

Governance Charter

of

National Folk Festival Ltd

National
Folk
Festival



March, 2009

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1. Purpose of this charter

This Charter sets out the role, composition and responsibilities of the Board of Directors of the National Folk Festival Ltd. (the Company). In doing so the Charter aims to ensure that responsibility is properly sourced and that there is a high level of accountability, clarity and transparency of roles and decision-making authority between the Board, members, staff and volunteers.

2. Statement of purpose and vision

The objects for which the Company is established are:

- To organise and conduct annually the National Folk Festival (the Festival) and associated activities.
- To assist with community education and development in all aspects of traditional and contemporary folklore/folklife including music, song, dances, craft, lore, verse, customs, beliefs and traditional life styles, speech, games and food practices.
- To promote, maintain and preserve all facets of folklore/folklife

3. Authority

The conduct of the Board and a number of operational matters relating to the Board are governed by the Company's Constitution.

The Board is the legal authority for the Company, a public company limited by guarantee and trading as The National Folk Festival. As a member of the Board, in accordance with duties imposed by law and the Constitution of the Company, a Director acts in a position of trust for the community and is responsible for the effective governance of the organization.

4. The role of the board

Under the leadership of the President, having regard to the objects of the Company, the interests of the membership as a whole and the legal and regulatory environment, the Board will determine and promote the Company's values, vision and mission.

The Company has a Board of directors each elected by the members of the Company on an annual basis. Directors (other than the Managing Director) would normally not be members of the paid staff of the organisation. Directors should be free from any interest and/or business which could materially interfere with the director's ability to act in the best interests of the organisation.

The Board has an Executive consisting of the President, Vice-President, Secretary and Treasurer. The Managing Director is also a member of the Executive.

5. Functions of the board:

1. Provide effective leadership and collaborate with and support the Executive in:
 - Promoting the organisation's values, vision and mission;
 - Developing a strategic plan and prioritising strategic issues;
 - Maintaining open lines of communication with the organisation, its members and other stakeholders, in a manner consistent with the values, vision, mission and strategies; and
 - Developing and maintaining an organisational structure and executive reward system to support the achievement of agreed strategic objectives and outcomes.
2. Appoint the Managing Director and monitor his/her performance against agreed performance indicators.
3. Review and agree the business plan and annual budget proposed by the Managing Director.
4. Monitor and review the achievement of the strategic plan, the business plan and annual budget outcomes.
5. Establish such Board committees, policies and procedures as will facilitate the effective discharge of the Board's role and responsibilities. A list of the Board's committees and their roles and a list of current policies are attached.
6. Ensure, through the Board and its committees, compliance obligations and functions are effectively discharged.
7. Initiate a Board self-evaluation program and follow-up action to address issues arising and arrange for directors to attend courses and seminars and participate in development programs as the Board judges appropriate.
8. Ensure new Board members are given an induction to the Company which includes a personal briefing by the President and Managing Director and set reading material (see Attachment) pertaining to the organisation and committees.

6. Principles

1. The guiding principles of the governance arrangements are:

(a) The Board exercises strategic control over the Company and the Festival consistent with its Constitution and the provisions of relevant company law and all other laws governing the organization and acts honestly and credibly in all dealings with the organisation and its stakeholders.

(b) The Managing Director is responsible for the development of business strategies and handles the day-to-day operational functions of the company and is directly responsible for the day to day supervision of Festival staff and volunteers.

(c) The Managing Director must ensure that:

- i. the Company's activities are conducted professionally and in a business-like fashion;
- ii. staff and volunteers are managed according to Human Resource best practice and the law; and
- iii. staff and volunteers maintain the highest standards of integrity, accountability and responsibility.

(d) Required standards of disclosure are satisfied. In particular, the Managing Director must make timely disclosure of anything:

- i. which may affect the standing or reputation of the Company;
 - ii. which may influence Board decisions in relation to the Company;
- or
- iii. in which the Board has a legitimate interest.

(e) Information is produced for the Board according to the highest standards; where appropriate, information enables ready comparison with other relevant information.

(f) The Board, either as a group, or through the President must be consulted on matters of significance.

