OCHRE: Good Governance Guidelines
Glossary

Capacity Strengthening Policy: The Policy has been developed to guide the negotiation of capacity strengthening strategies and to assist with identifying resources for investment.


Local Decision Making Accord Process: The document sets out the process for commencing and negotiating an Accord.


NSW Government Phase 1 Accord Readiness Self-Assessment: The Self-Assessment sets out the minimum level of awareness and basic understanding that NSW Government agencies and their representatives will need to participate in Phase 1 Local Decision Making Accord negotiations.

Premiers Memorandum: Local Decision Making M2015-01: The Memorandum directs NSW Government agencies to work respectfully, constructively and cooperatively with Aboriginal regional alliances, to develop Accords.

Regional Alliance Phase 1 Accord Readiness Self-Assessment: The Self-Assessment sets out the key governance principles regional alliances must meet, or have achieved substantial progress towards, before commencing Phase 1 Local Decision Making Accord negotiations.
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Good Governance Guidelines

Introduction

The OCHRE Good Governance Guidelines (the Guidelines) are intended to assist the NSW Government and Aboriginal regional alliances to work together to strengthen Aboriginal community governance capacity.

The Guidelines provide a transparent pathway for progressing through the LDM phases and are based on research undertaken by the Centre for Aboriginal Economic Policy Research (CAEPR). The Guidelines incorporate prerequisite good governance principles that must be met before regional alliances can progress through each phase of LDM.

Exactly how regional alliances demonstrate each good governance principle is up to each alliance. However, before the NSW Government can transfer greater decision-making authority to regional alliances it must be satisfied that they are operating in accordance with good governance principles.

Purpose

The Guidelines have been developed to:

- Assist with strengthening and assessing regional alliances’ governance capacity and their readiness to progress through each phase of LDM;
- Inform strategies for investing in governance capacity development;
- Guide whole of NSW Government resourcing and the delegation of decision making responsibility; and
- Monitor the impact that the governance environment and governance of government have on regional alliances.

The Guidelines provide:

- An overview of the Good Governance Principles; and
- A description of good governance in the context of Local Decision Making;

Local Decision Making is an iterative process and the Good Governance Guidelines will be adapted and updated regularly to reflect learnings as the initiative rolls out.

Good Governance Principles

The Guidelines include the following good governance principles:

- **Power** - its scope, issues and areas of decision-making, its relationship with other governance bodies, institutions and government;
- **Leadership** - how leaders and decision-makers are selected, monitored, held accountable and replaced;
- **Decision-making** - committee processes, decision-making rules, documentation of decisions;
- **Cultural geography and legitimacy** - how cultural values are asserted and protected, how power and authority are shared, arrangements for member communities to inform their values and power sharing
- **Strategic direction** - a long-term perspective on social, economic and cultural development and what is needed for such development;
- **Participation and voice** – how member Aboriginal communities are involved in regional alliance decision-making; and
Good Governance Guidelines

- **Accountability** - internal and external, including the control of corruption and political lobbying.
- **Resource governance** - management of resources and economic development;
- **Organisational performance** - how governance structures and goals are established and reviewed, organisational capacity to formulate and deliver policies and services to meet need for transparency, and for stability, innovation and risk management.
- **The ‘governance of government’** - government’s capacity to formulate and implement enabling policy and service delivery guidelines, funding mechanisms, downwards accountability;
- **The governance environment** - the relationships with external parties, impact of wider regional, state and national environment; and
- **Governance capacity development** - processes for, relevance and outcomes.

The diversity of circumstances in Aboriginal communities suggests that there will not be a ‘one size fits all’ model of ‘good governance’ for LDM. When assessing regional alliances governance in accordance with the good governance principles the following important parameters should be considered:\(^1\):

- they are not a magic checklist, but an ideal that people can work towards;
- no society or government in the world has fully attained them;
- they have important cultural foundations that will determine how they play out in practice;
- they overlap and sometimes reinforce each other;
- judgement and balance need to be used in their application;
- they require both qualitative and quantitative evidence;
- Aboriginal and non-Aboriginal views and expectations need to be investigated; and
- practical, simple measures need to be identified that can be used by leaders, organisations and governments.

