



Royal Australian Navy

Central Canteens Board

Governance Charter

This charter has been adopted by the Royal Australian Navy Central Canteens Board to assist the members of the Board and its committees in the exercise of their responsibilities. The principles and policies set out in the charter are in addition to and are not intended to change or interpret any laws or the application of the company's constitution. The Board of directors will review the charter at least annually and revise if appropriate.

Uncontrolled if Printed

Purpose of Charter

1. This Charter establishes the governance practices employed by the Royal Australian Navy Canteens Board (RANCCB) in conducting the affairs of and managing the business of RANCCB and the associated Royal Australian Navy Canteens Fund (RANCCF).
2. In establishing the governance practices, the RANCCB is conscious of the fact that the Board is not a management or consultative committee but a legal entity established as body corporate in perpetuity by *the Navy (Canteens) Regulations 1954 Statutory Rules 1954 No 129 as amended, made under the Naval Defence Act 1910 (Regulations)* and capable of suing and being sued in its corporate name. The RANCCB is also subject to the *Commonwealth Authorities and Companies Act 1997 (CAC Act)* which regulates the conduct of Commonwealth bodies.

Purpose of the RANCCB

3. The purpose of the RANCCB is to administer the RANCCF (Reg 4) and apply the resources of the RANCCF as appropriate:
 - a. in making grants to the Royal Australian Navy Relief Trust Fund;
 - b. in making grants and loans to persons conducting canteens, clubs, cinemas or other institutions or facilities for the welfare or entertainment of members of the Navy; and
 - c. otherwise for the purposes of the exercise of the powers and functions conferred on the Board by these Regulations.

Responsibilities of the RANCCB

4. In fulfilling its purpose, the RANCCB has been charged with specific responsibilities by the Minister for Defence who is, under the Regulations and the CAC Act, the responsible minister. The Minister's direction has been augmented by a statement of intent from the Chief of Navy who is the statutory officer with authority over the Board. Specifically the RANCCB is charged to ensure the RANCCF:
 - a. operates the Royal Australian Navy Central Canteens Fund (RANCCF) in accordance with the relevant legislation including the *Navy (Canteens) Regulations 1954* established under the *Naval Defence Act 1910* and the *Commonwealth Authorities and Companies Act 1997*;
 - b. complies with the appropriate government policy, including directions made by the Finance Minister;
 - c. remains a commercially viable organisation utilising contemporary business management practices to extend its commercial operations to support the long term provision of financial aid and assistance to members of the RAN and their families, whilst maintaining its financial independence from government;

- d. encourages continuous improvement practices to maximise opportunities that will ensure long term viability;
 - e. publishes the Minister for Defence's Statement of Expectations and this Statement of Intent in the RANCCF's annual report;
 - f. provides a copy of the RANCCF's annual report, compliance report and quarterly reports to the Minister for Defence, the Secretary for Defence, the Chief of the Defence Force and the Chief of Navy;
 - g. adopts best practice governance principles and implements risk management strategies as determined by the Commonwealth, as appropriate for the operation of small agencies;
 - h. keeps the Minister for Defence fully informed on relevant activities of the RANCCF and alert the Minister to any significant events related to the RANCCF's core business; and
 - i. identifies and manages all actual and perceived conflicts of interest, advising the Minister of any significant issues as they arise.
5. The RANCCB discharges its obligations by:
- a. appointing, setting remuneration for, performance evaluation of, and if necessary removing the Chief Executive Officer (CEO);
 - b. providing strategic direction for the RANCCF by setting corporate strategy and performance objectives with a view to ensuring the RANCCF remains a viable and sustainable contemporary business capable of fulfilling its purpose;
 - c. reviewing the performance of the RANCCF against the strategic plan;
 - d. approving the annual budget necessary to meet the strategic plan and monitoring performance against the budget;
 - e. approving and monitoring of capital management, acquisition and divestitures;
 - f. appointing the auditors subject to limitations imposed by the CAC Act;
 - g. reviewing and ratifying systems of risk management;
 - h. establishing and monitoring policies, procedures and or systems to ensure compliance with legislation, regulations and best practice codes appropriate to the activities and size of the RANCCF, and
 - k. establishing and monitoring policies, procedures and or systems to ensure the RANCCF is capable of meeting all its reporting requirements.

