), much resourcing effort is used to support and service the Board. Most directors commented that more resources were required to support the senior leadership team of the NADC – they felt the team is placed under quite a bit of pressure and comments were made about addressing the key risks of losing such talented personnel. The staff had much support from the deputy chair and the head of the audit and risk committee.

Clarity and clear processes with state and territory committees has been improved significantly. Given the time I was not able to examine the relationship with the state and territory arrangements however Board directors acknowledged significant work has been done over the last few years on matters to



improve these relationships, like standardising the Australian of the Year voting system. Further work is required for the stakeholders to fully support and acknowledge a national branding of the Australian of the Year awards.

#### Observation about sponsors and media partners.

#### e. The Board's history and projected challenges

##### Need to explain what has happened over last few years – for context.

The board directors and others are very positive about the Council's future. There have been significant positive gains and positive messages particularly in the context of the *Reflect Respect Celebrate* Campaign. A key challenge is to keep the momentum going within currently available resources – in this context some directors suggested a strengthening of the ambassador role in local communities, as well as being innovative and considering other ways to maintain momentum.

Within the operation of the council and board, there is a desire to have ongoing stability and a more structured approach to the role of the Board and how it oversees the performance of the Council.

s 47C , s 47G(1)(b)

#### f. Other issues raised

##### i. The National Australian of the Year awards

Are the awards for individual achievement and/or for the cause the recipients are being nominated for or receiving the awards? What support is or should be given to the AOTY winners from the organisation following their award?

##### Comments were also made about confusion by some members of the community about the broader AD awards

There seemed to be mixed understandings by some directors of the National Australian of the Year Awards process, particularly in the early stages of the call for nominations. Some directors were of the view the nominations had an initial assessment for eligibility before providing to the state and territory Australia Day awards committees. Check actually what happens.

##### ii. Remuneration

There were diverse views about remuneration of Board directors.

s 47C , s 47E(d)

More structured planning and discussion around board agendas, including the number of meetings, clearly focussing on strategy, clarity of board papers would alleviate matters of workload. Consideration of alternative arrangements to oversight grants processes for example might alleviate some pressure on Board directors for example, through a sub-committee of the Board.

There is flexibility within current arrangements to cover costs and provide for additional financial support should a Board member be disadvantaged through meeting their obligations.

### iii. Resourcing

One of the main issues which was raised consistently throughout the interviews was the funding of the NADC. While the funds to run the organisation and manage the Australian of the Year Awards has been consistent, the additional funds recently provided by the Government to pay for research, deliver several grants programs (in effect within six months), and the Australia Day campaigns like *Respect Reflect Celebrate* are not.

The main issue in relation to funding is recent lumpiness and the availability and timing of providing this funding to the Council, particularly in relation to the delivery of grants to ensure compliance with better practice grant funding arrangements. The lack of certainty about future funding may also constrain planning and may impact the momentum and gains made in relation to the *Respect Reflect Celebrate*.

The lateness of the funding also causes significant disruption to the NADC as it places significant stress on both the organisations staff and board to rapidly organise, sort, and approve grants and other administratively intensive funding actions. (I have stats on dollars and grant numbers to put in here) This has been the main reason for the significant number of additional board meetings which occurred this year, as the Board was required to meet to approve the grants as they were made to meet implementation schedules, rather than as a more considered process. The combination of a rapid turnaround time for the delivery of significant funding initiatives together with the need to support the Board decision making processes put significant pressure on the NADC staff and was a major contributing factor to some of the comments about risks of senior staff potentially leaving.

s 47C , s 47E(d)

### Summary

This summary to go at end of recs or in a separate document.