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\(^1\) Smith, 2005, pp.22.
Good Governance in the context of Local Decision Making

Governance of regional alliances

- **Establishment and Start Up**  →  **Advisory Delegation (Phase 1)**

Prior to Phase 1 Accord negotiations each regional alliance will need to work out how their regional alliance will run and make decisions, including how they will be accountable to the broader community. As part of this work the regional alliance will need to demonstrate power, leadership, decision-making, and cultural geography and legitimacy.

- **Advisory Delegation (Phase 1)**  →  **Planning Delegation (Phase 2)**

If a regional alliance decides it wants to progress to Phase 2 of LDM this will need to be outlined in the Phase 1 Accord. Before they can progress to Phase 2 the regional alliance will need demonstrate strategic direction, participation and voice, and accountability.

- **Planning Delegation (Phase 2)**  →  **Implementation Delegation (Phase 3)**

If a regional alliance decides it wants to progress to the Phase 3 of LDM this will need to be outlined in the Phase 2 Accord. Before they can progress to Phase 3 the regional alliance will need to demonstrate resource governance and organisational performance.
Governance of government

NSW Government agencies will need to strengthen their capacity to formulate policy and service delivery guidelines, and implement downwards accountability and funding mechanisms which are flexible and responsive to the needs of regional alliances, whilst recognising Aboriginal leadership and decision-making.

The Premiers Memorandum: Local Decision Making M2015-01 sets out the requirements for NSW Government agencies with respect to Local Decision Making. It requires senior officers with sufficient delegation and authority to work openly, constructively and collaboratively with regional alliances to achieve positive outcomes, including through service innovation, in response to the needs of Aboriginal communities. Aboriginal Affairs has also developed a Self-Assessment for the NSW Government which sets out the minimum level of awareness and basic understanding that NSW Government agencies and their representatives will need to participate in Phase 1 Accord negotiations. The Self-Assessment includes a number of key practice indicators, which cover:

- Building Trust
- Time Frames
- Understanding Aboriginal Ways
- Partnerships and Project Management
- Managing costs

Prior to Accord negotiations commencing, the NSW Government will need to demonstrate its readiness to commence Accord negotiations. This includes that they meet or have made substantial progress toward meeting requirements set out in the Premier's Memorandum and the NSW Government Phase 1 Accord: Readiness Self-Assessment.

As a part of Accord negotiations, NSW Government agencies and regional alliances will need to negotiate capacity strengthening strategies and identify resources to ensure regional alliances are able to meet prerequisite good governance principles and that government is flexible and responsive to the needs of regional alliances.

The Capacity Strengthening Policy sets out an approach for defining, implementing and monitoring capacity strengthening strategies as a part of LDM.

The governance environment

Regional alliances do not exist in isolation, but are “situated within a wider, inter-connected ‘governance environment’ that spreads across local, regional, state and national levels”. The wider governance environment will have major, ongoing impacts on the role and effectiveness of regional alliances.

LDM includes a whole-of-government accountability framework (outlined in the Local Decision Making Policy & Operational Framework) designed to facilitate change and flexibility, and ensure that government is not overly bureaucratic.

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Continuum of Good Governance Principles

The Guidelines incorporate an extensive continuum of good governance principles as outlined in the preceding sections. The diagram below outlines which governance principles have been coupled with each phase of LDM. The Guidelines require that regional alliances demonstrate specific governance principles and capacity before transitioning from:

- Establishment and start up;
- Advisory delegation;
- Planning delegation; and
- Implementation delegation.

It is important to note that these governance principles will apply to and carry over each phase of LDM. The Guidelines are designed to support development through each phase of LDM by focusing on specific governance principles, not at the exclusion of all others. Governance capacity development, the governance environment and the governance of government in particular, will cut across each phase of LDM and may support (or constrain) regional alliances efforts to strengthen their regional alliances governance arrangements.