Powers of the Board

6. The powers of the RANCCB are laid out in Regulations 10 and 11. Briefly the RANCCB may:
 - a. make recommendations to the Minister or the Chief of Navy concerning the opening, conducting and closing of canteens and the levies to be paid to the RANCCF and also the authorisation of persons to open, conduct and close clubs and other facilities for the welfare or entertainment of members of the Navy;
 - b. receives levies and accepts gifts and donations of money or property for the purpose of the RANCCF;
 - c. makes grants to the RAN Relief Trust Fund;
 - d. makes grants or loans to persons conducting canteens, clubs or other institutions for the welfare or entertainment of members of the Navy;
 - e. purchase, lease, hire or otherwise acquire land, buildings, plant, equipment or other property to provide welfare or entertainment to members of the Navy and also to dispose of any asset so acquired;
 - f. may enter into contracts for goods, services, construction or other items intended for the provision of welfare or entertainment to members of the Navy either directly or through funds raised by resale; and
 - g. anything incidental to its powers.
7. The powers of the RANCCB are extensive but the Board should bear in mind the requirements of the Minister and the Chief of Navy in regard to being kept fully informed and also of the Department of Finance's interest in property disposal.

Board Membership

8. The constitution of the RANCCB is fixed by Regulation 7 as a Chair plus six members appointed by the Chief Navy. Under Regulation 9 the Chief of Navy may also appoint a Secretary to the Board.
9. Where an RANCCB member seeks to resign from the Board, the Chief of Navy is to be informed.
10. The Chair may recommend the termination of an RANCCB member's appointment to the Board for persistent failure to attend meetings, for a breach of the RANCCF Code of Conduct, or a breach of *Division 4 of the CAC Act*.

Duties of Board Members

11. RANCCF Directors have fiduciary duties, that is duties relating to dealing with property belonging to someone else and statutory duties that is duties enshrined in statute, in the RANCCB's case the *CAC Act Division 4* and also *The Corporations Act 2001 (Cth) Section 180*. The statutory duties have reinforced the fiduciary duties by extending them and providing specific penalties. A brief summary of the responsibilities is as follows:

- a. **Act bona fide in the interests of the RANCCF (Act in good faith).** The responsibility is to act honestly and in the best interests of the RANCCF. It has been the practice to appoint directors from various commands or locals. It is important that directors remember they are appointed to bring a variety of experience to the Board not as representatives of a particular constituency. The interests of the RANCCF are determined by how the action impacts on the ability of the fund to achieve its purpose and the overall impact on all members of the Navy rather than any particular group.
- b. **Exercise care, skill and diligence.** The *CAC Act Section 22*, specifically addresses this obligation by referring to the Business Judgement Rule.

“An officer of a Commonwealth authority who makes a business judgment is taken to meet the requirements of subsection (1), and their equivalent duties under the general law, in respect of the judgment if he or she:

(a) makes the judgment in good faith for a proper purpose; and

(b) does not have a material personal interest in the subject matter of the judgment; and

(c) informs himself or herself about the subject matter of the judgment to the extent he or she reasonably believes to be appropriate; and

(d) rationally believes that the judgment is in the best interests of the Commonwealth authority.

The officer's belief that the judgment is in the best interests of the Commonwealth authority is a rational one unless the belief is one that no reasonable person in his or her position would hold”.

The requirement of directors in respect of informing themselves is to question and seek information on the topic at hand. The law (*CAC Act Section 27D*) allows reliance on information from management providing there is no reason to have doubts due to character or experience. Directors are also able to rely on professional and expert advice and also committees of the Board in relation to matters within the committees designated authority.

- c. **Exercise the powers for the purpose for which they were conferred.** Board members must ensure they, and other members of the Board exercise their powers to achieve the purpose of the RANCCF and not for other purposes.
- d. **Retain their discretionary power.** Under the *CAC Act Section 27E*, directors retain responsibility for the actions of a delegate unless:

(a) the director believed on reasonable grounds at all times that the delegate would exercise the power in conformity with the duties imposed on directors of the Commonwealth authority by this Act and the authority's enabling legislation; and

(b) the director believed:

(i) on reasonable grounds; and

(ii) in good faith; and

(iii) after making proper inquiry if the circumstances indicated the need for inquiry;

that the delegate was reliable and competent in relation to the power delegated.

