Corporate Governance Toolkit for small and medium enterprises: 2nd Edition

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This series of information sheets is part of the CPA Australia program to advance financial reporting and governance issues. It is sponsored by CPA Australia and authored by PricewaterhouseCoopers.

CPA Australia (www.cpaaustralia.com.au) is a major international accounting body with membership of more than 105,000 finance, accounting and business professionals around the globe.

PricewaterhouseCoopers (www.pwc.com/au) provides industry-focused assurance, tax, legal and advisory services for public and private clients worldwide. It assists clients to understand and implement good practice corporate governance principles and effectively integrate these into a framework meeting the client's needs and circumstances.

The Corporate Governance Toolkit focuses on the practical application of governance principles for small and medium enterprises and provides straightforward guidance.

Corporate governance is constantly evolving to reflect the current corporate, economic and legal environment. The information sheets which make up the Corporate Governance Toolkit provide generic guidance on corporate governance practices. There will be specific legal and regulatory requirements in each country which are relevant to individual organisations. To be effective, corporate governance practices need to be tailored to the particular needs, objectives and risk management structure of an organisation.

No person should undertake or refrain from any action based on the information in this publication without seeking advice from their professional advisers.
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Corporate governance is a topic that has received growing attention in the public in recent years as policy makers and others become more aware of the contribution good corporate governance makes to financial market stability and economic growth. Corporate governance is all about controlling your business and so is relevant, and indeed vital, for all organisations, whatever size or structure.

The concept of corporate governance has proved difficult to define precisely, because it covers a large number of concepts and economic relationships that affect many people. The OECD has the following working definition of corporate governance:

"Corporate governance is the system by which business corporations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as the board, managers, shareholders and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structure through which the company objectives are set, and the means of attaining those objectives and monitoring performance."

This is summed up in a quote from Corporate Practices and Conduct, 3rd edition:

“The essence of any system of good corporate governance is to allow the board and management the freedom to drive their organisation forward but to exercise that freedom within a framework of effective accountability”.

The basic principles of effective corporate governance are threefold:

- **Transparency**: Are the board telling us what is going on?
- **Accountability**: Is the board taking responsibility?
- **Good, effective governance**
- **Corporate Control**: Is the board doing the right thing?

Based on these principles, organisations and markets around the world have considered the appropriate mechanisms for their markets. For example, the UK started their corporate governance regime with the Cadbury Code of Practice published by the London Stock Exchange in 1992, which has been regularly updated, most recently as a new Combined Code in 2004. Other examples include:

- the OECD, which publishes guidelines on corporate governance
- South Africa, where the comprehensive King Report on Corporate Governance was issued in 2002
- Australia, where the Australian Stock Exchange Corporate Governance Council issued a set of principles of good corporate governance in 2003
- Hong Kong, where the Hong Kong Society of Accountants has produced a number of relevant publications, including a updated basic framework of principles in 2004
- the US, where various stock exchanges, such as the NY Stock Exchange, have set out specific requirements in relation to governance mechanisms.

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The Australian recommendations of the ASX Corporate Governance Council, for example, translate to the basic principles as follows:

The King Report from South Africa expands on the three basic principles to separate out characteristics within these principles\(^2\), as a basis for its framework, and other country specific requirements may concentrate on specific parts rather than the principles overall.

However, whatever regime is in place, when considering corporate governance issues, and specifically recommendations in relation to systems or mechanisms, it is useful to concentrate on the overall purpose of good governance: to assist organisations to achieve their strategic objectives.

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\(^2\) The King Report characteristics are set out in information sheet 1.2 Governance in an SME.
1.2 Governance in an SME

The King Report on Corporate Governance for South Africa identified seven primary characteristics of good governance:

- **Discipline** - commitment by the organisation’s senior management to widely accepted standards of correct and proper behaviour
- **Transparency** - the ease with which an outsider can meaningfully analyse the organisation’s actions and performance
- **Independence** - the extent to which conflicts of interest are avoided, such that the organisation’s best interests prevail at all times
- **Accountability** - addressing shareholders’ rights to receive, and if necessary query, information relating to the stewardship of the organisation’s assets and its performance
- **Responsibility** - acceptance of all consequences of the organisation’s behaviour and actions, including a commitment to improvement where required
- **Fairness** - acknowledgement of, respect for and balance between the rights and interests of the organisation’s various stakeholders
- **Social responsibility** - the organisation’s demonstrable commitment to ethical standards and its appreciation of the social, environmental and economic impact of its activities on the communities in which it operates.

How does corporate governance apply to small and medium sized enterprises (SMEs)?

Many of the characteristics described above are relevant to both SME’s and large listed public companies. As an organisation grows in size and influence, these issues become increasingly important.

