
March 2021

GOVERNANCE MODEL AND LEGAL FRAMEWORK

**BACKGROUND DESKTOP RESEARCH DOCUMENT
TO NDRP GOVERNANCE ISSUES PAPER**

National Disability Research Partnership

Background research by
NDRP Working Party

For the purpose of
providing background information to proposals set out in the
National Disability Research Partnership (NDRP) Governance
Issues Paper



NDRP

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Acknowledgements

The NDRP Working Party would like to thank the following people for their generous advice, sharing of knowledge and input to this governance review.

- Heather Nancarrow, CEO of Australia’s National Research Organisation for Women’s Safety (ANROWS)
- Penny Daikin, CEO of Australian Research Alliance for Children and Youth (ARACY)
- Martin McNamara, Deputy CEO, and Sian Ridge, Head, Evidence for Action, Sax Institute
- Ian Winter, former Executive Director, and Peter Cocks, Business Manager and Head of Corporate Services, Australian Housing and Urban Research Institute (AHURI)
- Andrew Robinson, Managing Director, Centre of Excellence in Bio-security Risk Analysis (CEBRA)
- Linda Dewey at University of New South Wales Canberra for desktop research.

1. Executive Summary

The purpose of this paper is to provide background information to proposals set out in the **National Disability Research Partnership (NDRP) Governance Issues Paper (March 2021)**.

The NDRP Governance Issue Paper invites comments on proposals for more permanent governance arrangements for the NDRP, after the initial 2-year establishment Phase which is being led by the Melbourne Disability Institute at the University of Melbourne until mid-2021.

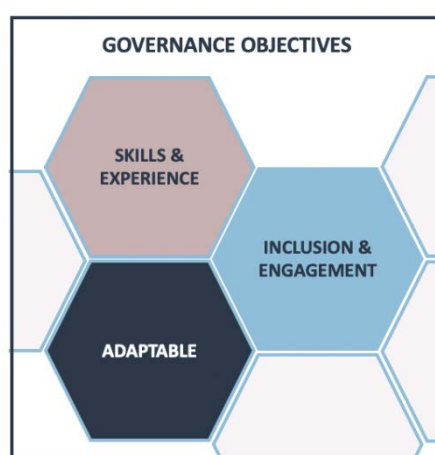
To support work to engage NDRP stakeholders on options for future governance arrangements, the NDRP Initial Working Group conducted a preliminary desktop review of governance models for a range of Australian (and international) research institutes and partnerships that have a similar purpose and mission as the NDRP.

That is, to facilitate impactful collaborative research within their sectors ¹. In addition, for some entities, interviews with key staff were conducted. The desktop review included the following organisations:

- the Australian Housing and Urban Research Institute (AHURI),
- Australia's National Research Organisation for Women's safety (ANROWS),
- Australian Research Alliance for Children and Youth (ARACY),
- the Sax Institute,
- National Health and Medical Research Council (NHMRC) Special Initiatives,
 - NHMRC Special Initiative in Mental Health
 - NHMRC National Institute for Dementia Research (NNIDR)
- Co-operative Research Centres (CRCs)
 - Autism CRC

- Lowitja Institute (Aboriginal and Torres Strait Islander Health CRC)
- Australian Research Council (ARC) Centres of Excellence.
 - Centre of Excellence in Bio-security Risk Analysis (CEBRA)
 - Centre of Excellence in Population Ageing Research (CEPAR)
- Australia Strategic Policy Institute
- Advanced Research and Translation Centres (ARTCs)
- International Examples
 - Social Care Institute for Excellence (SCIE) (UK)
 - Institute for Research and Innovation in Social Services (IRISS) (Scotland)
 - National Institute for Disability, Independent Living and Rehabilitation Research (NIDILRR) (US)

A key finding from this work is that one of the key determinants of success for these initiatives is that their governance arrangements need to evolve over time - to meet changes in mission, aims or objectives, stakeholder expectations, to facilitate organisational growth (scale and scope), and funding.



We found that organisations with a similar purpose to the NDRP pursued common

¹ Desktop review and interviews were conducted between October 2019 and May 2020.

governance objectives regardless of the focus or intended beneficiaries of their work.

These include meeting commonly understood standards of **good governance** and regulatory compliance, maintaining the **right balance of skills and experience within their governance arrangements**, remaining focussed on **inclusion and engagement** for intended beneficiaries, and having arrangements that are sufficiently **adaptable** to allow the organisation to grow and diversify the partnership, functions, activities and funding sources over time.

Other findings are more nuanced and include: the need for trusted, stable, open, long-term relationships between key stakeholders; the

need for leadership built around a shared vision; that there must be transparent and clear processes, especially in relation to managing conflicts of interest; and that there must be strong in-built mechanisms to ensure that all research is high quality and timely.

These governance outcomes are relevant to the aims, objectives, and mission of the NDRP. We anticipate they will reflect the expectations of NDRP stakeholders. Consequently, they are incorporated into the NDRP *Governance Issues Paper* for consultation to test support for, inform and ultimately ratify with key stakeholders NDRP governance arrangements.

