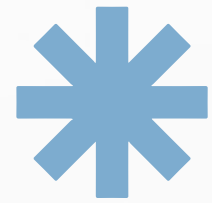




Why Board Meeting Minutes Really Matter



While minutes often feature in-jokes about board performance (for example, ‘boards take minutes and waste hours’), they are no laughing matter. Board meetings are an essential component of an organisation’s decision-making process. The record (minutes) of the conduct of those meetings is a direct indication of the quality of a board’s administration. For various reasons, the quality of the minutes and the protection of their integrity, once approved and signed off, are treated with considerable gravity.¹ Boards should pay closer attention to both the recording and approval of their minutes than is often the case.



¹ Falsification of the minute book or other misbehaviour such as parting with it, mutilating it, making a false entry in it, or destroying it, is prohibited under the NZ Companies Act 1993, and anyone who is a party to doing any of these things is liable for a fine of up to \$200,000 or a term of up to 5 years imprisonment.

Why you should care about the quality of your minutes



To be legally compliant

It is a widespread legal requirement for incorporated bodies to keep a written record of their boards' decisions. This requirement applies whether decisions are taken at a properly convened meeting or 'between meetings' using circular resolutions or as BoardPro calls them, 'Flying Minutes'. Failure to keep an adequate record of its proceedings might be taken as a worrying sign not only of the board's competence but of its integrity. Inadequate minutes may also compromise some aspects of a corporate entity's legal protections (e.g., of limited liability).²



To demonstrate the integrity of process

Minutes are a record of important organisational transactions. While an enduring record of its deliberations is primarily for the benefit of the board itself, minutes are also increasingly important to third parties. For example, when minutes are described as 'a letter to a judge' it acknowledges their importance in special inquiries or litigation when board decisions (or a lack of them) are under the microscope. Minutes are a significant component in a 'paper trail' that can help prove, for example, that proper authority was exercised, and correct procedure was followed.

The process of producing minutes is as important as what they contain. That is why, for example, after minutes have been approved and signed by the chair as a true and correct record they should not be altered. If there is subsequent disagreement with a decision, and the board has second thoughts, it is not the minute book that should be changed, but the decision - at a subsequent meeting.

Typically, in a legal contest the other side has to prove that a board's minutes are not correct. In a dispute, for example, about whether a board acted in compliance with applicable legal and contractual requirements, the courts will accept the board's minutes as the best record of its decision and the basis on which it was made. But, if that record is inadequate - if, for example, it is too cryptic - the board may be faced with a judicial conclusion that it had not properly decided the matter.

². Denying the limited liability protection of corporate status might arise if, for example, there was a failure to document compliance through appropriate minutes.



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To protect organisational and director reputation

Boards frequently have to deal with potential conflicts of interest. Handling these with care is essential to protecting the reputation and the integrity of the organisation and individual directors who may later be vulnerable to accusations that they have misused their positions. Minutes should accurately and thoroughly record the process steps taken (e.g., full disclosure of the actual or potential conflict and the extent to which a potentially conflicted director is involved, if at all, in the decision making process).



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As a basis for decision evaluation and review

Historically, legal advice was to keep minutes to a record of decisions so that a board's decision making process was not exposed. Current thinking is the complete opposite - that the best defence for a board whose decisions are questioned is to have documented the diligence and thoroughness that was applied. Boards need to be able to demonstrate that, for example, they received sufficient information and advice from reasonable sources, that such information and advice was properly interrogated, and that appropriate discussion occurred before the board made its final choice.

Minutes that record the thinking on which a decision was based, are also an important starting point for the board's own post-decision evaluations. If, for example, a project the board approved did not meet expectations, were there flaws in the original decision making process or its subsequent implementation oversight that it could learn from?

Because board and executive team members change over time, minutes are also useful when current board and management teams want to understand why, for example, a longstanding policy which now has no apparent purpose, was adopted. They should expect to be able to find information on the objectives, and the assumptions on which the policy was originally based, in past minutes and attached papers.





To clarify responsibility and track action

The content of board minutes frequently contains details of the assignment of responsibility for further action on a variety of the matters that were discussed. Whether this assignment is to officers of the board (e.g., the chair or a committee), or to the chief executive³, documenting accountability in the minutes creates an implementation tracking reference point. For greater visibility and easier access, this kind of minute content is often copied into a separate action list. Nevertheless, the starting point is what was recorded in the minutes.



To facilitate due diligence

Auditors have an obvious interest in a board's minutes, but board records are also an important source of information for others who may be entitled to access board records. For example, directors considering joining the board would want to know about potential risks and liabilities. In a sales process a prospective purchaser, and in a merger situation a potential partner, may have similar interests. If it turns out there are significant errors or omissions, or if the minutes are misleading, it may lead to trouble for those who approved the original minutes.

