

## 8. Productive meetings

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Meeting of directors should be forums of informed discussion and decisions – not an endless stream of surprises or a lobbying space.

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### Questions that directors of health services should ask

- Is the number and length of board meetings sufficient to allow the board to effectively discharge its duties and responsibilities?
- Are previous meetings' board minutes easily accessible for review prior to the next meeting?
- Is the board provided sufficient time to review the board papers prior to the next meeting?
- Is the chair clearly accountable for the agenda's content? Do all directors and board committee chairs have the opportunity to contribute?
- Are the board's communication channels secure and confidential?
- How clear are our values? How clear is our purpose (the why we exist which underpins our values)?
- What are our guiding principles (i.e. what helps us make decisions)?
- Is the size of the meeting group appropriate, having regard to the purpose of the meeting, and are all attendees directly relevant?
- Is regular feedback and evaluation of the effectiveness of meetings provided to board directors?
- Does the board manage actions arising from board minutes, with outstanding actions being reviewed at each board meeting?
- Is the board undertaking board self-assessment to identify opportunities for improvement?
- Has the board allowed sufficient time for committee reporting such that the board is satisfied delegated authorities are being executed appropriately?
- Is time dedicated to quality and safety at every meeting?
- What is the goal of my question(s)? Is this my goal or the goal of the entity?

### Red flags

- Board or subcommittee meetings are not scheduled on a regular basis.
- Meeting agendas and materials are sent out with little time for review or director contribution.
- No time is spent reviewing clinical data/domains at each board meeting.
- Directors do not read board papers prior to attending the meeting.
- Board papers are voluminous and don't always relate to the key agenda items.
- The chair provides incomplete or untimely distribution of board meeting minutes after meetings (more than 24 hours after).
- Many issues discussed carry over to the next meeting without an agreed set of actions.
- Attendee and absentee lists are kept irregularly and sometimes are not noted in the minutes.
- Directors attend less than 75 per cent of meetings held.

- There is no information sharing portal set up for the board and directors rely on emails and handouts to communicate and store information.
- Board meetings only ever include the CEO, with no other executives or staff, external specialists or guests attending to discuss new and emerging issues relevant to performance, strategy development and/or risk management.
- At the end of each meeting a review of the effectiveness of the meeting is not undertaken before closing.
- The board does not hold, or consider holding, 'in-camera' meetings where directors meet behind closed doors, without management or any other non-board director present.
- 'In camera' sessions are used inappropriately with no clear reason for being held.

## Introduction to the chapter

Boards only get together every 4-8 weeks, meaning that the limited time available needs to be productive and effective. This chapter looks at:

- what makes a board meeting effective
- guidance with respect to making board papers more targeted and meaningful – and enabling directors to better meet their responsibilities.

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Hospital boards also have a crucial role in safety and quality. Boards help **set the tone** of an organisation's corporate culture. They can set priorities for safety and quality alongside financial management, and hold the CEO and other staff accountable. They can **signal the priority** they place on safety and quality by the time allocated at board meetings, diligence in questions asked and their supervision practices generally.

-Targeting Zero report, page 24

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## Effective and productive board meetings

The roles and responsibilities of the board involve risk, strategy, stakeholder engagement and setting the organizational culture.

The key forum in which all this happens is the regular board meetings. Meetings are often held monthly and may only be 3+ hours in duration. It is therefore important the meetings are productive and effective in order for the board to get through full agendas, ensuring that all key areas and responsibilities are covered.

### Directors

Directors are expected to prepare for, attend and contribute meaningfully to board meetings in order to discharge their director duties. Directors must understand the time commitment of serving on the board of a health service, including taking the time to prepare and attend all meetings of the board and board committees held during the year. A minimum attendance of 75% is a requirement of the appointment.

There are many elements that make a meeting productive. Some involve mechanics such as meeting frequency and board papers, others related to skills, conduct and behaviours of board directors. These are outlined in Figure 8-1 below.

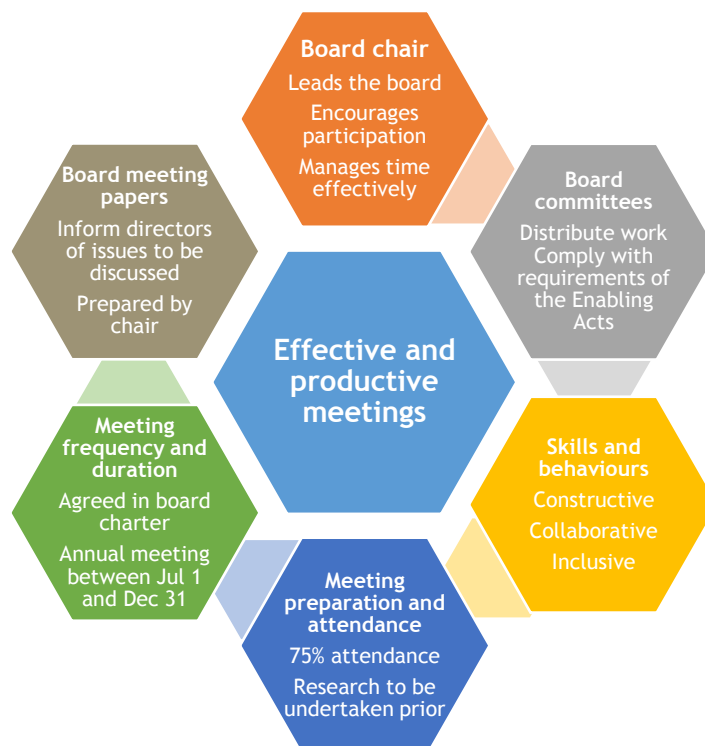


Figure 8-1 Elements of effective and productive board meetings (Source: KPMG)

## Board chair

For most health service boards, the board chair is appointed by GiC on the Minister's recommendation. For public hospitals and MPS the board chair is elected by the members, however, the HLA Bill will enable the Minister to appoint a chair if the Minister deems it appropriate.