(g) Board members should not as a rule and subject to these arrangements, instruct Festival staff and/or volunteers, on operational or day to day matters. There may be instances where Board members have legitimate reasons for contact, but the Managing Director should be made aware of such contacts.

(h) Minutes of Board meetings must record the proceedings and resolutions of meetings. The minutes must be kept at the Company's registered office. Board confidentiality and solidarity are key ingredients in building trust around the boardroom.

Board members should respect the right of individuals to express their views freely at board meetings without fear of their being named outside the board meetings as taking particular positions. A sense of trust among board members is vital for the wellbeing of the Board.

7. Reporting

The powers the board reserves for itself and those it delegates to management.

1. **Board:**
 - Agree the vision and mission.
 - Develop the strategic plan.
 - Approve and monitor the business plan.
 - Recruit the Managing Director and manage his/her performance to agreed guidelines.
 - Approve policies and program plans for identified strategic issues.
 - Ensure policies are implemented and reviewed regularly or as needed.

2. **Managing Director:**
 - Manage the day to day affairs of the organisation.
 - Co-ordinate recruitment and management of staff and volunteers within the approved plan and policies.
 - Manage finances within the Board approved budget and policies.
 - Implement the approved business plan in accordance with policies.

3. **Spokesperson/relationships with external parties:**
 - The chief responsibility lies with the Managing Director to act as spokesperson and develop/maintain relationships with external parties.
 - Board members or others must coordinate with the Managing Director to ensure a unified message.

4. **Board relations with stakeholders:**
 - The Managing Director is the principal vehicle in communicating with stakeholders and has a direct channel on behalf of the Board with stakeholders including through newsletters and annual reports.
 - The Board speaks with one voice or not at all.

8. Board of Directors

8.1 Board Responsibility

8.1.1 General

Board members have legal responsibilities to act honestly, exercise reasonable care and skill and understand their fiduciary duties whilst performing their necessary tasks on behalf of the corporation.

Fiduciary duties can be summarised as:

- the duty to pay attention to the corporation's affairs
- the duty to act in good faith and in the interests of the corporation as a whole;
- the duty to exercise powers in accordance with the corporation's constitution;
- the duty to avoid any conflicts of interest; and
- the duty not to make improper use of information or position.

All Board members must at all times act honestly and use a reasonable degree of care and diligence while performing duties of office.

Directors hold a position of trust. They make decisions that affect the future of the organisation. Large amounts of money can be involved with various appointments, grants and contracts, making it vital for Directors to act and make decisions that do not suit their own agendas, but are made in good faith and with the primary duty being to the organisation. The community should be confident that a director will act in good faith and always in accordance with the law. All organisations need to comply with the relevant legislation of the Commonwealth and the Territory, which include:

- occupational health and safety;
- trade practices;
- fair trading;
- equal opportunity;
- environment protection;
- liquor licensing; and
- any other relevant legislation.

Directors should also:

- not take advantage of their position to further their own needs;
- be honest and industrious and act with care and diligence;
- never use information gained through their privileged position to advantage a friend/associate outside the organisation;
- provide adequate information to authorised persons or members when requested and not mislead them in any way;
- disclose any potential conflict of interest;

- maintain confidentiality of information that is only made available to the decision makers;
- never knowingly place the organisation in a potentially litigious position;
- ensure all decisions made are to the advantage of the organisation or group, not an individual or any particular interest group;
- ensure they act according to the constitution of the organisation; and
- adhere to the Company Gift Policy.

8.1.2 Individual (ie President/Vice President/Treasurer/Secretary)

The major duties, qualifications and skills required for each of the positions on the Company Executive are attached.

8.2 Board Appointments and Removal

Board members are elected from among the members at the AGM. Directors hold office until the next AGM when they retire but are eligible for re-election.

Any two members of the Company may nominate any other member to serve as a member of the Board.

The Company may by resolution passed at a general meeting increase or reduce the number of Board members either to fill a casual vacancy or as an addition to the existing Board. Any member so appointed holds office until the next AGM.

The Company may remove any Board member before the expiration of their period of office and appoint another person in their stead until the next following annual general meeting.

