



Board Charter

October 2022

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1 Purpose

The purpose of this Charter is to document the objectives, responsibilities and governance framework for the operation of the Board of the National Disability Services (NDS) and NDS's relationship to Divisional Committees and other internal committees.

This Charter should be read in conjunction with NDS's Constitution, By-Laws and Governance Policies.

NDS is a company limited by guarantee and also a large registered not for profit entity under the Australian Charities and Not-for-profits Commission Act 2012 (Cth) (ACNC Act). For the purposes of the ACNC Act Governance Standard 1, the NDS's charitable purpose is to help people with disabilities. NDS's principal activities include representing over 1,200 non-government disability service providers. Collectively, NDS members operate several thousand services for Australians with all types of disability.

NDS is subject to the ACNC Act, the Corporations Act 2001 (Cth) and its Constitution. If there is any conflict between this charter and the Constitution, the Constitution prevails.

2 Objectives

As a formal governing Board, the objectives of the Board are to provide leadership and to determine and monitor:

- (a) NDS's strategic objectives and its short, medium, and long-term strategic goals;
- (b) policies governing the operations of NDS;
- (c) powers and functions of Divisional Committees, Board Committees, and other committees as may be established from time-to-time; and
- (d) annual progress and performance of NDS in implementing its strategic goals and objectives.

3 Responsibilities

The Board acts for the benefit of the Members. At all times, the Board recognises the trust placed in it by the Members and their expectations of the Board. The Board will demonstrate this by:

- (a) appropriate attitudes and behaviours towards Members;
- (b) loyalty to the Members;
- (c) gathering information from Members about their concerns, needs and aspirations;
- (d) remaining up-to-date in matters concerning Members' interests; and
- (e) reporting to the Members on a regular basis on the performance of NDS.

3.1 Responsibilities of the Board

In performing its role, the Board shall:

- (a) make and/or amend from time-to-time, the by-laws that regulate the Board, Divisional Committees, and NDS and its members;
- (b) review and approve strategic goals and objectives, annual budgets, and financial plans;
- (c) oversee and monitor organisational performance and the achievement of strategic goals and objectives;
- (d) establish and determine the powers and functions of Divisional Committees, Board Committees and other committees established by the Board;
- (e) ensure there is an appropriate separation of duties and responsibilities between itself and the CEO;
- (f) ensure the independent views of Board members are given due consideration and weight;
- (g) monitor financial performance against forecast and prior periods, including approval of the annual financial report, and liaison with external auditors by the Audit, Risk & Investment Committee;
- (h) appoint, approve the succession plan and remuneration, and regularly assess the performance of the Chief Executive Officer (CEO);
- (i) set the framework for the policy platform, which is the mandate for the operation of policy committees;
- (j) determine the desired culture of the organisation and act as a role model of the desired culture;
- (k) ensure Members are provided with an accurate and balanced view of NDS's performance;
- (l) ensure it is engaging with Members so it can satisfy itself that members and their views are identified and understood;
- (m) enhance and protect the NDS's reputation;
- (n) set the Board's risk appetite, ensure risks are identified and appropriate control, monitoring, and reporting mechanisms are in place; and
- (o) engage, as appropriate and in consultation with the CEO, with stakeholders including Members, employees, industry, government, people with disability, carers and other interest groups.

3.2 Responsibilities of individual Directors

In performing their role, individual director shall:

- (a) act honestly and in good faith at all times in the interests of NDS and the Members and other key stakeholders, ensuring they are treated fairly according to their rights;
- (b) carry out their duties in a lawful manner and ensure NDS carries out its business in accordance with the law and the terms of the Constitution;
- (c) avoid conflicts of interests in as far as this is possible. Where such conflicts arise, the Director(s) concerned must declare those interests (refer the Governance Process 'Conflict of Interest' Policy);
- (d) be diligent, attend Board meetings and devote sufficient time to prepare for Board meetings to allow for full and appropriate participation in the Board's decision making;
- (e) observe the confidentiality of non-public information acquired by them in their role as Board members and not disclose to any other person such information;
- (f) not improperly use their position or misuse NDS's information;
- (g) act in accordance with their statutory and fiduciary duties, complying with the spirit as well as the letter of the law, recognising both the legal and moral duties of the role;
- (h) interact with the Board, Members and NDS staff in a positive and constructive manner;
- (i) be loyal and supportive to the Board, abiding by Board decisions once reached; and
- (j) do nothing that denigrates NDS or harms its public image.