2. Legal Frameworks

The desktop research identified the main legal frameworks currently in use by the organisations identified through the desk top research:

- Limited by Guarantee (not-for-profit)
- Partnership/(Un)incorporated Joint Venture
- Government Appropriation

2.1. Limited by Guarantee

AHURI, Sax Institute, ANROWS, ARACY and the Cooperative Research Centres are examples of initiatives that have a not-for-profit (limited by guarantee) legal structure.

Limited by guarantee is a form of legal structure often used by not-for-profit and charitable organisations as it means the liability of the company's members is limited. The limit is usually the amount members will contribute to the property of the company if it is wound up. Registration of a company creates a legal entity that is separate from its members, and this means the company can hold property and sue or be sued. A company

limited by guarantee cannot pay dividends to its members and there are specific requirements it must meet.

The features of a company limited by guarantee are that it creates a legal entity that is separate from its members. The entity must reinvest all profits into future activities and is regulated by ASIC. The clear legal entity means the company can hold property, enter into leases and other contracts, and employ people in its own name. Companies which are limited by guarantee are governed by a Board of Directors and it is the company and not the directors that hold the titles.

Although it is more expensive to register a company limited by guarantee, the disadvantages of a legal structure limited by guarantee are perhaps those that become its strengths: it has compliance requirements under the Corporations Act and it must meet statutory requirements. It must also have a Constitution and other relevant company policies.

Examples: Limited by Guarantee

The Australian Housing and Urban Research Institute Ltd (AHURI)

AHURI is a national independent research network with an expert not-for-profit research management company, AHURI Limited, at its centre. The AHURI governance structure (see Figure 1) allows for Directors to be appointed by Government and University partners (as major funding partners) and for independent Directors to be appointed. The governance structure also includes two Board committees, an Audit, Finance and Risk Management Committee and a Business

Development and Marketing Committee. AHURI receives income from three sources: grants from the Australian and state and territory governments; contributions from university partners in the National Housing Research Program; and revenue from third parties through professional services and its conferences.

For more information follow this link: [AHURI Website](#)

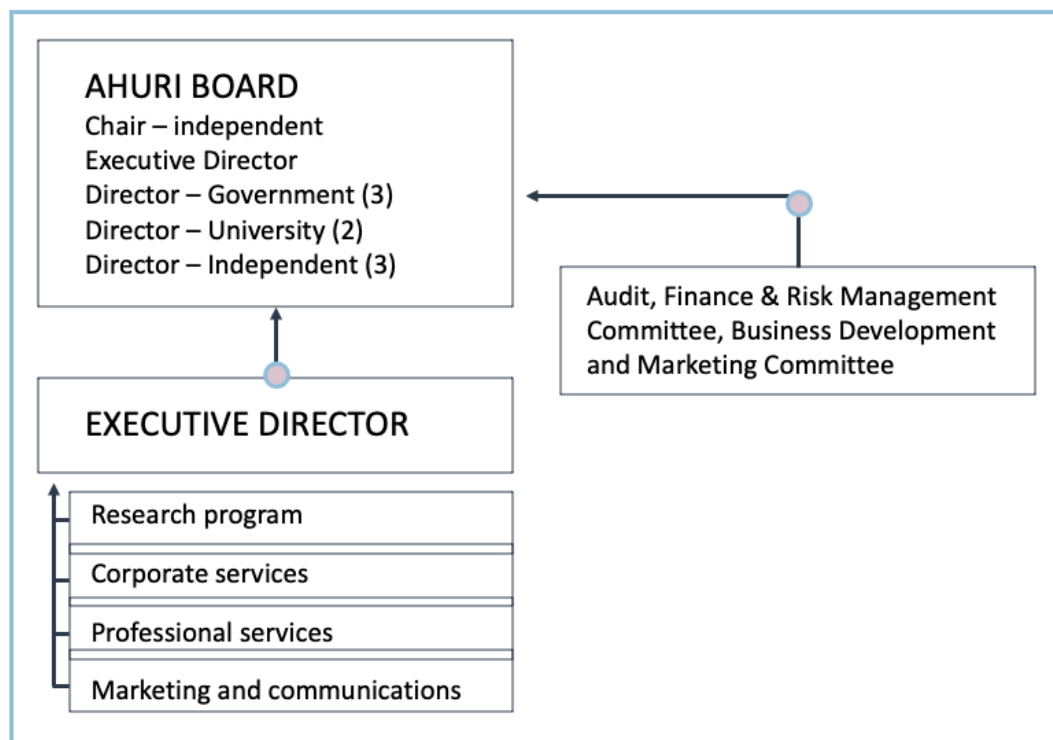


Figure 1: AHURI governance structure

The Sax Institute is a not-for-profit company limited by guarantee. The governance structure (see Figure 2) allows for the appointment of Directors from the research partners, university participants and the NSW Department of Health (its primary funding source) and for the appointment of independent Directors. The governance structure also includes an Audit, Finance & Risk Management Committee, a Remuneration & Nomination Committee, and a Research Governance Committee to facilitate identification of priorities and allocation of funds to meet these priorities.

The Sax Institute is independent of any one university or research group. It receives core funding from the NSW Department of Health and is supported by other government, non-government, philanthropic and competitive research funding agencies. It undertakes a range of commissioned or funded and fee for service activities relating to improving the quality and use of research evidence in health services nationally and has international partnerships.

