

# Board charter

## *Role of the board*

Board charters can facilitate the discussion and documentation of governance policies and guidelines.

In most organisations the governance framework is determined by the legislation that it has been created under (for example, the *Corporations Act 2001*), 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.

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.

*“The role and responsibility of the board could be set out in a board charter or in some other document published on the entity's website or in its annual report”.*

ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations 3e* (2104), p 8.

### The purpose of board charters

A board charter serves a number of important functions. As the top level policy document, the charter:

- 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;
- 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;

- serves as a team development vehicle for both the board and the senior management team, helping to clarify roles and expectations.

### 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 leading references provide a source of guidance for the content of board charters:

1. The ASX Corporate Governance Council *Corporate Governance Principles and Recommendations 3e* (2014) ('ASX Recommendations').
2. The model put forward by Geoffrey Kiel and Gavin Nicholson in their book *Boards that Work*, McGraw-Hill Australia Pty Ltd, 2003.

### Charters that follow the ASX Recommendations

Typical matters covered by the board charters include:

- Role of the board, role of the CEO;
- Role of the chair;
- Role of the co sec;
- Board responsibilities;
- Board membership;
- Independence and composition;
- Committees, meetings;
- Conflicts management;
- Access to management and independent advice;
- Induction and continuing training;
- Performance review.

### Charters based on the *Boards that Work* model

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.

Table 1: Boards charter headings

Defining governance roles	Key board functions	Improving board processes	Board effectiveness
Board composition	The board and strategy	Board meetings	Directors protection
Role of the board	The board and the CEO	Board meeting agenda	Board evaluation
Role of individual directors	Monitoring	Board paper	Director remuneration
Role of the chair	Risk management	Board calender	Director selection
Role of the company secretary	Compliance	Committees	Director induction
Role of the CEO	Policy framework		Director development
	Networking		
	Stakeholder communication		
	Decision-making		

### Board charter development

Many companies 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.

Kiel and Nicholson, recommend the following five-step process for developing a board charter that 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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