

# Establishing a Startup NFP Board — A Brief Guide

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# Overview

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# What is a not for profit?

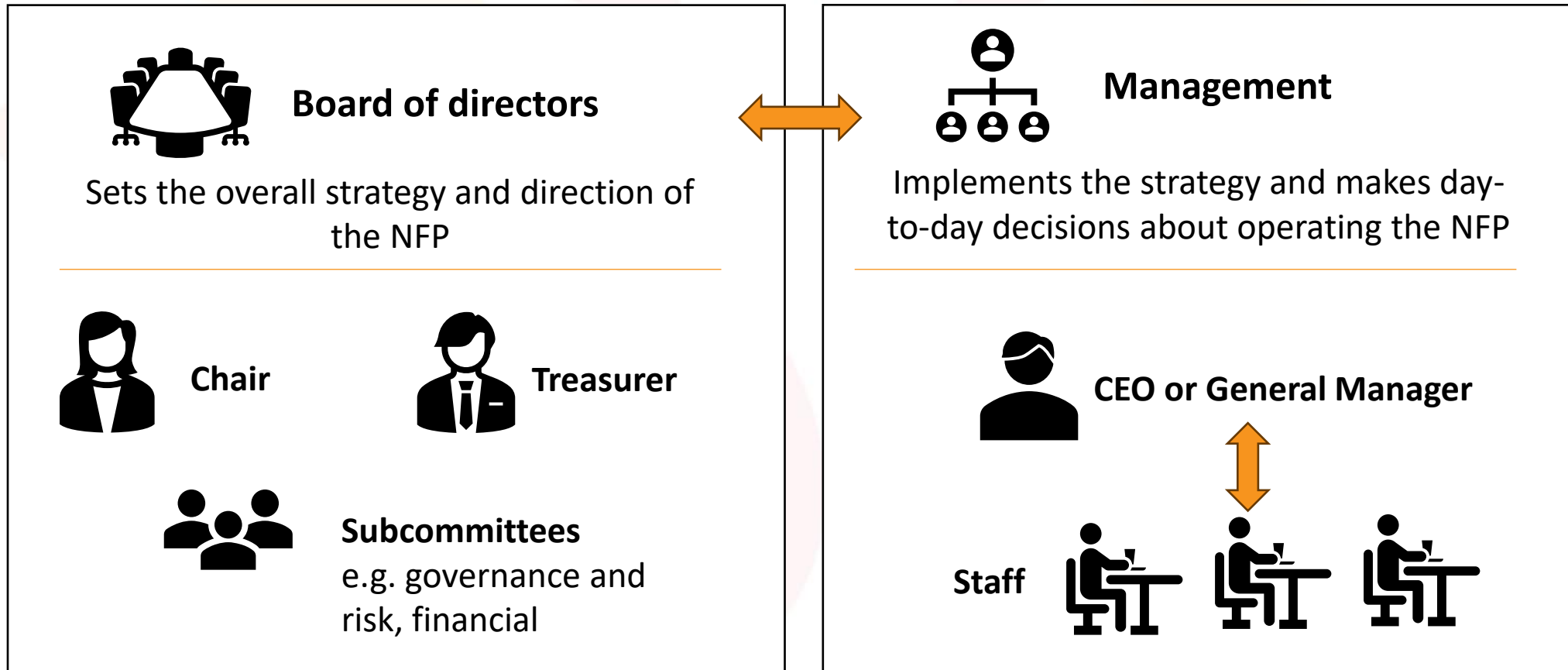
A **not-for-profit** is an organisation that **does not operate for the profit, personal gain or other benefit of particular people** (for example, its members, the people who run the organisation, or their friends or relatives) – *Australian Charities and Not for Profit Commission (ACNC)*

**Can it make a profit? YES!**

- A not-for-profit can make a profit, but any profit it does make **must** be allocated towards its purposes
- Not-for-profits can also retain any profits they make, as long as there is a genuine reason to do so, and that reason is clearly linked to its purpose

# Who runs a not for profit?

A not-for-profit is run by a management team and governed by a board of directors.