A Board member's position becomes vacant if the member –

- becomes bankrupt or makes any arrangement or composition with their creditors generally;
- has their office vacated under Section 224 of the Law;
- ceases to be a member of the Board by operation of section 228 of the Law;
- becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- resigns their office by notice in writing to the Company;
- for more than six months is absent without permission from Board meetings held during that period;
- ceases to be a member of the Company; or
- is directly or indirectly interested in any contact or proposed contact with the Company except where disclosure has been made by them of such interests as required by the Corporations Law.

9. Financial Governance

9.1 *Financial structure*

The company is a public company limited by guarantee. Thus the liability of the company's members is limited to the amount the members undertake to contribute to the property of the company if it is wound up (an amount not exceeding \$1.00).

Under the terms of the Company's constitution and Corporations law the Company is a not-for-profit organisation. This means that any income or property derived from its activities must be applied solely towards the promotion of the objects of the company. Additionally the company is prohibited from making distributions to its members and paying fees to its directors.

The Finance and Audit Committee manages the financial affairs of the company and prepares an Annual Budget for Board approval. Budgets aim to deliver a surplus.

9.2 *Financial reporting*

Financial reports are prepared on a monthly basis in consultation with the Finance and Audit Committee for submission to the Board of Directors.

9.3 *Financial accountability*

Financial accountability is through the Finance and Audit Committee to the Board on a monthly basis with an annual audit presented at the AGM. The Board is accountable for the prompt collection of revenue and oversight of sound financial practice.

9.4 *Planning & budgeting*

An annual budget is presented to the Board at the June Board meeting for ratification. An adjusted budget may be presented to the Board at the November Board meeting for the remainder of the financial year.

9.5 *Audit*

An audit is conducted on an annual basis by an accredited external auditor, approved by the Board, who reports through the Finance and Audit Committee to the Board.

9.6 *Cash Management*

Subject to operational requirements, the Board, through its Finance and Audit Committee will use available cash to provide the best net return to the company. Without excluding other options, this may be by reducing (either permanently or temporarily) any interest bearing debt, or by investing in high yield term deposits with major Australian banks.

10. Risk management

The Board ensures that all relevant insurance policies including Directors and Office Bearers Liability Insurance are adequate and up to date.

The Board ensures a comprehensive Risk Management Policy is maintained and regularly reviewed.

11. Workplace relations

11.1 Employee selection

The Company practices equal opportunity. Selection to positions is based on an open, merit based, transparent process.

11.2 Induction

Each employee is given an induction to the Company, by the Managing Director or appointed staff member which includes personal briefing and set reading material pertaining to the Company and working committees.

11.3 Training & development

Company policy for staff development is to provide budget funding for employees to attend appropriate courses and training programs. The Managing Director's approval as to timing and appropriateness is required.

11.4 Remuneration & benefits

Remuneration reviews are conducted on an annual basis and each staff member is assessed against their individual KPIs. Recommendations for remuneration reviews are made by the Staffing Committee.

12. Privacy

Under the *Privacy Act 1988* a business with greater than \$3million in annual turnover, or a small business with a turnover of less than that but undertaking certain activities is bound to comply with the Act.

The National Folk Festival is not bound by the Act, but nonetheless has committed, as a matter of policy and as a good corporate citizen, to observe, where practicable, the 10 National Privacy Principles. Those principles are set out in the Attachments.

13. Review of Charter

The Board will review this charter annually to ensure it remains consistent with the Board's objectives and responsibility.

ATTACHMENTS

Legal Commitments and Obligations

Australian Tax Office

- GST reporting and payments quarterly
- PAYG reporting and payments monthly, except when combined with quarterly GST statements
- Tax Deductible status
- Registration as public beneficial non-profit

Insurances

- Public Liability Insurance
- Volunteer Workers Insurance
- Business Insurance
- Workers Compensation Insurance
- Directors and Officers Insurance

ACT Registrar Generals Office

- Business Name registration (renewal)
- Exemption from Stamp Duty

ASIC

- Annual reporting of Board members and audit.
- Annual Statement of particulars
- Annual Statement of Financial Position

Industrial Relations

- Superannuation Guarantee

Other

- Register of Cultural Organisations

Board Committees

1. Marketing and Communications

Oversight of marketing, communications and public relations activities. Coordination of Company's advocacy activities. Oversight of sponsorship and fundraising activities.

