



ROLE OF THE BOARD

1. Introduction

The College is an incorporated body, a company limited by guarantee, notwithstanding it is a charity and a not-for-profit membership organisation, which was incorporated in 1938.

Australia's Corporations legislation specifies that every incorporated body must have directors, a minimum of 3 for public companies such as the College (of which 2 must be resident in Australia) and 1 director for propriety limited companies.

The Corporations Act 2001 (Commonwealth) provides that:-

"The business of a company is to be managed by or under the direction of the directors.

The directors may exercise all the powers of the company except any powers that this Act or the company's constitution requires the company to exercise in general meeting."

2. Corporate Governance

Corporate Governance is concerned with the framework within which corporate bodies exercise their authority on behalf of stakeholders (members, directors, employees, creditors and so on) and the accountability mechanisms in place to manage that authority.

There are numerous definitions of corporate governance. The ASX Corporate Governance Council, for example defines corporate governance as the:-

"framework of rules, relationships, systems and processes within and by which authority is exercised and controlled in corporations. It encompasses the mechanisms by which companies and those in control are held to account."

In particular, corporate governance focusses on the role of the Board as the body principally responsible for ensuring that companies discharge their responsibilities to stakeholders.

A company's Constitution is normally its primary corporate governance document.

3. What do Board's Do?

Boards are responsible for a range of functions including but not limited to:-

- ensuring enduring value of their organisation for their members is created;
- improving the performance of the corporation through strategy formulation and policy making;
- monitoring the organisation's performance, ensuring that performance is in the members' interests and meets agreed goals and objectives (this includes complying with all relevant legal requirements and appropriately managing risks);
- recruiting, and overseeing the performance of, the CEO.

These functions are interrelated, with many issues facing the Board having both compliance and performance outcomes. For example, compliance issues are raised by the Workplace Health and Safety laws ("WHS").

The company's response to this compliance pressure will have implications on performance both directly such as through the costs of implementing an effective WHS compliance program, and indirectly through improving employees' lost time and improved productivity.

The Board normally appoints management to carry out the day to day functions of the organisation within a framework of policies and strategic guidelines established by the Board.

The Board must, at the same time, control and support management to achieve high levels of both compliance and performance.

These business performance and compliance responsibilities can result in conflicting pressures on directors.

Boards must balance these roles and give enough attention to both. Again, the Board's appetite for risk, and its views on the balance between these possibly competing objectives should be regularly discussed and reviewed to ensure management has a clear understanding of the direction the Board wishes to take.

To discharge its role, a Board performs the following essential functions:-

Strategic Direction:-	Participate with management in setting policies, goals, strategies and performance targets for the organisation to meet both member and community expectations.
Resources:-	Make available to management the resources to achieve the strategic plan.
Performance:-	Monitor the organisation's performance against its strategies and targets.
Compliance:-	Ensure that there are adequate processes in place to comply with legal and accounting requirements.
Risk:-	Set the organisation's risk appetite and ensure that the risks to which the organisation is exposed are clearly identified and that suitable processes are in place to manage those risks.
Accountability to Members:-	Report progress to members as their appointed representatives and align the collective interests of members, directors, management, other employees and other stakeholders.

4. Board Powers in General

The company is viewed by the law as a separate legal entity, comprising three distinct elements:-

- the company itself as a separate legal entity;
- the directors and officers of the company;
- the shareholders or members of the company.

The members own the company but the directors control the way it is to operate.

Under current governance thinking and practice, the Board is responsible for the job of governing, not managing, their organisation.

This model sees the Board as the "servant leaders" of the owners (i.e. the members). The Board's job is to ensure that the organisation achieves its "Board stated goals" and conducts itself with honesty and integrity in order to carry out its leadership role.

Most companies are structured on the basis that the Board will be vested with the power to manage and run the company with residual power only left with the members.

The generally accepted practice is for the Board to delegate the day to day management of the company to its employees, via the Chief Executive, with a major part of the Board's role being the oversight of management in its performance of that delegation.

The practical issue that flows from the difference between governing and managing is the difficult one of where the line is drawn between the work of the Board and that of management on a day

to day basis. Whilst in theory it is easy to create a list of responsibilities that fall into each, the line will shift and change depending on the organisation's circumstances and the issues at hand.

Responsibilities can flow into each other, particularly where the breach of a legal requirement could result in personal liability of directors. These and other operational type matters may escalate and become a matter for the Board because, for example, the potential they may have to affect the organisation's reputation.

