

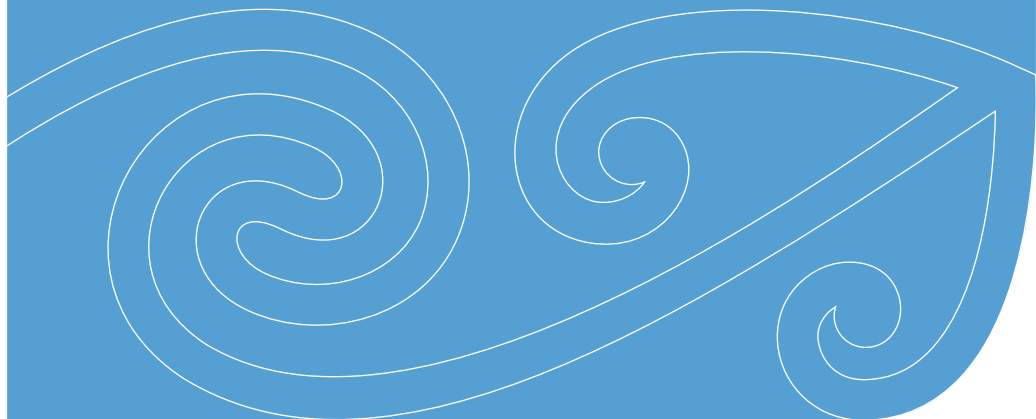


Te Puni Kōkiri
REALISING MĀORI POTENTIAL

Ngā Pōari Whakahaere

Being on a board

MĀTAURANGA KNOWLEDGE



Kotahi te kōhao o te ngira e
 kuhuna ai te miro mā, te miro
 pango, te miro whero
*There is but one eye of the needle
 through which white, black and red
 threads must pass*

REALISING MĀORI POTENTIAL



The framework above identifies three key enablers that are fundamental to Māori achieving Te Ira Tangata (improved life quality) and realising their potential. All our written information has been organised within these three key enablers or Te Ira Tangata.

1	<i>Mātauranga – Building of knowledge and skills. This area acknowledges the importance of knowledge to building confidence and identity, growing skills and talents and generating innovation and creativity. Knowledge and skills are considered as a key enabler of Māori potential as they underpin choice and the power to act to improve life quality.</i>
2	<i>Whakamana – Strengthening of leadership and decision-making.</i>
3	<i>Rawa – Development and use of resources.</i>
4	<i>Te Ira Tangata – The quality of life to realise potential.</i>

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2 Introduction

ABOUT BOARDS

4 Why does governance matter?

6 What boards do

7 How boards work

BOARD MEMBER RESPONSIBILITIES

11 Being a board member

12 Duties of directors and trustees

14 Personal risks

15 Ethics

16 Conflicts of interest

18 Knowing the law

TIME AND TRAINING

20 Time and remuneration

21 Training

BECOMING A BOARD MEMBER

26 Te Puni Kōkiri Governance and Appointments

27 Before you accept a board appointment

INTRODUCTION

Effective governance is the key to a strong future for any organisation, whether it be a multi-national corporation, a whānau trust or a community organisation.



Board directors and trustees are the people who provide the kaitiakitanga (guardianship) and leadership to protect and develop an organisation's assets as it moves into the future. Being a board director or trustee is a position of trust which carries great responsibility and great satisfaction.

Boards are hugely influential in New Zealand life. The many thousands of boards lead organisations that deliver everything from New Zealand's export earnings to health services for iwi, sport for local children and sustaining marae.

No matter what the business of an organisation, whether board members are volunteers or full-time professional corporate directors, or whether the organisation is a company, trust or an incorporation, the fundamentals of governance and board work remain the same.

This booklet aims to give an introduction to the roles and responsibilities of board directors and trustees so that you can confidently make a strong contribution to your organisation, and the wider community, through being a board member.

Ngā mihi nui ki a koutou.