For more information follow this link: [Sax Institute website](#)

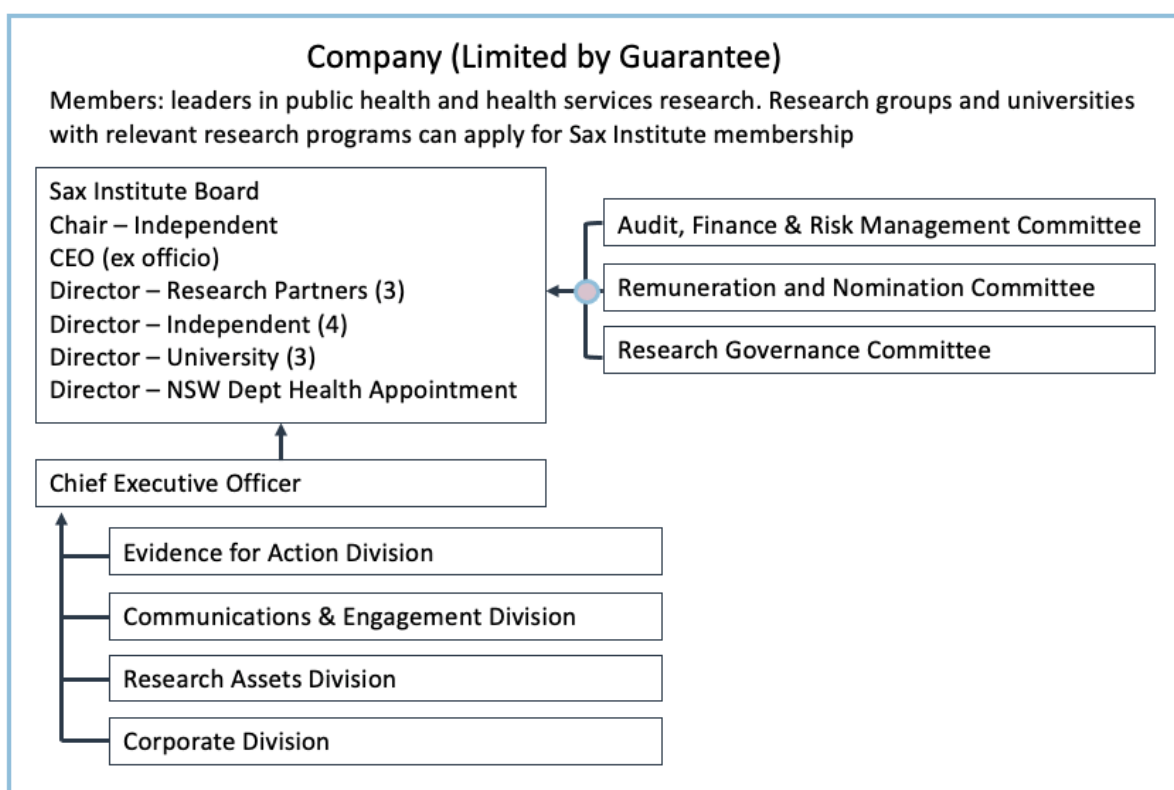


Figure 2: The Sax Institute governance structure

Australia's National Research Organisation for Women's Safety Limited (ANROWS)

ANROWS is a not-for-profit company limited by guarantee with all nine Australian Governments as members of the Company. The governance structure (see Figure 3) allows for four Government appointed Directors and six independent Directors, including the Chair of the Board. The Board has, a Finance, Risk and Audit, Committee, and an Appointments Committee to oversee the financial and Board appointment processes of the company. Ad hoc committees, such as the Constitution and Conflicts of Interests Management Committee, may be convened to conduct reviews and advise the Board as needed.

ANROWS is a registered Harm Prevention Charity and is required to have a separate account and a public fund management committee (the Research Fund Management Committee) for the management of donations to ANROWS. The Research Fund Management Committee is not a sub- committee to the ANROWS Board but oversees fund raising and management of funds donated to ANROWS, reporting to the ACNC on the public fund. All donated funds must be used for the Company's principal activity.

For more information follow this link:

[ANROWS website](#)

