AUSTRALIAN INSTITUTE *of* COMPANY DIRECTORS

NFP DIRECTOR TOOLS

Board committees

Role of the board

Boards often use committees to increase overall efficiency. Work can be delegated to committees to more effectively deal with complex or specialised issues, and to manage workloads by making better use directors' time and expertise. It is critically important to recognise that committees only make recommendations for action to the full board, which retains collective responsibility for decision making.

Committees also provide opportunities to develop knowledge within an organisation. Members can focus their skills in areas that will most benefit the organisation, and conversely committees help develop talent and support a leadership pipeline.

Additionally, the existence of committees can indicate to members and stakeholders that the board is taking particular issues seriously. Similarly there may be committees established for a relatively short period of time (for example building committees) and then wound up when no longer required.

Smaller organisations may not benefit from a formal committee structure because their boards are often quite small and operations not as complex. Organisations without board committees should have board processes in place which cover the issues that would otherwise be considered by the relevant committees.

What is required by law and the regulators?

Corporations Act 2001

Section 198D of the *Corporations Act 2001* ('Act') allows boards to delegate some of their powers to a committee of directors unless the organisation's constitution disallows it. The delegation must be recorded in the minute book.

Section 190 provides that, when directors delegate a power under s 198D of the Act, they remain responsible for the exercise of the power by the delegate as if it had been exercised by the directors themselves. There is a limited exception where the director who delegates will not be held responsible if that director believed:

- on reasonable grounds at all times that the delegate would exercise the power in conformity with the duties imposed by the Act and the company's constitution; and
- on reasonable grounds and in good faith (and after making proper inquiries if the circumstances so required) that the delegate was reliable and competent in relation to the power delegated (s 190(2) of the Act).

Section 189 gives authority for the rest of the board to reasonably rely on the information or advice given by a committee so long as it is independently assessed by the board and is relied upon in good faith. However, this delegation of authority does not lessen the board's overall duties and responsibilities.

Incorporated associations

Many not-for-profit organisations in Australia are registered as incorporated associations. The relevant legislation for this type of structure is state-based legislation.

ACT - *Associations Incorporation Act 1991*

NT - *Associations Act*

NSW – *Associations Incorporation Act 2009*

QLD - *Associations Incorporation Act 1981*

SA – *Associations Incorporation Act 1985*

TAS – *Associations Incorporation Act 1964*

VIC – *Associations Incorporation Reform Act 2012*

WA – *Associations Incorporations Act 2015*

This organisation structure was originally designed to be used by smaller entities established to provide services in a localised area such as sporting clubs and community groups. The legislation generally refers to committees of management and their roles and responsibilities. As the structure was designed for smaller entities the law generally does not refer to delegations of responsibilities.

There are many incorporated associations that have grown in business size in terms of their member numbers and spread (some representing members across Australia), and in terms of revenue and net assets.

Following good governance practices, the larger the organisation becomes the more relevant it is to create a split between those who are ultimately responsible at law for the operations of the organisation, often referred to as the board of directors, and those who manage the organisation.

These boards will use committees in the same way as companies.

What are the most common committees?

Every board will have to decide for itself which committees will add most value to their organisation. Committees may be of an ongoing nature like the governance committee, usually referred to as standing committees, or may be formed for a specific short term project or goal, often referred to as ad-hoc committees.

Governance, audit, finance/budget, and risk committees are the most common committees. Other committees that might be used by not-for-profit organisations may also include an executive committee or a fundraising committee. It is important to make sure all committee charters clearly outline the role and responsibilities of the board collectively and that of individual directors as well as the role and responsibilities of management.

Governance committee

There are many different definitions of corporate governance but it is generally agreed that it encompasses the rules, relationships, policies, systems and processes whereby authority within organisations is exercised and maintained. The governance committee should, therefore, ensure there is a framework in place to maintain appropriate controls and protection around the organisation.

The main functions of the governance committee include:

- Developing and reviewing board governance policies:
    - board and CEO relationship, which outlines the roles and responsibilities of the board and the roles and responsibilities of the CEO, the communication between the board and CEO, CEO financial and operating delegations, etc;
    - conflict of interest policy;
    - whistle blower policy, which is accessible by all staff;
- Keeping the board informed of all regulatory compliance requirements and developing appropriate policies for board review;
- Overseeing the mix of board committees and their separate roles and responsibilities;
- Ensuring board performance is reviewed and improved and an appropriate skill mix is maintained;
- Induction of new board members.

Audit committee

Audit committees were originally created to establish a pathway for the internal and external auditors to work with and report to the Board rather than reporting to management.

The committee oversees the preparation of the year-end financial statements and the work of the external auditors. The committee will also set the work agenda for the internal audit team or raise areas of concern for the internal auditors to investigate. All formal communications should be between the committee and the auditors, not management.

Most not-for-profit organisations are not large enough to employ their own internal auditors. If this is the case, it is very important the audit committee ensures they have other mechanisms in place to assess the adequacy of the internal controls of the organisation.

This is often an area overlooked by smaller organisations.

The main functions of the audit committee include:

- ensuring the adequacy and integrity of the company's financial reporting systems;
- reviewing the appropriateness of major financial policies adopted by the organisation;
- reviewing the audited year-end financial statements before their submission to the board;
- monitoring and evaluating the adequacy of internal accounting controls;
- reviewing and agreeing on the audit plan;
- overseeing the appointment, performance and independence of the external auditor.