### Background

s 47C , s 47E(d)

### Issues

s 47C , s 47E(d)

s 47C , s 47E(d)

Recommendations

s 47C , s 47E(d)

s 47C , s 47E(d)

**Board Governance**

s 47C , s 47E(d)

**Director Induction and Training**

s 47C , s 47E(d)

**Board Policies and Practices**

s 47C , s 47E(d)

**Culture and Professional Conduct**

s 47C , s 47E(d)

**Resourcing/Staffing**

s 47C , s 47E(d)

**Board Planning**

s 47C , s 47E(d)

*Corporations Act 2001*

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**Constitution**  
**of the**  
**NATIONAL AUSTRALIA DAY COUNCIL**  
**ACN 050 300 626**

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**A company limited by guarantee**



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**Constitution of the**  
**NATIONAL AUSTRALIA DAY COUNCIL**  
***Corporations Act 2001***

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**1. COMPANY LIMITED BY GUARANTEE**

**1.1 Constitution**

This document, as amended from time to time in accordance with the Act, is the Constitution of the Company.

**1.2 Company limited by guarantee**

The Company is a company limited by guarantee and the liability of Members is limited as provided in this Constitution.

**1.3 Members' liability limited**

The liability of Members is limited and each Member undertakes to contribute to the Company's property if the Company is wound up while he, she or it is a Member or within one year after he, she or it ceases to be a Member, for payment of the Company's debts and liabilities incurred before he, she or it ceased to be a Member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amounts as may be required, not exceeding \$100.00 (one hundred dollars).

**1.4 Restriction on application of profits**

Subject to **Rule 1.5**, all profits (if any) and other income and property of the Company must be applied in promoting the Objects and no part of them may be paid, directly or indirectly, by way of dividend, bonus, fee or otherwise, to Members or Directors.

**1.5 Certain payments allowed**

**Rule 1.4** does not prevent the payment in good faith of:

- (a) remuneration, including travelling expenses, of any Director of the Company, not exceeding the rate set by the Remuneration Tribunal under the *Remuneration Tribunal Act 1973* in relation to daily fees for part time holders of public office;
- (b) reasonable and proper payments to a Director or a Member in return for goods and services supplied to the Company by that Director, other than in his or her capacity as a Director, or by that Member;

- (c) principal and interest at a rate not exceeding the rate for the time being charged by the Commonwealth Bank of Australia for overdrawn accounts, upon money lent by any Member or Director to the Company;
- (d) reasonable and proper rent for premises let by any Member or Director to the Company; or
- (e) any moneys by the Company to the Commonwealth under the terms of any relevant funding agreement or any other contractual arrangements,

provided always that no Member of the Company shall be appointed to any salaried office of the Company (in addition to the office of Director) remunerated by salary, fees or other form of monetary benefit except repayment of out-of-pocket expenses and interest at the rate stated above on money lent or reasonable and proper rent for premises demised or let to the Company.

1.6 Payments under **Rule 1.5** must be approved by the Directors.

## **2. REPLACEABLE RULES**

2.1 Subject to **Rule 2.2**, the Replaceable Rules set out in the Act apply to the Company to the extent that they apply to companies limited by guarantee and are not inconsistent with this Constitution.

2.2 The Replaceable Rules set out in the following sections of the Act do not apply to the Company:

- (a) 198C (Managing director);
- (b) 201G (Company may appoint a director);
- (c) 201H (Directors may appoint other directors);
- (d) 201J (Appointment of managing directors);
- (e) 201K (Alternate directors);
- (f) 202A (Remuneration of directors);
- (g) 203A (Director may resign by giving written notice to company);
- (h) 203F (Termination of appointment of managing director);
- (i) 247D (Company or directors may allow member to inspect books);
- (j) 248E (Chairing directors' meetings);
- (k) 248F (Quorum at directors' meetings); and
- (l) 254U (Other provisions about paying dividends).

### **3. OBJECTS AND POWERS**

3.1 The Company's Objects are to inspire national pride and spirit to enrich the life of the nation by working with and for the people and government of Australia to:

- (a) unite all Australians through celebration with a focus on Australia Day;
- (b) promote the meaning of Australia Day through activity, education, reflection, discussion and debate; and
- (c) promote good citizenship, values and achievement by recognising excellence and service to communities and the nation.