ABOUT BOARDS

- *Why does governance matter?*
- *What boards do*
- *How boards work*

ABOUT BOARDS

Governance in its widest sense includes all the processes, systems and controls that are used to safeguard and grow assets. In business terms, it has been defined by the OECD (Organisation for Economic Co-operation and Development) as 'a system by which business organisations are directed and controlled'.



WHY DOES GOVERNANCE MATTER?

Governance is the responsibility of boards which operate as the link between the people who own an organisation, whether they are shareholders of a corporation or whānau owners of a farm, and the way the organisation is run day-to-day.

How the organisation is managed depends on its size. In some cases there will be a full-time CEO and management team, in others, board members may be filling both board and management roles, and a good organisational understanding of governance helps keep these roles separate.

Good governance makes sure an organisation is continuously steering towards its vision for the future and that all activity is lined up to support that vision. Many Māori organisations are set up to provide a resource for future generations. Effective governance is critical to ensure that assets are protected and developed for generations to come.

Poor governance puts organisations at risk of failure, including loss of assets, legal problems, or negative media coverage, and may impact on the influence or mana carried by the organisation.

Is it different for Māori organisations?

The principles of good governance are the same for any kind of organisation, however there are some aspects of Māori organisations that can create a unique governance environment.

These include:

- Organisation goals – an organisation may be expected to make a profit in a normal commercial manner, and also be expected to deliver social or cultural goals.
- Tikanga and values may play an important role in board processes and in shaping strategies.
- Kaitiakitanga (guardianship) may be seen to lead to conservative investments, but may include prudent use, development and growth.
- Long-term view – many Māori organisations think and plan generations ahead, much further than standard 'long-term' planning.
- Appointment of board members – tikanga and whakapapa can play an important part in ownership and board member selection, although the overriding duty of the board member is always to the organisation as a whole (or to all beneficiaries fairly), rather than their own whānau/hapū.
- Involvement of owners in decision-making – some boards may be required to undertake high levels of consultation with iwi/hapū/whānau owners before making major decisions.
- Many commercial assets are held in the form of trusts, requiring particular standards of care and fiduciary duties of trustees, and are not held under 'limited liability' principles.
- Restrictions on use of assets – core assets may be protected by law, their use constrained through Māori Land Court processes or by the owners' wishes and are not able to be used in a standard commercial manner. For example, major land assets may not be mortgageable and cannot therefore be used to generate capital for investment.

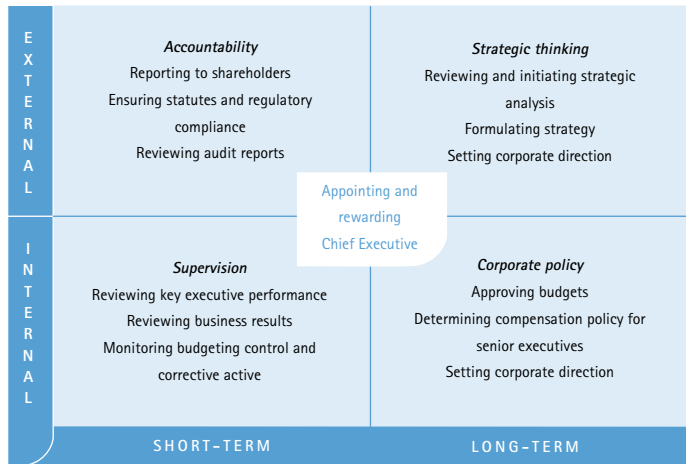


WHAT BOARDS DO

A board sets the vision and direction for an organisation and then makes sure everything is working towards that vision.

Some types of boards, including boards of many Māori organisations, may work very closely with owners to set the organisation's vision and overall strategy.

This diagram¹ sets out the five main areas of a board's responsibility along with the tasks in each area.



¹ *The Fish Rots From The Head*, Bob Garratt, Profile Books, Figure 8, Bob Tricker's early model of a board's roles.

HOW BOARDS WORK

Although boards may vary in size and make-up for different types of organisations, the basic way in which a board works remains the same.