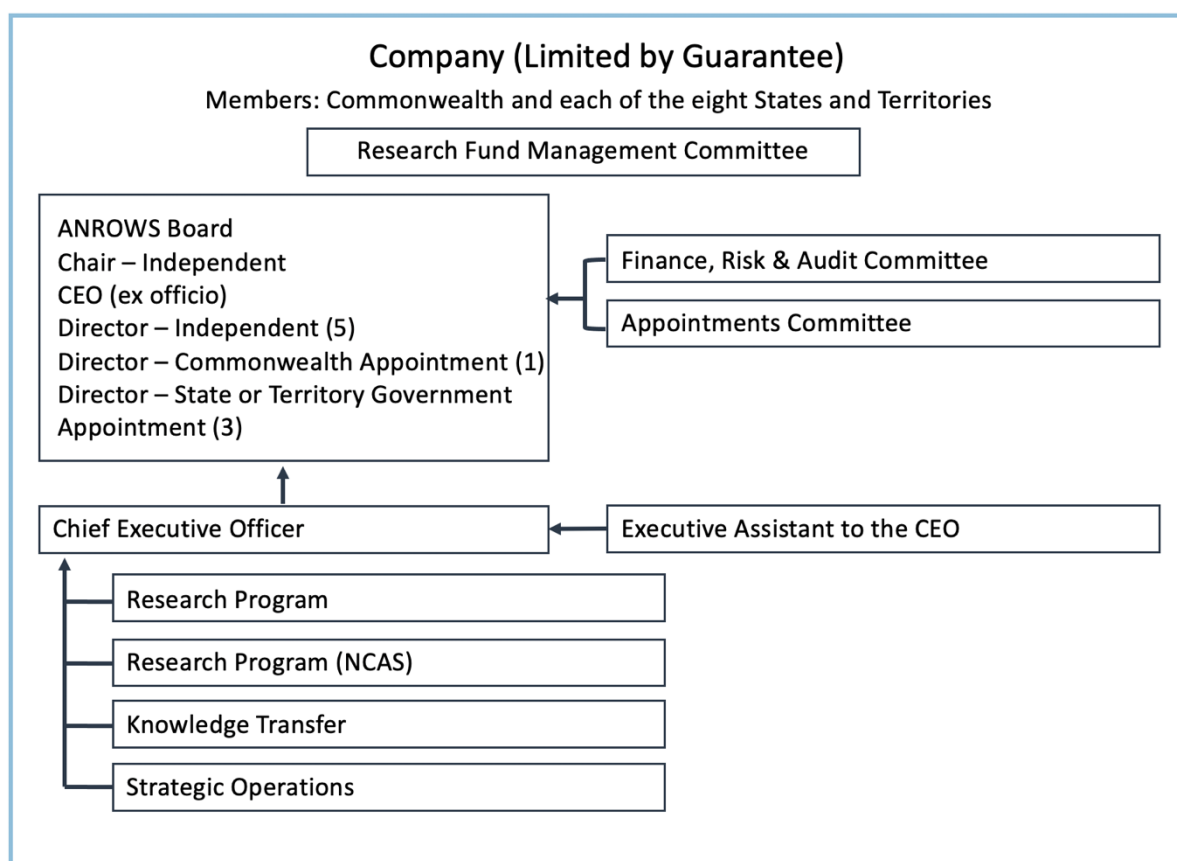


Figure 3: ANROWS governance structure

Australian Research Alliance for Children and Youth (ARACY)

The Australian Research Alliance for Children and Youth (ARACY) was established as a not-for-profit constitutional corporation in 2002, governed by a Board of Directors. ARACY was formed initially with guaranteed Federal Government funding (which lasted for the first 15 years)

ARACY Ltd is a company limited by guarantee, registered with the Australian Securities and Investments Commission; and is a Deductible Gift Recipient registered with the Australian Taxation Office.

The company is established for the charitable purpose of facilitating, coordinating and supporting the development of knowledge through scientific research and the effective use of that knowledge, which is or may prove to be of value to Australia by enhancing the wellbeing and life chances of children and young people. ARACY relies on funding and support from federal and state governments, philanthropic organisations and the corporate sector and receives in-kind professional assistance.

For more information follow this link: [ARACY website](#)

Cooperative Research Centres (CRCs)

Cooperative Research Centres (CRCs) are industry-led collaborations between industry, researchers, and the community. CRCs can operate as not-for-profit (limited by guarantee), or as unincorporated joint ventures or incorporated joint ventures

Typically, CRCs operate with a simple governance structure comprising a 4-member Board (including the Managing Director or CEO) and a management team. The CRCs may have many hundreds of members, and some

of these members may contribute funds for specific projects.

A good example of a current disability research CRC is the Autism CRC. The Autism CRC was established in March 2013 as a company limited by guarantee and is taking a whole-of-life approach to autism focusing on diagnosis, education, and adult life.

For more information follow this link: [Autism CRC website](#)