- e. **Avoid conflicts of Interest.** The *CAC Act Section 27F* addresses conflict of interest and establishes a strict liability criminal offence for failure to disclose a material conflict of interest. Conflicts can arise in respect of contracts with the RANCCB, appropriation or assisting in the appropriation of the RANCCB's business opportunities, relationships with organisations or individuals competing with RANCCB activities or divided loyalties due to employment. Board members who have a conflict or feel they may be perceived as having a conflict should declare such a conflict at the first board meeting after they become aware that a conflict has or may arise. Conflict of Interest will be noted in the Board Minutes and recorded in a register and the Board Member is to excuse him or herself from any consideration impacted by the conflict.
- f. **Trading while Insolvent.** It is an offence under the Corporations Act 2001 for a director to allow a company to trade while insolvent. The liability on directors extends to allowing a company to enter arrangements which will cause it to become insolvent eg entering a contract which the director is aware will not be able to be repaid when due. This duty carries personal liability for directors ie they may be personally liable for the company's debt.

Board Meetings

12. The RANCCB will normally meet at least seven times per annum. This schedule may be altered but there is a regulatory requirement (Regulation 7(3)(b)) that the interval between meetings not exceed three months. Meetings will be conducted according to the following principles:

- a. the Chair will schedule the meeting and approve the agenda;
- b. a quorum is 4 members of the RANCCB not including the Secretary (if appointed under Regulation 9) or the CEO;
- c. the Chair will preside unless absent, in which case a member elected by those RANCCB members present will preside;
- d. all questions shall be decided by a simple majority of those RANCCB members present;

- e. the Chair or other RANCCB member presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote;
- f. members are expected to attend meetings of the RANCCB or its committees in person except as provided for in sub Para 12g below ;
- g. the RANCCB or its committees may, with the concurrence of the Chair , elect to have some meetings conducted by video or teleconference;
- h. substitute members are not permitted; and
- i. Board papers are to be distributed two weeks prior to a meeting unless agreed otherwise by the Board.

Committees

13. The Board may establish committees, standing committees of a permanent nature which have their own charters approved by the Board, and ad hoc committees which will have terms of reference either recorded in the Board minutes or as a separate document signed by the Chair. While Committees have nominated members, any member of the RANCCB may attend as committee member or as an observer.

14. Committees acting within their charter have the same powers as the Board in terms of seeking information and assistance from management. Normally requests for assistance should be directed through the CEO. Committees also have the right to seek independent professional advice. Such advice requires budgetary approval through the RANCCB.

15. The RANCCB will appoint a Chair of each committee and the Chair is responsible for scheduling the business of the committee and reporting on the outcome of the committee's deliberations to the RANCCB.

16. The Board has established three standing committees to provide more detailed oversight of various aspects of its responsibilities. These committees are as follows:

a. **The Audit and Risk Committee.** An Audit Committee is required under the CAC Act Section 32 and in accordance with that Act, its responsibilities include:

“(a) helping the authority and its directors to comply with obligations under this Act; and

(b) providing a forum for communication between the directors, the senior managers of the authority and the internal and external auditors of the authority.”

In addition the Audit and Risk Committee is charged with oversight of the management of risk in the organisation and assisting the RANCCB meet its responsibilities in this area. The Committee also maintains oversight of the compliance and governance regimes with a view to ensuring the RANCCB meets both its legislative and internal requirements.

The Chair of the RANCCB may attend meetings of the Audit and Risk Committee as an observer but he may not be a member of that committee.

- b. **The Grants Committee.** The Grants Committee is charged with oversight of the Grants process and making recommendations to the Board on priorities which best meet the purpose of the Fund.
- c. **The Remuneration Committee.** The Remuneration Committee is charged with reviewing and making recommendations on the CEO remuneration and other staff as requested by the CEO.

Board/ CEO relationship

17. The Chief Executive Officer (CEO) is appointed by the RANCCB and serves at the pleasure of the Board subject to the terms of his or her contract and employment laws applicable in the ACT.

18. The RANCCB delegates its power of management of the RANCCF's business affairs to the CEO with the expectation that the CEO will exercise the care and skill of a person in that position. The Board does not expect to be informed of the details of how the RANCCF is managed but do expect to be informed of anything untoward or appropriate for consideration by the Board; that would affect the RANCCB achieving its purpose or meeting its responsibilities.

19. As the Boards delegate, the CEO is the primary contact for Directors seeking information on the Business activities and should they seek other information, it should normally be done through or in consultation with the CEO. Directions from the Board should always be through the CEO.