2. Staffing

Develop and oversight employment and recruitment policies for staff as well as policies and procedures for volunteers. Establish and review benchmarks for annual performance and salary reviews. Assist in development and management of grievance procedures for staff and volunteers.

3. Governance

Maintain the health and effectiveness of the Board, including board recruitment, induction and evaluation.

4. Finance and Audit

Oversee the company's finances and preparation of annual budget, review monthly management accounts. Consider the authorities given to staff to incur expenditure. Periodically review the organisation's financial procedures and legal compliance – ensure there are proper controls in place to minimise risk exposure.

5. ROCO Administration

Oversight the Company's listing on the Australian Government's Register of Cultural Organisations.

Company Policies

Higher duty

Recognition

Grievance

- Employees,
- Volunteers,
- Patrons

Long Service Leave

Volunteers (?)

No Pets

Gifts and Benefits

Featured State

Code of Conduct

Emergency Services Protocol

Computers

Ticket Policy

Vehicle Usage

Company Credit Card

Duty Statements

Board Member

Qualifications/Skills:

Knowledge and skills in one or more areas of Board governance: policy, finance, programs, and/or personnel.

Term:

Directors are elected at each company AGM and, subject to the requirements of the law and the Constitution, hold office until the following AGM

Requirements:

- Commitment to objectives of the Company (drawn from 5 year plan);
- Agree to abide by the Guiding Principles in the Governance Charter;
- Agree to becoming a Company member;
- Knowledge and skills in areas of professional expertise recognised as relevant by the Board;
- Willingness to serve on committees established by the Board and actively participate;
- Attendance at monthly Board meetings;
- Attendance at Annual General Meeting;
- Be informed of the aims and objectives of the Festival and publicly support them
- Prepare for and participate in the discussions and the deliberations of the Board;
- Be aware of and disclose any conflict of interest at the next available meeting;

Duties

- Govern the Company by the broad policies developed by the Board;
- Collectively establish overall long and short term goals, objectives and priorities for the Festival;
- Recommend policy to the Board;
- Monitor and evaluate the Festival by reviewing the program and services delivered;
- Prepare for and participate in the discussions and the deliberations of the Board;
- Foster a positive working relationship with other Board members, and the staff and volunteers of the festival;
- Act at all times in accordance with the fiduciary responsibilities of Board Members (see attached)
- Be available as a duty manager at the Festival

Additional Requirements for Executive Positions

President

Qualifications/Skills:

Have served on this Board or other similar Boards, and have an understanding of meeting procedures.

Term:

The President is elected from amongst the company members on an annual basis.

Requirements:

- Understand the role of a Chair
- A time commitment of 5-8 hours per month, (includes Board preparation, meeting, committee and meeting time)
- Lead and participate in the discussions and the deliberations of the Board
- Foster a positive working relationship with other Board members, and staff
-

Major Duties:

- Establishes overall long and short term goals, objectives and priorities for the Company
- In collaboration with the Managing Director be a spokesperson for the Company to the media and community at large
- Address Annual General Meeting
- Report to Board on status of major programs
- A signing authority on behalf of the Board for financial and legal purposes
- Represent the organization to Government and officials
- Provide leadership and direction to the Board
- Represent Company at community functions
- In conjunction with the Managing Director set monthly Board meeting agenda
- Enhance relationships with other community groups and agencies
- In conjunction with the Executive provide guidance and leadership
- Ensure Board members receive agenda and minutes in a timely manner
- Ensure Board members adhere to general duties outlined in the board member job description

Vice President

Qualifications/Skills:

Have served on this Board or other similar Boards, and have an understanding of meeting procedures.

Term:

The Vice President is elected from amongst the company members on annual basis.

Requirements:

- A time commitment of five hours per month, (includes Board preparation, committee and meeting time)
- Foster a positive working relationship with other Board members, and staff

Major Duties:

- Fulfill Chair position, in the absence of the Chairperson, at monthly Board meetings
- Be an active member of the Executive
- A signing authority on behalf of the Board for financial and legal purposes

Treasurer**Qualifications:**

Have served on this Board or other similar Boards and have the ability to interpret and give advice on financial matters.