The chair plays a central role in the effective functioning of meetings, maintaining responsibility for leadership of the board and its efficient organisation and functioning. The chair is responsible for setting the board agenda and ensuring adequate time is available for discussion of all items. It is important the chair leads discussions, encourages participation of all directors, and conducts meetings in an effective manner.

When a topic has been fully discussed, the chair should summarise the discussion and seek the agreement of the board (or hold a vote). The chair must also ensure the board's time is used to focus on the most important issues.

More details regarding roles and responsibilities of the chair and other office holders are provided in **Chapter 3: Conduct, Ethics and fiduciary duties** and **Chapter 4: Statutory duties**.

## Board committees

Board committees provide an effective way of distributing work between directors and allow for more detailed consideration of important issues than would be possible during scheduled board meetings. Committees allow directors sufficient opportunity to focus on relevant matters without having to compromise the limited time available during full board meetings.

Each committee should appoint a chair, who is ideally not the chair of the board. Subject matter experts and advisors can also be appointed as committee directors, however they too should not be appointed chair.

The purpose of any committee is to make recommendations to the board on specific matters (defined under the committee's terms of reference). Some committees may be ongoing, whilst others may be established for a short time only, to deal with a specific working matter of the board that requires particular focus or additional formal consideration outside the boardroom.

Under the Standing Directions of the Minister for Finance of the FMA, all boards of public sector entities, including health services, must establish an audit committee. Furthermore, boards of metropolitan and major regional health services are required to establish three committees: finance, audit and quality committees. Whilst the Enabling Acts do not specify that boards of other health services must establish those committees, good governance suggests all health services adopt this (or a similar) structure in order to prevent a possible breach of their director's duties.

The Government's executive remuneration policy also requires all boards to establish a remuneration committee comprising of at least three directors. The role of a remuneration committee is to determine the health service's policy and practice for executive remuneration, and the individual remuneration packages for its executives.

The Enabling Acts require boards of metropolitan and major regional health services to appoint a primary care and population health advisory committee, and a community advisory committee. Boards are also permitted to appoint other advisory committees under the Enabling Acts as they deem fit.

Refer to **Chapter 5: Board structure and renewal** and **Chapter 4: Statutory duties**.

## Boardroom conduct

While each board will have its own particular boardroom style, there are basic principles of good boardroom practice and etiquette:

- punctuality and attendance for the full meeting
- full attention should be given to listening and contributing to the discussion
- well-timed and adequate breaks should be scheduled, and catering provided, especially for long meetings
- professional, respectful and collegiate behaviours aligned with the expectations of directors of public sector health services.

Procedure and the degree of formality of meetings is up to the board. These procedures and forms of etiquette should be sufficiently documented and provided to new directors at orientation.

Boards should also have a **conduct charter**, which includes dispute resolution and behaviours expected of directors. A model conduct charter is available on the Health

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### Effective codes are: **Institutional and symbolic**

Within institutions codes articulate boundaries of behavior as well as expectations for behavior. That is they provide clear markers as to what behavior is prohibited (bribery) and what behavior is expected (showing impartiality to all citizens).

They are also highly symbolic. Subscribing to institutional codes is the way we define a model professional not only as we see ourselves but as we want to be seen by others.

-Gilman, Stuart C, Prepared for the PREM, the World Bank in 2005 (refer to references for full details).

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Services Governance website.<sup>100</sup>

More information on director conduct is in **Chapter 3: Conduct, ethics and fiduciary duties**, **Chapter 4: statutory duties** and **Chapter 11: Organisational culture and leadership**.

## Meeting procedures and conduct

The board is responsible for establishing its own procedures for board meetings, which should be documented within the health service's by-laws or governance policy. The board must agree on the frequency and duration of meetings, together with the processes for effective decision-making.

A board should establish clear meeting procedures based on governance of principles of transparency, integrity, honesty and accountability. The board should structure regular meetings to monitor strategy implementation, risks and operational matters and make informed decisions in these areas.

### In-camera sessions

In-camera sessions are 'director only' meetings where executives, guests and other non-board directors are not in attendance. They are useful for discussing issues such as:

- CEO performance and remuneration
- relationships between directors
- relationships with management and assurance providers
- director performance issues (both individual directors and the board as a whole)
- 'tone at the top' concerns
- protected disclosure issues relating to senior management
- confidentiality or sensitive issues affecting management and/or assurance providers
- potential conflicts of interest
- independence concerns relating to assurance providers.

It is recommended to have in-camera sessions at each meeting as a standing agenda item allocating about 15 minutes. This ensures that requesting the in-camera session does not become a barrier in and of itself to a positive disclosure culture. If there are issues raised with the chair prior to the meeting, more time can then be allocated in

## Productive boards have robust and respectful discussions to make decisions

### Inclusive leadership

Whilst boardroom discussion should be robust, the chair needs to facilitate meetings in such a way as to ensure that all directors are participating equally and respectfully.

### Differing views

Robust discussion in all boardrooms is encouraged. It demonstrates an engaged, curious, active and informed board. In some instances, decisions may only be made after differing views are voiced, which helps to properly assess the issues.

Whilst personal views are encouraged – and expected – in the course of decision-making, once the board has reached a decision, board directors must ensure that any differences of opinion stay in the boardroom.

### Making decisions when consensus cannot be reached

Where a decision cannot be reached by consensus, the chair will facilitate a vote and some directors will inevitably be outvoted.

In these instances, individual board directors must ensure they leave the boardroom as a united voice.

A clear recap of the discussion and the agreed way forward should be made to ensure that all directors can clearly articulate the board's position.

<sup>100</sup> Available here: <https://www2.health.vic.gov.au/hospitals-and-health-services/boards-and-governance/education-resources-for-boards/directors-conduct-and-workplace-culture>

advance.