Members

A board's success depends on the directors, trustees or committee members on the board.

Effective boards function as a whole, with the right overall mix of skills and perspectives, so recruitment of board members is a key board task.

Boards may be elected, have members who fulfil legislative requirements, or the directors themselves may be responsible for appointing further directors. In every case, however, an effective board has the right mix of skills to lead the organisation.

An effective Chair

The Chair represents the organisation to owners, the financial community and the general public. They may be appointed or voted in, and have the critical job of ensuring that board processes and meetings flow smoothly and reach outcomes.

The main responsibilities of the Chair are to:

- Lead strategic planning
- Manage relationships
- Ensure risks to the organisation are managed
- Monitor the performance of the Chief Executive
- Run efficient board meetings where all members are encouraged to contribute to debate and decision-making
- Manage board processes



- Maintain the focus of kōrero and discussion on the issues and ngā take
- Mentor board members where appropriate

Meetings

Boards usually do most of their work through meetings.

Board meetings which are formally structured and well-chaired achieve more.

Board members are expected to come to meetings well-prepared, and ready to engage in discussion and decision-making having read, and given thought to, the information provided for the meeting.

When all board members come prepared, meetings are more efficient and discussion is well-informed, helping quality decision-making.

Board committees

As board members' time together is limited, some specific tasks, such as monitoring a building project or auditing financial reporting, may be carried out by a sub-group of the board as a committee.

A committee's job is to fully investigate and analyse relevant information and then report back to the board with recommendations. Unless specific authorisation is given, committees do not have the authority to spend funds, appoint people or make decisions. In any event, as a principle, the board as a whole remains fully responsible for all decisions made.

Committees are usually temporary unless, like an audit committee, they are given an ongoing role by the board. Often committees are used to drive and lead specific projects.

Board self-evaluation

Effective boards take the time to make sure that they are working well, and to see if there are any opportunities to do better. These reviews are generally done annually and can be done in-house or led by a consultant.

The areas covered in a self-evaluation will generally include performance in relation to:

- Relations with shareholders/beneficial owners
- Relations with other stakeholders
- Strategic and business planning
- Legal/ethical duties
- How performance against plan is monitored
- Relationship with the CEO
- How well board meetings are working
- Contributions of board members
- Wider issues relating to the community/competitors/tikanga

Boards and management

One of the key findings from studies of successful Māori organisations is the need to keep a clear distinction between board and management responsibilities.

The board sets the overall direction for the company and management carries out the day-to-day running of business.

Management then reports to the board with all the information the board needs to be sure that operations are running well and in line with the organisation's purpose and direction. The board's job is not to manage the daily operations directly, but to make sure they are well-managed.

This principle applies even when board members are in management roles (sometimes called executive board members) or where management activities are carried out by contractors.

In larger organisations, board-management contact will only be between the Chair and the Chief Executive outside board meetings. In smaller organisations, there may be more contact, or some board members may also be in a management role. The line between governance and management responsibilities, however, remains critical.

The board sets the overall direction for the company and management carries out the day-to-day running of business.





BOARD MEMBER RESPONSIBILITIES

- *Being a board member*
- *Duties of directors and trustees*
- *Personal risks*
- *Ethics*
- *Conflicts of interest*
- *Knowing the law*

BOARD MEMBER RESPONSIBILITIES

Being a director or trustee on the board of an organisation offers a unique opportunity to contribute to the organisation and the community it operates in – whether that be the wider New Zealand community or a local community.



BEING A BOARD MEMBER

A board's success, and ultimately the success of the organisation, rests on the skills and commitment of the directors or trustees who make decisions on behalf of the owners and keep the organisation moving successfully towards its vision. Board members must have the trust of shareholders and beneficial owners.

The first duty of a director or trustee is to work for the organisation as a whole, and in trusts, for trustees to implement the trust in the best interest of all present and future beneficiaries of the trust, in accordance with the deed.

