

Role of the chair

Governance relations

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 NFP 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*, thus many functions of the chair are customary rather than formalised by law.

The chair is responsible for 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;
- 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 his/her role, the chair's responsibilities also include:

- In consultation with the CEO/company secretary:
 - setting the agenda for the matters to be considered by the board;
 - seeking to ensure that the information 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;
- Chairing board meetings efficiently and shaping the agenda in relation to goals, strategy, budget and executive performance;
- Obtaining appropriate information to present to the board;
- Encouraging contributions by all board members and seeking consensus when making decisions;
- 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;
- Assisting with the selection of board committee members.

What is the role outside the boardroom?

- 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 he or she retains 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) but, in respect of most organisations, can only be removed as a director from the board by a vote of shareholders or members.

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, for example, in USA where the concept of a combined chair/CEO continues to have reasonable appeal. This 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 the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations 3e* (2014), Recommendation 2.5.

“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.”

What are important personal traits for a chair?

A balance of desirable personal traits for a chair include:

- tact, diplomacy and sensitivity
- ability to reconcile opposing views
- strength and clarity of purpose
- ability to lead including by example
- ability to encourage and get the best from all team members
- power to influence.

Is a chair held to a higher standard or does a 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 corporate collapses like One. Tel and HIH. 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
- 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.

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:

- To perform the role and functions of the chair in the absence of the chair for any reason.
- To be 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.
- At the request of the chair, to support the chair in the performance of the role and function of the chair.

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.

Disclaimer

This document is part of a Director Tools series prepared by the Australian Institute of Company Directors. This series has been designed to provide general background information and as a starting point for undertaking a board-related activity. It is not designed to replace legal advice or a detailed review of the subject matter. The material in this document does not constitute legal, accounting or other professional advice. While reasonable care has been taken in its preparation, the Australian Institute of Company Directors does not make any express or implied representations or warranties as to the completeness, currency, reliability or accuracy of the material in this document. This document should not be used or relied upon as a substitute for professional advice or as a basis for formulating business decisions. To the extent permitted by law, the Australian Institute of Company Directors excludes all liability for any loss or damage arising out of the use of the material in this document. Any links to third-party websites are provided for convenience only and do not represent endorsement, sponsorship or approval of those third parties, or any products and/or services offered by third parties, or any comment on the accuracy or currency of the information included in third party websites. The opinions of those quoted do not necessarily represent the view of the Australian Institute of Company Directors.

© 2016 Australian Institute of Company Directors

About us

The Australian Institute of Company Directors is committed to excellence in governance. We make a positive impact on society and the economy through governance education, director development and advocacy. Our membership includes directors and senior leaders from business, government and the not-for-profit sectors.

For more information **t: 1300 739 119** **w: companydirectors.com.au**