3.3 Role of the President

The President assures the integrity of the Board's processes and represents the Board to outside parties.

Accordingly:

- (a) the President ensures the Board behaves consistently with its own rules and those legitimately imposed upon it from outside NDS.
 - (i) Discussion at meetings will deal only with those issues which, according to Board policy, clearly belong to the Board to decide, not to the CEO.
 - (ii) Deliberation will be fair, open and thorough but also timely, orderly and kept to the point.

- (b) the President's authority consists of making decisions within the Governance Process and Board/CEO Linkage policies, except where the Board specifically delegates portions of this authority to others. The President is authorised to use and convey any reasonable interpretation of the provisions in these policies.
- (c) the President is empowered to chair Board meetings in accordance with the Constitution, with all the commonly accepted powers of that position.
- (d) the President has no authority to make decisions that conflict with Board policies. Therefore, the President has no unilateral authority to personally supervise or direct the CEO.
- (e) the President may represent the Board to outside parties in announcing Board-stated positions and in stating chair decisions and interpretations within the area delegated to them.
- (f) the President may delegate this authority but remains accountable for its use.

3.4 Role of the Company Secretary

The Company Secretary plays an important role in supporting the effectiveness of the Board by monitoring that governance process are in place and followed, that Board policies and procedures are followed and that meetings of Members and the Board are conducted effectively.

As a Company limited by guarantee, NDS must have at least one Company Secretary and at least one of its secretaries must 'ordinarily reside' in Australia. Where there is more than one Company Secretary in place, any reference to the term 'Company Secretary' in this document implies the plural.

The appointment and removal of the Company Secretary is a matter for decision by the Board. The Company Secretary is accountable to the Board, through the Governance Committee and President, on all governance matters. Evaluation of the performance of the Company Secretary is the responsibility of the Governance Committee Chair and President.

Company Secretaries fall under the definition of an 'officer' of a corporation, so they have many of the same duties and obligations as Directors under the Corporations Act, including to exercise their powers and discharge their duties "with care and diligence", "in good faith and for a proper purpose". Refer to the Corporations Act section 188 for more information.

More information can be found in the Company Secretary Position Description.

3.5 Role of the CEO

The CEO:

- a) leads NDS such that it can represent the interests of Members in their work to deliver high-quality supports and life opportunities for people with disability;

- b) provides key leadership and support to the sector and, together with the Board, drives robust national representation of NDS;
- c) builds and maintains relationships with key stakeholders, including Members, parliamentarians, government officials and other peak bodies; and
- d) leads successful communication and influencing campaigns using a variety of channels.

3.6 Board/CEO linkage

The Board's sole official connection with the day-to-day operations of NDS, its achievements and its conduct will be through the CEO.

3.6.1 Unity of Control

Only decisions of the Board acting as a whole are binding on the CEO.

Accordingly:

- (a) decisions or instructions of individual Board members, officers or committees are not binding on the CEO except in rare circumstances when the Board has specifically given such authority; and
- (b) in the case of Board members or committees requesting information or assistance without Board authorisation, the CEO can refuse such requests that require, in the CEO's opinion, a material amount of staff time or funds, or are disruptive.

3.6.2 Board/CEO Delegation

The Board delegates to the CEO responsibility for implementation of its strategic objectives. The Board allows the CEO to use any reasonable interpretation of these policies to achieve the intended results.