3.2 The Company has the powers set out in the Act but only to do all things that are necessary, convenient or incidental to carry out, or conducive to the attainment of, the Objects set out in **Rule 3.1**.

3.3 Notwithstanding **Rule 3.2**, while the Commonwealth is a Member of the Company:

- (a) the Company may not carry on any business or do any act or thing that is beyond the powers of the Commonwealth under the Constitution of Australia;
- (b) the Company may not form or participate in the formation of a company without the prior written consent of the Minister;
- (c) the Company and the Directors must comply with the CAC Act; and
- (d) this Constitution may only be repealed or modified with the prior written consent of the Minister.

### **4. IDENTIFICATION OF MEMBERS**

4.1 Subject to **Rule 5**, the Members of the Company are:

- (a) the Members of the Company at the date of adoption of this Constitution; and
- (b) the Commonwealth.

### **5. RULES RELATING TO MEMBERS**

5.1 While the Commonwealth is a Member, it shall be represented by the Minister.

5.2 A Member's membership of the Company will cease if the Member:

- (a) resigns by giving written notice to the Company; or
- (b) in the case of a Member other than the Commonwealth:
  - (i) that is an individual:

- (A) dies;
- (B) becomes bankrupt or enters into any arrangement with creditors under Parts IX or X of the *Bankruptcy Act 1966*;
- (C) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health; or
- (D) is convicted of an indictable offence;
- (ii) that is a corporation or a representative of a Body:
  - (A) comes under one of the forms of external administration referred to in Chapter 5 of the Act, or an order is made by a court for the purpose of placing the Member or Body under external administration; or
  - (B) an order is made by a court for the deregistration of the Member; or
- (iii) who is also a Director:
  - (A) resigns as a Director by giving written notice to the Company;
  - (B) has his or her appointment as a Director terminated by the Minister giving written notice;
  - (C) comes to the end of the term of his or her appointment as a Director and is not reappointed;
  - (D) is found by a court of competent jurisdiction to have breached or defaulted in the observance or performance of any obligation contained in this Constitution, under the Act or the CAC Act; or
  - (E) receives a written notice from the Minister terminating that Member's membership of the Company.

5.3 If the Commonwealth is not the sole Member of the Company, the Commonwealth must be present at all meetings of Members.

## **6. APPOINTMENT AND REMOVAL OF DIRECTORS**

### ***Appointment of Directors***

- 6.1 The Directors, including the Chairperson and Deputy Chairperson, shall be appointed by the Minister.
- 6.2 The Chairperson or the Deputy Chairperson can resign as Chairperson or Deputy Chairperson respectively by notice in writing to the Company.
- 6.3 There will be not less than five Directors of the Company.



- 6.4 The Directors who hold office at the date of adoption of this Constitution shall continue to hold office as if appointed by the Minister under **Rule 6.1** for the remainder of the term for which they were originally appointed.
- 6.5 While the Commonwealth is a Member of the Company, the Company must notify the Minister in writing of any vacancy in a position of a Director within 14 days of the vacancy occurring.

### ***Removal of Directors***

- 6.6 The office of a Director becomes vacant if the Director:
- (a) dies;
  - (b) becomes bankrupt or enters into any arrangement with creditors under Parts IX or X of the *Bankruptcy Act 1966*;
  - (c) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it;
  - (d) resigns by notice in writing to the Company;
  - (e) has his or her appointment as a Director terminated by the Minister giving written notice;
  - (f) comes to the end of the term of his or her appointment as Director and is not reappointed; or
  - (g) otherwise ceases to be a Director by operation of law.

## **7. TERM OF APPOINTMENT**

- 7.1 Subject to this Constitution, the term of office of a Director is two years, or any other period as determined by the Minister and stated in the notice of appointment.
- 7.2 A Director retires but is eligible for re-appointment on the expiry of his or her term of office.