LDM includes a whole-of-government accountability framework (outlined in the *Local Decision Making Policy & Operational Framework*), and performance standards are being developed, to ensure the governance environment, including government itself, is flexible and responsive to the needs of regional alliances, and recognises Aboriginal leadership and decision-making.
Advisory Delegation (Phase 1)

- Power
- Decision Making
- Cultural Geography and Legitimacy
- Leadership

Advisory Delegation (Phase 1)
<table>
<thead>
<tr>
<th>Principle</th>
<th>What is it?</th>
<th>How could it be measured?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Power</strong></td>
<td>Scope of decision making; local/community, regional and national.</td>
<td>Regional alliances could undertake a network mapping exercise to map their relationships to/with other Aboriginal governance bodies in the region.</td>
</tr>
<tr>
<td></td>
<td>Issues/areas of decision making responsibility.</td>
<td>Regional alliances could examine their existing arrangements and decide what’s ‘in’ and ‘out’ of scope for their regional alliance.</td>
</tr>
<tr>
<td></td>
<td>Relationship to/with other Aboriginal governance bodies and Australian governments and institutions (Commonwealth, State and Local)</td>
<td>Regional alliances could negotiate with other Aboriginal governance bodies in the region to determine who should have responsibility for different issues and how they will relate.</td>
</tr>
<tr>
<td><strong>Leadership</strong></td>
<td>Regional alliance membership/composition, and members roles, responsibilities and authorities.</td>
<td>A Terms of Reference / Charter of Governance could demonstrate the principles of leadership, decision making and cultural geography and legitimacy.</td>
</tr>
<tr>
<td></td>
<td>Regional alliance functions including monitoring, risk management, compliance, networking, stakeholder communication, decision making.</td>
<td></td>
</tr>
<tr>
<td><strong>Decision making</strong></td>
<td>Regional alliance processes including the conduct of meetings, decision-making rules, documentation of decisions, papers and the role and function of sub-committees (i.e. negotiating panel).</td>
<td></td>
</tr>
<tr>
<td><strong>Cultural geography and legitimacy</strong></td>
<td>Regional alliances establish culturally legitimate governance rules and policies which: • Assert and protect their values; • Reflect their ideas about how power and authority should be shared; and • Demonstrate the support of their communities, who have informed their values and power sharing</td>
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</table>

**Tools:**
The following tools from the Indigenous Governance Toolkit may assist regional alliances to develop a Terms of Reference / Charter of Governance:
- Governance Reference Manual
- Check Up: Your Leadership Health
- Check Up: Cultural Rules and Policies
- Conflict of Interest
<table>
<thead>
<tr>
<th>Principle</th>
<th>What is it?</th>
<th>How could it be measured?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participation and voice</td>
<td>Regional alliances involvement in decision-making, its relationship to members and the Aboriginal community, and other Australian governments and institutions</td>
<td>A Communication and Community Engagement Strategy could be developed and attached to demonstrate participation and voice. Regional alliances may also consult their members and Aboriginal communities on the development of their Strategic Plan.</td>
</tr>
</tbody>
</table>
| Accountability         | Regional alliances meet the standards of behaviour, financial transparency, reporting and decision making required under their legal constitution/charter of governance; and Regional alliances show proper respect to their members and elders through their decisions and how they behave. | Regional alliances could conduct a review of their accountability arrangements. Tools: The following tools from the Indigenous Governance Toolkit may assist regional alliances to establish accountability arrangements:  
- Good practices for governing bodies  
- Check Up: Accountability |
| Strategic direction     | A roadmap outlining:  
- objectives;  
- how they will be accomplished,  
- what resources are required; and a  
- general scheme of how regional alliances will work. | Regional alliances could work on developing a Strategic Plan throughout Phase 1. Tools:  
The following tools from the Indigenous Governance Toolkit may assist regional alliances to develop a Strategic Plan:  
- Basic steps in strategic planning  
- SWOT Analysis (optional) |
Regional Alliance Phase 1 Accord
Readiness Self-Assessment

Before negotiating Accords Aboriginal regional alliances and NSW Government agencies are required to demonstrate their Accord readiness. Regional alliances will need to work out how their regional alliance will run and make decisions, including how they will be accountable to the broader community. Each regional alliance will need to demonstrate power, leadership, decision-making, and cultural geography and legitimacy before commencing Advisory Delegation (Phase 1) Accord negotiations for LDM.