The most obvious difference between what directors do and what managers do is that directors can only act as a group (subject to any specific delegations given to an individual director or directors, to undertake certain acts on behalf of the full Board). Directors come together, either in person or by phone or video conference to take joint decisions for which they are all individually and collectively liable. Although directors can delegate authority to do anything concerned with the business of their organisation to any body or person whom they reasonably believe to be capable of performing that delegation, directors as a group remain liable for that decision, and can be held accountable if it turns out, even in retrospect, to be wrong.

As a general rule, directors tend to operate on a longer term time frame and at a more strategic level than managers; indeed their legal duty is to act in the interests of the company as a whole, meaning present and future members, which demands a longer term view. Thus:-

- directors are generally held to be responsible for setting the appetite for risk, whilst management ensure that risks are managed;
- directors set the strategic direction and vision, whilst management devise the strategic plan and implement it, following Board approval;
- directors set the "tone from the top" by acting ethically, modelling the correct values and requiring management (particularly the CEO) to demonstrate appropriate values, whilst management develops and adheres to codes of conduct;
- directors retain responsibility for ensuring that "everything is done" and that it is done to the required standard.

Sometimes the Board delegates authority to one or a few directors to undertake a certain action on behalf of the full Board, as previously noted. When operating under such a delegation the director, or directors, does not, or do not, have the decision making power of the Board, but is, or are, limited to any powers authorised under that particular delegation only.

A company's Constitution is the document that sets out how the company is to be organised in pursuit of its objects, and where the division of power and authority lies between its owners (the members) and operators (directors and management).

A Constitution normally provides directors with the authority to exercise all of the relevant powers of the company, except for those powers within the Constitution that are specifically reserved for members to exercise. As noted the Board may delegate some, or all, of that authority (but not its responsibility) as it sees fit.

A company's Constitution is, in effect, a legally binding contract between the company and its members and directors. This concept is given the force of law through Australia's Corporations legislation which in part states that a company's Constitution has the effect as a contract under which each person (members and directors in particular) "agree to observe and perform the Constitution and rules so far as they apply to that person."

Rights that are embedded in a Constitution cannot be varied without following the appropriate procedures, e.g. changes approved by members in general meeting as special resolutions.

5. RACP's Constitution and its Directors

The College's Constitution states that the Board is to govern the College.

“The management and control of the business and affairs of the College shall be vested in the Board. The Board may exercise all such powers and do all such acts and things as the College is authorised to exercise and do.”

The College’s Constitution confers a number of specific powers on the Board to undertake certain acts (Clause 7.1); to undertake certain activities as part of its accountabilities and responsibilities (Clause 7.2); the power of delegation (Clause 7.3) and the power to make, amend and repeal such By-laws as it deems necessary for the proper conduct and management of the College (Clause 7.4) provided in more detail in Appendix 2 to this Brief.

6. Board Charter

The Board has adopted a Board Charter to promote high standards of governance across the College and its numerous College Bodies, and to clarify, primarily for Members as well as for itself, the roles and responsibilities of the Board and those of the Chief Executive.

As the peak decision making body within the College, with various powers conferred on it by the College’s Constitution, the role of the Board is to govern the College and to promote the College’s interests in the pursuit of its objects. The Board does this by setting strategic direction and context and focussing on issues critical to the College’s success.

The Board Charter covers the following matters:-

- Board accountabilities and responsibilities
- Use and role of Board Committees and other College Bodies
- The role and responsibilities of the CEO
- The role of the RACP President
- The responsibilities of individual Directors
- Management of Conflicts of Interest
- Access to information and independent advice
- Role of the Company Secretary

Successive Boards have confirmed that the Board’s accountabilities and responsibilities include:-

Strategy and Planning	Set strategic direction; approve strategic plans, annual operating and capital expenditure budgets for the benefit of Members in the pursuit of the College’s objects.
Performance Monitoring	<p>Reviewing the College’s performance and progress against approved plans and budgets.</p> <p>Monitor and drive the College’s performance against any agreed key performance indicators (“KPI’s”)</p> <p>Approve any action or remediation plans to be implemented by management in respect of the College’s performance.</p> <p>Monitor the performance of the Chief Executive against approved plans, budgets and KPI’s.</p>
Financial Reporting	<p>Ensure the College produces compliant financial statements and reports as required by the law and applicable accounting standards.</p> <p>Appoint external auditors and agree the scope of their audit and audit fee.</p> <p>Review the College’s control environment and audit and compliance resources, structures and processes and consider and approve any changes.</p> <p>Review any significant audit and compliance issues identified and approve any action or remediation plans proposed.</p>