Even if a director or trustee has been elected or appointed to represent a particular group, as a board member, his/her duty is to consider the overall success of the organisation, or to implement the terms of the trust.

In many Māori organisations, directors are not just working to give a return to the current owners – they are working to safeguard and grow assets for future generations of owners.



DUTIES OF DIRECTORS AND TRUSTEES

Specific duties of directors and trustees are often set out in the constitution, trust deed, rules for statutory bodies and in legislation. There are also general obligations that apply across different types of organisations. Some of the main points are:

Directors and trustees on a board must:

- Act in the interests of the organisation as a whole over their own personal, whānau or other interests.
- Make sure they request or otherwise get the information they need to base their decisions on.
- Ensure that all reporting, financial and otherwise, from the organisation to owners and other stakeholders is accurate and not misleading.
- Be aware of the legislation which is relevant to their organisation and ensure that legislation is complied with. Directors can risk being charged with fraud or negligence if an organisation fails to comply with laws that apply to it.
- Attend board meetings (and send formal apologies if they cannot).
- Contribute to debate in an informed and constructive manner (even if they cannot attend a meeting).
- Respect confidential information.
- Accept collective responsibility for all decisions.
- Abide by majority decisions if that is the agreed way of arriving at decisions.

What directors and trustees should NOT do includes:

- Quoting other directors' or trustees' comments outside the boardroom. The board needs to be seen to speak with unity.
- Going directly to organisation staff for information or other requests.
- Committing to expenses without the authority of the board, for example, commissioning external advice without getting prior approval.
- Speaking on behalf of the organisation without approval.
- Seeking pecuniary gain directly or indirectly from knowledge gained as a board member.

13



Boards set the 'tone' of an organisation, so it is important that directors and trustees are seen to behave with professionalism, integrity and high ethical standards.

PERSONAL RISKS

Directors or trustees may be personally liable for financial or legal decisions made by the board. This liability depends on the specific rules that apply to the structure the organisation is using to do business.

If, for example, the board enters into a contract knowing there is no money to pay the supplier, or continues to trade knowing the company is insolvent, board members could be held personally liable for 'trading recklessly'.

It is essential that board members are covered by Directors and Officers Liability Insurance. This is available through most major insurers. This insurance will generally be arranged by the organisation. Board members must however ensure they have reviewed the insurance cover available before accepting the appointment. Note also that insurance will not cover any personal 'reckless' activity or fraud.

ETHICS

Directors and trustees are expected to work to the highest standards of integrity and ethics. Legislation and regulations cannot create values and ethics for a board. Ethics relate to doing 'what is right' and good judgement about what is, and will be seen as, ethical behaviour.

Elements of ethical behaviour are:

- Working for the good of the organisation rather than personal benefit or for one group of shareholders or beneficial owners.
- Making sure that decisions are based on good and extensive information.
- Being clear and open about conflicts of interest.
- Showing high standards of conduct in and outside the boardroom.

Some boards develop a code of ethics or a code of conduct which sets out expectations for how the board, and individual board members should behave. Boards set the 'tone' of an organisation, so it is important that directors and trustees are seen to behave with professionalism, integrity and high ethical standards – and that they are committed to complying with the letter and spirit of the laws and regulations that apply to their organisation.



CONFLICTS OF INTEREST

Directors and trustees are bound to serve the interests of the organisation over their own personal or whānau interests. They must not abuse their position of trust. It is also extremely important that a board is seen to make decisions that are based on fair process.

A conflict of interest arises when a director or trustee or their whānau/family stand to gain financially from a decision or discussion in the boardroom. For example, if a trust is considering letting a tree pruning contract and a trustee's brother owns a forestry contracting business, good practice requires that he/she must declare a conflict of interest to the board. The board must make sure that the contractor selection process is seen to be open and fair and that the trustee does not gain commercially sensitive information about other contractors that they could pass on to their brother. The trustee must not play any role in selecting the contractor or negotiating the contract.

Following good conflict of interest procedure means directors and trustees and their whānau/family can seek contracts from the organisation along with other businesses.

