

Board Charter

1 Overview

This Board Charter (the **Charter**) sets out the principles under which the Board of Directors (the **Board**) of NuCoal Resources Ltd (the **Company**) and its subsidiaries (the **Group**) will operate and describes the functions of the Board. It also prescribes the manner in which the Board may delegate its functions to management.

The Charter is intended to create an appropriate, practical and consistent framework of control for the Group and so, ensure compliance with statutory and Corporate Governance practice requirements by the Board and management of the Group. In turn this will ensure the maintenance of integrity of the Group.

The Board is of the view that such a framework of control will assist management and staff to effectively perform their duties, manage risk and will facilitate the monitoring of performance and compliance by the Board against agreed benchmarks.

2 The role of the Board

The Board considers that the essential responsibility of directors is to oversee the Group's activities for the benefit of its shareholders, employees and other stakeholders. In performing its role, the Board shall act in accordance with the Company's Code of Conduct and all other relevant legislative requirements.

3 Term of office of directors

Executive directors must resign from the Board when they cease to occupy their executive position with the Company. They may be eligible for re-appointment, although the Board would need to consider whether they would be independent directors.

If the contribution of a non-executive director appears to a majority of directors (including the Managing Director) to be less than adequate or to be harmful to the good working of the Board, they may request the Chairman to inform that director accordingly and ask the director to consider his or her position on the Board. If the director takes no action in response, a circulated minute signed by a majority of directors will authorise the Company Secretary to inform the shareholders that the Board will not support the re-election of the director at the general meeting where they are next due to offer themselves for re-election.

4 Responsibilities of the Board

The Board is responsible for, and has the authority to determine, all matters relating to the strategic direction, policies, practices and goals for management of the Company.

Without intending to limit this general role of the Board, the specific functions and responsibilities include:

- determining the direction, strategies and financial objectives of the Company and monitoring the implementation of such strategies and objectives;
- monitoring the operational and financial position and performance of the Company;
- reviewing the performance and monitoring the implementation of strategies and budgets by the Managing Director and other executive key management personnel;

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- monitoring the principal risks faced by the Company and taking reasonable steps designed to ensure that appropriate internal controls and monitoring systems are in place to manage and, to the extent possible, reduce the impact of these risks;
- ensuring that management of the Company has in place appropriate processes for risk management and internal control, codes of conduct, and legal compliance;
- appointing and, where appropriate, removing the Managing Director for the Company;
- ratifying the terms of appointment and, where appropriate, the removal of senior key management personnel;
- planning for executive succession;
- approving and reviewing management procedures to ensure compliance with its responsibilities under the *Corporations Act 2001* (Cth), the Constitution, the ASX listing rules, Australian Accounting Standards and other relevant laws and ethical standards including responsibilities relating to occupational health and safety, the environment and cultural heritage;
- corporate governance including legal compliance systems, as well as monitoring compliance with those systems;
- ensuring appropriate resources are available for the Company in the pursuit of its objectives;
- approving the Company's budgets and business plans and monitoring the management of the Company's capital, including the progress of major capital expenditures, acquisitions and divestitures;
- approving, and reviewing the Company's internal compliance procedures, including any codes of conduct and taking all reasonable steps to ensure that the business of the Company is conducted in an open and ethical manner;
- approving and monitoring financial and other reporting and disclosure;
- approving significant changes to the organisational structure of the Company, including significant acquisitions, divestiture or changes to the capital of the Company;
- ensuring directors inform themselves of the Company's business and financial status; and
- reviewing, to the extent necessary, amending and approving the Board and Committee Charters.

5 Delegation of Authority

The Board has delegated the day to day management of the Group and its operations to the Managing Director. The Managing Director is authorised, in turn, to delegate such powers conferred on him as he deems appropriate to his direct managing reports (other executive KMP). The Board will approve and monitor all such delegations of authority from the Managing Director to other executive KMP's. The delegation of powers by the Managing Director is subject to the limits and restrictions set out in the Company's Delegated Authority policy.