Whether there should be minutes of an 'in-camera' meeting is up to the board and will depend on the nature of the discussion. Some organisations allow their minutes to simply state that an 'in-camera' session should be documented, allowing outcomes to be tracked in subsequent meetings.

## Director's boardroom behaviour

Good boardroom debate will ensure that different views are tabled and discussed in an open, collegiate and respectful way. However, often issues discussed and decisions made in the boardroom involve compromise of an individual's personal views.

Disagreement is common and healthy for a board, however, the chair must manage both the range of views and time allocated to any one issue. This means that directors necessarily need to defer to the chair's authority rather than make the already difficult task harder. In doing this, directors need to remember that the chair's role is to ensure the board fulfils its role. This means that sometimes a topic one director is passionate about has to be moved on or taken offline. It may mean that the chair calls for a vote to decide the issue. It may appear, if the issue is something you are passionate about, that the chair has simply moved on or dismissed the issue; this is likely just the chair keeping the meeting on track to ensure that all issues and views are discussed in the allotted time, not just the one you are passionate about.

Significantly, decisions of a board are group decisions. Even if you as a director disagree, it is not a case of you being right or wrong. Joint decision making as a group means that there is a very real possibility of a decision going in a direction you disagree with.

In situations where you as a director strongly disagree with a proposed course of action, it is important that you:

- Properly **prepare** and ensure you understand the agenda item and/or the proposal.
- Make sure you have considered **how the proposed action fits in with the goals and purpose of the health service**. Ask yourself, is your concern consistent with the health service's goals and purpose? Remember, it is not about you or what you did when you were in a past role.
- Where the concerns are evident in the papers (i.e. before the discussion), **raise it with the chair prior to the meeting** to enable further information from management to potentially address your concerns and/or inform the discussion.
- **Keep calm and respectful**. Remember you are one view of many. Seek to listen to others rather than simply waiting for your chance to speak or talk over them.
- **Ask questions**. Don't just assume you are right. Ask yourself, what is the goal of this proposal and the goal my questions seek to understand?
- In the meeting, **take your cues from the chair** – the chair is managing all the views in the room, not just yours or the view opposed to yours.
- **Take any caution regarding your behaviour seriously**. The chair will take into account that debate can be robust, passionate and even lively. The chair is, however, expected by all directors to call out inappropriate behaviour.
- **Remember how hard the chair's job is**, particularly in navigating the space between 'robust' or 'lively' debate and disrespectful argument. Do not contribute to the negative, rather, assist your chair by following his/her instructions.
- If you still retain significant concerns that you feel were not understood at the meeting, ask to **speak to the chair about it offline**. The chair will be able to provide an opportunity to discuss

Each director has an individual responsibility to ensure that their conduct reflects the importance of the office and the responsibilities and privileges that they have been given.

the matter in more depth and potentially with the executive that presented the item.

More information on boardroom behaviour and the critical role of the Chair is in **Chapter 11: Organisations Culture and Leadership**.

## The role of the board chair

The board chair is the ultimate leader of the organisation and as such, needs to have all of the attributes of a good leader and of a good board director. The chair presides of the meeting and facilitates debate and discussion to enable a matter to be decided on by the group.

The chair must have a strong working relationship with the CEO but must also maintain their independence from the executive. This means the chair is required to both challenge and support the CEO and facilitate exploration of issues for the board.

A board chair should strive for consensus and guide the board to their decision, rather than simply make decisions for them. The board chair is responsible for creating a culture and an environment where all directors feel comfortable and safe to contribute, challenge others and reach a decision as a group.<sup>101</sup>

### Inclusive leadership

The chair plays a critical role in facilitating effective boardroom dynamics. Robust, effective discussion should not be confrontational or be domineered by a select few. The chair's role is to understand the different personalities on the board and ensure that everyone participates equally in the discussion.

This requires strong communication skills and emotional intelligence to that need to be challenged, conflicts as they arise, and identify what was not said (or who has not spoken) to ensure all views are heard.

It is the chair's role to ensure that all directors are able to contribute and bring their best self to each meeting. That means that the chair needs to have a good understanding of director personalities, experience, expertise. Each board director is there for a reason and the chair's role is to utilise that for the maximum benefit of the health service. This enables the range of diverse views to properly interrogate the subject matter and come to the best decision available from the information known at that time.

### Managing director conduct

An old saying in the health arena is 'prevention is better than cure'. This holds particularly true for board culture and managing conduct of directors. As such, the first step in managing director conduct is having systems and processes already in place. These include:

### Features of an effective board chair:

- The ability to chair a meeting – this may sound obvious but it is critical! This includes time management, inclusive leadership, and being able to keep the discussion on topic
- Has clear vision for the health service, its purpose and values
- Honest, reliable and committed to the health service and its goals
- Resilience and toughness – the chair often has to be the make hard decisions and/or have the tough conversations
- Actions taken to manage performance or correct conduct are proportionate and are not designed to humiliate
- Manages and/or extinguishes board factions if/when they arise.

<sup>101</sup> Leading Governance, *10 Attributes of a great chair*, (2013), Leading Governance Ltd, Belfast.

- Role modelling values based conduct
- Being honest and act with integrity
- Have a conduct charter in place so that you can refer to that in difficult discussions. If the board does not have a conduct charter, the chair can refer to the Directors' Code of Conduct<sup>102</sup>
- Meet with board directors one-on-one and make all directors feel valued.

On those occasions the chair is required to step in (to correct behaviour), the chair should model the values and conduct they wish to see. This might include acknowledging strengths and passions while also reminding the director of their tone and/or refocusing the discussion on the health services' goals. This is not an easy task and directors should actively support their chair in fulfilling this role.