	<i>(Some or all of the above accountabilities and responsibilities have been delegated to the Finance and Risk Management Committee to monitor but remain the responsibility of the Board.)</i>
Risk Management and Compliance	<p>Review major risks the College is, and is likely to be, exposed to in the achievement of its strategic plans and objects.</p> <p>Review risk management strategies, resources, structures, assumptions and processes within the College and approve any recommended changes.</p> <p><i>(Again some of which may be delegated to the Finance and Risk Management Committee to review but the responsibility for this activity remains with the Board.)</i></p> <p>Review the processes implemented by management to ensure the College complies with its statutory and regulatory obligations, such as the AMC, MCNZ, with WHS requirements and corporations' law requirements; oversee the management of the College's "brand" and reputation.</p>
Personnel	<p>Require a fair and effective election process within the College that nominates and elects suitable candidates for the Board.</p> <p>Select, appoint (and remove if required) the College's Chief Executive, noting that the CEO is ultimately responsible for the day-to-day management of the College's staff.</p> <p>Oversee the College's relationships with its Fellow and Trainee Members.</p> <p>Ensure succession planning occurs within the College for key positions including potential future Board members.</p>

An effective Board, with appropriate powers and clarity around its obligations and responsibilities is essential for the good governance of the College in pursuit of its objects for the benefit of its Members.

7. Legal Challenges to the Powers of the Board

Members have the right to appoint Directors, as per the College's Constitution, and they also have a statutory right to remove them in certain circumstances using appropriate processes.

While Members generally, (subject to any specific authority and power vested by a company's Constitution), cannot intervene in the management and control of their company and overrule the day to day decisions of the Board, there have been attempts to do so which have ended up in Court. The Courts have found strongly in favour of Boards and confirmed that it is the Board's responsibility to govern, control and manage a company on behalf of, and in the best interests of, Members as a whole.

Appendices

1. Standing Bodies that report to the RACP Board
2. Role of the Board – College's Constitution

Authored by Michael Smith

Director of Governance, HR and Commercial Services
Company Secretary
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Note: This review is based on the Corporations Law, case law precedents and the College's Constitution as at the date it was written, and will be subject to change as the law and/or the College's own Constitution changes.

1. Committees of the Board

- College Appeals Committee (ad-hoc)
- College Education Committee
- College Policy and Advocacy Committee
- College Research Committee
- College Standards Committee (ad-hoc)
- College Trainees' Committee
- Ethics Committee
- Fellowship Committee
- Finance and Risk Management Committee
- Remuneration Committee

2. New Zealand and Australian Regional Committees

- New Zealand Committee
- NSW and ACT Committee
- NT Committee
- QLD State Committee
- SA State Committee
- TAS State Committee
- VIC State Committee
- WA State Committee

3. Other Bodies

- College Council
- Adult Medicine Division Council
- Paediatrics and Child Health Division Council
- Australasian Faculty of Occupational and Environmental Medicine Council
- Australasian Faculty of Public Health Medicine Council
- Australasian Faculty of Rehabilitation Medicine Council
- RACP Foundation

5a) Constitutional Power of the Board (Clause 7.1)

Under the College’s Constitution the Board shall have power to:-

- encourage and support the educational aims of the College (***College Education Committee undertakes much of this work on behalf of the Board but the Board retains much of the approving authority;***);
- encourage and support by all means in its power the promotion of health research (***RACP Foundation provides the funding, College Research Committee oversees research activities within the College, including direction and priorities, directing the RACP Foundation’s funds and the needs of the College in commissioning research;***);
- further the objects of the College in such a way as to benefit the public generally;
- promote ethical and responsible decision making at all levels of the College and in its dealings with external agencies and the community;
- establish such Divisions, Faculties, Chapters, committees, branches and agencies in Australia and/or New Zealand and to make such By-laws for their management and to delegate to each of them and their respective committees such powers, rights and obligations (and to remove or add to such powers rights and obligations) and to close and discontinue the same as the Board may from time to time determine;
- publish information about criteria for admission to training courses, curricula, pathways to achieving Fellowship, and the nature of the training and continuing professional development programs offered by the College; and
- regulate admission and assessment of candidates to the training programs offered by the College, and issue qualifications to successful candidates as prescribed by the By-laws of the College.