Accordingly:

- (a) the Board will develop strategic objectives that make clear its instructions to the CEO for the achievement of results or outcomes;
- (b) all Board authority delegated to staff is delegated through the CEO to whom in turn staff members are accountable:
 - (i) The Board will never give instructions to persons who report directly or indirectly to the CEO.
 - (ii) The Board will refrain from evaluating, either formally or informally, any staff other than the CEO;
- (c) as long as the CEO uses any reasonable interpretation of the Board's strategic objectives, they are authorised to establish all operational policies, make all operational decisions, take all operational actions, establish all practices, and develop all activities;

- (d) the Board may change its strategic objectives, thereby shifting the boundary between Board and CEO domains. By doing so, the Board changes the latitude of choice given to the CEO. But as long as any particular delegation is in place, the Board will respect and support the CEO's choices;
- (e) the CEO is not restricted from using the expert knowledge of individual Board members;
- (f) the Board will view the CEO's performance as the same as organisational performance so that achievement of the Board's strategic objectives will be viewed as successful CEO performance.

3.6.3 Industry policies

Notwithstanding the processes outlined in 6.3.1 and 6.2, the Board reserves the right to determine industry policies.

4 Composition and Meetings

4.1 Membership of the Board

- (a) The Company must have between twelve (12) and fifteen (15) Directors.
- (b) The Company in general meeting may by ordinary resolution alter the maximum or minimum number of Directors, provided that the minimum is not less than 3.
- (c) The Board of Directors shall comprise:
 - (i) the current Chairperson of each Division of the Company (who is entitled to be appointed as a Director of the Company solely by virtue of their position as a Divisional Chairperson) (Divisional Directors); and
 - (ii) four Directors elected in accordance with this Article 5.2 (Elected Directors); and
 - (iii) Up to three Directors appointed by the Directors in accordance with Article 5.2(h).
- (d) If the number of Directors is below the minimum fixed by this Constitution, the Directors must not act, except in emergencies, other than to appoint one or more Directors in order to make up a quorum for a meeting of Directors or to call and arrange to hold a meeting of Members to elect one or more Directors.

4.2 Meetings

- (a) The Board may meet, adjourn, and otherwise regulate its meetings as it thinks fit.
- (b) Meetings may be held using any technology consented to by all Directors.

- (c) Each member of the Board has one vote for the purpose of determinations by the Board. The President does not have a second or casting vote except in a general meeting.

4.3 Meeting Process

The Board is committed to the achievement of effective and efficient meetings.

Accordingly:

- (a) there shall be a Board-developed annual agenda plan designed to ensure the Board reviews its strategic objectives on an ongoing basis and attends to its own development requirements;
- (b) at the suggestion of the CEO, staff may be invited to the meeting to present an issue or provide information or advice;
- (c)
 - (i) the Board will as a matter of course include an in-camera session as a standing agenda item for all of its meetings;
 - (ii) the Chair is to exercise their right to determine whether to include or exclude any such in-camera session on the agenda or at the beginning of the meeting; and
 - (iii) reserve the right to include or exclude any non-Board person it chooses.
- (d) meetings will be held with the expectation that Board members have prepared for them and will participate in all discussions at all times within the boundaries of behaviour considered acceptable by the Board.
- (e) the Company Secretary shall ensure the agenda and Board papers are disseminated to Directors prior to the Board meeting, not less than five (5) working days in advance.
- (f) the Company Secretary, or another person appointed by the Company Secretary, shall take minutes of the proceedings of all Board meetings. Draft minutes will be distributed to Board members following a Board meeting.

4.4 Quorum

- (a) Subject to the Corporations Act, a quorum for a meeting of Directors is half plus one of the Directors in position at the time of the meeting, rounded down to the nearest whole number.
- (b) A quorum for a meeting of Directors must be present at all times during the meeting.
- (c) If there are not enough persons to form a quorum for a meeting of Directors, one or more of the Directors (including those who have an interest in a matter being considered at that meeting) may call a general meeting of the Company and the general meeting may pass a resolution to deal with the matter.

4.5 Terms of office

- (a) While there are no term limits set in the Constitution, the Board will set term limits by convention in order to ensure a periodic turnover of directors and facilitate regular review of director tenure.
- (b) Effective 1 January 2023, a Director may serve up to nine (9) consecutive years in a Director position. Terms apply to all Directors including Divisional Chairpersons, Elected Directors, Appointed Directors, or any combination thereof.
- (c) Once the nine (9) year term limit is reached, the Director may complete their current term but is not permitted to complete any further terms. For the avoidance of doubt, a Director may be elected or appointed for a further term if they have served less than 9 consecutive years as a Director at the time of election, even if at the completion of that further term they will have held a Director position for more than 9 consecutive years.
- (d) A person who has held office as a Director for nine (9) consecutive years is eligible for re-election or reappointment after a period of two (2) years from the date the person last held office as a Director.