This delegation of authority includes responsibility for:

- developing business plans, budgets and strategies for the Board's consideration and, to the extent approved by the Board, implementing these plans, budgets and strategies;

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- operating the Group’s business and implementing all policies, processes and code of conduct approved by the Board;
- where proposed transactions, commitments or arrangements exceed the parameters set by the Board, referring the matter to the Board for its consideration and approval;
- identifying and managing risks (and where those risks could have a material impact on the Group’s business, formulating strategies for managing these risks for consideration by the Board);
- managing the Group’s current financial and other reporting mechanisms to ensure that these mechanisms are functioning effectively to capture all relevant material information on a timely basis;
- implementing the Group’s internal controls, establishing procedures for monitoring these controls; and ensuring that these controls and procedures are appropriate and effective;
- taking all reasonable steps to ensure that the Board is provided with accurate and sufficient information regarding the Group’s operations on a timely basis;
- keeping the Board informed of all material developments relating to the business;
- ensuring that the Board is made aware of all relevant matters relating to the Group’s performance (including future performance), financial condition, operating results and prospects so that the Board is in an appropriate position to fulfil its corporate governance responsibilities; and
- drafting the agenda and submitting papers for matters to be considered at Board meetings.

6 Board Composition

Under the Company’s constitution, the minimum number of directors is three and the maximum number is ten. The Board has resolved at this time that the maximum number will not exceed six. Each director is bound by all of the Company’s charters, policies and codes of conduct, including without limitation, the Company’s Securities Dealing Policy, Continuous Disclosure Policy and Corporate Code of Conduct.

The roles of Chairman and Managing Director are not to be held by the same individual.

7 Director Independence

7.1 The ASX Corporate Governance Council recommends the following in relation to Board member independence:

- the majority of directors are to be independent; and
- the Chairman is to be a non-executive independent director.

7.2 In determining whether a director is independent, the Board may consider whether the director:

- is a substantial shareholder of the Company or an officer of, or otherwise associated directly with, a substantial shareholder of the Company (as defined in section 9 of the *Corporations Act 2001* (Cth));

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- is a related party, as defined in section 228 of the *Corporations Act 2001* (Cth), of a substantial shareholder of the Company or an officer of, or otherwise associated directly with, a substantial shareholder of the Company;
- is employed, or has previously been employed in an executive capacity by the Group, and there has not been a period of at least three years between ceasing such employment and serving on the Board;
- is or has been within the last 3 years been a principal of a material professional advisor or a material consultant to the Group, or an employee materially associated with the service provided;
- is a material supplier or customer of the Group, or an officer of otherwise associated directly or indirectly with a material supplier or customer;
- is a Related Party of a material supplier of a customer of the Group, or an officer of or otherwise associated directly or indirectly with a material supplier of customer; or
- has a material contractual relationship with the Company or another group member other than as a director.

The matters listed above are not exhaustive and other factors may need to be considered in a particular context.

The Board will undertake an annual review of the extent to which each non-executive director is independent, having regard to the criteria set out above and any other relevant relationship that the non-executive director may have.

The current Board structure does not contain a majority of independent directors, and the Chairman is not independent. Notwithstanding the Council’s recommendations regarding independence, the Board is of the opinion that the objectives and current strategy of the Company are best served and achieved by a Board comprised of a majority of persons associated with the Company since listing as NuCoal Resources, irrespective of their degree of independence. It is expected that all directors, whether independent or not, should bring an independent judgement to bear on Board decisions.

The Board will continue to assess the benefits associated with the introduction of additional independent non-executive directors.

8 Chairman

Where the Company circumstances allow, the Chairman of the Board should be an independent director and should not be the Managing Director of the Company simultaneously. The Board of the day appoints the Chairman on the basis of the principle that the “most appropriate person” gets the job. In the absence of a deputy Chairman, the Board will nominate an independent non-executive director to act in the absence of the Chairman.