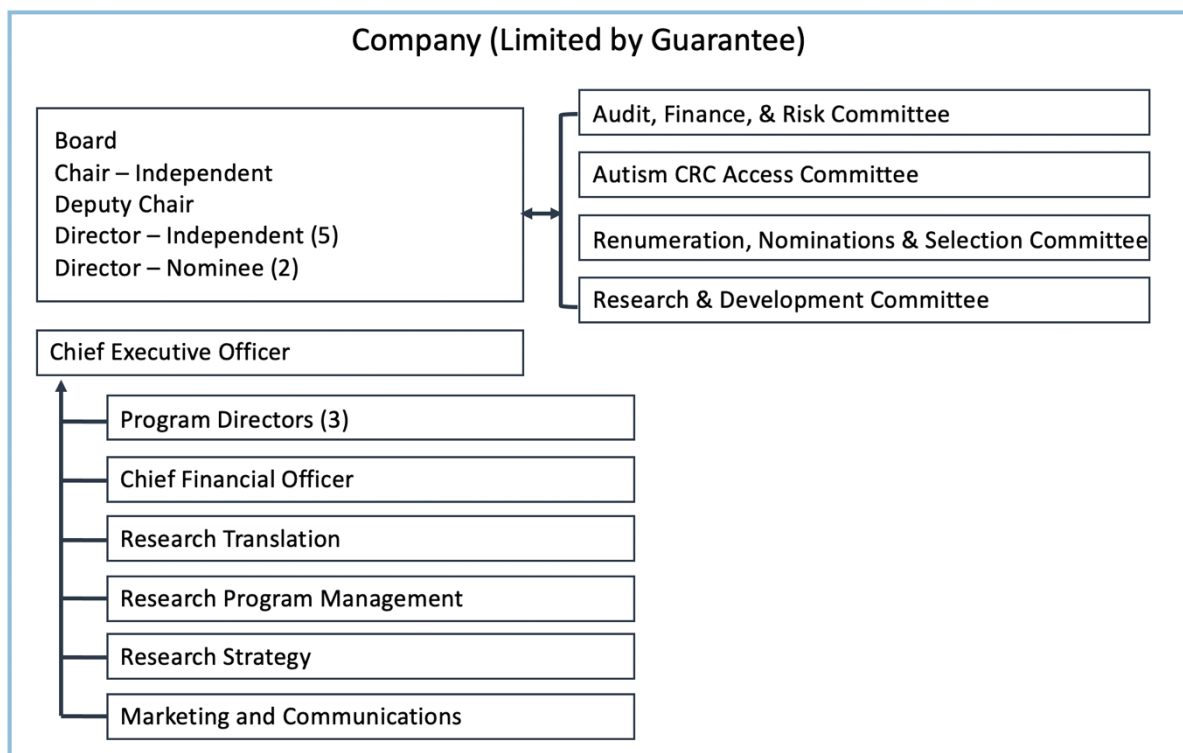


Figure 4: Example CRC governance structure (Autism CRC)

The Lowitja Institute is an interesting example of how a research partnership can evolve over time. The Lowitja Institute, as the national institute for Aboriginal and Torres Islander health research, has overseen 20 years of work covering all areas that contribute to the health and wellbeing of Aboriginal and Torres Strait Islander peoples, including the social and cultural determinants of health and wellbeing.

Prior to arrangements which were put in place in mid-2020, the Australian Government's Cooperative Research Centre program funded Lowitja Institute Aboriginal and Torres Strait Islander Health CRC (Lowitja Institute CRC) activities from 2014 to 30 June 2019, with funds and in-kind support provided by participants (such as universities, government departments and Aboriginal Health Service organisations). The total real expenditure of Lowitja Institute CRC between 2010 and 2019 was \$55.6 million (\$FY19 inflation adjusted, inclusive of CRC expenditure)². The Lowitja Institute CRC which commenced operations on 1 July 2014 built on the work of predecessor CRC funded organisations: the CRC for Aboriginal and Tropical Health (1996–2003), the CRC for Aboriginal Health (2003–2009), and the CRC for Aboriginal and Torres Strait Islander Health (2010–2014).

Having ceased operating in 2019 as a Cooperative Research Centre (CRC), changes to the Lowitja Institute Constitution were made to establish the Institute as an Aboriginal and Torres Strait Islander

community-controlled organisation. Since July 2020 the Institute operates through the Lowitja Institute Members Community. The Lowitja Institute Members Community includes:

- Full Member Organisations: Aboriginal and Torres Strait Islander organisations committed to the purpose and values of the Lowitja Institute
- Associate Organisations: Non-Indigenous organisations committed to the purpose and values of the Lowitja Institute
- Lowitja Institute Scholars: Lowitja Institute Scholarship recipients, past and present (Alumni)
- Associate Researchers: Researchers making a contribution to the vision and purpose of the Lowitja Institute.

Since 2010 (commencing with the establishment of the aforementioned CRC for Aboriginal and Torres Strait Islander Health (2010–2014)) the Lowitja Institute traded as a limited liability company - the National Institute for Aboriginal and Torres Strait Islander Health Research Limited (NIATSIHR Ltd). NIATSIHR is registered as a not-for-profit company limited by guarantee and is structured as a public benevolent institution. The Lowitja Institute is independent of government and other centres of health and policy administration and has an independent Board.

For more information follow this link: [Lowitja website](#)

² Lowitja Institute Social Impact Assessment. Deloitte Access Economics (2020).

A good example of an NHMRC Special Initiative with similar aims and purposes to the NDRP is the Special Initiative in Mental Health (SIMH), which as of January 2021 is still being established. It will operate as a virtual network across Australia, coordinated by a single institution (a University led consortia), through a series of flagship programs and be

open to a broad membership of researchers, health care services, carers and consumers in mental health to facilitate innovative service delivery across Australia.

For more information follow this link: [NHMRC Special Initiatives website](#)

NHMRC National Institute for Dementia Research (NNIDR)

The NHMRC National Institute for Dementia Research (NNIDR) was established in 2015 (and ran to June 2020) to target and coordinate the \$200 million national dementia research effort through the Boosting Dementia Research Initiative (announced in the 2014-15 Budget). In 2017 another \$40 million for medical research projects into dementia was announced. The research funding has been provided in the form of grants including Fellowships, Projects, International Collaborations and Centres.

Hosted and administered by Dementia Australia, NNIDR's role was to coordinate and translate the strategic expansion of dementia research by collaborating with Australia's best researchers while also drawing on the expertise of consumers, health professionals, industry and policy makers to translate evidence into policy and practice.