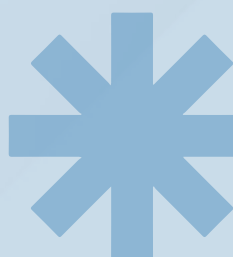


As a record of an organisation's history

We should also acknowledge the broader value of minutes in terms of historical research. Few organisational histories are written without extensive reliance on the minutes of past board meetings as a primary source. As board minutes are recorded so is an organisation's longer-term history being recorded.

Similarly, board minutes can play a very important part in the induction of new directors and senior executives. Minutes often hold the key to a new director's or a new chief executive's understanding of the origins of current issues and even pointers to future challenges.

³. Note that while it is common to do so, boards should rarely if ever make decisions that direct a subordinate of the chief executive because it effectively undermines the board's ability to hold its chief executive accountable for the outcome of executive action.



What should be included in the minutes?

To begin with the basics. These include:

- **The title of the meeting (e.g., board or committee)**

- **Date and time (including the time the meeting concluded)**

- **Venue and place**

- **Participation: noting who were the decision makers (e.g., directors) and confirm that a quorum existed. Noting also who were also 'in attendance' (staff, external advisors, observers, visitors, etc.) and those with specific roles in relation to the conduct of the meeting (e.g., chair, secretary/minute taker). Apologies should be recorded and declarations of interest in respect of matters on the agenda⁴. Any changes in attendance during the meeting should also be noted (e.g., when a director leaves the room and returns).**

- **Meeting description (what business was dealt with and in what order⁵, how it was handled (procedure, discussion, votes, etc.) and with what result (decisions).**

As indicated previously, the minutes are not only a record of a board's decisions but of the development of the board's thinking about significant topics. Generally, minutes should aim to achieve a 'Goldilocks' kind of balance. They should be neither too long nor too short but the more important something is, the more thorough, and likely extensive, the minutes should be. A good test of any decision described in the minutes is whether someone who was not present can later see how and why the board arrived at its final position. Material that is influential in the board's decisions on matters of substance should normally be included by reference or even attachment.

Minutes should also record that appropriate governance processes were observed. Having minutes record the steps taken encourages a higher level of compliance with agreed decision-making processes and protects both the board and an organisation's stakeholders from shortcuts. If normally part of a board's operating mode, parliamentary-style procedural motions and voting outcomes should be applied and accurately

recorded, including votes in opposition to a motion and abstentions.

Usually, it is neither necessary nor advisable to note who said what. Directors are collectively accountable for a board's final decisions whether those reflect their personal preferences or not. In reaching decisions members must be able to contribute to rigorous and meaningful discussions. They should be able to engage actively in the ebb and flow of board dialogue without consideration for how a view that is attributed to them (and which may change during the debate) might be received by any other potential audience.

While, ultimately, a director's personal view on a matter is not relevant individual views can be heard and acknowledged without attribution. For example: **"In considering the proposal the board reflected on a concern that the cash flow needed to fund the initiative might be insufficient if there was a further COVID-related lockdown. On balance, however, it felt that its present and prospective reserves would be sufficient to carry it through."**

⁴ Declarations of directors' interests (or of any other participant in the board's decision-making process) should be disclosed in the minutes. This disclosure should be accompanied by a record of the action taken to manage or mitigate any conflicts of interest. An example might be if an interested party withdraws from the meeting while a matter is discussed and resolved.

⁵ The business of a board meeting often follows the formal, pre-circulated agenda of the meeting but, not uncommonly, will depart from that (e.g., by deleting or adding items and/or taking them in a different order), in the interests of meeting efficiency and effectiveness. When that happens, it should be reflected in the minutes.



Preparing the minutes

In an ideal world every board would have a competent scribe assigned the task of taking the minutes. Someone who is not required to contribute to the content of the meeting but who understands the business and has solid experience of governance. This is not always the case. In smaller and less well-resourced organisations the task may by default fall to a board member who is otherwise actively involved in the meeting, or even a relatively junior and inexperienced staff member.

Minutes should be clearly written, balanced, and impartial, and not least, accurate. If just one set of minutes is wrong, it throws doubt upon any other minutes that the board may later need to rely on. No matter who has prepared the draft minutes nor in what circumstances, particular care needs to be taken in reviewing the first draft. One risk, if the draft minutes have been prepared by anyone who has participated in the meeting, is the temptation to write up the meeting as they thought it should have occurred rather than as it did.

Generally, the initial review (and, if necessary, correction) of draft minutes should be undertaken by the board chair. Then the draft should be sent to all directors inviting (and expecting) them to identify any discrepancies or errors. It is an opportunity for them to check against any notes they may have made themselves.⁶

A further, penultimate (but still draft) version of the minutes, approved by the chair, can be circulated to those who need to take follow-up action on anything before the minutes are approved.

The final step is for the draft minutes to be formally confirmed by the board and signed as a true and correct record by the Board chair. They are then part of the official record. Usually this would occur at the board's next meeting but board portals like BoardPro that facilitate on-line voting can help this occur much sooner if the law and the entity's constitution allow.