## **8. PROCEEDINGS OF THE BOARD**

### ***Directors' meetings***

- 8.1 Notice of every meeting of Directors must be given to each Director, but failure to give or receive such notice will not invalidate any meeting.
- 8.2 The Directors may hold a Directors' meeting using any technology consented to by all the Directors, and adjourn and otherwise regulate their meetings as they think fit.

- 8.3 A Director shall be regarded as present at a meeting where the meeting is conducted by telephone, audio-visual link-up, or other instantaneous communications medium for conferring, if the Director is able to hear, and to be heard by, all other Directors attending the meeting.
- 8.4 A meeting conducted by telephone, audio visual link-up, or other instantaneous communications medium for conferring, shall be deemed to be held at the place agreed upon by the Directors attending that meeting, provided that at least one Director present at the meeting was at that place for the duration of the meeting.
- 8.5 A Director shall not vote in respect of any contract or proposed contract with the Company in which he or she is interested in any way, or in respect of any matter arising out of such a contract or proposed contract, unless such voting is permitted in accordance with subsection 195(2) of the Act.

***Quorum for Directors' meeting***

- 8.6 The quorum for a Directors' meeting is five Directors. The quorum must be present at all times during the meeting.

***Questions decided by majority***

- 8.7 Questions arising at a meeting of Directors are to be decided by a majority of votes of Directors present and entitled to vote and any such decision is for all purposes to be deemed a decision of the Directors.

***Chairperson's casting vote and chairing of Directors' meeting***

- 8.8 In the event of an equality of votes, the Chairperson has a casting vote in addition to his or her deliberative vote.
- 8.9 In the event that the Chairperson is not present at the meeting, the Deputy Chairperson shall chair the meeting and shall have a casting vote in addition to his or her deliberative vote.
- 8.10 If the Chairperson and the Deputy Chairperson are not present at the meeting, the Directors present at the meeting may elect one of their number to be the Chairperson for that Directors' meeting and that Director shall have a casting vote in addition to his or her deliberative vote for the period that he or she is Chairperson.

***Alternate Directors***

- 8.11 With the prior written consent of the Minister, a Director may appoint an alternate Director to exercise some or all of the Director's powers for a specified period.
- 8.12 If the appointing Director requests the Company to give the alternate Director notice of Directors' meetings, the Company must do so.

- 8.13 When an alternate Director exercises the Director's powers, the exercise of the powers is just as effective as if the powers were exercised by the Director.
- 8.14 The appointing Director may terminate the alternate Director's appointment at any time.
- 8.15 An appointment or its termination must be in writing. A copy must be given to the Company.

## **9. MINUTES**

- 9.1 The Company shall cause minutes to be made in which it records within 1 month:
- (a) names of Members of the Company present at all meetings of the Company and of all Directors present at meetings of the Directors;
  - (b) all proceedings at all meetings of the Directors (including meetings of a committee of Directors) and of the Company; and
  - (c) any resolutions passed by the Company or Directors without a meeting.

Such minutes shall be signed by the Chairperson of the meeting at which the proceedings were held or by the Chairperson of the next succeeding meeting.

## **10. COMMITTEES**

- 10.1 The Directors may delegate any of their powers to a committee or committees consisting of such of their number as they think fit.
- 10.2 A committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any directions of the Directors and powers so exercised shall be deemed to have been exercised by the Directors.
- 10.3 The members of such a committee may elect one of their number as chairperson of their meetings. Where such a meeting is held and:
- (a) a chairperson has not been elected;
  - (b) the chairperson is not present at the meeting within 10 minutes of the time appointed for the commencement of the meeting; or
  - (c) the chairperson is not willing to act as chairperson of the meeting,
- the members of the committee present may elect one of their number to be chairperson of the meeting.
- 10.4 Meetings of any committee of Directors will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors.
- 10.5 Questions arising at a meeting of a committee shall be determined by a majority

of votes of the members of the committee present and voting.