For more information follow this link: [NNIDR website](#)

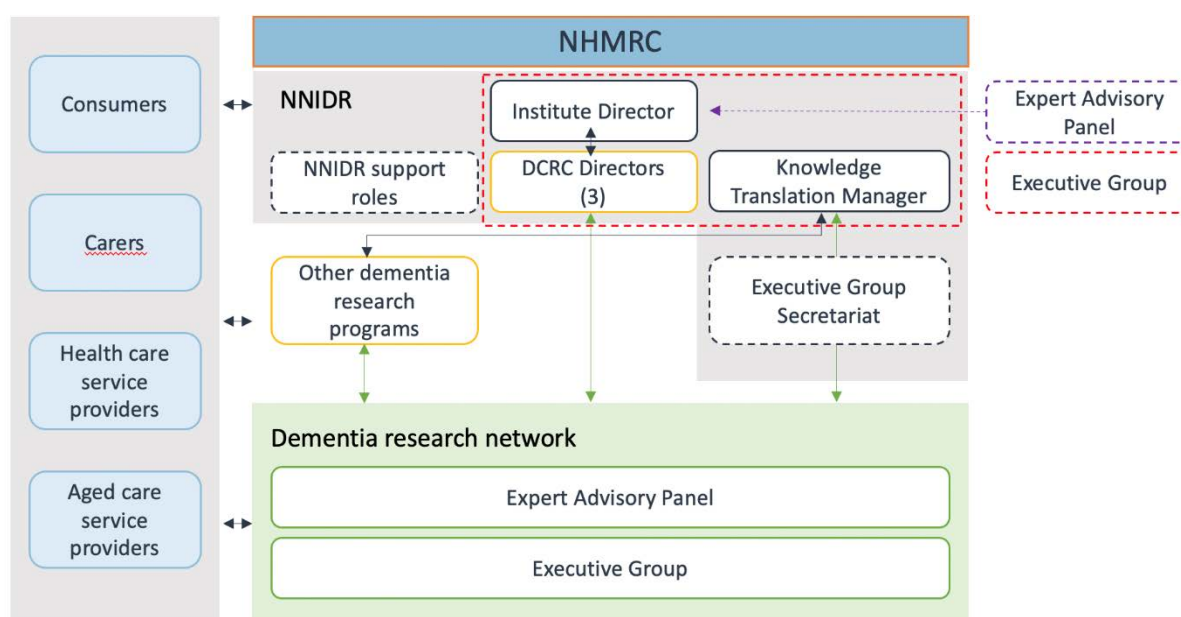


Figure 5: NNIDR governance and management structure

Australian Research Council (ARC) Centres of Excellence

ARC Centres of Excellence may be situated at a single site (commonly referred to as concentrated Centres of Excellence), be comprised of networked nodes (distributed Centres of Excellence), operate as a virtual centre or adopt any other approach to research management provided that it meets the eligibility criteria and funding rules. Each Centre must have a board, such as an advisory committee that offers broad representation of research and end-user communities. The

Board or Advisory Committee provides advice to the Centre Director and partner organisations regarding the research focus of the centre and on issues such as general structure and operating principles, intellectual property rights and commercialisation of research results.

For more information follow this link: [ARC Centres of Excellence website](#)

A current example of an ARC Centre of Excellence with similar aims and objectives to the NDRP is the **ARC Centre of Excellence in Population Ageing Research (CEPAR)**. CEPAR is a unique collaboration of academia, government and industry based at the University of New South Wales (UNSW) with nodes at the Australian National University (ANU), Curtin University, The University of Melbourne, and The University of Sydney.

CEPAR's governance arrangements include an Advisory Board, which provides independent advice to the Management Committee with regard to strategy and external relations, facilitates the Centre's engagement with relevant stakeholders, identifies new opportunities for engagement, and acts as advocates and champions of CEPAR (see Figure 6 below). The CEPAR Management Committee has executive oversight of the implementation of CEPAR's strategic plan, its research program, budget management, selection of personnel, mentoring,

dissemination of results and research translation, stakeholder engagement and outreach activities. Stakeholder Reference Groups (SRGs) facilitate stakeholder interaction and provide opportunities for end users to shape the direction of the Centre's research program and activities. An International Scientific Advisory Committee provides advice on the strategic direction of the Centre from a global perspective, with emphasis on research programs.

CEPAR is predominantly funded under the ARC's Centres of Excellence program, from 2017 receiving \$27.24 million over 7 years. CEPAR also receives financial support from its collaboration partners with over \$40 million in additional cash and in-kind supports (including ARC grants) over the life of the centre.

For more information follow this link: [CEPAR website](#)



Figure 6: CEPAR Governance Arrangements

Centre of Excellence for Biosecurity Risk Analysis (CEBRA)

The Centre of Excellence for Biosecurity Risk Analysis (CEBRA) is based at the University of Melbourne and receives funding from the Department of Agriculture, Water and the Environment and Biosecurity NZ, within the

Ministry for Primary Industries. Quality and timely research is essential to meet the needs of the stakeholders. The Governance structure is set out in Figure 7 below.

