



INDIVIDUAL

Role of the chair

The chair has been described as *first among equals* within the board of directors and is usually appointed to the position of chair by fellow board members, rather than directly by the organisation's members or shareholders (subject to some exceptions for not-for-profit and government/public sector organisations).

The chair acts as an important link between the board and the organisation's management via the CEO. The role of the chair is not defined in the *Corporations Act 2001 (Cth)* and therefore many functions of the chair are customary rather than formalised by law.

The chair is responsible for the leadership of the board including:

- facilitating proper information flow to the board;
- facilitating the effective functioning of the board including managing the conduct, frequency and length of board meetings; and
- communicating the views of the board, in conjunction with the CEO, to the organisation's security holders, broader stakeholders and to the public.

In performing this role, the chair's responsibilities also include:

- (in consultation with the CEO and company secretary):
 - setting the agenda for the matters to be considered by the board;
 - seeking to ensure that the information (both financial and non-financial) provided to the board is relevant, accurate, timely and sufficient to keep the board appropriately informed of the performance of the organisation and of any developments that may have a material impact on the organisation or its performance;
 - seeking to ensure that communications with stakeholders and the public are accurate and effective;
- seeking to ensure that the board as a whole has the opportunity to maintain adequate understanding of the organisation's financial position, strategic performance, operations and affairs generally and the opportunities and challenges facing the organisation;

- facilitating open and constructive communications amongst board members and encouraging their contribution to board deliberations;
- overseeing and facilitating board, committee and board member evaluation reviews and succession planning;
- liaising and interfacing with the CEO as the primary contact between the board and management; and
- liaising with and counselling, as appropriate, board members.

Subject to the terms of the constitution, the chair is appointed by the board from amongst its members and holds office at the discretion of the board until removed from office by the board or until the chair resigns from office or is no longer a board member.

In the absence of the chair, the deputy chair (if there is one appointed by the board) or the senior or lead independent director, should assume the role that otherwise would be performed by the chair if the chair was not absent.

What is the role inside the boardroom?

- Acting as an important link between the board and management but without necessarily preventing direct access of fellow directors;
- Establishing and maintaining an effective working relationship with the CEO;
- Setting the tone for the board, including the establishment of a common purpose, values and code of behaviour;
- Chairing board meetings efficiently and shaping the agenda in relation to goals, strategy, budget and executive performance;
- Reporting to board members on key corporate matters and matters discussed with the CEO in-between/outside board meetings; these reports may occur with or without CEO presence (for instance, in-camera sessions);
- Obtaining appropriate information (both financial and non-financial) to present to the board;

- Encouraging contributions by all board members and seeking consensus when making decisions;
- Supporting effective and robust board discussions by encouraging board members to raise constructive questions with management;
- Motivating board members and where appropriate dealing with underperformance;
- Overseeing the process for appraising board members individually and the board as a whole;
- Overseeing negotiations for the CEO's employment and evaluating the CEO's performance;
- Planning for CEO succession; and
- Assisting in the selection of board committee members.

What is the role outside the boardroom?

- Acting as an important link between the board and management by clarifying board decisions and instructions to management via the CEO;
- Providing guidance to the CEO without interfering with day-to-day operations;
- Meeting with the CEO regularly and sharing updates with board members in-between/outside board meetings;
- Being visible to management and employees, and attending key company events;
- Communicating with shareholders and members on behalf of the board and on matters of corporate governance;
- Chairing shareholder or member meetings, annual and extraordinary general meetings (AGMs and EGMs);
- Increasingly, being available to speak with institutional investors and significant stakeholders.

What happens when a chair does not perform effectively?

A chair can only be effective while they retain the confidence and respect of their fellow board members. An underperforming chair may be asked to step down by other directors (or be required to step down by resolution of the board unless the chair is appointed directly by the organisation's members or perhaps a government minister in the case of a public sector organisation). In respect of most organisations, the chair can only be removed as a director from the board by a vote of shareholders or members. For reasons including this one, it is suggested that organisations consider conducting a chair performance assessment as part of the annual board evaluation so directors can provide feedback on the chair's performance. It's important to note that recent examples demonstrate that the chair's performance may be judged by those outside of an organisation. The resignations of the chair of both AMP¹ and NAB² were as a direct result of the Financial Services Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

Should the chair be independent?