However, it is also important to recognize that good corporate governance is based on principles underpinned by consensus and continually developing notions of good practice. There are no absolute rules which must be adopted by all organisations. “There is no simple universal formula for good governance”¹ Instead emphasis in many localities, such as Australia, Hong Kong and the UK, has been to encourage organisations to give appropriate attention to the principles and adopt approaches which are tailored to the specific needs of an organisation at a given point in time.

When corporate governance is discussed, it is often spoken of in terms of a company’s corporate governance framework. The key elements within an effective governance framework, and the issues relating to each element, are set out on the following page and are relevant to organisations large and small, in both the private and the public sectors. The table provides a useful structure for any company to consider its own approach to corporate governance and the matters which may assist it to achieve its strategic objectives.

Many of the matters listed may not be directly relevant in all situations and some may not, in particular circumstances, be within the board’s control, but it provides a useful context in which any organisation can consider its governance needs and how they might be most appropriately addressed.

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The role of the board can be summarised as being to bring an independent and objective view to the organisation’s decisions and to oversee the performance and activities of management.

## What is the board’s role?

The full range of a board’s responsibilities is extensive and includes:

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<td>Â Understanding and protecting the organisation’s financial position</td>
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<td>Â Approving annual financial reports, annual reports and other public documents/sensitive reports</td>
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<td>Â Agreeing key performance indicators (KPIs)</td>
<td>Â Ensuring an effective system of internal controls exists and is operating as expected</td>
<td>Â Assuming responsibility for the relationship with CEO including his or her appointment, succession, performance assessment, remuneration and dismissal</td>
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<td>Â Overseeing aspects of the employment of the management team including remuneration, performance and succession planning</td>
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<td>Â Overseeing the risk management framework and monitoring business risks</td>
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<td>Â Recommending auditors and new directors to shareholders</td>
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<td>Â Monitoring developments in the industry and the operating environment</td>
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<td>Â Ensuring effective communication with shareholders and other stakeholders</td>
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<td>Â Oversight of the organisation, including its control and accountability systems</td>
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<td>Â Crisis management</td>
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<tr>
<td>Â Approving and monitoring the progress of major capital expenditure, capital management and acquisitions and divestitures</td>
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<td>Â Appointment of the CFO and company secretary</td>
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What is management’s role?
The responsibilities of management are to:
Á recommend the strategic direction and translate the strategic plan into the operations of the business
Á manage the company’s human, physical and financial resources to achieve the organisation's objectives - run the business
Á assume day to day responsibility for the organisation’s conformance with relevant laws and regulations and its compliance framework
Á develop, implement and manage the organisation’s risk management and internal control frameworks
Á develop, implement and update policies and procedures
Á be alert to relevant trends in the industry and the organisation’s operating environment
Á provide information to the board
Á act as a conduit between the board and the organisation
Á have an appropriate level of skills and resources
Á perform against the established KPIs to deliver the objectives of the organisation.
But at all times, the board must be in control.

How important is the relationship between management and the board?
The relationship between management and the board is critical and must be supported by a clear segregation of responsibilities.
Management must:
Á be accountable
Á operate within delegated authorities

Does a non-executive director have specific responsibilities?
Organisations commonly appoint individuals to the board from outside of the organisation. This allows a fresh perspective to be taken on the responsibilities of the board. These individuals are the non-executive directors.

Non-executive directors do not have any additional responsibilities over an executive director in their role as director, but the expectations and skills each director brings to the board will differ. Common duties are addressed in a separate information sheet ‘2.2 Directors’ duties’.

These duties are augmented by your operational responsibilities to:
Á understand the organisation, its business, its operating environment and its financial position
Á apply your expertise and skill in the organisation’s best interests
Á assist management to keep performance objectives at the top of its agenda
Á understand your role is not to act as auditor, nor to act as a member of the management team
Á respect the collective, cabinet nature of the board’s decisions
Á prepare for and attend board meetings
Á seek information on a timely basis to ensure you are in a position to contribute to the discussion when a matter comes before the board, or alert the chairman in advance to the need for further information in relation to a particular matter
Á make informed decisions
Á ask appropriate questions.

How does all this work in an SME?
Small and medium organisations are often characterised by the high level of integration and overlap of board
membership, ownership and management. Many have a sole director. Where there is a board, it is often made up of members of the management team (executive directors), key stakeholders and/or their relatives.

These facts do not change the roles and responsibilities, or the legal duties of the directors. In fact, it makes it more important that you understand the capacity in which you act at any given point in time. In these circumstances, the easiest approach may be to give specific attention to your role as a director and to encourage your board to meet formally on a periodic basis to address its responsibilities.

It may also be prudent to consider whether your board and indeed your organisation might benefit from the inclusion of one or more non-executive/external directors.

A well selected external director will:

- bring knowledge and objectivity to support the management team
- provide a valuable sounding board
- provide the catalyst to introduce an appropriate level of structure, process and formality to the board.
As a director, you have a number of specific legal duties which have developed from a number of sources over time.