It is critical to keep in mind that directors serve on the board of a health service due to a range of benevolent motives, including believing in the purpose and work of the health service. Health services, at their core, exist to provide high quality, safe clinical services to people in distress and need. This benevolent and critical purpose of health services for the community, mixed with beliefs and personal experiences can generate a level of passion in the discussion. Given this, the first step for a chair to manage director conduct is to remember and acknowledge the in many cases the source of the conduct may be passion rather than simply acting out.

Passion and commitment, even for the best of causes, are not an excuse for aggression, talking over people, dominating the conversation, bullying or harassment. Even if the director is 'right', conduct must remain respectful, courteous and take guidance from the chair. Board discussions are not about winning or losing, they are about arriving at a place for a decision having properly tested the options and issues. This can only occur in an environment where all parties feel safe to contribute.

In order to manage poor conduct, the chair must understand his/her individual directors and where they are coming from. A good chair is sensitive to that passion while moderating conduct to maintain a place that is safe for all to challenge viewpoints and disagree.

If a dispute arises in response to poor behaviours, or any other alleged breach of the health services conduct charter, by one or more of the directors, the chair must work with the relevant individuals to find a constructive solution. Importantly, the chair must be careful to role-model values based conduct when correcting director behaviour, particularly if it has to be done during the board meeting. Like any supervisor relationship, the chair should be careful to maintain the dignity of the director being corrected.

More information on boardroom behaviour and the critical role of the Chair is in **Chapter 11: Organisations Culture and Leadership**.

“Respect and trust do not imply endless affability or absence of disagreement. Rather, they imply bonds among board members that are strong enough to withstand clashing viewpoints and challenging questions.”

- Jeffrey A Sonnenfeld, *What makes great boards great*, (September 2002), Harvard Business Review.

<sup>102</sup> Available from the VPSC here: <https://vpvc.vic.gov.au/resources/code-of-conduct-for-directors/>



## Decision-making processes

The emphasis in the boardroom is on consensus decision-making, which focuses on securing the agreement of the full board. If unable to reach a consensus, the board should state the reasons for this and endeavour to solve the issues or find further information required to make a decision. It is the role of the chair to lead and direct the decision-making process, ensuring that consensus is reached or, if not, there is a clear way forward.

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A board should have a set of **guiding principles** to help them make decisions.

These guiding principles should be based on the health service's **values** (what we believe) and **purpose** (why we are here).

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The board must consider all aspects of an issue and seek necessary advice to assist directors in understanding the full implications of the decisions they make. The board should ensure the decisions it makes are legally valid, compliant with Government policy, and are ethically sound and fair.

The following elements (at a minimum) should be considered for informed decision-making:

- alignment with strategic direction
- financial and reputational impact and considerations
- economic and financial assumptions
- key risks and dependencies
- availability of resources (internal and/or external)
- ethical and environmental dimensions
- stakeholder perspectives
- description of due diligence completed
- benefits or outcomes are measurable and can later be tested
- contingencies to deal with unexpected developments
- monitoring and accountability mechanisms.

It is common practice for a resolution to be agreed by the board without a formal motion or vote. Instead the chair leads the board discussion around the recommended resolution proposed by management and agrees whether or not to endorse that recommendation.

In some instances, a board prefers that a motion have a second director to indicate support for it – known as a ‘seconded’. A motion that cannot attract a seconder fails.

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“The upshot wasn’t that the board won and management lost, but rather that, after passionate disagreements had been voiced, together they arrived at new conclusions.”

- Jeffrey A Sonnenfeld, *What makes great boards great*, (September 2002), Harvard Business Review.

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## Decision-making outside the boardroom

In some situations, decisions need to be taken before the next scheduled directors’ meeting. It is usually permissible to circulate a resolution for approval by directors without the need to convene a meeting, though this process should be reserved for urgent matters or more procedural matters.

Unless the health services by-laws provides otherwise, the resolution must be signed by all directors entitled to vote on the matter and it is deemed as passed when the last director has signed. Separate copies of the document may be used for signing, provided the wording of the resolution and statement is identical in each copy.

Once the resolution has been passed, it must be entered into the minute book and noted at the next meeting of directors.

## Meeting preparation and attendance

Regular and consistent attendance at board meetings and adequate preparation prior to meetings are fundamental elements to ensuring productive board meetings. It is important that all board directors are sufficiently informed in relation to ongoing discussions and issues from previous meetings, as well as agenda items for upcoming meetings, in order to contribute meaningfully.

### Meeting preparation

Careful preparation of the agenda enhances the board's productivity and supports its strategic and oversight role. The board meeting should be an opportunity for directors to add value to the discussion and not be informed on the issues for the first time.

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Preparation and attendance (including being on time) to all board meetings and committees is part of a director's fiduciary duty of care and diligence.

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The purpose of the meeting should be communicated amongst directors in advance, allowing sufficient time to become familiar with the proposed agenda and undertake any research required. In order for a meeting to be productive, a strategically defined purpose should be linked to specific plans and outcomes. Meeting papers should be circulated well in advance of the meeting to allow board directors adequate time to review the materials and information provided for discussion.

### Meeting attendance

As part of their duties and responsibilities, directors should be present for all board and relevant committee meetings. Absenteeism does not excuse a director from their duties to the health service. To facilitate participation, directors may attend in person, via tele- or video-conference per the procedures established by the board.

Serving on a health service board requires a substantial time commitment, including attending meetings of the board and board committees, preparing for meetings and ongoing self-education to assist directors perform their role and meet their fiduciary duties under the Enabling Acts.

Directors are required to attend at least 75 per cent of board meetings held during the year. This is, however, the minimum required. Directors are expected to attend all meetings unless there is a reasonable excuse. Directors who are unable to attend should ensure their apology is given in advance and it is noted in the minutes. If there are repeated director absences, the chair may need to meet with the director to ascertain their future availability and commitment. In some circumstances, it may be in the health service's interest for the director to resign or be removed.

