



BOARD COMPOSITION

The 'Inner Board' Problem and How Constitutions Accidentally Create It

Full legal responsibility, with none of the visibility, is what most excluded directors actually carry

An inner board forms quietly. It rarely announces itself as a governance failure. It usually begins as an entirely reasonable convenience, an executive committee handling matters between full board meetings, a small group the chair consults informally before a difficult decision, a finance subcommittee that gradually starts making calls the full board never actually reviews. None of these decisions look like a problem individually. Together, they can produce a board with two tiers, one that actually governs and one that ratifies.

Which rules apply to your association?

The law depends on how your association is set up. A **company limited by guarantee** follows the Corporations Act 2001 (Cth) and its constitution. An **incorporated association** follows its state or territory associations Act and its rules. A **registered charity** also follows the ACNC Act and the ACNC Governance Standards, and some Corporations Act rules are replaced for charities that are companies. Check your own governing documents, and get advice before decisions with legal consequences.

In this resource

1. [The Legal Mechanism That Makes This Possible](#)
2. [The Liability Point Most Boards Miss Entirely](#)
3. [How Constitutions Accidentally Enable This](#)
4. [The Practical Signs An Inner Board Has Already Formed](#)
5. [Building The Guardrails Into Your Governing Documents](#)

The Legal Mechanism That Makes This Possible

For a company limited by guarantee, section 198D of the Corporations Act 2001 (Cth) is why this is possible at all, and constitutions rarely restrict it. Unless the constitution provides otherwise, directors may delegate any of their powers to a committee of directors, a single director, an employee, or any other person, with the delegation recorded in the minute book. For an incorporated association, the power to delegate comes from your rules and your state or territory Act, so check what your own governing documents allow. This is useful machinery. A board that could delegate nothing would be unworkable for anything beyond the smallest association. The risk sits not in the existence of delegation, but in delegation drifting from a defined, reviewed authority into a standing, informal inner circle nobody consciously decided to create.

The Liability Point Most Boards Miss Entirely

Here is the fact that should worry boards more than it typically does. For a company, section 190 of the Corporations Act provides that when directors delegate a power, every director remains responsible for how the delegate exercises it, as if the full board had exercised it themselves. A director who sits outside the inner circle making the actual decisions may have no visibility of what is being decided there, yet remains just as legally responsible for the outcome as if they had voted on it personally. The narrow exception requires the director to show they believed on reasonable grounds, at all times, that the delegate would act in line with directors' duties and the constitution, and believed on reasonable grounds,

in good faith and after proper inquiry where needed, that the delegate was reliable and competent. That belief becomes difficult to sustain the longer an inner group operates with no real reporting back to the full board. For incorporated associations and registered charities the rules on responsibility for delegates may differ, so take advice on your own position, but the practical lesson is the same: delegation does not remove a director's responsibility to oversee.

An inner board does not just disempower the directors sitting outside it. It leaves them carrying full legal responsibility for decisions they were never part of.

How Constitutions Accidentally Enable This

Very few constitutions set out to create an inner board deliberately. Most create the conditions for one to form by accident, through absence rather than design. A constitution that authorises the board to delegate powers, standard and necessary, but says nothing about the scope, review cycle, or reporting obligations attached to that delegation leaves the door entirely open. An executive committee established for a real, narrow purpose, urgent decisions between meetings, for instance, can expand its own remit over time simply because nothing in the governing documents forces a periodic reset of what it is authorised to decide.

The Practical Signs An Inner Board Has Already Formed

- Board papers routinely present recommendations as settled rather than open, with the real discussion having happened somewhere the full board was not present for.
- A subcommittee or executive committee's decisions are reported to the full board as information items rather than matters requiring board endorsement.
- Certain directors are consistently briefed ahead of meetings in a way others are not, so the formal meeting becomes a ratification of a decision effectively already made.
- New directors describe a sense that the 'real' decisions happen somewhere else, even when they cannot point to a specific meeting or committee where that happens.

A director who sees these signs should ask to see the delegations register, the terms of reference and minutes of any committee exercising delegated power, and, if access is refused, raise it formally at a board meeting and have the request minuted.

Building The Guardrails Into Your Governing Documents

- Define the scope of any standing delegation explicitly in a delegations of authority document, consistent with the drafting discipline covered throughout this series, rather than leaving delegated authority to informal understanding.
- Require any committee exercising delegated power to report substantively to the full board, not just table minutes as an information item, so board-level scrutiny happens.
- Review delegated authority on a fixed cycle, tied to the constitutional review discipline discussed in the Foundations quarter, rather than allowing a delegation created for one purpose to persist indefinitely without anyone revisiting its scope.

- Rotate committee membership deliberately, connecting directly to the staggering and succession principles discussed earlier in this quarter, so no standing group becomes a fixed, unchanging inner circle by default.

The antidote to an inner board is not banning delegation, which no functioning association board can realistically do without. It is treating every delegation as a deliberate, scoped, reviewed decision rather than a convenience that quietly hardens into a permanent second tier of governance nobody ever consciously voted to create.

This is one of the practical governance topics built into our Board Director course, alongside the papers, tools and frameworks that turn the principle into your board's actual practice. [Explore the course](#)

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BOARDROOM ACTION WORKSHEET

The 'Inner Board' Problem and How Constitutions Accidentally Create It

Turn the resource into evidence, a decision and an accountable next step. Keep the completed record in your association's approved board records system.

1 What is the issue or decision?

State the governance question in one clear sentence.

2 What evidence do we already have?

Record the facts, source documents and stakeholder evidence available now.

3 What evidence is still needed?

Identify the legal, regulatory, financial, member or operational information still required.

4 What is the agreed next action?

Capture the owner, timeframe and how the matter will return to the board.

Action owner	Review date	Board decision or resolution

General education, not legal, financial, tax, clinical or governance advice. Confirm specifics at the relevant primary source or with your own qualified adviser. Nexus Leadership is operated by Lipstick Consulting Pty Ltd · ABN 15 619 120 482.

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