Term:

The Treasurer is elected from amongst the company members on an annual basis.

Requirements:

- Knowledge and skills in one or more areas of Board governance: policy, finance, programs and personnel
- Prepare for and participate in the discussions and the deliberations of the Board

Major Duties:

- Chair the Finance and Audit Committee
- A signing authority on behalf of the Board for financial matters
- Ensure audited financial statements are presented to the Board on an annual basis
- Calls the motion at Annual General Meeting to appoint the Auditor
- Act as a resource to other committees

Secretary**Qualifications/Skills:**

Have served on this Board or other similar Boards and have good oral and written communication skills. Understand statutory reporting requirements.

Requirements:

- Knowledge and skills in one or more area of Board governance: policy, finance, programs and personnel;

Major Duties:

- Ensure preparation and maintenance of minutes and records for all board meetings;
- Ensure statutory requirements are met;
- Review/monitor and verify accuracy of the minutes of Board meetings, and ensure they are circulated to all Directors;

New Board Member Induction Kit

Documentation

- Most current annual report
- Constitution
- Most recent audited financial statement
- Business plan and budget
- Governance Charter
- A list of other current board members, titles and all affiliations and latest contact details
- Staff organisation chart
- copies of any current NFF publications.
- Board and Committee structure

National Privacy Principles.

1 Collection

- 1.1 An organisation must not collect personal information unless the information is necessary for one or more of its functions or activities.
- 1.2 An organisation must collect personal information only by lawful and fair means and not in an unreasonably intrusive way.
- 1.3 At or before the time (or, if that is not practicable, as soon as practicable after) an organisation collects personal information about an individual from the individual, the organisation must take reasonable steps to ensure that the individual is aware of:
 - (a) the identity of the organisation and how to contact it; and
 - (b) the fact that he or she is able to gain access to the information; and
 - (c) the purposes for which the information is collected; and
 - (d) the organisations (or the types of organisations) to which the organisation usually discloses information of that kind; and
 - (e) any law that requires the particular information to be collected; and
 - (f) the main consequences (if any) for the individual if all or part of the information is not provided.
- 1.4 If it is reasonable and practicable to do so, an organisation must collect personal information about an individual only from that individual.
- 1.5 If an organisation collects personal information about an individual from someone else, it must take reasonable steps to ensure that the individual is or has been made aware of the matters listed in subclause 1.3 except to the extent that making the individual aware of the matters would pose a serious threat to the life or health of any individual.

2 Use and disclosure

- 2.1 An organisation must not use or disclose personal information about an individual for a purpose (the **secondary purpose**) other than the primary purpose of collection unless:
 - (a) both of the following apply:
 - (i) the secondary purpose is related to the primary purpose of collection and, if the personal information is sensitive information, directly related to the primary purpose of collection;
 - (ii) the individual would reasonably expect the organisation to use or disclose the information for the secondary purpose; or
 - (b) the individual has consented to the use or disclosure; or
 - (c) if the information is not sensitive information and the use of the information is for the secondary purpose of direct marketing:
 - (i) it is impracticable for the organisation to seek the individual's consent before that particular use; and
 - (ii) the organisation will not charge the individual for giving effect to a request by the individual to the organisation not to receive direct marketing communications; and
 - (iii) the individual has not made a request to the organisation not to receive direct marketing communications; and
 - (iv) in each direct marketing communication with the individual, the organisation draws to the individual's attention, or prominently displays a