### Meeting frequency and duration

Commonly boards hold monthly meetings. The length of the meeting should be sufficient to give appropriate attention to all issues at hand. When planning the agenda for a long meeting, it may be useful to consider whether splitting the meeting into two shorter meetings would be more appropriate. If the meeting must be kept to a single session, scheduling breaks is vital to keep participants focused, attentive and productive.

The board must ensure that the CEO convenes an annual meeting of the health service between 1 July and 31 December.

## Board papers

Board papers should consist of concise documents that fully present the information the board will require in order to comprehend all the issues and make appropriately informed decisions. This includes reports presented to the board from a variety of sources, including from the CEO and committees. Poor papers are a major cause of bad board decision-making and difficulty in reaching a consensus. To facilitate effective decision-making, board papers should be:

- prepared to strict standards in terms of presentation and content
- share a consistent format
- include the date, version reference, author's name and title
- subject to appropriate review, challenge and approval from a completeness, accuracy and data integrity perspective, and to ensure consistent messaging is provided to the board.

## Reports

Reporting to the board from various sources should clearly articulate key issues across the health service, and include sufficient information to allow the board to make an effective and informed decision. Reporting should be:

- clearly aligned to the following principles to enable the board to efficiently discharge their responsibilities:
- strategic priorities, risks and impacts to the organisation
- board accountabilities
- organisational business plan
- key clinical, financial, operational and workplace performance indicators and metrics
- accreditation requirements, where appropriate.
- action oriented and clearly outline and track remediation plans in response to non-achievement of actions, strategies or expected performance outcomes
- clearly state the action and/or decision required by the board (e.g. for noting, for decision, etc.)

## Agenda

A board meeting agenda enables directors to be fully informed of issues to be proposed and discussed at the meeting, reducing the time required on briefing at the beginning of a meeting. It should be referenced to the annual agenda, which identifies matters to be periodically included on the board agenda.

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Directors should **declare all interests** relating to matters on the agenda (or matters that arise in discussion), not just the interests they believe are in conflict.

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The annual agenda is an important planning tool to ensure that all compliance, strategic and operational board matters are considered on a regular and timely basis. An annual agenda is essentially a calendar of issues to be discussed throughout the year, such as strategy review/renew, remuneration, annual reporting, election of officer holders etc. An example annual agenda is provided in Appendix 6.

The chair is accountable for the agenda's content. Input into the agenda should be sought from directors, the CEO and senior management, and the chairs of committees. Directors should not be passive in this process. Directors should actively consider the agenda in advance to:

- identify any potential interests that may be in conflict
- identify issues that may need further information from management
- consider if adequate time is allocated to an item, particularly if that director sees risks in the item that have not been addressed in the papers
- consideration of if the minutes and actions arising from the prior meeting are accurate
- seek items to be added to the agenda.

Setting the agenda should involve a consideration of content, the ordering of items, the allocation of each item and deciding on appropriate invitees. High-priority items should be scheduled first and it is essential to clarify which items are for decision, discussion, noting or information purposes. A timed agenda will assist directors in recognising the relative significance of each issue and ensure the meeting finishes on time.

Standing agenda items should include:

- attendance and apologies
- privacy and confidentiality requirements
- declaration of interest and if these present a potential conflict (actual and perceived) at the outset of the meeting
- outstanding action items from prior meetings
- quality and safety.

When preparing the agenda, the chair should consider any potential conflicts of interest that may arise as a result of the matters being discussed. Any personal interests should be declared annually by all directors under the DPI requirement of the VPSC. Any items that potentially raise a conflict for any director should be raised by the chair with the director. If a conflict is apparent, board papers should be withheld from the conflicted director on that particular item for discussion. Additionally, the conflicted director should not be present when that item is discussed.

An example board meeting agenda is provided in **Appendix 6**.

## Board minutes

The board chair, one of the directors, or the board secretary is responsible for drafting the minutes of the meeting. A draft of the minutes should be provided to the chair within 24 hours, and circulated to board directors no later than a week after the meeting. The minutes should always be formally approved at the next meeting if they have not previously been formally approved by all directors of the board. If the minutes are amended at the next board meeting, this should be reflected in the minutes of the subsequent meeting. It is the responsibility of all directors to ensure the minutes are accurate.

Minutes should be compiled very carefully, and with due regard to their potential use as documents with legal significance in instances of litigation. In this regard, it is essential for directors to give the process of reviewing and approving the minutes the level of attention it warrants, rather than simply treating it as an administrative exercise. Once signed, minutes are evidence of a proceeding, resolution or declaration to which it relates.

### Board solidarity

In all cases, regardless of the issues, board solidarity outside the board meeting is an imperative. Without it, directors will lose the confidence to voice their views.

Differences of opinion aired during the decision-making process must not be aired outside the boardroom.

Where there is a controversy or critical vote, it may be reasonable to note who voted in favour (or not) of a proposal. However, it is not usual practice to provide reasons for the dissenting view in the minutes as this could breach confidentiality of the board deliberation and undermine public confidence in the board's decision. The board can, however, as a group decide what should and should not be noted in the minutes.

Minutes should be prepared and distributed to board directors after every meeting in a consistent format. Minutes are a key element of the governance framework and must be developed as documents to evidence decisions made, key issues considered and adherence to due process. It is therefore critical that minutes accurately reflect the outcomes of each board meeting.

The level of detail included in the minutes will vary. The minutes typically include the following:

- meeting location, date and commencement time
- board chair and attendees names, including those physically present and those participating through the use of technology, what period and whether anyone left the meeting for conflict of interest reasons
- any apologies for those unable to attend the meeting
- directors' DPs
- each agenda item
- the outcome of each discussion of an agenda item or paper, with a record of any dissenting viewpoints and the reasons for the decision
- any new procedures or policies agreed by the board
- title, version reference and date of all papers tabled
- directors' disclaimers or objections
- actions to be taken, including outstanding issues to be progressed and re-considered at the next meeting
- closure time
- a signature block for the board chair to sign the minutes at the following meeting when directors have approved the minutes.