For companies incorporated in Australia, for example, these primarily stem from statutory obligations imposed by the Corporations Act 2001 and complementary relevant State legislation and Ordinances of relevant Territories. Other duties have arisen from precedents developed in case law. You should be aware of the specific legislative or industry requirements applicable to the country of your organisation.

What are my key duties?
In Australia, and many other countries, the fundamental common law and statutory obligations of any director are the duties to:

- act in good faith, in the best interests of the company
- act with care and diligence
- avoid conflicts between your role as a director and any of your personal interests.

These are extended by a range of specific responsibilities including requirements in relation to the preparation of financial statements and avoiding insolvent trading.

In discharging these duties you need to:

- support management to make the best decisions while avoiding the tendency to second guess them
- encourage constructive debate in the boardroom
- ensure all relevant issues are given due consideration before a decision is made.

As a director, you also need to be aware of the wide range of other legal requirements with which the company must comply and that, as a result, have a direct bearing on your role and in some instances, attach specific personal responsibilities to you. Specific examples include legislation in relation to privacy, occupational health and safety, environment protection, trade practices, taxation and equal opportunity legislation.

To whom do these duties extend?
As a director, your key duty is to the shareholders as a group. However the legislative framework described above usually extends your responsibilities to include certain limited duties to creditors, employees, the community, government or other stakeholders.

The business judgment rule?
The business judgement rule provides that, if as a director, you make a decision in relation to the business operations of the company and meet a number of specific requirements, then you will be taken to have discharged your duty to act with care and diligence.

The specific requirements that must be met are that:

- you made the decision in good faith for a proper purpose
- you do not have a material personal interest in the subject matter of decision
- you have taken steps to inform yourself on the subject matter of the decision to the extent you reasonably believe to be appropriate
- you reasonably believe the decision is in the best interests of the company.

Where can I find more information on this important issue?
There are corporate governance organisations in many countries that provide additional information on directors’ duties. For Australian companies, the Australian Institute of Company Directors publication Duties and Responsibilities of Directors and Officers (17th Edition, 2002) provides a comprehensive overview.
The chairman is the most prominent position on the board, and one which has specific responsibilities. It is generally accepted that on average, a non-executive chairman may spend up to two to three times as many days each year on their duties for an organisation as his or her fellow directors.

The time and effort that it may take a chairman to effectively discharge his or her responsibilities is largely impacted by the organisation, the particular issues it is confronting at any point in time, the personalities and skills of the individual directors and the dynamics of the board as a whole.

What is the role of the chairman?

It is the chairman’s responsibility to lead the board and facilitate constructive contributions by all directors to ensure the board functions effectively as a whole in discharging its responsibilities.

One of the core competencies of any chairman is ensuring that board meetings are efficient and effective. This is facilitated by:

- an appropriate meeting agenda which allocates sufficient time to each agenda item
- competent management of the information flows to the board to support agenda items
- managing boardroom discussions and ensuring conclusions/decisions are reached, are clearly understood by all directors and are appropriately recorded.

Because of the nature of the role, many corporate governance regimes require or recommend that the chairman be an independent director.

Meeting agendas and the flow of information

In establishing the meeting agendas, the chairman should meet with the company secretary and CEO to determine which matters require the board’s attention and/or decision.

In seeking to have items added to the agenda, management may need to provide written reports or papers.

The agenda may need to allow for relevant presentations to the board and where appropriate, management attendance to discuss a particular agenda item.

The form and content of board papers is discussed separately in the information sheet ‘2.10 Board papers’.

Managing boardroom discussions

The chairman needs to ensure:

- there is structured and open debate of issues
- he or she facilitates the contributions of all members
- all issues are given due and appropriate consideration.

The chairman has to ensure there is balance. He or she must maintain control without dominating the debate.

The chairman typically allows the discussion of issues to proceed until the point of which a broad consensus has been achieved, or he or she is able to summarise an agreed-upon conclusion. Where dissention exists and no conclusions appear to be forthcoming, the Chairman must decide whether:

- the directors require additional information
there may be particular benefits in postponing a decision on a specific matter
additional or external advice should be obtained.

In situations where there are serious disagreements, the chairman must manage this situation to its resolution.

Does a chairman have any other responsibilities?
The chairman is the principal spokesman for the board and will be required to show leadership in difficult situations.

There will be instances when he or she is called upon to speak publicly on behalf of the organisation. Whilst this may occur in certain instances, generally, this role falls to the CEO.

In addition, the chairman is the key link between management and the board. The relationship between the CEO and chairman is vital and, if it is to be effective, it must be based on co-operation, trust and mutual respect.

