

These are sample minutes. Each heading is accompanied by an explanation of the purpose of each element of the minutes. The sample minutes should be read in conjunction with Governance Institute's sample agenda.

KEY

= Explanatory Notes

These notes explain the purpose of each element of the minutes and are provided for education only. The explanatory notes should not appear in an agenda.

PURPLE TEXT = items that are optional, according to company circumstance



[COMPANY NAME]

A.B.N. XX-XXX-XXX-XXX

[Company name]

[PUBLIC COMPANY] Board of Directors

Providing the company name at the top of the document clearly identifies the identity of the organisation of whose meeting the minutes are a record. Providing the title of the body that holds the meeting is essential for organisational records.

Minutes

Minutes for a meeting of the Board of Directors of [Company Name] held on [Date], at the [Location] commenced at [Time]

The minutes of the meeting provide the primary evidentiary source of the events that occurred. Under s 251A(6) of the *Corporations Act 2001* (Cth), proceedings entered into a company's minute book and properly signed are *prima facie* evidence of the proceedings. It is important, therefore, that details concerning the timing and location of the meeting are correctly recorded. The primacy of company minutes has been reinforced by the recent court decision in *James Hardie*.

Importantly, the minutes must be an accurate record of the meeting. It is important that the minutes reflect the agenda of the meeting. A director cannot bring new business before a meeting of the board without notice or the consent of the directors, as all directors must have reasonable notice of the meeting and the items to be discussed. Short notice can be provided, but all directors must consent to it. Please refer to Governance Institute's *sample agenda* where we explain each element of an agenda.

It is also important to number the pages of the minutes for easy reference. A decision needs to be taken as to whether the page numbers will be consecutive, which can be useful from an audit perspective, as it ensures there are no duplicated page numbers. A decision also needs to be taken as to whether the chair will sign and date each page of the minutes, or sign and date the final page of the minutes, and initial the other pages. Both approaches are acceptable — what is important is that the company can provide comfort that the version of the minutes entered in the minute book is the correct record that has been signed by the chair.

1 Attendance

Present

Example: Mr John Smith

Position

Chair

As the minutes are evidence of the proceedings and resolutions passed by the directors present, they must include a list of those directors in attendance at the meeting. The minutes should also record the relevant time that directors join or leave the meeting, and those who send their apologies due to other commitments, so that it is clear who was making decisions at the meeting. The minutes should record other attendees at the meeting, the capacity in which they are attending and may record the times at which they joined and left the meeting, as relevant. Good corporate governance requires disclosure of director attendance at meetings in the annual report — the minutes will provide this record.

Where directors are unable to attend the meeting in person, s 248D of the *Corporations Act* allows directors' meetings to be called or held using any technology which has the consent of all the directors. The consent may be a standing consent, and a director may only be able to withdraw their consent a reasonable time before the meeting commences. The minutes should reflect whether the directors attended the meeting in person or through the use of technology. It is good practice to have those attending by phone announce themselves at the commencement of the meeting and in some cases the constitution may provide for this to occur.

Apologies

The minutes should also reflect those directors who send their apologies and those apologies should be noted to the directors present.

In attendance

The minutes should list the other attendees at the meeting, including executive officers of the company. The minutes also record the minute taker for the meeting, who is usually the company secretary.

Chair

The Chair, **[name]**, declared the meeting open at **[time]** and that a quorum was present.

The chair will always declare the meeting to open at a particular time. The requirements for a quorum for business to be properly discussed and resolved at a meeting is usually determined by either the terms of the company's constitution or s 248F (a replaceable rule) of the Corporations Act which requires at least two directors to be present. A quorum must be maintained throughout the entire duration of the meeting — it is important that the requirement for a quorum is considered when directors leave the meeting for any particular reason as the decisions made by the board can be procedurally challenged if it is subsequently revealed that a quorum is not present. There are exceptions to this for public companies (see ss 191(4) and 195(5) of the Corporations Act). It is also important to note that s1322(2) and (4)(a) of the Corporations Act provide a general power of relief in circumstances where an irregularity arises. These sections are of last resort and good governance dictates that it is paramount that proper meeting practice and procedure be followed.

It is important that the minutes are always written in the past tense, as they are a historic record and not a forward-looking document. It is also preferable to use the active voice rather than the passive voice when recording minutes (for example, 'The chair declared the meeting open, rather than 'The meeting was declared open by the chair'.)

2 Declaration of interests

2.1 Declaration of directors' interests

[Name of individual director] declared that s/he had an interest in **[Explanation]**

[Name of individual directors] declared that **[Explanation]** which might affect their relationship with **[Company Name]** regarding matters to be discussed during the meeting.

Directors (but not other officers) who have a material personal interest in a matter that is being considered or will be considered at the meeting of the board or its committee, or a conflict or perceived conflict between the duties which the director may owe to another entity of which they are a director or salaried executive and their duties as a director of the company in considering a matter than is brought before a meeting of the board, must disclose that interest to the other directors (as provided for in s 191 of the Corporations Act) unless a s 191(2) exception applies. Upon being appointed as a director, it is good practice for a director to disclose their material personal interests in a 'standing notice'. The entity should set out the guiding principles for the disclosure of those interests. The standing notice should provide details of the nature and extent of the interest and how the interest relates to the affairs of the company and recorded in a register of interests.