# What is the role of the board?

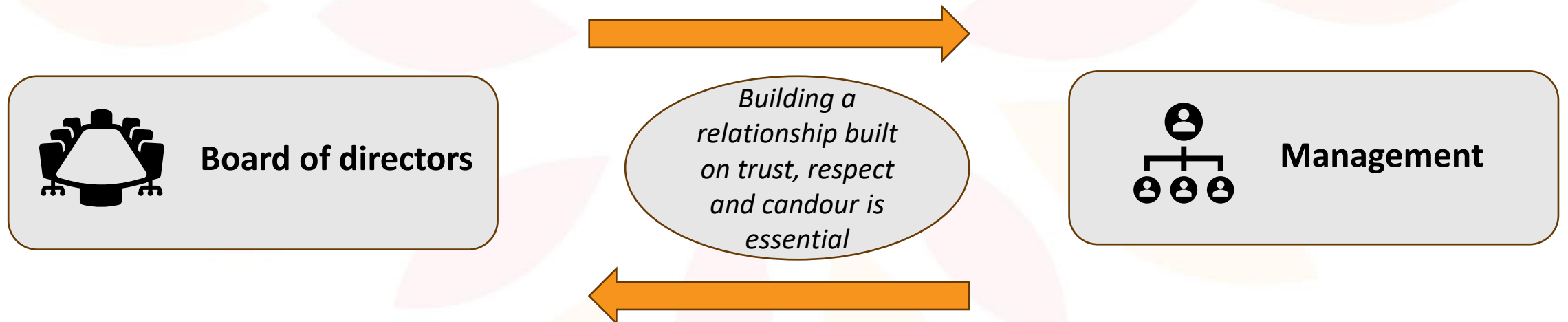
A board of directors is responsible for the **overall governance** and **strategic direction** of an organization.

- The board of directors and a company have a **fiduciary relationship** – this means a director must act in the best interests of the company and not in his or her own interests
- Although boards often make decisions together, each board member is individually responsible to undertake their duties to the company
- If a board of directors does not do its job properly this can lead to criminal and civil penalties (e.g. substantial fines)

# How do they work together?

A productive relationship between the board and management is critical for good governance and organisational effectiveness.

- Be prepared for board meetings – read board papers and ask thoughtful questions
- Make informed decisions based on relevant and informed material provided by management
- Share learnings and experience from outside board role



**Agreed reporting systems help the flow of essential information**

- Report relevant material information to the board
- Help the board analyse and consider issues
- Respond to issues raised by the board

# Who is a director?

A person validly appointed as a director or an alternate director under the NFP's rule book.

A director includes:

- a person validly appointed as a director or an alternate director;
- a person who, even though not validly appointed as a director, acts in the position of a director (also known as a 'de facto director'); and
- a person about whom, even though not validly appointed as a director, the directors are accustomed to act in accordance with that person's instructions or wishes (also known as a 'shadow director').

Directors' duties apply to a person who exercises directors' power and control in the company even if they may not be validly appointed e.g. de facto and shadow directors.

**It is important to maintain the separation between the board and the management team of a NFP, so that the management team don't end up acting as shadow directors.**

# What are the legal obligations of directors?

Directors have five main obligations.  
They might have additional obligations under specific legislation that applies to the particular NFP.

Duty	Obligation
<i>Care and diligence</i>	Exercise powers and discharge duties with the degree of care and diligence that a reasonable person would exercise if they were in the same position.
<i>Act in good faith</i>	Exercise their powers and discharge duties in good faith in the best interests of the corporation, and for a proper purpose.
<i>Manage conflict of interests</i>	Avoid or appropriately manage conflicts between personal interests and the company's best interests.
<i>Don't misuse information or one's power</i>	Don't improperly use their position, or information they obtain because they are a director, to gain an advantage for themselves or someone else, or cause detriment to the company.
<i>Don't trade when insolvent</i>	Ensure that a company does not trade whilst insolvent (not having enough money to pay bills) or where they suspect it might be insolvent.



# What are the key policies that set out the NFP governance?

