

## ORGANISATION

# Board charters

Board charters have become an important tool to aid good governance. As a policy document covering how the board will function, they can facilitate the discussion and documentation of appropriate governance practices and guidelines for a specific board.

In most organisations the governance framework is determined by the legislation that it has been created under (for example, the *Corporations Act 2001 (Cth)*), and the requirements of the organisation's constitution (which is a contract between the company, its shareholders and its directors). There may also be other legally binding contracts between the owners and/or the owners and the directors which specify governance details such as a shareholders' agreement.

However, there are many aspects of modern governance which the board must consider and act upon that lie outside legal requirements. The board charter is one way of documenting these matters. In addition, as distinct from a constitution or contractual agreement which have a variety of formal requirements which must be met to change these documents, board charters can be changed by the board as circumstances require.

A board charter is defined as a written policy document that clearly sets out the respective roles, responsibilities and authorities of the board of directors (both individually and collectively) and management in setting the direction, the management and the control of the organisation.

Board charters are used by many organisations. Many major inquiries, reports and leading governance practice recommendations refer to the need for board charters or similar documentation in delivering effective governance. For example, Recommendation 1.1 of the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations (ASX Principles) states:<sup>1</sup>

*A listed entity should have and disclose a board charter setting out:*

- (a) the respective roles and responsibilities of its board and management; and*
- (b) those matters expressly reserved to the board and those delegated to management.*

1. ASX Corporate Governance Council, 2019, *Corporate Governance Principles and Recommendations*, 4th Edition, February, p 6, <https://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-fourth-edn.pdf>, (accessed 7 August 2019).

### The purpose of board charters

A board charter serves a number of important functions:

- serves as a reminder for the board of the legal framework within which it operates;
- documents the policies that the board has decided upon to meet its legal and other responsibilities;
- assists the corporation's leadership in delivering good governance;
- allows communication of the board's policies and expectations to management;
- sets out the functions and responsibilities of the board and of management;
- provides guidance and comfort to shareholders that the board has implemented robust governance processes;
- is a point of reference for disputes; and
- serves as an induction tool for new directors and senior managers.

As a top-level process, the charter:

- encourages boards to focus on how they can continuously improve their governance processes for the benefit of the organisation;
- provides a forum for discussing 'hard-to-mention' governance issues; and
- serves as a team development vehicle for both the board and the senior management team, helping to clarify roles and expectations.



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### The contents of a board charter

Companies have considerable discretion regarding the contents of a board charter. Some organisations prefer a short document that touches on major governance issues but is not overly prescriptive. Others regard the board charter as a top-level policy document which must address a wide range of governance issues.

In Australia, two sources of guidance for the content of board charters include:

1. The ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations*<sup>2</sup>
2. The model put forward by Kiel, Nicholson, Tunny and Beck in *Directors at Work*<sup>3</sup>

### Charters that follow the ASX Corporate Governance Council

Typical matters covered by the board charters include:

- role of the board, role of the CEO;
- role of the chair;
- role of the company secretary;
- board responsibilities;
- board membership;
- independence and composition;
- committees;
- meetings;
- conflicts management;
- access to management and independent advice;
- induction and continuing training;
- performance review.

2. Ibid

3. G Kiel, G Nicholson, J Tunny and J Beck, 2012, *Directors at Work*, Thomson Reuters

TABLE 1: Board charter headings in the Kiel, Nicholson, Tunny and Beck model

| DEFINING GOVERNANCE ROLES     | KEY BOARD FUNCTIONS       | IMPROVING BOARD PROCESSES | BOARD EFFECTIVENESS   |
|-------------------------------|---------------------------|---------------------------|-----------------------|
| Board composition             | The board and strategy    | Board meetings            | Director protection   |
| Role of the board             | The board and the CEO     | Board meeting agenda      | Board evaluation      |
| Role of individual directors  | Monitoring                | Board papers              | Director remuneration |
| Role of the chair             | Compliance                | Board minutes             | Director selection    |
| Role of the company secretary | Risk management           | Board calendar            | Director induction    |
| Role of the CEO               | Policy framework          | Committees                | Director development  |
|                               | Networking                |                           |                       |
|                               | Stakeholder communication |                           |                       |
|                               | Decision making           |                           |                       |

### Charters that follow Kiel, Nicholson, Tunny and Beck

These have four major sections:

1. **Defining governance roles** requires the board to elaborate on the role of the board, policies related to board composition and the specific expectations of the various key governance players.
2. **Key board functions** outlines nine key roles which the governance literature suggest are central roles of all boards.
3. **Improving board processes** concentrates on the actual activities of governance – policies in relation to the conduct of board meetings, board papers and the role and function of committees.
4. **Board effectiveness** reviews a range of activities required to ensure that directors are best equipped to undertake their role.

The Kiel et al model includes a fifth component to incorporate into a charter – board behavioural dynamics – that involves behaviours and dynamics around the boardroom table that contribute to board performance and, ultimately, to the performance of the organisation. This fifth component can be incorporated into the board charter in a section that specifically addresses this topic such as setting out the behaviours expected in the boardroom or a director code of conduct.

### Board charter development

Some people dismiss the board charter as just another compliance checklist item. They delegate writing the charter to the company secretary or company lawyers, and then ‘tick the box’.

Taking this approach means that one of the key benefits of a board charter – the opportunity for directors to discuss how governance can help to improve organisational performance – is lost.

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The following process for developing a board charter involves director discussion and, accordingly, adds value.

### Step 1: Collect information

Document existing board policies, governance practices, position statements, duty descriptions for key governance personnel and any board policy documents, including the “unwritten” practices that regulate corporate conduct. Larger organisations are likely to have many policy documents to consider while some small companies may have none.

Depending on the size of the organisation and the experience of the directors the board may decide to delegate much of this work to an individual or small group – the company secretary, for example.

### Step 2: Analyse documentation

Analyse the documentation to identify any discrepancies between existing board policies and current practice, as well as areas where no formal policies exist and existing policies that may not conform to normative advice on good practice.

### Step 3: Draft charter

As long as the entire board discusses the relevant charter policies and guidelines the initial task of drafting the charter may be delegated to one person, such as the company secretary. Directors frequently ask whether they should call on outside expertise when they are developing the charter. This will depend on factors such as the size of the company, the complexity of the governance framework and whether governance personnel, particularly the company secretary, can devote to the necessary time to the task.

### Step 4: Board approval process

The board as a whole is responsible for the governance practices of the organisation and must approve any new policies, charters, codes or other documents the organisation wishes to adopt. Inviting directors to comment on a draft board charter will give them a sense of ownership of the final document, though there may be a number of rounds of changes before it is finally approved.

### Step 5: Annual review

An annual review of the board charter is recommended. This will ensure that the charter is current and raises the directors’ awareness of the organisation’s overall policy framework.

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