Directors should be asked to consider at the commencement of the meeting if they have a conflict of interest in relation to any of the items on the meeting agenda. If they do, the meeting must then determine the extent to which the director may or may not participate in the discussion and vote on that matter (s 195). Any declared conflicts of interest and board decisions relating to these must be recorded in the minutes. It is general meeting protocol that when the matter of business is tabled, the directors remain silent, unless there is a change to the extent or nature of their standing notice.

Listed companies should consider any shareholder approval requirements, disclosure requirements or voting restrictions set out in the ASX Listing Rules concerning directors having a notifiable interest in a relevant contract with the company or by being a party or otherwise connected to a transaction with the company that is subject to the ASX Listing Rules.

It is a personal statutory obligation on directors to disclose conflicts of interest — they cannot rely on the chair to bring their attention to the requirement for them to disclose any actual or perceived conflict of interest.

For more information, please see Governance Institute's Good Governance Guide: *Issues to consider when developing a policy on disclosure of and voting on matters involving a director's material personal interests*.

2.2 Director trading activity (applicable to public listed companies only)

The Corporations Act prohibits insider trading and the misuse of company knowledge and information for personal gain. The ASX Listing Rules and Corporations Act require notification to the market by directors where a dealing changes their relevant interest in the entity's securities. Notwithstanding that, a person in the position of director, officer or employee must not use confidential information or improperly use their position to gain an advantage for themselves or another cause detriment to the company.

3 Minutes of the last board / committee meeting

The minutes of the **[Name]** board meeting held on **[Date]** were adopted and signed by the Chair

Under s 251A of the Corporations Act, a company must keep minute books in which it records, within one month, the proceedings and resolutions of directors' meetings (including meetings of a committee of directors). In most companies, the minutes of the previous board meeting are formally approved at the subsequent board meeting. However, in many companies, the board does not meet each month, but may meet every two months or at other periods. These companies, therefore, need to ensure that they have a process in place to satisfy the demands of the legislation when the next scheduled meeting is not within one month of the board meeting. For more information please refer to Governance Institute's Good Governance Guide: *Recording minutes of directors' meetings*.

The minutes must be signed by the chair of the meeting — it can be the chair of either the previous meeting or the current meeting before which the minutes have been tabled. When the board of directors authorises the chair to sign the minutes of the previous meeting as an accurate record of that meeting, the last page of the minutes should be properly structured to record that fact. For example, a statement might indicate that the minutes have been signed as a true and correct record of the meeting and that the chair is authorised to sign them (including the chair's name) on the appropriate date.

3.2 Matters arising from previous meetings not covered elsewhere in the agenda

The minutes will capture the progress of matters since the previous meeting, even when those matters are not included on the agenda of the current meeting.

3.3 Action items

The action items list is the mechanism by which the board keeps abreast of what it has resolved and to whom it has delegated those resolutions at previous board meetings. The action items list notes who is required to undertake a particular action, when the action is required to be undertaken or completed and may also note how the action is to be performed. Some of the items on the action list will be included on the agenda of the current meeting, and will therefore be dealt with and recorded in the minutes under that agenda item. The minutes must record each action item, any progress or otherwise in relation to it and any further resolutions made by the directors in relation to it.

The action items list may be set out in a table format, as an attachment to the minutes, and include the following:

- an item number that correlates to the number on board agenda noting the business matter (for ease of reference)
- a summary and description of the item upon which action is required
- an assignment of the responsibility to a particular director, executive, or branch of the company
- an indication as to the ongoing status of the action item, and/or
- the deadlines which are relevant to the performing of actions

3.4 Noting circulating resolution (optional)

The minutes may capture notice of the circulating resolutions which have been passed during the intervening period between directors' meetings.

4 [Agenda items]

A company's minutes should reflect the order of the agenda of the previous meeting. The minutes should also reflect what action the board of directors or committee members took in relation to each agenda item, that is, For decision; For noting, For ratification. See Governance Institute's Good Governance Guide: *Board matters: when to resolve, ratify or note*.

Minutes of resolution will simply record that an agenda item was discussed and a resolution passed. Minutes of narration may choose to provide more information about the issues under consideration and the deliberations of the directors in arriving at the resolution. However, it is common practice to omit from the minutes extraneous material such as discussion, lost amendments, unseconded motions and procedural motions.

Directors' minutes *must* record the passing of a resolution as the collective will of that body and adequately record the process followed in coming to that business decision, whether it be to take or not to take certain action. Individual directors are not named in relation to resolutions — it is unitary decision. There is no one-size-fits-all approach to choosing which style of the minutes are appropriate for all organisations, but it is common for the minutes of public companies to be more in the style of minutes of resolution. Importantly, minutes should not record every aspect of the discussion in relation to any particular matter, nor any record of which director made which comment on the issue.