5 Powers and Delegations

5.1 General powers

The Board has powers to delegate any of its powers particularly to Board Committees, the CEO, or others as determined by the Constitution.

5.2 Management

5.2.1 The Board may delegate its powers to the CEO as it considers appropriate. Management is responsible for implementing the strategic objectives and operating within the risk appetite set by the Board and for all other aspects of the day to day running of NDS. However, ultimate responsibility for strategy, control and oversight of sound and prudent management of the NDS rests with the Board.

5.2.2 The Board has delegated any Statutory Reporting obligations to the CEO and Company Secretary, who shall provide updates to the Board.

5.3 Divisional Committees

The role and structure of Divisional Committees is as per the NDS By-Laws.

5.4 Board Committees

5.4.1 The Board has established the following committees to assist it in fulfilling its duties and responsibilities:

- (a) Audit, Risk & Investment Committee;
- (b) Governance Committee;

- (c) Remuneration Committee; and
- (d) Communications Committee.

5.4.2 Each committee has formal Terms of Reference and has been granted certain delegations by the Board. Committee terms of reference, delegations and composition of each committee are reviewed annually by the Board.

5.5 Advisory Committees

- (a) The Board, in consultation with the CEO, may approve the establishment of advisory committees from time to time with the purpose of advising NDS on specific developments and issues within their areas of expertise.
- (b) The Board, in consultation with the CEO, approves, and then periodically reviews, the operation of each advisory committee.

6 Policy-Making

Policies are designed to provide clear, unambiguous guidelines for NDS's operations. Policies provide continuity and a consistent point of accountability.

Once a policy is adopted, the Board will speak with one voice in relation to that policy.

There shall be two levels of policy-making:

6.1 Governance policies

6.1.1 The Board will develop the following policies, and may develop additional policies:

- (i) strategic objectives, describing the outcomes the Board wants to be achieved. These policies define the benefit provided, beneficiaries and the cost or worth of the benefit;
- (ii) Governance Process policies describing the way the Board carries out its governing role;
- (iii) Board/CEO Linkage policies, defining the nature of the relationship between the Board and the CEO.

6.1.2 At a formally constituted Board meeting, the Board will approve all governance policies.

6.1.3 All governance policies will be systematically reviewed by the Board.

6.1.4 All governance policies shall be available to all Board members, the CEO and to staff as appropriate via the CEO.

6.2 Operational policies

- 6.2.1 These define day-to-day operational frameworks/guidelines for staff. All operational policies shall be consistent with the principles, boundaries and definitions espoused in the Board-level policies.
- 6.2.2 The CEO is responsible for the development of all operational policies.
- 6.2.3 All operational policies shall be accessible to all staff, and to Board members as required.
- 6.2.4 All operational policies shall be systematically and regularly reviewed.

6.3 Industry policies

- 6.3.1 The Board will determine policies and or responses to issues affecting NDS's membership and/or the sector more generally. Such decisions on policies or issues may be delegated to a designated Committee from time to time. In general however, industry policies shall be determined by the Board having regard to the advice and/or recommendation(s) of:
- the CEO
 - NDS Committees (including Board Committees, Divisional Committees and other committees)
 - NDS Communities of Practice (CoP)
 - NDS forums or conferences; and
 - Other significant stakeholders.
- 6.3.2 In determining NDS's industry policies, the Board shall have regard to the National Policy Development Flow Chart at Appendix A to this Charter.

7 Board Effectiveness

7.1 Directors' Protection

- (a) To the extent permitted by law, the Company may indemnify each Relevant Officer against:
- (i) A liability of that person; and
 - (ii) Legal Costs of that person.
- (b) Directors are also invited to sign the 'Deed of Indemnity, Insurance and Access'.

7.2 Evaluations

The Board considers the ongoing development and improvement of its own performance as a critical input to effective governance. As a result, the Board undertakes an annual evaluation of Board and director performance. The Board may engage an independent expert to facilitate the process.