An example board meeting minutes template is provided in **Appendix 6**.

Board directors must review the meeting minutes for accuracy and completeness and have corrections formally made at the following meeting.

Meeting minutes must be provided to all board directors, but distribution to non-board directors is at the discretion of the board (with the exception of a delegate). At times, it may be appropriate for contributors to a meeting be made aware of a decision or outcome relating to papers they tabled.

#### [Publication and distribution of minutes outside the board](#)

It is recommended that boards put in place clear processes and criteria under which papers are distributed to non-board directors. Where board papers are distributed to non-board directors, the board must ensure privacy (names etc), legally privileged information and commercial-in-confidence information is protected.

It is up to the board if they make minutes public or not, however, consideration ought to be given to any legal of confidential matters that may need to be redacted prior to publication, for example, commercial in confidence matters or information pertaining to legal proceedings.

### **Access to meeting papers**

Directors of health services are permitted to retain their papers at the end of a board meeting, but must treat them as confidential.

Technology is rapidly moving into boardrooms, with digital distribution of board papers becoming increasingly widespread. Electronic communication methods may facilitate the exchange of timely and accurate information between board directors. The adequacy of the security of data sharing and storage technology (email, iPad and Dropbox-type applications) should be carefully considered when exchanging highly sensitive and confidential information. The use of online portals for hosting board papers and other organisational materials is growing substantially as a secure and efficient way of facilitating the board process. Electronic delivery allows relevant information required for decision-making to be delivered rapidly and economically.

The way in which directors access information has changed. Most directors use tablets and access a portal for board documentation.

Directors who utilise tablets claim it greatly improves their ability to prepare for meetings through reading and marking up board papers on the screen, and in recording and sending minutes instantly. Each director has access to the same information at the same time, no matter where they are, and are immediately able to review the information and collaborate further, if needed. The interaction of tablets and web-based board portals makes for an efficient and easy way to store records long-term, thus freeing up physical office space.

Tablets can include multiple layers of authentication and encryption to offer a considerable security improvement over traditional hard copy distribution. However, professional advice may be warranted regarding security and document retention concerns.

## Technology

A board meeting can be called or held using any technology, provided that all directors consent. This is obviously useful when a director cannot physically participate in a meeting. Emergency meetings called at short notice are a case in point. Whilst the use of meeting technology, such as tele- and video-conferences, can eliminate many hours of travel time for directors located interstate or overseas, face-to-face meetings are generally preferred, especially where contentious matters are to be discussed.

It is fundamental where technology is used, that it is secure (particularly given the sensitive nature of discussions), reliable and fully functional.

Boards should also put in place protocols and etiquette expectations for technology use, including how the chair will include those participating via phone and use of mobile phones during meetings. In general, mobile phones should not be permitted during a meeting without specific permission as it distracts from the meeting.

## Confidentiality and Security

Consistent with their fiduciary duties, directors are expected to maintain confidentiality of the deliberations of the board and its committees. Confidential board papers must remain secure. It is recognised as best practice for directors to return meeting papers to the chair after the meeting, who will then arrange for the secure destruction of surplus copies.

Several fundamental security recommendations include:

- encrypting documents
- installing password-protection mechanisms for all electronic equipment

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“I have seen an exponential growth in the use of iPads in the boardroom since February 2011. What surprised me the most were the comments from directors of large organisations - that their use of iPads was actually assisting them to focus even more and that the board meetings were even more productive”.

S. Bowman. iPads in the Boardroom – The next e-governance evolution. 2011

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- activating automatic locking of screens on electronic devices after periods of inactivity
- careful use of PINs for conference calls.

## Duty of Confidentiality

The *Directors' Code of Conduct* reiterates the fiduciary's confidentiality requirements:

- directors must use the information only for its intended purpose
- directors respect confidentiality and use their discretion, prudence and good judgement when deciding how to treat information
- directors only disclose official information or documents when required to do so by law and do not express personal opinion on official policy or practice
- directors are able to make a protected disclosure to IBAC if they believe improper conduct is occurring within the public entity
- directors do not leak information internally or externally.

## Independent professional advice

When one or a number of directors has concerns about the advice given to the board in relation to an issue, the board may need to seek independent professional advice to facilitate effective decision-making and to properly discharge its responsibilities. Independent advice means that of a third party and does not include reliance on an individual director's qualifications (e.g. independent legal advice refers to the legal counsel of the hospital not a legally qualified board member).

The board has authority to obtain advice, reports or opinions from expert advisers, as deemed necessary, at the expense of the health service and subject to the written consent of the chair to seek such advice. Controls should be in place to ensure the process is properly managed and costs are proportionate and appropriate.

## Board evaluation

### Evaluating board meetings

Each board meeting should conclude with a review of decisions reached and the related actions, in order to increase accountability among directors. All participants should be fully aware of what is expected of them. Following the meeting, the board chair should ensure the minutes are circulated quickly in order to allow directors to promptly respond.

Requesting feedback on the meeting will provide valuable insights into how future meetings may be made more productive. Having an in-camera time at the end of all board meetings is a sound mechanism to obtain this regularly.

Meetings should also be evaluated from an effectiveness and efficiency perspective, with regard to both board director/chair conduct and behaviours, as well as decision-making capabilities. This can assist in ensuring respectful and functional board relationships are maintained by allowing board directors to reflect on boardroom conduct in real time.

## Board and director assessment

A useful tool for obtaining feedback to further enhance the board's performance, including meeting productivity, is to obtain an independent assessment. This can include surveys, questionnaires and observation of the board directors and meetings, combined with benchmarking to high performing boards. This process usually provides the board with a comprehensive report on performance, including strengths and potential opportunities for improvement. This also provides a statement to the health service's staff and stakeholders that the board is proactively seeking feedback to drive continuous improvement.