- notice, that he or she may express a wish not to receive any further direct marketing communications; and
- (v) each written direct marketing communication by the organisation with the individual (up to and including the communication that involves the use) sets out the organisation's business address and telephone number and, if the communication with the individual is made by fax, telex or other electronic means, a number or address at which the organisation can be directly contacted electronically; or
- (d) if the information is health information and the use or disclosure is necessary for research, or the compilation or analysis of statistics, relevant to public health or public safety:
 - (i) it is impracticable for the organisation to seek the individual's consent before the use or disclosure; and
 - (ii) the use or disclosure is conducted in accordance with guidelines approved by the Commissioner under section 95A for the purposes of this subparagraph; and
 - (iii) in the case of disclosure—the organisation reasonably believes that the recipient of the health information will not disclose the health information, or personal information derived from the health information; or
 - (e) the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent:
 - (i) a serious and imminent threat to an individual's life, health or safety; or
 - (ii) a serious threat to public health or public safety; or
 - (ea) if the information is genetic information and the organisation has obtained the genetic information in the course of providing a health service to the individual:
 - (i) the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety (whether or not the threat is imminent) of an individual who is a genetic relative of the individual to whom the genetic information relates; and
 - (ii) the use or disclosure is conducted in accordance with guidelines approved by the Commissioner under section 95AA for the purposes of this subparagraph; and
 - (iii) in the case of disclosure—the recipient of the genetic information is a genetic relative of the individual; or
 - (f) the organisation has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the personal information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities; or
 - (g) the use or disclosure is required or authorised by or under law; or
 - (h) the organisation reasonably believes that the use or disclosure is reasonably necessary for one or more of the following by or on behalf of an enforcement body:
 - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law;
 - (ii) the enforcement of laws relating to the confiscation of the proceeds of crime;
 - (iii) the protection of the public revenue;
 - (iv) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct;
 - (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal.

Note 1: It is not intended to deter organisations from lawfully co-operating with agencies performing law enforcement functions in the performance of their functions.

Note 2: Subclause 2.1 does not override any existing legal obligations not to disclose personal information. Nothing in subclause 2.1 requires an organisation to disclose personal information; an organisation is always entitled not to disclose personal information in the absence of a legal obligation to disclose it.

Note 3: An organisation is also subject to the requirements of National Privacy Principle 9 if it transfers personal information to a person in a foreign country.

- 2.2 If an organisation uses or discloses personal information under paragraph 2.1(h), it must make a written note of the use or disclosure.
- 2.3 Subclause 2.1 operates in relation to personal information that an organisation that is a body corporate has collected from a related body corporate as if the organisation's primary purpose of collection of the information were the primary purpose for which the related body corporate collected the information.
- 2.4 Despite subclause 2.1, an organisation that provides a health service to an individual may disclose health information about the individual to a person who is responsible for the individual if:
- (a) the individual:
 - (i) is physically or legally incapable of giving consent to the disclosure; or
 - (ii) physically cannot communicate consent to the disclosure; and
 - (b) a natural person (the **carer**) providing the health service for the organisation is satisfied that either:
 - (i) the disclosure is necessary to provide appropriate care or treatment of the individual; or
 - (ii) the disclosure is made for compassionate reasons; and
 - (c) the disclosure is not contrary to any wish:
 - (i) expressed by the individual before the individual became unable to give or communicate consent; and
 - (ii) of which the carer is aware, or of which the carer could reasonably be expected to be aware; and
 - (d) the disclosure is limited to the extent reasonable and necessary for a purpose mentioned in paragraph (b).
- 2.5 For the purposes of subclause 2.4, a person is **responsible** for an individual if the person is:
- (a) a parent of the individual; or
 - (b) a child or sibling of the individual and at least 18 years old; or
 - (c) a spouse or de facto spouse of the individual; or
 - (d) a relative of the individual, at least 18 years old and a member of the individual's household; or
 - (e) a guardian of the individual; or
 - (f) exercising an enduring power of attorney granted by the individual that is exercisable in relation to decisions about the individual's health; or
 - (g) a person who has an intimate personal relationship with the individual; or
 - (h) a person nominated by the individual to be contacted in case of emergency.

2.6 In subclause 2.5:

child of an individual includes an adopted child, a step-child and a foster-child, of the individual.

parent of an individual includes a step-parent, adoptive parent and a foster-parent, of the individual.

relative of an individual means a grandparent, grandchild, uncle, aunt, nephew or niece, of the individual.

sibling of an individual includes a half-brother, half-sister, adoptive brother, adoptive sister, step-brother, step-sister, foster-brother and foster-sister, of the individual.