7.3 Director Remuneration

7.3.1 NDS does not pay any fees to a Director for performing that person’s duties and responsibilities as a Director.

7.3.2 NDS will pay all reasonable travel, accommodation and other expenses that a Director properly incurs (refer to Directors’ Expenses Policy).

7.4 Director Induction

Refer to NDS’s Board Member Induction Policy.

7.5 Director Development

The Board recognises that good governance is an investment in NDS and will therefore invest in training and development to increase its governance capacity:

- (a) the Board will offer training for all Board members in order to enhance their capacity for governance excellence;
- (b) all costs associated with governance will be prudently incurred, though designed to ensure the development of the highest standard of governance. Governance development costs will be sufficient to cover:
 - (i) induction of new Board members;
 - (ii) travel to Board meetings;
 - (iii) external audits or performance reviews; and
 - (iv) other costs associated with effective governance, e.g. surveys and focus groups.

8 Review of Board Charter

This Charter will be reviewed annually or more frequently by the Board as required.

9 Definitions and Interpretation

9.1 Definitions

In this document, unless otherwise provided or the context requires otherwise:

Term	Definition
Board	means the Board of Directors of NDS.
By-law	means a by-law made by the Directors in accordance with the Constitution.
CEO	means the Chief Executive Officer.
Chief Executive Officer, Director, Division, Member	and other words and expressions defined in the Constitution have the same meaning where used in this document.

Term	Definition
Constitution	means the Constitution of NDS.
NDS	means National Disability Services Limited (ACN 008 445 485).
Outcomes policies	means policies relating to strategic objectives and other desired or required achievements or outcomes set out in any policies.
Policies	are policies formulated by the Board in relation to NDS.
President	means the person elected or appointed as President of the Board in accordance with the Constitution or, if there is no such person at any relevant time, the person then holding the position of Vice-President of the Board.
Divisional Committee	means a committee of a Division of NDS established in accordance with By-Law No 2.
Division Manager	means (in relation to a Division) the person holding the position of manager of the Division at the relevant time.
Strategic objectives	means the desired or required results and outcomes set out in the Board's strategic objectives from time to time.

9.2 Interpretation

In this document, unless the context otherwise requires:

- (a) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (b) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- (c) the singular includes the plural and vice versa;
- (d) a reference to any gender includes all genders;
- (e) a reference to any document is to that document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time.

10 Document Information

10.1 References or related documents

Description	Location
NDS Constitution	NDS Website
NDS By-Laws	NDS Website
NDS Governance Policies	NDS Board Portal on MS Teams
NDS Board Conflict of Interest Policy	NDS Board Portal on MS Teams
NDS Directors' Expenses Policy	NDS Board Portal on MS Teams
NDS Board Member Induction Policy	To be developed
NDS Deed of Indemnity, Insurance and Access	NDS Board Portal on MS Teams
NDS Insurance Policies	NDS Board Portal on MS Teams

10.2 Version History

No.	Approval Date	Updated By	Approved By	Summary of amendment(s)
1	10 February 2020			First edition
2	9 March 2021	David Moody	Joan McKenna Kerr	<ul style="list-style-type: none"> Reference to National Advisory Committees of the Board included in Section 6.3 and Level 3 in Appendix A – National Policy Development Flow Chart. Insert item 3.6.3: Notwithstanding the processes outlined in 6.3.1 and 6.2, the Board reserves the right to determine industry policies. Remove ‘selected’ in the flow chart under Level 3.
3	26 April 2022	Kirsty Minton	Rohan Braddy	<ul style="list-style-type: none"> Implement Board Governance Changes: <ul style="list-style-type: none"> Update Board Charter to implement 9-year term limits for Directors Remove reference to Alternate Directors Update references to Board size and composition. Include Communities of Practice as providing input to industry policy. Update references to Wiki Portal to the Board Portal on MS Teams. Additional information regarding Company Secretary role. Minor formatting and grammatical changes.
4	11 October 2022	Kirsty Minton	Rohan Braddy	<ul style="list-style-type: none"> Include reference to the Company Secretary Position Description in section 3.4.

National Policy Development Flow Chart