Board assessment questionnaires (for board and individual director self-assessments) are available on DHHS' website.<sup>103</sup>

### Types of assessment

There are three main types of board evaluation and all will reveal different things about the board. It is recommended that any board evaluation include all three.

#### Full board evaluation

Evaluation of the full board seeks to assess how well the board is performing as a group. It can be useful to have an outsider/independent party facilitate the board evaluation. The sort of matters the full board evaluation seeks to assess are:

- **understanding and development of strategy** – does the board understand why we are here, where we are going and why?
- **board composition** – does the board have the right skill mix (technical or 'soft' skills) for the challenges ahead? Does the board have an adequate level of challenge/dissent to enable respectful but robust discussion (vis a complacent, agreeable board)?
- **access to information** – do directors feel like they get the information they need to make decisions? Are the papers the board gets fit for purpose? Do they understand the entities performance in context? (e.g. do they know is the health service is safe right now – if so, how do they know that?)
- **openness and energy** – this speaks directly to the culture of the board. Do directors feel able to openly challenge one another? How strong is the participation of all directors? Are discussions dominated by one or two directors (or the CEO)? Are directors enthusiastically engaged or are they passive and/or distracted?

### Case Study: Enron

The famous (or perhaps infamous) collapse of Enron should be reflected upon in the context of having several significantly skilled, financial experts on the board.

While there were failings in governance at multiple points, two key elements emerge from any analysis of the Enron board:

- **Lack of openness and energy**

Despite their expertise, the financially skilled directors claimed they found Enron's financial statements confusing but did not feel safe to speak up or to 'rock the boat'.

This led to directors being disengaged and often missing meetings or being unprepared.

- **Lack of individual accountability**

The sheer number of financially skilled board members resulted in the other directors deferring to their wisdom rather than ensuring they themselves were confident.

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<sup>103</sup> Available from: <https://www2.health.vic.gov.au/about/publications/policiesandguidelines/Board%20assessment%20-%20a%20guide%20for%20Victorian%20health%20service%20boards>



## Director self-assessment

The director self-assessment is an opportunity for the individual director to be honest with themselves about the level of input they can, have and should be investing into the entity. Directors should consider if the current level of commitment investment is sufficient and/or sustainable. When considering these questions, the director should focus on the best interests of the entity and an honest assessment of their ability to contribute to the health service. Self-assessment should allow the director to determine if now is the right time to step down or step up.

The sort of matters the individual director self-assessment seeks to assess are:

- **individual commitment** – this is primarily about the use of the director’s time. Is the director’s time utilised in a way that maximises the benefit to the entity; does the director have capacity for the demands placed upon them?
- **use of their knowledge, expertise and experience** – does the director have skills that are critical to the board and are these being used? If not, why not? Does the director understand how their knowledge, expertise and experience should be used on a board (vis using those skills as an employee of the health service)?
- **awareness of current key challenges and personnel** – does the director understand who the current key issues and players are in the organisation? This is a pulse check – if the director is in the past (e.g. I know who used to do that) rather than in the present (e.g. Janet does that) it can indicate the director’s capacity has declined. Can the director describe the key challenges of the health service without deferring to the executive? Can the director describe the current safety issues? Can the director describe the current financial state and challenges? If there was an audit tomorrow, what would be the best matter to look?
- **level of preparation** – does the director read all papers and make enquiries prior to the board meeting? Does the director attend all board and committee meetings? Does the director contribute at board meetings? Is the director consistently on time and on point?
- **Individual accountability** – does the director understand that they are equally accountable for all the work of the board as their peers that may have financial or clinical qualifications? Does the clinician understand he/she has the same obligations and accountability as the accountant on the board (and vice versa)?

### The difficult transition: from expert to leader

Directors are often experts in their field with significant experience and qualifications in their chosen field. This means they have frequently been in a position to give expert advice to help their client make a decision. This advice will frequently be significant for their client such that the expert is accustomed to having to be relied upon – i.e. being right.

As a director, there are two challenges for the expert.

- First, the expert finds themselves on the other side of the advice coin. As a director, their role is to receive advice from their executive and other experts.
- Secondly, the board is a group decision making body. That means the director being ‘right’ or ‘wrong’ isn’t the critical issue – it is decision for the board as a group.

This can be a very difficult transition – from expert (who advises to assist another to make a decision) to leader (takes advice to make decisions) to a director (takes advice to make group decisions).

## Peer review

Peer review, where directors review each other's performance, is one of the most critical elements of board evaluations and is often the part that is missed. In a peer review, each director should review each other director (or at least 3 other directors).

There are many ways a peer review can occur, including using scoring or not. Scoring is useful to assist the group to understand the baseline or 'average' director for this board and also what good and bad look like. This enables each individual director to understand what the board as a whole thinks of their performance and contribution. This is of particular importance for the chair in both understanding his/her own performance and not having to be the only source of feedback for a director whose performance is lagging.

The sort of matters peer review seeks to assess are:

- the constructive and less constructive **roles individual directors play** in discussions – does the director play devil's advocate enough/too much? Can the director change roles when needed? E.g. being the project manager type in one discussion and the cost-cutter in another. Does the director keep the purpose and goal of the entity front of mind?
- the **value and use of directors skills**– does the director have skills and experience that are being used to guide the organisation to be better?
- **interpersonal styles** – Does the director contribute to robust, respectful debate or try to dominate or disappear? Does the director understand the balance between passionate debate and disrespectful argument?
- individuals' **preparedness and availability** – Is this director the one that is often late, looking at their phone in meetings, leaving early, not read their papers, etc. If so, it may indicate that the role on the board isn't for them – this is not a judgement of willingness or intention, rather an assessment of capacity.
- directors' **initiative** – does the director think about the health service and the health system outside of the board meeting? Do they keep their finger on the pulse or just turn up to a meeting once a month?
- **links to critical stakeholders** – does the director assist in bringing other views to the table? Does the director understand interests sufficiently to navigate potential conflicts versus an opportunity for the entity?