As outlined in the Local Decision Making: Accord Process, once regional alliances determine they are ready to commence Phase 1 Accord negotiations, they will need to complete this self-assessment outlining how they have met, or have achieved substantial progress towards, the good governance principles for Phase 1 Accord negotiations. Written or other information should be included to support the self-assessment including: Terms of Reference or Constitution, operating procedures and policies.

Power

☐ **Scope of decision making - local/community or regional**
  
  Does the regional alliance have the authority to make decisions?

  (Regional alliances need to be clear whether they make decisions at a local or regional level, and how they have negotiated this authority with member communities/organisations)

☐ **Issues/areas of decision making responsibility and any issues/areas where they have no decision-making responsibility**
  
  Does the regional alliance have a legitimate role in making decisions on these issues or areas?

☐ **Relationship to/with other Aboriginal governance bodies within their region who are not members of the Alliance and any informal/formal relationships with other levels of government e.g. Commonwealth and Local Government**

  Are there duplications or unworkable overlaps with existing groups or bodies?

Leadership

☐ **Definition of regional alliance membership/composition**

  Is the regional alliance structure inclusive of its constituent communities/organisations?

  Are there transparent nomination and selections processes including eligibility requirements?

  Are there clear rules about what circumstances would exclude membership?

☐ **Members’ roles, responsibilities, authorities and codes of conduct**

  Are there clear rules about members expected roles and behaviours so that constituents’ and government can maintain confidence in the regional alliance?

☐ **Functions of the regional alliance including management of formal complaints and dispute resolution, monitoring, stakeholder communication and decision making**

  Are there complaints management and dispute resolution processes?
Are there processes to keep members accountable to other members and their constituents?
Will member communities/organisations be updated about activities and be able to have input along the way?

Decision making

☐ **Conduct of meeting rules**
   Does the Terms of Reference/Charter of Governance outline rules about the conduct of meetings?

☐ **Decision-making rules including management of conflicts of interest**
   Does the Terms of Reference/Charter of Governance outline how decisions will be made e.g. by majority rule or consensus rule?

☐ **Documentation and communication of decisions and meeting papers**
   Are there processes in place for documenting and communicating meeting decisions?

☐ **Role and function of any sub-committees (i.e. negotiating panel or implementation groups)**
   Does the Terms of Reference/Charter of Governance outline how sub-committees can form?
   Do sub-committees have their own Terms of Reference/Charter of Governance?

Cultural geography and legitimacy

☐ **Assert and protect their values**
   Does the Terms of Reference/Charter of Governance reflect the culture and values of member communities/organisations?

☐ **Reflect their ideas about how power and authority should be shared**
   Has the Terms of Reference/Charter of Governance be developed in consultation with member communities/organisations?
   Does the Terms of Reference/Charter of Governance outline how member communities/organisations are engaged in decision making and priority setting?
NSW Government Phase 1 Accord Readiness Self-Assessment

Before negotiating Accords Aboriginal regional alliances and NSW Government departments and agencies are required to demonstrate their Accord readiness. NSW Government departments and agencies will need to ensure that they meet their obligations, in respect to Local Decision Making, as set out in the Local Decision Making Premier’s Memorandum (M2015-01) and the Good Governance Guidelines.

As outlined in the Local Decision Making: Accord Process, once the NSW Government is notified that a regional alliance is ready to commence Phase 1 Accord negotiations it will need to complete this self-assessment form outlining how it has met, or has achieved substantial progress towards, meeting its governance obligations as set out in the Local Decision Making Premier’s Memorandum (M2015-01), and the Good Governance Guidelines. Written or other material should be attached to support the self-assessment.