A 'happy medium' between pure minutes of resolution and minutes of narration is likely to be appropriate for modern corporate practice. Boards will ultimately make the decision as to their preferred mode of recording minutes and the extent to which additional information regarding board discussions is contained within them.

To ensure that the business judgement rule under s 180(2) of the Corporations Act can apply, it is important that the minutes reflect the fact that the directors turned their mind to the issues contained on the agenda, acted in good faith, for a proper purpose and in the absence of a material personal interest, and came to a rational decision which was reasonable for each of them to reach, in light of their own skills and experience and in light of circumstances known to the company at the time. The company's directors' and officers' insurance should also be considered. See Governance Institute's Good Governance Guide: *Board minutes: what to record, the business judgment rule*.

Only in very limited situations should individual comments by directors expressing dissent with the collective decision of the board be captured by the minutes, if a director so requests. As noted, a board should function cohesively in unity.

When recording the minutes in relation to each agenda item, it is good practice to note if a paper was presented to the board for consideration. It is good governance to ensure that a folder is maintained for each board meeting which includes an original set of board papers including copies of all documents tabled and presentations given at the meeting. See Governance Institute's Good Governance Guide: *Board papers*.

Some specific comments in relation to regular agenda items are provided below.

4.1 CEO or General Manager report

At each directors' meeting, the CEO, managing director or general manager of the organisation must report to the directors on a variety of matters. It is usual for the CEO's report to be included in the board pack and discussed at the meeting. Section 198A(1) (replaceable rule) of the Corporations Act 2001 provides that the business of the company is to be managed by or under the direction of the directors; that is, the directors are to exercise all the powers of a company except any that the law or the company's constitution (if any) requires the company to exercise in general meeting. Companies have clauses in their constitutions that allow the directors broad ability to delegate their collective powers, but not their responsibility, to others. See Governance Institute's *Providing your board with comfort on the accountability mechanisms operating in your company*.

The minutes must record the report to the directors by those to whom it has delegated its powers. See Governance Institute's *sample agenda* for a list of the reports from the CEO or general manager that the directors would expect to receive, and which will be recorded in the minutes.

4.2 Financial report

The minutes should record that the directors considered the financial accounts at each meeting. The financial accounts should be discussed at the meeting.

5 Committee [name] reports

The minutes should also contain a record of the reports received from the board's committees, such as the audit, remuneration and nomination committees. This ensures that the delegations made by the board to its committees receive appropriate oversight and that the board takes responsibility for any resolutions arising from committee deliberations. For example, the audit committee may scrutinise the company accounts and make recommendations to the board but the Corporations Act places upon the board and each director the specific task of approving the financial statements and this responsibility cannot be delegated to a committee. Each committee may not necessarily report to the board at each directors' meeting.

Importantly, while the board retains ultimate responsibility for the management of risks within the entity, it can delegate the day-to-day management function of risk to management. The board is responsible for reviewing the company's policies on risk oversight and management, settling the risk appetite, and satisfying itself that management has developed and implemented a sound system of risk management and internal control. The board should require management to report to it on whether the company's material business risks are being managed effectively. The board may wish to have the risk register tabled at each meeting (otherwise, each quarter, as a general rule) and this would be recorded in the minutes.

6 Governance

Directors' discussion

In order to demonstrate the independence of the board from management, or where there are instances of potential conflicts of interest, such as any discussion of CEO remuneration, the non-executive directors may request management to leave the room. The minutes should record the name and title of the party requested to leave the room, and **may record the time at which they left and rejoined the room, although there could be concern that showing the times may misinterpreted as inadequate consideration by the directors of the matters under discussion**. It is common for the non-executive directors to hold discussions without management present following the report from the audit committee on the financial statements. It is also common for the non-executive directors to hold a discussion with the auditors without management being present when the financial statements are presented to the board.

Example the CEO [name] and CFO [name] left the meeting
 The directors held a discussion without management present
 The CEO [name] and CFO [name] rejoined the meeting

7 General business

The minutes should record that the chair invited all those present to raise any matters of relevance that have not been dealt with on the agenda and any resolutions or noting of discussion that ensued in relation to those items of business should any be raised. Otherwise the minutes should record that there were no other items of general business raised. Business without notice can only be raised by consent.

8 Meeting review (optional)

If the board of directors has chosen to include evaluation of the meeting on the agenda, to assess whether everything on the agenda was discussed adequately and efficiently, and whether the meeting was properly conducted and in a timely manner, the minutes should record that such an evaluation took place and any resolutions arising from that discussion.

9 Next meeting

The next meeting of the **[insert company name]** Board of Directors / Board Committee will be held on **[date]** at **[time]** at **[address]**.

Each board meeting should conclude with confirmation of the date of the subsequent meeting, thereby providing reasonable notice to the directors. The minutes should record the date of the next meeting. The board calendar is settled at the beginning of the year and should stand as an attachment to the agenda and minutes as a running notice.

10 Closure

There being no further business, the Chair closed the meeting at **[Time]**.

The time at which the meeting concludes should be recorded in the minutes. The minutes record when the meeting commences and finishes, as details of the timing of the meeting are part of providing an evidentiary source of the events that occurred.