3 Data quality

An organisation must take reasonable steps to make sure that the personal information it collects, uses or discloses is accurate, complete and up-to-date.

4 Data security

- 4.1 An organisation must take reasonable steps to protect the personal information it holds from misuse and loss and from unauthorised access, modification or disclosure.
- 4.2 An organisation must take reasonable steps to destroy or permanently de-identify personal information if it is no longer needed for any purpose for which the information may be used or disclosed under National Privacy Principle 2.

5 Openness

- 5.1 An organisation must set out in a document clearly expressed policies on its management of personal information. The organisation must make the document available to anyone who asks for it.
- 5.2 On request by a person, an organisation must take reasonable steps to let the person know, generally, what sort of personal information it holds, for what purposes, and how it collects, holds, uses and discloses that information.

6 Access and correction

- 6.1 If an organisation holds personal information about an individual, it must provide the individual with access to the information on request by the individual, except to the extent that:
 - (a) in the case of personal information other than health information—providing access would pose a serious and imminent threat to the life or health of any individual; or
 - (b) in the case of health information—providing access would pose a serious threat to the life or health of any individual; or
 - (c) providing access would have an unreasonable impact upon the privacy of other individuals; or
 - (d) the request for access is frivolous or vexatious; or
 - (e) the information relates to existing or anticipated legal proceedings between the organisation and the individual, and the information would not be accessible by the process of discovery in those proceedings; or
 - (f) providing access would reveal the intentions of the organisation in relation to negotiations with the individual in such a way as to prejudice those negotiations; or
 - (g) providing access would be unlawful; or
 - (h) denying access is required or authorised by or under law; or
 - (i) providing access would be likely to prejudice an investigation of possible unlawful activity; or
 - (j) providing access would be likely to prejudice:
 - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law; or

- (ii) the enforcement of laws relating to the confiscation of the proceeds of crime; or
 - (iii) the protection of the public revenue; or
 - (iv) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct; or
 - (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of its orders;
 - by or on behalf of an enforcement body; or
 - (k) an enforcement body performing a lawful security function asks the organisation not to provide access to the information on the basis that providing access would be likely to cause damage to the security of Australia.
- 6.2 However, where providing access would reveal evaluative information generated within the organisation in connection with a commercially sensitive decision-making process, the organisation may give the individual an explanation for the commercially sensitive decision rather than direct access to the information.
- Note: An organisation breaches subclause 6.1 if it relies on subclause 6.2 to give an individual an explanation for a commercially sensitive decision in circumstances where subclause 6.2 does not apply.
- 6.3 If the organisation is not required to provide the individual with access to the information because of one or more of paragraphs 6.1(a) to (k) (inclusive), the organisation must, if reasonable, consider whether the use of mutually agreed intermediaries would allow sufficient access to meet the needs of both parties.
- 6.4 If an organisation charges for providing access to personal information, those charges:
- (a) must not be excessive; and
 - (b) must not apply to lodging a request for access.
- 6.5 If an organisation holds personal information about an individual and the individual is able to establish that the information is not accurate, complete and up-to-date, the organisation must take reasonable steps to correct the information so that it is accurate, complete and up-to-date.
- 6.6 If the individual and the organisation disagree about whether the information is accurate, complete and up-to-date, and the individual asks the organisation to associate with the information a statement claiming that the information is not accurate, complete or up-to-date, the organisation must take reasonable steps to do so.
- 6.7 An organisation must provide reasons for denial of access or a refusal to correct personal information.

7 Identifiers

- 7.1 An organisation must not adopt as its own identifier of an individual an identifier of the individual that has been assigned by:
- (a) an agency; or
 - (b) an agent of an agency acting in its capacity as agent; or
 - (c) a contracted service provider for a Commonwealth contract acting in its capacity as contracted service provider for that contract.
- 7.1A However, subclause 7.1 does not apply to the adoption by a prescribed organisation of a prescribed identifier in prescribed circumstances.
- Note: There are prerequisites that must be satisfied before those matters are prescribed: see subsection 100(2).