The CEO should be encouraged to use the chairman as a sounding board to discuss sensitive issues or matters of concern. If the working relationship is a good one, the CEO will also seek the benefit of the chairman’s experience and where the chairman is an independent, non executive director, his or her more independent and objective view.

In discussing issues with the CEO, the chairman may determine that certain issues require elevation for discussion at a board level.

If the company is a public company, the chairman will also be required to manage the annual general meeting and have a key role in the company’s relationship with any institutional investors.

What if the chairman is the CEO?
The duties and skills required of a CEO are different from those required by the chairman of the board. For this reason, many corporate governance regimes require or recommend that the roles of chairman and CEO should not be exercised by the same person. Some also suggest that the CEO should not go on to become the chairman of the same company. This is also based on the view that there should be a clearly accepted division of responsibility between the CEO and the chairman to ensure an appropriate balance of power and authority exists.

The chairman manages the board and the board provides an oversight to the organisation acting on behalf of the shareholders and other key stakeholders. The CEO manages the organisation with powers delegated to it by the board.

If the chairman and CEO are one and the same person, there is a risk that the benefits of independent oversight and an appropriate balance of power could be compromised.

In smaller organisations, separation of the CEO and the chairman may not always be possible or feasible. In these instances, organisations may set in place other structures to meet the aims of ensuring that both of the roles are implemented and that the benefits of independent oversight are met. These may include clearly setting out the specific duties of the individual in their role as chairman (which is of particular importance if there are external directors on the board), nominating one of the external/non-executive directors as a senior NED who will undertake some of these duties, or introducing written protocols for dealing with conflicts of interest.
2.4 Board composition

Effective boards work together in the interests of the shareholders. An effective board is not dominated by one member or factional group and it does not require members to be experts in all fields.

An effective board does not just happen. It requires care, effort, thought and analysis to identify and select the right team of people to help the organisation with its current challenges and opportunities, to take the organisation forward into the future and to work in partnership with senior management, providing real oversight and value adding guidance.

What makes an effective board?

Different boards have different compositions of skills. The skill requirements depend on the organisation’s size, nature, ambitions and the challenges it faces.

An effective board is one that has the right mix of skills and experience and can work together as a team while encouraging diverse and healthy debate in the interests of the company and its shareholders.

To discharge its duties, the board must also be structured in such a way that it has proper understanding and competency in the current and emerging issues facing the organisation; and can effectively review and challenge management's decisions.

What qualities should I demonstrate if I am going to be an effective director?

There are a number of personal qualities that each director should bring to a board regardless of their background, or the particular skills and experiences that have identified them as able to make a valuable contribution to the success of the organisation.

Individual directors should have:
- the highest standards of personal integrity
- excellent judgement and an ability to make informed decisions within time constraints
- professional credibility
- the capacity to think strategically and to demonstrate vision
- sound communication skills
- sound inter-personal skills
- team orientation.

- strategic thinking
- knowledge of the organisation and industry.

How do we determine the skills and professional experience we need on our board?

There is no single correct answer other than to say that it is increasingly important that the directors and particularly those serving on the audit committee, have an appropriate knowledge and understanding of financial statements and other financial reports.

Beyond this, it is beholden on the incumbent directors to consider the skills of the current board and to identify any additional skills or experience that are required.

Typically a board may have a mix of directors with skills in:
- law
- finance, including accounting expertise
- marketing
- operations relevant to the organisation's activities including, where important, international experience
- key industries in which the organisation operates
- corporate governance
- human resources
- risk management
- mergers and acquisitions, if relevant
- specific matters, relevant to the company.

The key is to take an informed and measured look at the skills the organisation needs on the board and to make an honest assessment of how the current board matches up to those skills. This does not mean that individual directors who are making a valuable contribution must stand aside, but does require proactive steps to be taken.
to address any identified skill deficiencies without allowing the size of the board to expand too far.

To achieve this, the board or a nominations committee should regularly review the range of skills, experience and expertise on the board to enable identification of potential knowledge gaps.

It is also valuable for the organisation to have a formal and transparent procedure for the selection and appointment of new directors and a succession plan that ensures the maintenance of an appropriate balance of skills, experience and expertise on the board. These procedures can be shared with stakeholders to assist communication, for example they could be published on the organisation’s website.

How big should a board be?

It is quality, not quantity that counts and there is no single correct answer. A small board of directors of the highest calibre, with complementary skills and experience and a degree of independence, can make for a more effective board than just sheer numbers of individuals.

Indeed a large board can very quickly become unwieldy and limit the opportunity for individual directors to make an effective contribution.

The board size should ideally reflect the needs of your organisation and encourage efficient decision-making. Suffice to say, one size does not fit all.

What is the difference between an executive and a non-executive director?

A board can be made up of both executive and non-executive directors.

Executive directors are employees, and are usually senior managers of the organisation.