20. The Board relies on the CEO:

- a. to carry out the day to day functions of the RANCCB's business affairs;
- b. to establish proper internal controls, management information systems and accounting records;
- c. produce in writing if appropriate and communicate policies adopted by the RANCCB;
- d. implement the policies and strategies adopted by the RANCCB;
- e. have knowledge of and review detailed figures, contracts and other information about the RANCCB business affairs and financial position and summarise such information for the RANCCB as appropriate;
- f. prepare proposals and submissions for consideration by the RANCCB;
- g. prepare and manage the annual budget;
- h. attend to personnel matters including hiring and firing of staff and their terms of employment; and
- i. to identify business opportunities which assist the RANCCB to meet its obligations to be sustainable, independent of government finance and generate sufficient revenue to fulfil its purpose.

21. The CEO will attend all RANCCB meetings as an advisor.

Induction and continuing education

22. On appointment to the Board, new members will be assisted in preparing for their role as follows:
- a. members will have an interview with the Chair who will brief them on requirements and expectations;
 - b. members will have the opportunity of visiting the RANCCF Head Office and consulting the CEO, CFO and other members of staff to gain an overview of the breadth of RANCCF activity; and
 - c. members will be provided with documentation (or guidance as to how to locate it on the web page) to assist them in due diligence including:
 - a copy of this charter;
 - the last annual report;
 - the last audit report(s);
 - the strategic and business plans;
 - minutes of the last two Board Meetings and relevant committee minutes;
 - the risk register; and
 - copies of key policies including the Code of Ethics, Code of Conduct, Work Health and Safety Policy, Compliance Register and Delegations and Instructions Policy.
23. It is desirable that all appointees to the RANCCB who have not completed the Australian Institute of Company Directors Course undertake this within twelve months of their appointment.
24. Directors should where practical, further their understanding of the RANCCF business activities by visiting the various business units as the opportunities arise during their normal activities. Visits should be coordinated through the CEO.

Board performance

25. The RANCCB will subject itself to a formal review of its performance on annual basis. The Board will use guidelines from the Australian Institute of Company Directors to establish protocols for the activity.

Access to management

26. Each Member of the RANCCB has the right of access to management and all relevant fund information. Under normal circumstances the access will be exercised through or in consultation with the CEO.

Access to independent professional advice (including external auditors and legal advice)

27. Each Member of the RANCCB may seek independent professional advice at the fund's expense having due regard to the reasonableness of the expense. Prior approval of the RANCCB is required and this approval will not be unreasonably withheld. A copy of advice received by the Member of the RANCCB is to be made available to all other Members of the RANCCB.

Deed of indemnity insurance and access (covering Directors and Officers Insurance)

28. The RANCCB will provide Directors liability Insurance for all directors and indemnify them to the extent permitted by the CAC Act Section 27M. Briefly the exemptions relate to a liability:

- a. owing to the RANCCF incurred as a member of the RANCCB; and
- b. owing to the RANCCF or RANCCB incurred or a third party as a result of civil action or a restitution order in respect of acting other than in good faith.

The RANCCB will also establish a Deed of Indemnity Insurance and Access to enable the RANCCB to settle claims in respect of past Directors, and ensure past directors or their advisors to have access to RANCCB documents for the purpose of defending a claim.

Confidential information

29. RANCCB directors will observe the confidentiality of the Board process. RANCCB directors will also protect RANCCF commercial information, treating it as confidential. The *CAC Act Section 25* establishes civil penalties for improper use of information:

- a. to gain advantage for him or herself or someone else: or
- b. to cause detriment to the RANCCB or another person.

30. The requirement to observe confidentiality is an ongoing requirement under the Act, ie it persists even after a Board member leaves the RANCCB.

Board Culture

31. The RANCCB is a Board of a portfolio enterprise: it is not a management committee, nor a Defence Department entity. The members of the Board are equally liable in law for the activities of the RANCCB and RANCCF in the same way that Directors of a registered company are liable. All members have a personal responsibility to participate in the decision making process irrespective of rank or position. Because of this personal responsibility, the Board will be open and frank and allow all points of view to be expressed.

32. Board members must feel free to participate and prepare themselves to participate by reading material provided. A Board meeting should not be a recitation of previously issued material nor should it involve excessive revisiting of Committee work. The law allows members to take advice of properly appointed committees and officials provided the director does not have reason to doubt the expertise.

33. The RANCCB will strive to be collaborative and inclusive and focus its limited resources to best effect to enable the achievement of its purpose and responsibilities.

Review of Charter

34. The Board Charter will be reviewed annually in detail by the Audit, Risk and Compliance Committee and any recommendations for change referred to the Board.