7.2 An organisation must not use or disclose an identifier assigned to an individual by an agency, or by an agent or contracted service provider mentioned in subclause 7.1, unless:

- (a) the use or disclosure is necessary for the organisation to fulfil its obligations to the agency; or
- (b) one or more of paragraphs 2.1(e) to 2.1(h) (inclusive) apply to the use or disclosure; or
- (c) the use or disclosure is by a prescribed organisation of a prescribed identifier in prescribed circumstances.

Note: There are prerequisites that must be satisfied before the matters mentioned in paragraph (c) are prescribed: see subsections 100(2) and (3).

7.3 In this clause:

identifier includes a number assigned by an organisation to an individual to identify uniquely the individual for the purposes of the organisation's operations. However, an individual's name or ABN (as defined in the *A New Tax System (Australian Business Number) Act 1999*) is not an **identifier**.

8 Anonymity

Wherever it is lawful and practicable, individuals must have the option of not identifying themselves when entering transactions with an organisation.

9 Transborder data flows

An organisation in Australia or an external Territory may transfer personal information about an individual to someone (other than the organisation or the individual) who is in a foreign country only if:

- (a) the organisation reasonably believes that the recipient of the information is subject to a law, binding scheme or contract which effectively upholds principles for fair handling of the information that are substantially similar to the National Privacy Principles; or
- (b) the individual consents to the transfer; or
- (c) the transfer is necessary for the performance of a contract between the individual and the organisation, or for the implementation of pre-contractual measures taken in response to the individual's request; or
- (d) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the individual between the organisation and a third party; or
- (e) all of the following apply:
 - (i) the transfer is for the benefit of the individual;
 - (ii) it is impracticable to obtain the consent of the individual to that transfer;
 - (iii) if it were practicable to obtain such consent, the individual would be likely to give it; or
- (f) the organisation has taken reasonable steps to ensure that the information which it has transferred will not be held, used or disclosed by the recipient of the information inconsistently with the National Privacy Principles.

10 Sensitive information

10.1 An organisation must not collect sensitive information about an individual unless:

- (a) the individual has consented; or
- (b) the collection is required by law; or

- (c) the collection is necessary to prevent or lessen a serious and imminent threat to the life or health of any individual, where the individual whom the information concerns:
 - (i) is physically or legally incapable of giving consent to the collection; or
 - (ii) physically cannot communicate consent to the collection; or
- (d) if the information is collected in the course of the activities of a non-profit organisation—the following conditions are satisfied:
 - (i) the information relates solely to the members of the organisation or to individuals who have regular contact with it in connection with its activities;
 - (ii) at or before the time of collecting the information, the organisation undertakes to the individual whom the information concerns that the organisation will not disclose the information without the individual's consent; or
- (e) the collection is necessary for the establishment, exercise or defence of a legal or equitable claim.

10.2 Despite subclause 10.1, an organisation may collect health information about an individual if:

- (a) the information is necessary to provide a health service to the individual; and
- (b) the information is collected:
 - (i) as required or authorised by or under law (other than this Act); or
 - (ii) in accordance with rules established by competent health or medical bodies that deal with obligations of professional confidentiality which bind the organisation.

10.3 Despite subclause 10.1, an organisation may collect health information about an individual if:

- (a) the collection is necessary for any of the following purposes:
 - (i) research relevant to public health or public safety;
 - (ii) the compilation or analysis of statistics relevant to public health or public safety;
 - (iii) the management, funding or monitoring of a health service; and
- (b) that purpose cannot be served by the collection of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained; and
- (c) it is impracticable for the organisation to seek the individual's consent to the collection; and
- (d) the information is collected:
 - (i) as required by law (other than this Act); or
 - (ii) in accordance with rules established by competent health or medical bodies that deal with obligations of professional confidentiality which bind the organisation; or
 - (iii) in accordance with guidelines approved by the Commissioner under section 95A for the purposes of this subparagraph.

10.4 If an organisation collects health information about an individual in accordance with subclause 10.3, the organisation must take reasonable steps to permanently de-identify the information before the organisation discloses it.

10.5 In this clause:

non-profit organisation means a non-profit organisation that has only racial, ethnic, political, religious, philosophical, professional, trade, or trade union aims.