Non-executive directors are not employees. They are removed from the day to day management and operational pressures of running the organisation. They are expected to:

- bring particular skills and qualifications to the organisation including an outside view, a balanced perspective and a “fresh set of eyes”
- offer it the benefit of their external experience and expertise
- be well placed to consider major issues and initiatives from an objective perspective.

Principles of good corporate governance emphasise the importance of a majority of non-executive directors in the boardroom, particularly of listed companies, where the separation of the interests of the shareholders and management may be quite substantial.

In Australia particular importance is placed on the separation of the role of the CEO (typically an executive director) and the chairman (typically a non-executive director). This is a view that has been adopted in a number of other countries, including the UK, and is gaining increasing acceptance internationally. This is discussed in greater detail in the information sheet ‘2.3 Role of the chairman’.

What is an independent non-executive director?

To be an independent non-executive director, a director should be independent of management and free from any business or other relationship which could materially interfere or reasonably be perceived to materially interfere with the exercise of their independent judgement. The board should regularly assess the independence of its directors. Many countries now require or recommend that a majority of the board of listed companies should be independent non-executive directors.

The concept of independence has been considered by many regulators and there are many slightly differing “definitions” provided. It is important that you understand the legal or regulatory requirements in your country relating to your organisation, and that your board has articulated what it considers an acceptable definition within these requirements.
Committees allow directors to give closer attention to important issues facing the organisation than is possible for the full board in a scheduled board meeting. Committees are an effective way to distribute the work between the directors and allow more detailed consideration of specific matters.

The number of committees, the size and mix, will vary from organisation to organisation depending on its size, complexity and the challenges it faces. Not all organisations will need to have specific committees. The smaller the organisation and the smaller the board, the less likely it is that board committees will strengthen the governance framework and provide real benefit to the board, the directors or the organisation as a whole.

However, in each situation the need for and possible benefits of delegating some of the work of the board to a board committee should be considered on its merits.

What makes board committees effective?

Regardless of the role of your committees, there are several steps your board can take to contribute to its effectiveness, including:

- developing formal, documented terms of reference for each committee
- appointing an appropriate chairman – usually an independent, non executive director
- appointing appropriate directors to the committee – typically the emphasis is on committee membership that is primarily/exclusively non-executive directors and includes those directors with the expertise most relevant to dealing with the issues at hand
- requiring regular feedback from committees to the board
- ensuring the committee has appropriate access to independent professional advice
- requiring absolute transparency on committee activities
- ensuring the committee has appropriate administrative support.

The key issue is that any committees set up serve the board’s needs and are effective. Committees should not be established simply because a board feels good governance requires it to have a number of committees.

An alternative to creating a board committee, and one which is favoured by many small and medium sized organisations with very small boards, is to adopt a model where the whole board fulfils the traditional role of specific committees but that it meets separately, outside the normal board meeting, to attend to these responsibilities.

This ensures the directors have sufficient opportunity to focus on the specific matters required without compromising the more strategic focus of the board meetings.

What committees might my company need?

**Audit Committee**

The most common committee is the audit committee. It is particularly relevant not only for large companies but also SMEs, not for profit organisations and public sector entities. The functions of the audit committee are considered separately in the information sheet ‘3.7 The audit committee’. Broadly the audit committee will oversee the external and internal financial reporting issues, including internal controls over reporting and relationships with auditors.

Public sector organisations and some SMEs often have a finance committee in addition to their audit committee.
Nominations Committee

Nominations committees are also common. While this is particularly important for larger organisations, the role of a nomination committee – to provide an efficient mechanism for the detailed examination of the selection and appointment processes of directors and officers – is also relevant to other organisations. The mix of skills and experience on a board is vital.

If a nominations committee is set up, for larger organisations it usually will consist of at least three members, the majority being independent directors to provide an objective view. The chairman of the committee will also be an independent director.

The specific responsibilities of the nominations committee may include making recommendations to the board on matters such as:

- the assessment of necessary competencies on the board and its maintenance
- selection criteria and process for appointing new members to the board
- board and CEO succession plans
- evaluation of board and CEO performance
- the appointment and removal of directors and the CEO.

Remuneration Committee

The remuneration of the board and senior executives is a sensitive area and the board will often set up a separate committee to spend time on the relevant aspects of remuneration.

If a remuneration committee is established there will usually be at least three members, the majority of whom are independent directors to ensure an objective view is brought to the deliberations. Use of independent directors will also avoid conflict of interest situations and can increase stakeholder confidence that the organisation’s best interests are being served. The chairman of the committee may also be an independent director.

The responsibilities of a remuneration committee may include:

- development and review of executive remuneration and incentive policies
- the organisation’s recruitment, retention and termination policies and procedures for executives and senior management
- performance based incentive schemes
- director remuneration policies
- superannuation arrangements
- consideration of disclosures required in the organisation’s reports on remuneration matters

Other Committees

While risks are often included in the audit committee remit, an organisation may establish a separate risk management committee which specifically address the identification, mitigation and monitoring of the risks faced by the organisation, whether financial or operational.