The Chairman is responsible for the leadership of the Board, including taking all reasonable steps to ensure that the Board functions effectively, and for communicating the views of the Board to the public.

In particular, the Chairman is required to:

- set the agenda for matters to be considered at the meetings of the Board;
- manage the conduct at, and frequency and length of, Board meetings so as to provide the Board with an opportunity to have a detailed understanding of issues affecting the Company’s business operations, the Company’s current financial position and performance and any opportunities or challenges facing the Company; and

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- facilitate open and constructive communications between members of the Board and encourage their contribution to Board deliberations.

9 Expertise

The Board shall ensure that, collectively, it has the appropriate range of skills and expertise to properly fulfil its responsibilities, including:

- accounting;
- finance;
- business;
- the Company's industry;
- Managing Director-level experience; and
- relevant technical expertise.

The Board shall review the range of expertise of its members on a regular basis to ensure that it has operational and technical expertise relevant to the Company's operations.

10 Board Committees

If the circumstances of the Company allow, the Board may establish committees to assist it in discharging its responsibilities.

The Board has established the following committees:

- Audit and Financial Risk Committee
- Non-Financial Risk Committee
- Remuneration Committee

The Board may also delegate specific responsibilities to ad hoc Committees from time to time.

The Committees are designed to consider specific matters and make recommendations to the Board, however, it is not intended that the Committees restrict the ability of the Board to make an independent assessment of the recommendations, having regards to the Board's knowledge of the Company and the complexity of the structures and operations of the Company.

Each Committee established has an approved charter setting out the composition of the Committee and the powers delegated to it by the Board.

If the circumstances of the Company allow, the Committees are to be composed of independent, non-executive directors with the necessary skills and experience.

The Board may rely on advice of a Committee provided the reliance was made in good faith and after making an independent assessment of the information or advice having regard to the Board's knowledge of the Company and the complexity of its structure and operations.

11 Indemnity and Insurance

Each current director has entered into a deed with the Company under which the Company has agreed:

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- to the extent permitted by law, to indemnify the director against liability arising out of the discharge of the director's duties;
- to maintain an insurance policy for the director against liability incurred in their capacity as director for the term of the director's appointment and for 7 years following cessation of office; and
- to maintain all board papers and other Company documents relating to the director's period of appointment and to make those papers available to the director for a period of 7 years following the director's cessation of office.

Unless the board otherwise determines, it is intended that each new director will enter into a similar deed with the Company, prior to that new director commencing office.

12 Conflicts of Interest

Each director has an obligation to reach decisions which he or she believes to be in the best interests of the Company as a whole, free of any actual or possible conflict of interest.

A director has an obligation under Section 191 of the *Corporations Act 2001* (Cth) to give notice of a material personal interest. If the Board determines that a director might be in a position where there is a reasonable possibility of conflict between his or her personal or business interests, the interest of any associated person, or his or her duties to any other Company, on the one hand, and the interests of the Company or his or her duties to the Company, on the other hand, the Board will require that the director:

- fully and frankly inform the Board about the circumstances giving rise to the conflict; and
- abstain from voting on any motion relating to the matter and absenting him or her self from all Board deliberations relating to the matter, including receipt of Board papers pertaining to the matter.

If the Board resolves to permit a director to have any involvement in a matter involving possible circumstances of conflicting interest, the Board must minute the full details of the basis of the determination and the nature of the conflict, and must formally resolve to permit the relevant director to participate as set out in Section 195 of the *Corporations Act 2001* (Cth).

If a director believes he or she has or may have a conflict of interest or duty in relation to a particular matter, the director should immediately consult with the Chairman.

13 Appointment of Directors

Directors are appointed in accordance with the terms of the Company's constitution.

The terms and conditions of the appointment and retirement of directors is set out in a letter of appointment which covers the terms of appointment, powers and duties of directors, remuneration, requirement to disclose impairment of independence and the availability of independent professional advice.