- 10.6 In the case of an equality of votes, the chairperson, in addition to the chairperson's deliberative vote, has a casting vote.
- 10.7 The Directors must establish and maintain an audit committee in accordance with section 44 of the CAC Act.

## **11. VALIDITY OF ACTS OF DIRECTORS**

- 11.1 All acts of the Directors, a committee or a member of a committee are valid notwithstanding that it is afterwards discovered that there was some defect in the appointment, election or qualification of them or any of them or that they or any of them were disqualified or had vacated office.

## **12. SECRETARY**

- 12.1 The Directors must appoint a Secretary for such term, and may vest in the Secretary such powers, duties and authorities, as they may from time to time determine.
- 12.2 The Secretary must exercise all such powers and authorities subject at all times to the direction of the Directors.
- 12.3 The Directors may suspend or remove a Secretary from that office.

## **13. SEAL**

- 13.1 The Directors must provide for the safe custody of the common seal of the Company which may only be affixed by the authority of the Directors in accordance with the Act.

## **14. FUNDING**

- 14.1 In any financial year where the Company budgets its operations on the basis of funding from the Commonwealth, the Directors shall:
  - (a) hold the funding in the Company's bank account; or
  - (b) hold confirmation of the terms of that funding in writing from the Minister,before making or authorising payments from such funding.
- 14.2 The Company shall make the accounting and other financial records of the Company open to the inspection of the Commonwealth or its representative at all times while the Commonwealth is a Member of the Company.

## **15. ACCOUNTS**

- 15.1 The Directors must cause proper accounting and other records to be kept and provide financial reports, directors' reports and auditor's reports to Members and lay such reports before the annual general meeting in accordance with the Act.
- 15.2 The Directors must comply with the requirements of the Act and the CAC Act relating to the auditing of the accounts of the Company.

## **16. ANNUAL REPORT**

- 16.1 The Directors shall, in accordance with the CAC Act, at least 14 days before each annual general meeting, prepare and forward to the Minister the Company's annual report that includes the Company's Annual General Meeting Documents (or, if there is no such annual report, a copy of the company's Annual General Meeting Documents).
- 16.2 If no annual general meeting is held then the Directors must forward to the Minister the reports and other statements referred to in **Rule 16.1** within four months of the end of each financial year.

## **17. NOTICE**

- 17.1 A notice may be given by the Company to any Member either personally or by sending it by post, facsimile or e-mail to the Member at the registered address, facsimile number or e-mail address, as the case may be, supplied by the Member to the Company for the purpose of the giving of notices to the Member.
- 17.2 Service of the notice shall be deemed to be effected:
  - (a) where the notice is sent by post, two days after the date of posting;
  - (b) where the notice is sent by facsimile or e-mail, upon receipt by the addressee.
- 17.3 Notices of Members' meetings shall be given in accordance with the requirements of the Act.

## **18. INDEMNITY AND INSURANCE**

- 18.1 To the extent permitted by the Act, the Company indemnifies every person who is or has been a Director, Secretary, or officer of the Company, and may indemnify every person who is or has been an auditor of the Company, against:
  - (a) any liability incurred by that person in his or her capacity as a Director, Secretary, auditor or officer of the Company other than:
    - (i) a liability owed to the Company or a related body corporate; or

- (ii) a liability for a pecuniary penalty order under section 1317G of the Act or a compensation order under section 1317H of the Act; or
  - (iii) a liability that is owed to someone other than the Company or a related body corporate which did not arise out of conduct in good faith; and
- (b) any liability for legal costs incurred by that person in his or her capacity as a Director, Secretary, auditor or officer of the Company other than:
  - (i) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under **Rule 18.1(a)**;
  - (ii) in defending or resisting criminal proceedings in which the person is found guilty;
  - (iii) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (except in relation to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order); or
  - (iv) in connection with proceedings for relief to the person under the Act in which the Court denies the relief.