Not for profit organisations, or others, may chose to set up a social responsibility committee that focuses on broader and non-financial issues which are important to the particular organisation.

How do I manage board committees?

The number and substance of committees utilised by the board will be dependent on the organisation’s activities, and any specific legal or regulatory requirements. To manage committees, the board should establish formal charters which set out the roles and responsibilities, composition, structure and powers of that committee. This will ensure that the members of the board, committees and management are clear on the role of each and that matters are not duplicated or left out. Agendas and reports of committees should be made in reference to the charter to ensure they remain focused.

Many organisations will also make the charters available to other stakeholders, for example by publishing them on the organisation’s website.
In the literature on corporate governance, much has been written about the need for committees of a board to have a formal charter or a statement of their terms of reference which sets out the committee’s roles and responsibilities and relevant administrative matters. A formal charter is important, as it provides a framework for the committee’s operations. It is also considered good governance for the board to have its own charter in place.

What is a charter?
Typically a committee charter is designed to ensure there is a clear understanding of the committee’s role, not just by the committee members, but by management and the board.

There is also increasing acceptance of the value of a board charter, particularly in small to medium sized companies, not for profits and in public sector organisations where defining the operation of the board, its roles and responsibilities and the separation of the role of the board from that of management, can be particularly valuable.

A board charter ensures:
- the roles and responsibilities of the board are clear and understood by all relevant stakeholders
- the operation of the board and the relationship between the board and management are clearly defined
- all directors have a clear understanding of the manner in which the board will conduct itself and the organisation’s expectations of them as directors.

A board charter can be a powerful tool to contribute to the effective and efficient operation of the board.

Even the smallest board can benefit from a written charter tailored to its specific needs.

What should a board charter cover?
A board charter would typically address:
- the responsibilities of the board
- the board’s relationship with management including delegations of authority and communications between directors and staff
- board committees, including the board’s power to establish committees, those in place at a given point in time, the process for appointing directors to committees and any relevant administrative requirements
- the role of the chairman and the procedures should the chairman be absent from a meeting of the board
- the conduct of board meetings including the timing, frequency, style and approach to meetings, and details of quorum and voting requirements
- other operational matters including:
  - the content, preparation and distribution of minutes
  - the role of the company secretary
  - circulation of papers
  - attendance expectations
- when directors can seek independent advice, or have access to outside advisors
- membership issues including:
  - the independence of directors
  - retirement of directors
  - performance appraisal processes
  - the size of the board
  - qualifications and experience.
Do committees need charters?

Like the board, a well run committee operates most effectively when a written charter is in place.

A typical committee charter will cover:
- the overall purpose and objectives of the committee
- the size, frequency and timing of meetings
- the committee’s roles and responsibilities including its particular areas of focus (for example, an audit committee’s charter will typically make particular reference to financial reporting, dealings with the internal and external auditors and oversight of the internal control framework)
- any delegation of decision making authority to the committee from the board
- the relationship with management and other stakeholders
- reporting responsibilities and the ongoing relationship with the board.

A committee charter will also cover relevant operational matters.

How else might a charter be used?

A well defined charter:
- provides particularly valuable information for new directors and will facilitate the induction process
- provides a valuable guide for the development of an annual agenda for the board or committee to ensure that, during the course of a year, they have given appropriate and due attention to all aspects of their role and responsibilities. This prevents a situation where there is undue focus on particular issues at the expense of other matters of importance to the company
- for a committee, provides a framework for reporting the committee’s activities to the board.

How often should governance charters be reviewed?

Each charter should be periodically reviewed, usually annually, to ensure the board/committee is meeting its objectives and considering any new challenges the organisation may be facing.

It is important that the charter is a living document that moulds itself to the needs of the organisation.

Who should have access to board and committee charters?

The organisation’s board and committee charters should be available to directors, management, internal and external auditors. It is becoming increasingly usual for organisations to also make them available to other stakeholders, particularly shareholders. Hence it is common to see board and committee charters, or summaries thereof, published on the organisation’s website.
Board meetings should be conducted in an open and inclusive atmosphere that allows for healthy debate by all members of the board. The chairman has a key role to play in achieving this objective but individual directors and the company secretary have their own responsibilities.

What are the key elements that contribute to an effective board meeting?
An effective board meeting is generally characterised by:
- a capable chairman
- informed, well prepared directors
- seamless logistics in terms of the agenda, preparation and delivery of papers and the venue
- timely attendance of appropriate members of the management team for specific agenda items
- clear and timely decision making.