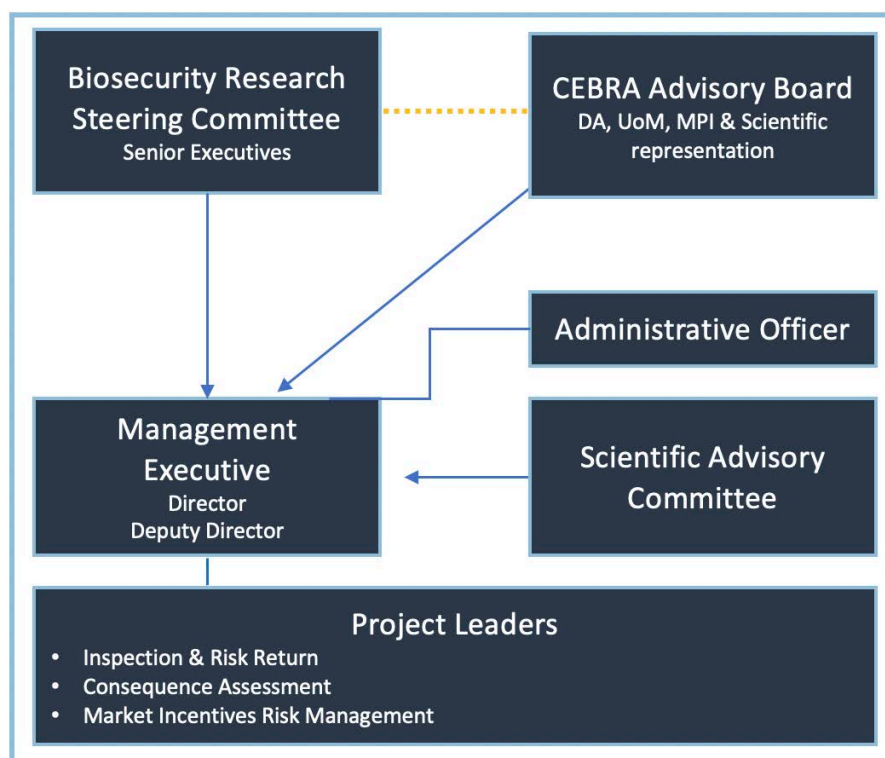


Figure 7: CEBRA Governance Arrangements

The Advisory Board is representative of broad-ranging interests. It provides advice on the operations and the research and policy framework of the Centre to the Managing Director. Also, the Advisory Board oversees the application of relevant professional standards, the progress and performance of research and outcomes, the dissemination of knowledge and the promotion of the Centre.

The Scientific Advisory Committee oversees the scientific quality of Centre outputs and manages the review process for proposals and completed documents, thereby ensuring the scientific excellence of project outcomes.

The Research Partners in Australia and New Zealand provide technical support and extensive professional networks to help identify appropriate researchers who are excited to see the products of their work used in an applied context. Together with the Scientific Review, they advise on strategies to develop concepts and issues that are likely to generate the greatest gains in biosecurity risk analysis methods and that best serve the interests of the Australian community.

For more information follow this link: [CEBRA website](#)

Australia Strategic Policy Institute (Limited)

The Australian Strategic Policy Institute is a wholly owned Commonwealth Company formed in 2001 as an independent, non-partisan think tank on defence and international relations. The Australia Strategic Policy Institute (ASPI) operates as a not-for-profit company limited by guarantee, funded by the Department of Defence (with a decreasing responsibility) and other commissioned research and sponsorship funding (with an increasing responsibility). The ASPI Council is the governing body of ASPI. The council reports annually to the Australian Securities and Investments Commission. As well as meeting legislative requirements, a governance framework guides the development of policies, plans and

strategies that are approved by the council covering areas such as risk, fraud, and business continuity. The council comprises up to nine directors with experience, expertise, and excellence in a range of professions, including business, academia, government, and the military. Provision is also made to have council members who are nominees of the Prime Minister and the Leader of the Opposition, emphasising that ASPI is politically non-partisan.

For more information follow this link: [ASPI website](#)

2.2. Joint Venture / Partnership Agreement

A **joint venture** agreement is an agreement between two or more individuals or companies, usually entered into with a specific goal in mind. Each party entering into a joint venture agreement maintains their separate business/entity. In a joint venture, each party is responsible for the debts they accrue, and profit is typically divided between the parties according to the terms of the agreement. A joint venture agreement differs from a partnership arrangement as it has a definite end. Parties can structure the joint venture either as an:

- unincorporated joint venture (i.e. the joint venture agreement includes the terms); or
- incorporated joint venture (i.e. a separate company is incorporated, with the parties each becoming shareholders in the company).

A **partnership agreement**³ differs from a joint venture agreement as it relates to an *ongoing* relationship between parties. Each partner in the relationship is responsible for the actions of the other (i.e. they are jointly and severally liable for the partnership's activities). Two or more individuals or entities can enter into a partnership with each other. The parties share the profits, responsibilities, and risks in the business. Partnerships are subject to the applicable state or territory's Partnership Act. It is critical to have a written partnership agreement in place to manage the relationship between the parties and formalise the expectations of the partners. Without having this written agreement, the Act may be deemed to apply.