When a vacancy exists, for whatever reason, or where it is considered that the Board would benefit from the services of a new director with particular skills, the Board will select appropriate candidates, with relevant qualifications, skills and experience. External advisers may be used to assist in such a process.

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14 Retirement and Re-election

The Constitution of the Company requires at least one director, other than the Managing Director, to retire from office at each Annual General Meeting. Directors cannot hold office for a period in excess of three years or later than the third Annual General Meeting following appointment without submitting themselves for re-election. Retiring Directors are eligible for re-election by shareholders.

15 Meetings of the Board

The Board must meet at least six times a year to consider the business of the Company, its financial performance and other operational issues. The Company's constitution states that two directors form a quorum.

Each Board meeting will allow for informal discussions between Board members. The Chairman of the meeting should ensure availability and, if necessary, the attendance at the relevant meeting of any member of senior management responsible for a matter included as an agenda item at the relevant meeting.

In accordance with the Company's constitution, urgent matters that cannot wait until the next Board meeting can be dealt with by a circulating resolution. A circulating resolution should be approved by the Chairman before being circulated to all directors, and should normally be preceded by a telephone meeting, if practical. A circulating resolution is to be signed by a majority of directors and will be entered in the Board minute book.

16 Executive Key Management Personnel

Any director may communicate directly with employees of the Company but such communications are to be conducted with regard to the efficient operation of the Company and the need to preserve and maintain an effective chain of command and the confidentiality of the deliberations of the Board of directors. All communications of a material or sensitive nature must be facilitated by the Chairman.

17 Directors' right to seek professional advice and access to Company information

If a director wishes to seek independent professional advice at the Company's expense, he or she must obtain the permission of the Chairman. When doing so, the director should provide the Chairman with:

- the reason for seeking the advice;
- the name of the person from whom the advice will be sought; and
- a quote from that person for the provision of the advice contemplated.

Upon receipt of the required information, the Chairman:

- must not unreasonably withhold permission to obtain the advice; and
- must inform the Board of the request as soon as possible.

Advice obtained at the Company's expense under these provisions must be made available to the Company.

All directors have unrestricted access to any employees or contractors of the Company and, subject to the law, access to all Company records and information held by employees and

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external advisers. The Board must receive regular detailed financial and operational reports from management to enable it to carry out its duties.

18 Directors' Remuneration

The remuneration of non-executive directors is different from that of executive directors. Executive directors receive a salary and may receive other benefits. Remuneration levels are set to attract the most qualified and experienced directors and senior executives relevant to other similar companies.

Non-executive directors' fees are determined within an aggregate directors' fee pool limit, which is periodically recommended for approval by shareholders.

Non-executive directors are remunerated by way of fees and long term incentives, but they do not receive retirement benefits. Non-executive directors are entitled to be reimbursed for all Group business related expenses, including travel on Group business, as may be incurred in the discharge of their duties.

Fees paid to non-executive directors are reviewed annually by the Remuneration Committee.

19 Review of Performance

The Board must review its performance and composition at least on an annual basis to ensure that it has the appropriate mix of expertise and experience, taking into account the size and nature of the Company's activities.

The Chairman is responsible for the:

- evaluation and review of the performance of the Board and its Committees (other than the Chairman); and
- evaluation and review of the performance of individual directors (other than the Chairman).

The Chairman should disclose the process for evaluation of the performance of the Board, its committees and individual directors.

The Board (other than the Chairman) is responsible for the:

- evaluation and review of the performance of the Chairman; and
- review of the effectiveness of the programme of Board meetings.

The process for the performance evaluation of the Board, its Committees and directors generally involves an internal review. However, where required, the Board may commission an external review of the Board and its composition.

20 Review

The Company Secretary will conduct an annual review of this Charter to ensure that it continues to reflect the most current guidance provided by the ASX.

The Board will approve any amendments to this Charter that stem from that review.

21 Publication of the Policy

This Charter is made available to all directors and staff of the Group and published on the Group's website www.nucoal.com.au.

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