Is how often we meet an issue?
The frequency of board meetings will largely depend on the internal and external circumstances and any specific issues the organisation needs to deal with at a given time. As a general guide, the full board should meet no less frequently than quarterly. The boards of most large companies meet on a monthly basis, or more often, as needs dictate.

Board committees typically meet less frequently than the board itself but again, this is directly related to the specific circumstances of the organisation and the charters of the individual committees.

How long should the meetings be?
The length of your board meetings should be sufficient to give appropriate attention to the issues at hand. Some organisations are holding fewer, but longer meetings. Board meetings can vary significantly in duration from organisation to organisation – anything from several hours to two days may be regarded as appropriate. The key is that the meeting should be long enough to cover the matters for attention in appropriate detail.

Are there any other things I should be aware of if I am to contribute to the success of a board meeting?
It is important for board members to have sufficient notice of forthcoming meetings. When this occurs, it is incumbent upon you to ensure you are able to attend, you are available for the scheduled duration of the meeting and that you allow yourself sufficient time to prepare for the meeting. You should challenge ideas where appropriate, without being aggressive and you should be receptive to the views of others.
What preparation am I expected to do?

Preparation is likely to involve reading and analysing the board papers provided prior to the meeting and taking appropriate steps to clarify any issues or papers you do not understand.

Prior to the board meeting, you should receive a package of board papers in sufficient time to allow you to review and consider them and follow up on any pertinent items.

The package you receive would typically include:
- an agenda and the supporting papers including:
  - the CEO’s operational report – providing an overview of major events impacting the business since the last meeting
  - a financial performance report, focussing on KPIs and strategic performance
- minutes of the previous meeting
- an action items list, noting responsible persons and dates for completion
- papers on specific issues for decision, discussion or information.

What is the role of the company secretary in board meetings?

The company secretary plays a significant role in ensuring that meetings are run efficiently and resolutions of the board are actioned on a timely basis.

The key responsibilities typically include:
- working with the chairman to prepare the agenda and compile the supporting papers
- facilitating the smooth conduct of board meetings
- ensuring the timely provision of quality board papers
- arranging the attendance of the right people including members of the management team and advisors at the right time
- sourcing and making available expert advice
- advising on and working with the chairman to enhance board practices and procedures
- writing and circulating the minutes of the meeting
- maintaining the statutory books and forms in accordance with legal requirements
- keeping abreast of and informing directors of any changes to legislative requirements or governance expectations.

It is important that the company secretary completely understands the board’s deliberations and the decisions reached to ensure they are correctly reflected in the minutes.

What is the company secretary’s role outside board meetings?

The role and responsibilities of the company secretary will vary from company to company. However, an active company secretary for a fully functioning board is usually expected to:
- be the board’s arms and legs, eyes and ears
- be a source of advice and counsel for directors and management
- anticipate and act to meet the needs of the board
- assist the board to achieve an appropriate balance between conformance and performance
- ensure that papers submitted for the Board meet the board’s requirements.
2.8 Boardroom conduct

The manner in which a board operates will largely be determined by the chairman and will reflect his or her personal style.

The level of formality which applies will be a particular feature that should be understood before you accept a board position, to ensure you will be in a position to make an appropriate contribution during the course of board meetings.

How do I participate in boardroom discussions?

Some boardrooms are still particularly formal and all directors wishing to participate in a discussion must first be recognised/acknowledged by the chairman. However, there is a clear move towards a more informal approach where directors are free to participate in discussions without first seeking the chairman’s permission.

Your participation in any boardroom discussion must reflect the importance of your role and the usual social niceties:

- each of your fellow directors should be allowed an appropriate opportunity to speak, subject to the chairman’s overall control of the meeting
- your contributions should be concise, considered, informed and to the point
- emotive language, emotional conduct and personal attacks are inappropriate no matter how passionate you may be about the subject under discussion

Discussion should be open and candid with appropriate time allowed to discuss issues of substance.

How are decisions made?

The traditional notion of the board voting on each matter put to them is rarely used in boardrooms today. The emphasis is on consensus decision making, which focuses on securing the agreement of the full board.

If you strongly disagree with a decision under this model, you may take the significant step of seeking to have your objection to the decision recorded in the minutes but this should not be viewed as a practice to be used, other than as a last resort.

In the same way, it is no longer necessary, unless specifically required in the organisation’s constitution or by the chairman, to have matters “moved” and “seconded” before a decision is made.

How do I manage any potential conflicts of interest?

Subject to the provisions of legislation, the organisation’s own constitution and any other governing requirements that may be relevant, particularly for public sector boards, a board is empowered to regulate its meetings and proceedings including the processes that will apply if there is a declared, actual or perceived conflict of interest.

Conflicts of interest can arise where directors have personal interests in any transactions, contracts or businesses with which the organisation may be dealing and, which may impinge on his or her objectivity and independence.