Each department and its agency will need to demonstrate key practice indicators before commencing Advisory Delegation (Phase 1) Accord negotiations for Local Decision Making. It is expected that NSW Government representatives who are engaging with Aboriginal regional alliances will be aware of and have current information on Aboriginal specific matters in the relevant region and will be conversant with the agreed approach for engaging with Aboriginal regional alliances.

The following key practice indicators set out the minimum level of awareness and basic understanding that NSW Government agencies and their representatives will need to participate in the Local Decision Making Accord negotiation process.

### Building Trust

Trust is a common Aboriginal theme. It is tied in with the history of the colonisation of Australia and the resultant life experiences of Aboriginal Australians and their place in Australian society. Developing a trusting relationship between Aboriginal regional alliances and the NSW Government is critical to ensure that a long term, respectful, robust and mutually beneficial relationship is established between each group.

- **Observe appropriate cultural and decision making protocols**
  
  Observing appropriate cultural and decision making protocols when working with Aboriginal Australians and their communities is critical to establishing positive and respectful relationships.

  Negotiating with Aboriginal regional alliances should always be seen as a two-way process, with both parties learning together and from each other.

- **Ensure sufficient delegation and authority**
  
  NSW Government engagement with Aboriginal regional alliances is to be conducted by senior officers with sufficient delegation and authority. Agencies will need to identify who is going to be at the negotiation table on their behalf.

  NSW Government representatives must:
  
  - have the seniority, authority and delegation of their agency to negotiate outcomes.
  - be clear on their delegation and their agency “negotiation envelope”.
  - be available and willingly to invest time and energy in the negotiation process.
• be informed and understand the intent and purpose of Local Decision Making and the Accord, and their obligations under the Premier’s Memorandum
• have their due diligence processes sorted in terms of reporting back with their respective agencies/cluster as the negotiations progress.

☐ **Provide Aboriginal regional alliances with sufficient information and data**

In the early stages of the Accord negotiation process it is important to explore issues or ideas and this means sharing information and data with Aboriginal regional alliances. Agencies hold a wealth of information and data, and Aboriginal regional alliances find this particularly helpful in developing an understanding of how programs are funded and managed, and what services are available and where.

Agencies need to come prepared to share information and be open to being questioned and challenged. If NSW Government agencies cannot share information and data, representatives must be able to explain why.

☐ **Provide Aboriginal regional alliances with the opportunity to become an involved and equal partner**

Providing Aboriginal regional alliances with the opportunity to become involved in the Accord process will give authenticity to local and regional Aboriginal perspectives.

NSW Government representatives will also benefit from encouraging Aboriginal people to share their knowledge and life stories – particularly where this may relate to something which has occurred directly within an agency’s service delivery area.

NSW Government agencies and representatives should come to the table and see Aboriginal regional alliances as equivalent and equal parties.

**Time Frames**

It is important to understand that members of Aboriginal regional alliances who are invited to participate in the Accord process may have a number of other responsibilities they are already committed to. One of the major failings of consultation processes involving Aboriginal communities is not allowing sufficient time for a consultation to occur.

☐ **Set realistic timelines for the Accord negotiation process**

NSW Government representatives must recognise that members of Aboriginal regional alliances often have competing priorities and should ensure that sufficient time is set aside to account for this.

Together the NSW Government and Aboriginal regional alliances will need to agree on a timeline for the Accord negotiation process.

☐ **Afford Aboriginal regional alliances sufficient opportunities to engage**

NSW Government representatives must also ensure that members of Aboriginal regional alliances are afforded sufficient opportunities to engage in the Accord process.

Together the NSW Government and Aboriginal regional alliances will need to agree on a negotiation process, including what, where and when and then commit to turning up.

**Understanding Aboriginal Ways**

A major issue for Aboriginal regional alliances is the effort it takes to explain or answer all of the questions that may be asked during the negotiation process about Aboriginal culture, values, beliefs and lifestyles.

☐ **Knowledge of the circumstances and factors impacting on Aboriginal community members and stakeholders in the relevant location**
It is critically important that people participating in the Accord negotiation process have some knowledge of the circumstances and factors impacting Aboriginal community members and stakeholders who they are negotiating with.