18.2 The Company may, where the Directors consider it appropriate to do so, pay or agree to pay a premium in respect of a contract insuring a person who is or has been a Director, Secretary, auditor or officer of the Company, against:

- (a) any liability incurred by that person in his or her capacity as a Director, Secretary, auditor or officer of the Company other than a liability which arises out of:
  - (i) conduct involving a wilful breach of duty in relation to the Company; or
  - (ii) a contravention of section 182 (Use of Position) of the Act or section 183 (Use of Information) of the Act; and
- (b) any liability for legal costs incurred by that person in his or her capacity as a Director, Secretary, auditor or officer of the Company in defending proceedings, whether civil or criminal, whatever their outcome, and without the qualifications set out in **Rules 18.2(a)(i)** and **(a)(ii)** above.

## 19. SURPLUS ASSETS ON WINDING UP

- 19.1 If upon the winding up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property other than unspent Commonwealth funding, this property must be given or transferred to some other institution or institutions having objects similar to the Objects, and whose constitution prohibits distribution of its or their income and property among its or



their members to an extent at least as great as is imposed on the Company under or by virtue of Rule 1.4, such institution or institutions to be determined by the Members at or before the time of the dissolution and in default, by application to the Supreme Court of the Australian Capital Territory for determination. Unspent Commonwealth funding shall be paid or transferred to the Commonwealth.

## **20. DEFINITIONS**

20.1 In this Constitution, unless the contrary intention appears:

‘Act’ means the *Corporations Act 2001* (Cth) as amended or replaced from time to time and any exemption or modification to that Act applying to the Company;

‘Annual General Meeting Documents’ means the documents relating to a financial year that the Company is required by the Act to lay before its annual general meeting;

‘ASIC’ means the Australian Securities and Investments Commission and any successor body;

‘Body’ means any body corporate, body politic, statutory authority or agency within the meaning of the *Financial Management and Accountability Act 1997* (Cth) as amended or replaced from time to time;

‘CAC Act’ means the *Commonwealth Authorities and Companies Act 1997* (Cth) as amended or replaced from time to time and any exemption or modification to that Act applying to the Company;

‘Chairperson’ means the person appointed by the Minister as Chairperson pursuant to **Rule 6.1**, or otherwise a Director acting in the capacity of Chairperson for a meeting of Directors pursuant to **Rule 8.9** or **8.10**;

‘Commonwealth’ means the Commonwealth of Australia;

‘Company’ means the National Australia Day Council ACN 050 300 626;

‘Constitution’ means this constitution as amended from time to time;

‘Deputy Chairperson’ means the person appointed by the Minister as Deputy Chairperson pursuant to **Rule 6.1**;

‘Director’ means any person occupying the position of director of the Company;

‘Directors’ or ‘Board’ mean all or some of the Directors acting as a board;

‘Member’ means a person described as a Member of the Company in **Rule 4.1** and includes a Member present by proxy;

‘Minister’ means the responsible Minister for the Company from time to time under the CAC Act, or his or her authorised representative;

‘Objects’ means the objects of the Company set out in **Rule 3.1**;

‘Replaceable Rules’ means the provisions referred to in section 141 of the Act;

‘Rule’ means a rule of this Constitution; and

‘Secretary’ means a person appointed by the Directors under **Rule 12** to perform any of the duties of secretary of the Company.

20.2 In this Constitution, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words importing any gender include the other genders (that is, masculine, feminine and neuter);
- (c) words or expressions defined in the Act or the CAC Act have the same meaning;
- (d) another grammatical form of a defined word or expression has a corresponding meaning;
- (e) headings do not affect construction or interpretation;
- (f) a reference to a person includes a body corporate and a body politic; and
- (g) an expression in a Rule that deals with a matter dealt with by a particular provision of the Act has the same meaning as in that provision of the Act.