Further, as a director or trustee, treating all owners or beneficial owners fairly is crucial, no matter how the board member was selected. To be a representative of certain interests could be considered as a conflict of interest and not working in the best interests of the organisation or carrying out a trust's requirements.

Declaration

If matters come up during a meeting that will affect a director or trustee's own or whānau/family business, he/she should declare a conflict of interest to the Chair. This declaration must be recorded in the minutes of the meeting.

With the Chair the director or trustee will then decide if they will:

- Stay in the room during discussion but not vote (abstain).
- Leave the room to make sure they do not influence the decision, or so that they do not hear information which could put them in a difficult situation. This applies when the issue being debated might result in a significant gain for the director or trustee.

17

Common 'conflict of interest' situations

- A director or trustee's own company is a possible supplier to the organisation.
- The board's decision could lead to employment for a whānau/family member.
- The board's decision could lead to a whānau/family member's business being used to provide goods or services.
- Information provided to the board in confidence might give an advantage to a director or trustee's business, or a whānau/family member's business, if they decided to seek a contract.

Perception

Note that it is also important that perceptions of conflicts of interest are managed. Situations may arise when, although the board does not believe there is a conflict of interest, it is nevertheless important to follow conflict of interest procedure so that all processes are seen to be fair and transparent by stakeholders.

Although beneficial owners and shareholders may expect 'their' board members to act on their behalf in the way an elected representative would, it is the responsibility of the board to communicate clearly about the role of board members and their primary duty to the organisation as a whole.



KNOWING THE LAW

As part of managing risk, both personal risk and risk to the organisation, directors and trustees should be aware of legislation which is relevant to their organisation. This is likely to be substantial – for example in the health sector, boards must comply with more than 90 pieces of legislation. It is also important to be aware that the common law, as decided in the courts, may impact on the roles, duties and responsibilities of directors and trustees.

Tax implications, employment law, resource management, Māori land law and trustee requirements are often used as examples of key areas to have an awareness of. However, it is not the role of the directors and trustees to know the ins and outs of the law, but rather to know when to get expert advice.

It is also essential that directors and trustees know their constitution or trust deed and the parameters and expectations this sets.

A complete list of New Zealand statutes is available at www.legislation.govt.nz



TIME AND TRAINING

- *Time and remuneration*
- *Training*

TIME AND TRAINING

Time commitment and the frequency of meetings varies between boards, however the Institute of Directors in New Zealand estimates that for every hour in a meeting, a board director or trustee needs to spend two hours in preparation.



TIME AND REMUNERATION

As well as reading board papers, directors and trustees need time to keep up with publications and activities relevant to their board.

Fees paid to directors vary from nothing in voluntary organisations to daily or yearly rates set for government bodies or in private sector firms. It is generally accepted that an hourly board fee is unlikely to match consulting rates. With many organisations, directors and trustees accept that they are contributing an element of public or community service through their board work.

TRAINING

Directors and trustees are advised to undertake training both when they join a board and as they continue to carry out their duties as board members. With increasing interest from owners/shareholders, it is crucial that directors and trustees are up-to-date with governance developments and the regulatory environment.

The main types of training are:

1. *Comprehensive courses*

Range from one day to five days, or can be a module in a university course, and can be for aspiring directors or for more experienced directors.

2. *In the boardroom training*

Tailored workshops to address particular issues facing a board, which could be followed by a series of short courses and seminars.

3. *One-on-one mentoring*

Board members may choose to meet with a mentor before each board meeting if the board is managing particularly difficult changes. This may also be useful for new board members.



The board should allow a budget for director and trustee training and encourage all board members to attend courses annually.

There are many organisations, both public and private, that offer director and trustee training.

Some examples of providers are:

- The Institute of Directors in New Zealand offers two and five day intensive training for new directors (www.iod.org.nz).
- New Zealand Trade and Enterprise offers courses specifically for Māori trustees (www.nzte.govt.nz).
- Otago University School of Business (www.commerce.otago.ac.nz).