(Much of the above two powers of the Board have been delegated to the College Education Committee to oversee in more detail).

5b) Constitutional Accountabilities and Responsibilities of the Board (Clause 7.2)

That Constitution provides that the Board shall:-

- approve and review the strategy and planning of the College, including any related approvals or reviews;
- oversee the Board election process;
- oversee the management of the College and appoint the Chief Executive Officer;
- oversee the College’s relationship with its Members (***College Fellowship Committee undertakes much of this work on behalf of the Board;***);
- organise and approve the financial reporting and auditing of the College, including review of any significant audit and compliance issues identified (***the Finance and Risk Management Committee undertakes this work on behalf of the Board;***);
- monitor the performance of the College, including approving performance indicators and reviewing reports;
- oversee management and compliance, including review of risks, risk management strategies and the management of the College’s brand (***the Finance and Risk Management Committee reviews risk related matters on behalf of the Board;***);

- oversee the capital management of the College, including approving the annual budgets, other major capital expenditure commitments and the entry into other financial arrangements (***the Board has delegated some of these arrangements under the Financial Delegations Schedule, and has delegated approval of changes to this schedule to the Finance and Risk Management Committee***);
- determine and approve any Board policies and delegated authorities;
- appoint, remove and suspend Office Holders and Members in accordance with this Constitution from time to time.

5c) Constitutional Power to Delegate (Clause 7.3)

The Constitution provides that the Board may delegate any of its powers (other than that of delegation) to the Chief Executive Officer or to committees comprising persons appointed by the Board.

The Board may revoke any delegation of its powers by ordinary resolution.

The responsibility for the day to day management and administration of the College will be delegated by the Board to the Chief Executive Officer assisted by staff of the College. The Chief Executive Officer will manage the College in accordance with the strategy, plans and delegations approved by the Board, and is accountable to the Board for the authority delegated and the performance of the College.

5d) By-laws the Board may make, amend and repeal (Constitution Clause 7.4)

The Constitution provides that the Board shall have the power from time to time to make, amend and repeal such By-laws as it seems necessary or desirable for the proper conduct and management of the College.

The Constitution provides, without in any way limiting the above general power vested in the Board, a number of matters about which the Board may choose to make, amend, and repeal By-laws in relation to, being:-

- procedural matters in relation to application for all classes of Membership of the College;
- entrance fees, annual subscriptions and other fees payable by all classes of Membership of the College (***set by the Board on the recommendation of the Finance and Risk Management Committee as part of the Annual Budget process***);
- rights and privileges to be accorded to all classes of Membership of the College, (***partly covered by the Policy governing the Award of Honorary Fellowship***);
- academic dress to be worn by Office Holders or other Members of the College;
- the establishment, regulation, administration and dissolution of Divisions, Faculties, Chapters or other organisations of Members, whether such organisations have a New Zealand and regional basis or otherwise and in relation to the Office Holders of such organisations, (***each Divisional and Faculty Council and each Chapter Committee has a By-law setting out its responsibilities, membership and other matters of relevance to the particular body***);
- the conduct of courses of training, study and assessments for admission to Membership or admission to Fellowship or for other diplomas or certificates of the College or otherwise, including prescribed fees pertaining to such courses of study and assessments, (***Admission to Fellowship Policy covers much of this***);
- the regulation of elections and appointments to the Board and voting by post or electronically by Members;
- the nomination and election of Directors and Office Holders of the College;
- the conduct of direct voting and postal or electronic polls of Members of the College;

(The above three points are covered by the By-law Nomination and Election Process for Board and College Bodies plus relevant clauses in the Constitution)

- the Membership, purpose and proceedings of Board Committees ***(each Board Committee has in place a Board approved By-law covering such matters. The Governance of College Bodies By-law regulates procedural matters common to each committee);***
- the terms and conditions for renewal of, continuation of and re-admission to Fellowship and any professional development requirements adopted by the Board, ***(the current Constitution provides the Board with the authority to re-admit former Members as Fellows; this authority could be delegated to the relevant Division or Faculty to approve);***
- the discipline of Fellows, Trainees and others on any terms as determined by the Board, including suspension, counselling, reprimand, termination or expulsion, ***(Code of Conduct, College Standards Committee By-law in place to manage this, together with relevant clauses of the Constitution).***