Non-Aboriginal people participating in the Accord process should, as a minimum, have participated in an Aboriginal Cultural Awareness Training session as a starting point.

☐ **Understanding of Aboriginal regional alliances priority areas**

NSW Government representatives need to read and understand the Statements of Claim, prepared by Aboriginal regional alliances, and come prepared in terms of information and proposals. This includes consulting and liaising with key people within the agency, and other agencies if necessary, before negotiations commence.

**Partnerships and Project Management**

A key outcome from the Accord negotiations is to ensure there is transparency in the process. It is important to ensure there are clearly defined and agreed partnership opportunities to add value to and build on the negotiated Accord commitments.

☐ **Ensure partnership opportunities are clearly defined and agreed**

It is important to ensure that the Accord process includes opportunities for the Aboriginal regional alliance to have input into decision making and to come together with the NSW Government as an equal partner.

The NSW Government and Aboriginal regional alliances will together select and engage an independent facilitator to facilitate opportunities for partnership throughout the Accord negotiation process.

☐ **Nominate a key contact/lead for the NSW Government**

It is useful in the negotiations to have a lead negotiator or a lead contact for each party. This simplifies communication and decision-making in terms of small issues and allows for a single point of contact.

☐ **Adopt and implement agreed negotiation principles**

It is important that negotiation principles are negotiated and agreed between both the NSW Government and Aboriginal regional alliances at the commencement of the Accord negotiation process.

☐ **Explore different options and new ways of doing business**

NSW Government representatives must be willingly to explore options and reach positive outcomes. The Accord negotiations are not the place to simply rehash what work agencies are already doing – it is the opportunity to be innovative. The Accord process is about exploring new ideas and different ways of doing business.

**Managing costs**

One of the common assumptions made in consultation processes is that Aboriginal people will give freely of their time to be involved in a project interview, workshop or conference. In many instances, an Aboriginal person will have to consider what the financial cost is to them personally to provide input into or set aside time to be involved in a consultation process.

☐ **Factor in costs associated with the negotiation process for Aboriginal regional alliances**

Costs that should be considered include travel costs parking fees, catering costs, equipment and materials.
Resources

Below is a list of documents and resources that may assist regional alliances to strengthen their governance arrangements and processes.

Factsheet:

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<th>Title</th>
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<tr>
<td>Complaints &amp; Dispute Resolution</td>
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Check-up:

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<tr>
<td>Effective legitimate governance</td>
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<tr>
<td>An overall governance health check</td>
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<tr>
<td>The qualities of effective leaders</td>
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<td>Your leadership health</td>
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<tr>
<td>When is there a conflict of interest?</td>
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<td>Are your processes accountable?</td>
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<tr>
<td>How do we manage change?</td>
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<tr>
<td>Our governance policies and rules</td>
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<tr>
<td>Signs of management problems in your organisation</td>
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<tr>
<td>Our dispute resolution processes</td>
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What can we do?

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<tr>
<th>Title</th>
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<tbody>
<tr>
<td>Mapping community assets for governance</td>
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<tr>
<td>Strengthening community governance</td>
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<td>Organisational governance</td>
</tr>
<tr>
<td>Seven steps to evaluation</td>
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<td>Mapping your governance history</td>
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<tr>
<td>Strategies for succession planning</td>
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<td>Good practices for governing bodies</td>
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<td>Decision making processes</td>
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<td>The basic steps in strategic planning</td>
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<tr>
<td>Cultural legitimacy in governance rules and policies</td>
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<tr>
<td>Steps to develop effective policies</td>
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<tr>
<td>Building a strong internal culture in our organisation</td>
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<tr>
<td>A conflict analysis tool</td>
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</tbody>
</table>
Solving the dispute as a group
Stakeholder analysis
Improving our networking

Template:

Title
Governance development and action plan
Decision making
SWOT Analysis
Governance development and action plan
List of contents for a governance reference manual
Meeting agenda
Decision making
Progress report on actions
Sample minutes
A policy
List of contents for a governance reference manual
Monitoring our governance environment
Our governance stakeholder influence
Mapping your governance history
Governance development and action plan
References