Accepted good corporate governance practice in Australia (like in many other countries of the world) recommends that the chair should be an independent director, although there are differing schools of thought on this topic. In the US, for instance, the concept of a combined chair/CEO continues to have reasonable appeal. Independence means that the chair is free from potentially conflicting relationships with the organisation – for example, being an executive or professional adviser within the last few years, being a substantial shareholder or supplier, and having no material contractual relationships with the organisation.

Australian good corporate governance practice also recommends that, where the chair is not an independent director, it may be beneficial to consider the appointment of a lead independent director. This person can act as a conduit for any material issues that independent directors on the board may wish to raise with the CEO or executive management team.

For more information, see Recommendation 2.5 of the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations*.³

What are important personal traits for a chair?

A balance of desirable personal traits for a chair include:

- strength and clarity of purpose;
- tact, diplomacy and sensitivity;
- ability to reconcile opposing views;
- excellent communication skills;
- ability to lead including by example;
- ability and willingness to constructively challenge and probe (and encourage to do the same of each other and management);
- ability to encourage and get the best from all team members; and
- power to influence.

Is the chair held to a higher standard, or does the chair have additional responsibilities, to those of a 'mere' director?

Court cases have created debate on the role and responsibilities of the chair. Public scrutiny of the role of the chair increased due to high profile corporate collapses like One.Tel and HIH.

1. ABC News, 2018, "AMP chairman Catherine Brenner steps down after royal commission revelations", *ABC News*, 30 April, <https://www.abc.net.au/news/2018-04-30/amp-chairperson-catherine-brenner-steps-down/9709874>, (accessed on 4 June 2019).
 2. S Chalmers, S Letts and staff, 2019, "NAB CEO Andrew Thorburn and chair Ken Henry resign in the wake of banking royal commission", *ABC News*, 8 February, <https://www.abc.net.au/news/2019-02-07/nab-ceo-and-chairman-both-resign-after-royal-commission/10790670>, (accessed on 4 June 2019).
 3. ASX Corporate Governance Council, 2019, *Corporate Governance Principles and Recommendations*, 4th edition, February, p 15, <https://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-fourth-edn.pdf>, (accessed 8 May 2019).

The resulting court decisions suggest that there is an argument that the chair's role is one that at least carries additional responsibilities, although whether or not this means the chair is held to a 'higher' standard of duty and responsibility is moot.

ASIC has argued that the chair has responsibilities beyond those of other directors at least in the following respects:

- general performance of the board;
- flow of financial information to the board;
- establishment and maintenance of systems for information flow to the board;
- public announcement of information; and
- making recommendations to the board as to prudent management of the group.

So far there is no legally binding precedent and the question awaits a definitive answer from the courts or Parliament.

The deputy chair (or senior independent director if a deputy chair is not formally appointed)

The deputy chair (if one is appointed), or the senior independent director (if a deputy chair is not formally appointed), has the following responsibilities:

- performing the role and functions of the chair in the absence of the chair for any reason (for instance, when the chair has a conflict of interest on matters being discussed at the board meeting);

- being available to facilitate the following matters when and as appropriate and required:
 - chair succession planning;
 - approvals and actions required to be performed by the chair under this charter, or its policies, where the chair actually or potentially may be compromised due to personal or other conflict of interest;
- supporting the chair (at the chair's request) in performing the role and function of the chair, such as chairing the committee or board meetings, sharing the burden of work and travel commitments.

As with the chair, accepted good corporate governance practice recommends the deputy chair should be an independent non-executive board member and should not also be the CEO.

Besides having a readily available replacement person during the chair's absence, the deputy chair can act as a representative of a sub-group of directors, and act as a conduit between directors and the chair when providing feedback on chair performance.

The deputy chair role may at times be used as recognition for a long-serving director, or as a signal to the external market: for example, if a board knows a particular director is viewed particularly favourably by the institutional investor community.⁴

4. A Moddie, 2001, "Is there a role for the deputy chairman", *Company Director Magazine*, 1 November, <http://www.companydirectors.com.au/director-resource-centre/publications/company-director-magazine/2000-to-2009-back-editions/2001/november/is-there-a-role-for-the-deputy-chairman-cover-story-deputy-chairmen>, (accessed 4 June 2019).

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