

Sport New Zealand Group

The constitution and the board charter

What belongs in them &
what doesn't

Things that belongs

The constitution

The primary purpose of the constitution is to serve as an agreement between the owners and the organisation. It ensures that the members' or owners' interests are protected and that their legitimate rights cannot be usurped by the board or others.

The constitution should reflect organisational design. In this case, form (the legal document) follows function (the governance design).

Too often boards look to the constitution for answers when faced with issues. Although constitutions can be poorly drafted and create confusion, most problems stem from poor board processes and a lack of clarity around the board's role.

The forms of constitution, incorporated society, charitable trust, limited liability company will all have different requirements. Here we focus on the first two. Trust constitutions are somewhat simpler as they generally don't have all the complexity of member based ownership and their associated rights. For charitable trusts the owners, are in a moral sense, the beneficiaries alluded to through charitable purpose.

Legal niceties

Registered office, contact person, keeping register of members (Inc Soc Act and Privacy Act requirements), no pecuniary gain.

Objects or purposes

A short, but broadly stated Objects or Purposes that allow for a wide range of organisational activity. In a charitable entity they need to reflect one or more of the [heads of charity](#)

Noting that the organisation is legally bound to operate within the scope of its objects. They should be broad enough to allow the board to maneuver.

Powers

Powers of the organisation in broad terms such that it has the necessary mandate to fulfil its role.

Powers of the board

Making clear the powers given to the board and therefore what rights the members retain through the annual meeting.

Officers' duties

Obligations placed on directors or trustees. The new Incorporated Societies Act is now quite specific.

Structure and rights

Important in federal structures. Who are the legal members. How do they become members, (necessity for consent) What are the processes for expelling members, including natural justice and recourse provisions. What rights do they have and what obligations are placed on them as members.

Annual meeting

Who can attend, what business is to be conducted, (requirements under relevant Acts), notice provisions for annual meetings, voting rights and procedures, proxy voting procedures if allowed, conformation of the auditor, who chairs the meeting, who can speak, what percentage of votes are needed to alter the constitution, frequency of and maximum intervals between meetings, meeting quorum, requirement to keep minutes of the meeting., receipt of the annual report, processes for resolutions outside the annual meeting, SGMs, EGMs, electronic voting etc.

[Trusts are not obliged to have annual meetings, but many do have an annual open forum, and some do have a form of membership]

Financial statements

The document will mandate the maintenance of appropriate financial records and processes.

How the board is formed

Number of directors and how they are selected (elected, appointed, ability to co-opt), tenure specified. If independence is a pre-requisite that needs to be defined. Powers of the board outlined. Generally, the annual meeting has the right to remove a director. If so in what circumstances.

If there is a board appointment panel those details should be in the constitution.

Disputes

Procedures for resolving disputes, including providing for how a complaint may be made,

Winding up provisions

How the organisation is to be wound up and the disposal of any residual assets should be outlined.

Board meetings

How a meeting is called, quorum, process for appointing the chair (preferably by the board itself). Voting procedures.

Committees

There is a tendency to list a range of specific committees in a constitution. This binds the organisation to entities that may or may not be useful or have served their purpose. An Audit committee (or Audit and Risk) should be mandated together with the ability for formation or dissolution of other committees at the board's discretion.

Indemnity

It is common and desirable to see an indemnity clause for directors or trustees.

SportNZ requirements

From time to time there may be Sport NZ requirements on partners. Increasingly these will be linked to investment schedules or formal policy e.g., diversity and inclusion. Partners may choose to include all or some in their constitutions e.g., equity and inclusion.

In general

Constitutions should be carefully designed and drafted to facilitate smooth and effective governance. They should be in plain English, free from ambiguity and address primarily key issues of concern to owners. In theory every statement is open to being challenged at law so anything that appears open to broad interpretation probably needs tightening up.

Things that don't belong

Detail of board meeting processes

This is for the board to decide. Some constitutions prescribe an operating model for the board, Policy Governance or others. This is for the board not the owners.

By laws and rules

They are an adjunct document. By laws are the domain of the board who may form a committee to consider them and/or implement them.