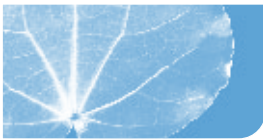


BECOMING A BOARD MEMBER

- *Te Puni Kōkiri Governance and Appointments*
- *Before you accept a board appointment*

BECOMING A BOARD MEMBER

There are thousands of boards in New Zealand, from private sector corporate boards to boards and advisory committees for government bodies, Māori trusts and incorporations, charitable trust boards, local sports trust boards and many more.



Membership to some boards is by election – if this is the case, you need to make sure you fully understand the timing and process of elections.

Where board members are appointed, boards are likely to be looking for particular skills, experience and personal attributes to complement their current board mix.

What makes a good candidate for a board?

Each board will have specifics they are seeking, but there are some overall qualities which most boards will be looking for:

- The ability to take a big picture approach to planning.
- A team player who participates and accepts the responsibilities of the role.
- Skills and expertise relating to the business and the overall management of business.
- The courage to think independently and contribute that thinking in a constructive way.
- Commitment to the board and its objectives.

Boards usually run their own recruitment processes, but there are some organisations which maintain databases of people interested in joining boards.

There are over 550 government boards, committees and advisory groups. In order to help manage the process of nominating and appointing, a number of government departments maintain databases, including:

- Te Puni Kōkiri (www.tpk.govt.nz)
- Ministry of Women's Affairs (www.mwa.govt.nz)
- Ministry of Pacific Island Affairs (www.minpac.govt.nz)
- Office of Ethnic Affairs (www.ethnicaffairs.govt.nz)
- Crown Company Monitoring Advisory Unit (www.ccmaw.govt.nz)



You can register on the Governance and Appointments database through the website at www.tpk.govt.nz

TE PUNI KŌKIRI GOVERNANCE AND APPOINTMENTS

Te Puni Kōkiri advises the Government on suitable candidates for many of the appointments to government boards, committees and advisory groups. The Te Puni Kōkiri Governance and Appointments team is also occasionally asked for names for private sector and community boards.

Te Puni Kōkiri seeks suitably qualified people with a range of senior level skills across many sectors including:

- Financial and business management
- Education, health and social policy development
- Technical fields such as engineering, resource management, science and technology
- Research and ethics
- Public sector management
- Iwi/community development

If you can answer 'yes' to the following questions, you are likely to be a good candidate for the Te Puni Kōkiri database.

- Would relevant organisations, communities and the industry sector support your nomination?
- Would your personal and work history stand up to public scrutiny?
- Can you spare at least 15 hours a month?
- Do you work with integrity, wisdom and energy?
- Once appointed to a board, can you work in the best interests of the organisation – even if this could conflict with the wishes of your own community?
- Do you want to make a difference to New Zealand society?

BEFORE YOU ACCEPT A BOARD APPOINTMENT

Study the organisation

The first thing to do when you are invited to join a board is to take a thorough look at the organisation and the board before you accept the appointment. This process is called 'due diligence'.

Questions to ask include:

- What is the current state of the organisation?
- What is its financial position?
- How well-managed is the organisation?
- Does management give accurate and up-to-date reports to the board?
- Can you see any looming problems — and do you feel you can influence the outcome?
- Will you feel comfortable working with the Chair and other board members?
- Is there an induction process?

Also essential is:

- Reading the annual reports.
- Making sure, if you are about to accept an appointment with a company under the Companies Act, that all directors have Directors and Officers Liability Insurance.
- Knowing how much time the commitment will be and that you can give the time.

Conflict of interest

You must also ensure that you will not have ongoing conflict of interest issues (see the earlier Conflicts of Interest section) which would prevent you from taking part in a significant number of discussions and decisions.



Te Puni Kōkiri's www.governance.tpk.govt.nz

offers extensive information on the practice of effective governance. As well as covering the main topics relating to governance, the site has a full glossary of terms and references to useful resources both online and in print.



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GOVERNANCE

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