³ While a Partnership Agreement has a very specific meaning as set out here, the reference to 'Partnership' in the National Disability Research Partnership (NDRP), is not meant to imply that the NDRP will operate through a Partnership Agreement. The purpose of the governance

Examples: Joint Ventures (incorporated or unincorporated) and Partnerships

Advanced Research and Translation Centres

The Advanced Research and Translation Centres (ARTCs) have either a (un) incorporated joint venture or partnership legal structure. ARTCs are funded by Australian governments and are responsible to the relevant Health Ministers. The legal structure of the ARTCs established and operating under this funding include the following as examples:

- unincorporated joint venture:
 - Health Translation SA (ARTC recognised in 2015)
 - Melbourne Academic Centre for Health (AHRTC recognised in 2015)
 - Western Australian Health Translation Network (AHRTC, recognised in 2017)
- partnerships
 - Monash Partners Academic Health Science Centre (AHRTC recognised in 2015)
 - Sydney Health Partners, (AHRTC recognised in 2015)
 - Brisbane Diamantina Health Partners (AHRTC recognised in 2017)
 - SPHERE Maridulu Budyari Gumal (AHRTC, recognised in 2017)
- Central Australian Academic Health Science Network (CIRH, recognised in 2017) operates under a Memorandum of Understanding, and
- NSW Regional Health Partners (CIRH, recognised in 2017)

The **joint venture governance structures** typically include either a Council of partners or working groups of partners providing strategic direction and priorities; a small

consultations is to determine the best future governance arrangements for NDRP, of which a Partnership Agreement is one option. The reference to Partnership as opposed to a Partnership Agreement therefore is a reference to a long-term collaborative arrangement.

Board with an ex-officio Executive Director; and a leadership team.

The **partnership governance structures** typically include a small board with ex-officio Executive Director, and a leadership team. Each of the organisations has at least one member of the Board appointed by a Health Department, and some allow for a consumer advocate member.

The advantages of a joint venture or partnership are that the arrangement is only temporary and relevant parties share the risks and costs. This legal structure provides for flexibility.

2.3. Government Appropriation

Government appropriation models essentially facilitate an assignment of financial resources to an entity which typically remains within direct government control, though may be established as a quasi-independent body. This structure does not appear to be favoured by governments, currently, and so is included for completeness.

Examples: Government Appropriation

The Australian Institute of Family Studies (AIFS)

The Australian Institute of Family Studies (AIFS) is a Melbourne-based statutory agency

of the Australian Government, established in February 1980 under the Australian Family Law Act 1975.

A non-corporate entity, AIFS is a portfolio body, within the Department of Social Services (DSS). It also has close links with the Attorney-General's Department (AGD), the Department of Education and Training (DET), the Department of Human Services (DHS), the Department of the Prime Minister and Cabinet, the Department of Defence, the Department of Veterans' Affairs (DVA), the Department of Health and other Australian Government portfolios, their departments and agencies. Its staff are employed under the Public Service Act 1999.

For more information follow this link: [AIFS website](#)

The Australia Indonesia Institute

The Australia Indonesia Institute is fully funded by the Department of Foreign Affairs and Trade (DFAT) and reports through the DFAT annual report. It was established in 1989.

3. International Examples

National Institute for Disability, Independent Living and Rehabilitation Research (US)

NIDILRR is the US federal government's primary disability research agency and operates as a division of the Administration for Community Living within the US Federal Department of Health and Human Services and has an annual budget of approximately US\$100m. Its mission is:

'to generate new knowledge and to promote its effective use to improve the abilities of individuals with disabilities to perform activities of their choice in the community, and to expand society's capacity to provide full opportunities and accommodations for its citizens with disabilities.'

NIDILRR maintains a Long-Range Plan – a five-year agenda that advances applied disability, independent living, and rehabilitation research with an emphasis on research outcome domains of community living and participation, health and function, and employment. NIDILRR's Long Range plan also provides the framework for investment in three areas that support outcomes across these domains: technology for access and function; disability statistics; and a nationwide network of technical assistance, training, and research centres to support implementation of the Americans with Disabilities Act (ADA).

For more information follow this link: [NIDILRR website](#)

Social Care Institute of Excellence (UK)

The Social Care Institute for Excellence (SCIE) is a leading UK social care improvement

agency which partners with the UK Department of Health and Social Care, and a range of other partners at national and local levels. It has evolved from a largely government-funded body to a more commercial organisation leading debate on policy and practice in social care. SCIE is a registered charity in the UK and is governed by a Board of Trustees who guide its work and ensure its independence.

For more information follow this link: [SCIE website](#)

Institute for Research and Innovation in Social Services (UK / Scotland) (IRISS)

IRISS is a charity that has supported the social services workforce in Scotland since 2008. Its work involves working with people and services across the social services sector — local authority, third sector and private — to improve the knowledge and skills of the workforce and ultimately, improve the quality of social services. IRISS is governed by a Strategic Board who are Directors and Trustees of the charitable company. IRISS is mostly funded by the Scottish government. The IRISS governance structure includes a Strategic Board who are Directors and Trustees of the charitable company, using recruitment processes that mirror the Office of the Commissioner of Public Appointments Scotland.

For more information follow this link: [IRISS website](#)

National Disability Research Partnership

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