Delegations

They are the domain of the board

Budget approval

Again, the board. Although it may be 'presented' to the annual meeting along with the annual report

Strategic plan approval

Board to decide outcomes related to purpose and adopt the plan

Appointment of the chair

Domain of the board. If there is a President, that is the business of the annual meeting. The President is deemed to be a direct representative of the members' interests and as such the members should decide

Appointment of the chief executive

Domain of the board although the right to engage a CE is often noted

Other appointments

Some boards like to appoint the national coach. But that is only valid if they report separately to the board and not through the chief executive which is suboptimal as it splits up lines of accountability. Same with representative teams. The board should be comfortable with the process, but these areas sit outside the constitution.

Constitution checklist

This is not intended to be a complete list but covers the main points that are relevant to governance matters

Item	Y	N	In part
Legal niceties			
Objects or purposes			
Structure and rights			
Annual meeting			
Powers of the organisation			
Powers of the board			
Duties of officers or trustees			
Structure and rights			
Annual meeting			
Financial statements			
How the board is formed			
Disputes			
Winding up provisions			
Board meetings			
Committees			
Indemnity			
Any SportNZ requirements			
Up to date, plain English			

The board charter

As indicated in the title this the board's document outlining its roles and responsibilities. It makes clear the board is acting on behalf of the owners and to ensure enduring prosperity for the organisation. It will set out the matters below. These will be laid out in a manner that on the one hand meets the board's oversight obligations but does not overly prescribe or limit the chief executive's freedom to act. Basically, the board needs to avoid getting into the weeds through its policy setting.

Policies are in one sense, decisions made in advance, about governing processes, outcomes being sought and desired behaviours. Once agreed and in place, they should free directors from having to create operating rules or agree appropriate behaviours and actions on the fly, often in knee jerk reaction to specific events.

Board charters certainly should reflect legal obligations, but they are fundamentally values based. These are the board's core beliefs

Policies should say what they mean and mean what they say. They are the foundation of accountability, there must be no room for misinterpretation or ambiguity.

The board itself

- The role of the board and its governing philosophy
- How it will conduct meetings
- The conflicts of interest policy/ guidance on provision of service by a director/ clarity on expenses
- Processes for and commitment to review, development, director induction
- The role, responsibilities and expectations of individual directors, legal and moral
- Role description for the chair
- A code of ethics or conduct
- How significant decisions will be made
- Process for review of the charter and its policies
- The board's specific role in
 - Strategic direction and planning
 - Financial governance
 - Risk governance
 - Setting and oversight of organisation culture
 - Delivering its obligations under the Health and Safety at Work Act

Chief executive

Outlining the board's overall authority it provides the chief executive, preferably set out in limitations terms, i.e. the ends to be achieved and any limitations on the freedom to choose means. Essentially clarifying decision rights:

- The high level approach to delegation
- How the chief executive's performance, development and remuneration will be addressed by the board, by whom and with what frequency. If there is to be a committee to consider this, then those terms of reference should be in the charter.

- Clarity on the board's expectations in the areas of
 - Financial management
 - Budgeting and financial planning
 - Employment conditions, remuneration and benefits within the organisation
 - Protection of assets
 - Information to and communication with the board
 - Contingency planning
 - Stakeholder engagement and public affairs

Committees

The charter should include terms of reference for any standing committees. These will make clear

- Purpose
- Membership
- Responsibilities and authority to act
- Preferably also a commitment to regular review

In our view ad hoc committees should have sunset clauses that force the question, "is this still a value adding entity".

Optional clauses

Could include

- Welfare of sport and recreation participants (probably a good idea)
- Commitment to Te Tiriti and engagement with Māori
- Environment and sustainability
- Any other values based policies, alcohol, gaming, tobacco etc

What the charter should not include

Operational policies

Detailed operational policies are the domain of the chief executive. The board should have provided sufficient guidance in its charter in order for these to be framed, for example

Travel/ IT/ HR/ information privacy/ health and safety etc.

Management domain

The chief executive is the board's point of contact. The charter will provide adequate guidance to him or her. All other staff are accountable through the chief executive. Therefore, the charter must not include any strictures that override this principle or limit the freedom to instruct, guide, develop, and performance manage the staff.

There are nuances, for instance the chair of the Audit and Risk committee will necessarily have a direct relationship with the CFO, but it is not a supervisory one in any way.

-