## What should be assessed?

Board evaluation and assessment are critical for a board to continue to ensure adequate competency to act in the best interests of the health service, to remain independent and to improve. The purpose of the evaluation is to identify where the board's strengths and weaknesses are (to enable it to address the weaknesses and exploit the strengths). There is a mix of matters that need to function together for a board to be competent, which should be assessed in any board evaluation.

### Individual directors commitment

Attendance and preparation for meetings is a proxy for measuring the level of commitment and capacity the director is willing or able to give to the entity. Note that it is not a subjective measure of how much the director would like to dedicate to the board, rather, how much they are able to.

- Attendance of board meetings
- Meeting attendance at committees
- Attendance for other core board functions (e.g. strategic planning day; open access meeting)
- Attendance and participation at ceremonial matters for the health service

- Being prepared for meetings (i.e. read the papers, raised issues in advance)
- Being on time for meetings.

### Board director skills

- The currency of the particular skill/competency they fulfil (e.g. communications, ICT, law)
- Financial literacy – all directors must have a minimum level of financial literacy; they cannot simply rely on the directors with financial qualifications
- Clinical governance literacy – all directors must have a minimum level of clinical governance literacy; they cannot simply rely on the directors with clinical or medical administrative qualifications
- Corporate governance – all directors must understand the core concepts of corporate governance and risk management
- Succession planning for skills that might be leaving the board soon.

### Director independence and self-reflection

**Director independence serves a critical role in allowing the board to question decisions and improve on the past. This needs to be balanced against the experience, expertise and, in particular, corporate knowledge of the health service that the director has.**<sup>104</sup>

**Health service boards in Victoria start with a significant independence advantage that many entities in the private sector do not have, that being the CEO is not allowed to be a director of the board. There are numerous examples of companies that came into harm from the conflict of interest inherent in a CEO as a director model. The OECD has recommended for some time that the CEO should not sit on the board, and if they do, as a minimum, the chair of the board should be completely independent.**<sup>105</sup>

- **Tenure on the board – even directors that are strong contributors with highly sought after skills can begin to reduce the effectiveness of the board due to a lack of independence, particularly if that director has to confront the impacts of decisions made under his/her watch**
- **Interests (conflicted or otherwise) with the health service’s activities**
- **Connections to staff (or being a former staff member)**
- **A relationship with the CEO that is too familiar (e.g. friendship rather than a professional relationship that would enable both working with and challenging the CEO)**
- **Diversity of the board can be a proxy to independence.**

**While removing a long standing director might be one mechanism of improving independence, director independence and its benefits should not be confused with board renewal. Nevertheless, given one of the greatest predictors of non-independence is board tenure (i.e. how many terms a director has spent on the one board) the board should consider key risks such as business continuity and succession planning when evaluating independence.**

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<sup>104</sup> Nicholson, Gavin J and Kiel, Geoffrey C, *Breakthrough board performance: How to harness your board’s intellectual capital*, (2004), Corporate Governance: The International Journal of Business in Society, 4(1), pp.5-23. See references.

<sup>105</sup> OECD Ad Hoc Task Force on Corporate Governance, *OECD Principles of Corporate Governance*, (1999), Corporate Governance, OECD, Paris.

## Board culture

A board culture that enables directors to feel safe and confident to challenge views, question the executive (and others), and reach a joint decision. Critically, a good board culture will be receptive to 'bad news' as a learning experience. It will have the confidence of the CEO, the department and the Minister.

Measuring culture<sup>106</sup> of the board should both consider the board's culture and its ability to positively influence through the health service's culture through leadership.

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"There are two young fish swimming along, and they meet an older fish swimming the other way, who nods at them and says: 'Morning boys, how's the water?' The two young fish swim on for a bit, and then eventually one looks over at the other and goes: 'What the hell is water?'" ...

"The point of the fish story is merely that the most obvious, important realities are often the ones that are hardest to see and talk about."

- David Foster Wallace, 2005 commencement speech Commencement Speech to Kenyon College. Refer to Useful resources to see the full transcript and YouTube video.

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### Considerations for evaluating board culture include:

- **Conduct of directors**
- **Ability for directors to hear 'bad news' and act on it in a way that enables the organisation to learn**
- **Celebration of any 'island of integrity'<sup>107</sup> or good conduct (e.g. reporting)**
- **Empower senior leaders to own ethical and safe decisions**
- **Risk appetite of directors, in particular, to ensure innovation and learning are embedded and not just an add on**
- **The willingness of directors to question and require adequate information from management and the ability to obtain this – do directors feel like they need to use back doors to get information because the CEO has not provided adequate or timely advice?**
- **Just culture – how do we, as a board, encourage a reporting culture so that people do not feel like it is either a) futile to speak up (i.e. do we value accountability), or b) dangerous to speak up (do we shoot the messenger/complainer rather than learning from the bad news?).<sup>108</sup>**

Further information on board evaluation and assessment can be found in **Chapter 5: Board structure and renewal**; and further information on board culture is in **Chapter 11: Organisational culture and leadership**.

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<sup>106</sup> EthicalSystems.org have two online (public commons) modules for measuring ethical conduct and a speak up culture. Access the online measurement modules here: <http://ethicalsystems.org/content/ethical-systems-culture-measurement>

<sup>107</sup> Gilman, Stuart C, *Ethics codes and codes of conduct as tools for promoting an ethical and professional public service: Comparative successes and lessons*, (Winter 2005), Washington, p. 75.

<sup>108</sup> See the panel discussion from the June 2016 Ethics by Design conference here (full reference details in the useful references at the end of this chapter): <https://www.youtube.com/watch?v=Ap2vRpS5jhs&feature=youtu.be>

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