This committee is often expanded to take on a finance or budgeting role as well as a risk monitoring role. Each of these functions can be separate committees.

Finance/budget committee

This committee is responsible for ensuring there are appropriate budgeting processes in place and to monitor the financial position and performance of the organisation.

The main functions of the finance/budget committee include:

- ensuring a budget is prepared for the organisation in accordance with board policies;
- reviewing the organisation's periodic financial statements prior to submission to the board, including monitoring the financial position and performance of the organisation and highlighting any concerns with the board;
- periodically reviewing the format and presentation of financial information to the board and make any recommendations for improvements to the board;
- periodically reviewing any board policies relevant to the role and responsibilities of the committee, including financial delegations to the CEO and make any recommendations for improvements to the board.

Risk committee

A risk committee is established to oversee the risk management framework operating within the organisation.

The main functions of the committee include:

- making recommendations to the board to improve the risk management framework;
- monitoring the significant risks of the organisation including the effective operation of risk mitigation strategies;
- making a contribution to the identification and evaluation of risks facing the organisation.

Executive committee

Depending on the size of the organisation, the regularity of board meetings and the need for quick flexible decisions from the board, not-for-profit organisations may establish an executive committee. The committee would usually consist of the chair, deputy chair and a number of other directors elected by the board.

If the organisation is an incorporated association, the organisation may be required (under its relevant state or territory legislation) to elect people to specific positions, such as:

- president;
- vice-president;
- treasurer;
- secretary;
- public officer.

If this structure is required, it is usual that the above positions form the executive committee with additional elected directors as required.

The committee's role is to make decisions on behalf of the board between board meetings. This may include decisions on matters that require an urgent response or general day-to-day decisions.

Fundraising committee

As a board committee, the fundraising committee should develop and monitor a framework in which fundraising activities are conducted. This may include what type of fundraising is considered appropriate for the organisation and what is not appropriate.
It may or may not be necessary for the directors to be involved in the activity as part of their director role. This should be clearly set out in the committee charter.

The main functions of the fundraising committee include:

- to oversee the development of a fundraising framework, including any ethical considerations as appropriate. This might include:
  - identifying what type of fundraising events/ activities are appropriate for the organisation;
  - identifying what types of events/activities are not appropriate;
  - listing any organisations that the board considers inappropriate to have an association;
- to allocate director roles in fundraising activities, if appropriate. This may include hosting fundraising dinners or events;
- to identify potential sources for funds and other resources;
- to monitor fundraising activities to ensure cost efficiency and outcomes are achieved.

What goes into a committee charter?

To facilitate smooth operations, a committee should have a clear purpose outlined in a written charter. Charters will vary according to the type of committee but usually they will state:

- role, purpose and responsibilities;
- scope of authority, extent of power and decision making abilities;
- membership requirements and procedure for meeting attendance by non-committee members;
- composition and structure;
- frequency of meetings;
- terms of access to internal and external resources and information;
- requirements for reporting to the board;
- special powers of the committee chair;
- tenure.

Who are committee members?

It is now generally accepted in Australia that the majority of committee members will be independent non-executive directors. Committee members should also be suitably qualified in terms of abilities, knowledge and experience.

Committees must be large enough to allow for proper consideration and debate of issues but not be so large that decisions cannot be reached. In practice, most committees will have three or four members with rotation happening every few years. Non-executive directors who are not committee members are often allowed to attend committee meetings as observers. A statement to this effect should appear in the committee's charter.

How and what should a committee report to the board?

This question should be addressed in the committee's charter. Responsibility for taking the minutes of each committee meeting is usually assigned to the company secretary. The minutes capture the key deliberations, show options for action and make recommendations for the board to endorse or decide on.

The minutes or a written report of the meeting should be included in the board papers for the next full board meeting. The information contained should reflect the needs of the full board, e.g. highlight the issues, options and recommendations for decision or approval.

If a committee meeting occurs just before a board meeting, the committee chair should present a verbal summary of key points raised at the committee meeting, with the minutes to follow.

Should the committees be evaluated?

The board must continually monitor each committee's activities as part of their duties of care, diligence and good faith. A committee's charter should be evaluated annually to ensure that it is appropriately focused and that the committee is fulfilling its functions; if not, amendments should be made.

The performance of the committee and its members should be also evaluated to ensure directors are fulfilling their responsibilities and that the board is achieving the most from its committees.

Does sitting on a committee carry extra legal liability?

The question of whether committee membership increases the liability of a director has not yet been fully explored in Australian law. This is especially an issue for the audit committee. Technically, all directors share responsibility for decisions equally. As outlined above, when directors delegate a power to a committee under s 198D of the Act, they remain responsible for the exercise of the power by the committee as if they had exercised it themselves (s 190).

However, there is an exception if the director believed on reasonable grounds at all times that the delegate would exercise the power in conformity with the duties imposed by the Act and the company's constitution; and the director believed on reasonable grounds and in good faith (and after making proper inquiries if the circumstances so required) that the delegate was reliable and competent in relation to the power delegated (see s 190(2)).

About us

The Australian Institute of Company Directors is committed to excellence in governance. We make a positive impact on society and the economy through governance education, director development and advocacy. Our membership includes directors and senior leaders from business, government and the not-for-profit sectors.

For more information **t:** 1300 739 119 **w:** companydirectors.com.au

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