While, traditionally, the approval of the minutes has been one of the first items on a board meeting

agenda, there is no need for this unless subsequent items cannot be dealt with until the minutes are confirmed. In fact, placement at the top of the agenda creates the risk of a linked agenda item ('Matters arising from the minutes') inviting random, time-consuming, and tangential discussions that delay the board getting to the 'meat' of the agenda.

It is important to note that the chair is involved at each step in the confirmation of the minutes. It is a core part of the chair's role as board leader to protect the integrity of the record of the board's deliberations whether or not the draft minutes have been taken by skilled, highly qualified staff. Remember that the minutes are the board's record of the board's meeting.

⁶ Directors who have made any notes during the meeting should keep those until the minutes are confirmed. There is a body of opinion that says as those notes should then be destroyed as they may be discoverable during litigation. This is to avoid having what might be construed as conflicting accounts of the same meeting, or any suggestion that the minutes are incomplete or inaccurate. Boards should consider having a policy on the retention or destruction of directors' personal meeting notes.

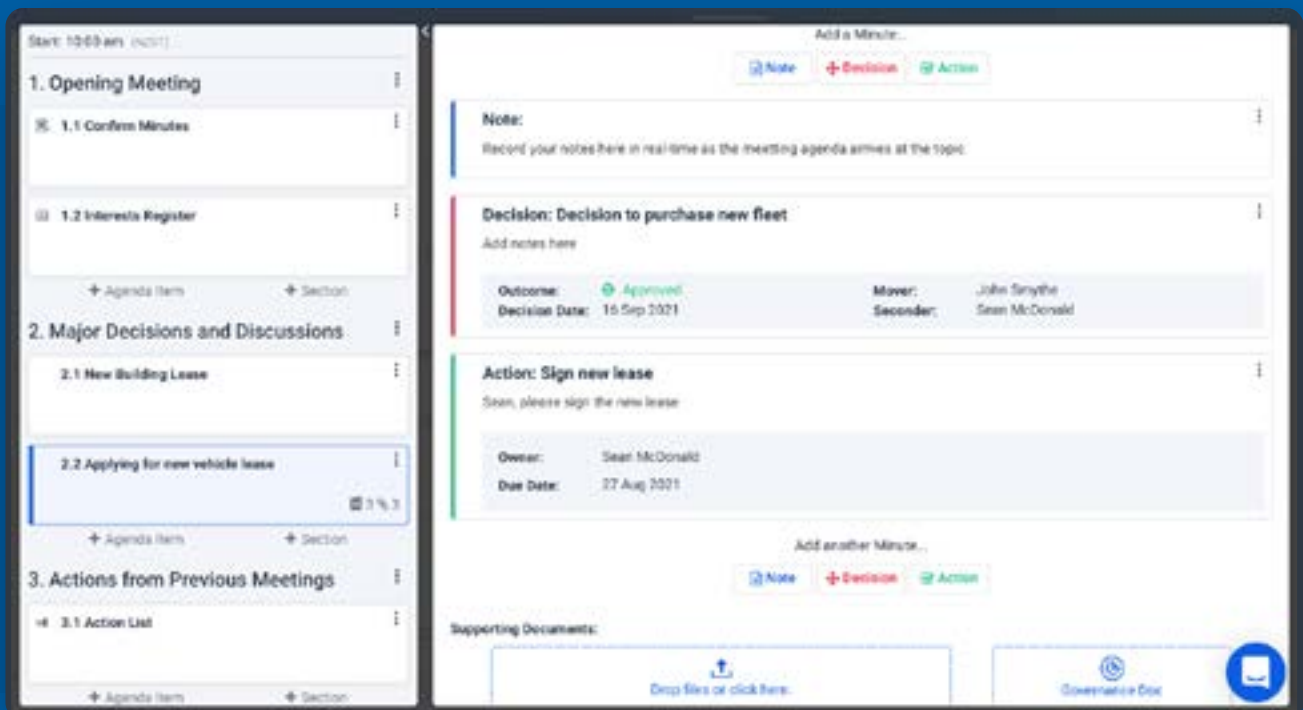
How BoardPro solves the minute taking conundrum

BoardPro Minute Taker enables the board administrator or company secretary to take clear and precise minutes against the agenda topics as they arrive in the meeting agenda.

The most important part of the meeting are made easy with accurate and timely minutes with BoardPro Minute Taker. Capture meeting topic notes, decisions and actions, and see it all turned into a professional document to send to your board.

Next Steps?

View our minutes features at <https://bit.ly/bpminutes> and take BoardPro for a FREE 30 day trial



About Boardpro

We exist to increase boardroom productivity and create better functioning boards. We don't believe good governance processes should be left to the domain of larger companies. We know that all parties in a board/management relationship want to use their time and resources most efficiently and productively. We found that a product that helped with the processes, workflows and guidance to work on the right things was missing from the market.

So we developed BoardPro in partnership with some of the best independent directors and most progressive CEOs.