As a director, you have specific responsibilities under corporate legislation to declare any material personal interests in any matters that relate to the affairs of the
company as soon as possible, subject to a number of specific statutory exceptions.

It is usual that you will be asked, on a periodic basis, to provide the organisation with a listing of your personal interests to facilitate the identification of possible conflicts of interest.

Whether this is undertaken or not and whether your interests are material or not, you have an ongoing responsibility to ensure you fully understand the board’s expectations of your conduct in relation to conflicts of interest.

As a minimum, it is likely that you will be required to:

Â alert the organisation to any matters in which you have or may be perceived to have a conflict of interest

Â exclude yourself from the decisions on any matter about which you have or have declared such a conflict.

This is a sensitive issue and there are a number of further options available to an organisation which your board may choose to adopt:

Â you may be asked to excuse yourself from all discussions on the relevant matter

Â you may be refused access to board papers on the relevant matter.

Are there any other matters of conduct I should consider?

You have obligations to:

Â ensure that, at all times, you exercise independent judgment

Â obtain enough information for you to be satisfied with the board’s conclusions on the matters put before you

Â keep confidential any information you obtain as a result of your position as a director

Â observe “cabinet solidarity” once a decision is reached

Â recognise that your actions may reflect on the organisation and your conduct must not be called into question

Â adhere to all codes of ethics, codes of conduct and standards of behaviour that apply to employees or officers of the organisation.
There is no single approach to be applied to the preparation, form, style and content of board papers. The requirements will vary from organisation to organisation and should be specific to the needs of the board. However, there are a number of principles that are applicable to all organisations’s to ensure the preparation of board papers is efficient and the information is presented in an effective way so that it can be readily understood and addressed by the board.

What should be management’s key considerations in preparing a board paper?

Board papers should be concise stand alone documents that present the information the board will require to fully understand the issues being raised and, where required, to make an appropriately informed decision.

It is unlikely that management papers can simply be “recycled” as board papers. The information needs are quite different. Management papers may provide the basis for a board paper, but the board paper itself should be prepared with the board’s needs in mind, recognising that non executive directors do not live with the business every day.

The purpose of each board paper should be clearly stated. This is particularly important in assisting directors to understand management’s requirements and to be appropriately prepared for board meetings. This can be achieved by allocating each board paper into one of three distinct categories:

- for information purposes – papers aimed at keeping the board informed of matters, for example, relevant press clippings, financial information
- for decision – matters put forward that require the board’s decision
- for discussion and input – discussion of matters prior to final recommendations, for example, concept papers seeking the board’s input in the planning phase, rather than simply when a final decision is required.

How much influence can the board really have over the form and content of board papers?

“It is ultimately up to the Board to decide what information it wants and when. The board can expect to get input and guidance on what is appropriate and achievable, but cannot avoid the responsibility of specifying the information it requires so directors can discharge their duties.”

Formal guidelines for board reporting, approved by the board, are a simple means to ensure the board’s requirements are clearly understood. These guidelines will set out the form, presentation and content requirements for board papers, together with administrative procedures in relation to time of submission and the process for review and approval. The guidelines should also provide that the control over distribution of board papers rests with the board. This is particularly important when distribution is undertaken electronically.

The board should ensure that these guidelines are communicated to all staff who may be responsible for the preparation of board papers. It may also be appropriate to offer internal support to key personnel in the form of education or briefing programs and to distribute sample or template documents illustrative of the recommended style.

It is important that what is ultimately presented to the board is concise and performance reports reflect relevant and approved KPIs and not superfluous information.

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1 David White, General Counsel and Company Secretary, Perpetual Trustees Australia Limited
How important is the presentation of board papers and what should I expect?

Presentation that contributes to the ease with which the information is understood and absorbed by the reader, is an important aspect of an effective board paper.

Presentation specifications might include requirements for:

- papers to be concise, accurate and easy to read, using simple terms, with little or no technical jargon and a font size no less than 10pt
- papers to be carefully structured to provide all the required information in a succinct and logical manner
- bullet points, which reinforce a concise writing style, to be used in preference to long paragraphs
- using indicators tailored to the needs of the company which are reported consistently month on month
- papers to include graphical and tabular analysis to summarise information, to facilitate understanding and to focus the readers attention
- titles on any graphs to reflect the message illustrated in the graphical analysis, for example, “Continuing favourable trends in revenue growth”.

Are there any views on the standard content of individual board papers?

Whilst the style of board papers is important, the content is critical.

The content of regular reports (for example, monthly management accounts) should be developed over time as a joint project between the board and management.

For individual papers, the author must ensure the board is adequately informed on the issues facing the organisation and is clearly focussed on the critical risk issues.

Papers for decision or discussion should also include an analysis of the different alternatives and the arguments for and against the different options. Management’s preferred option/recommendation, the reasons supporting that view, the likely outcomes and the potential consequences of the proposed course of action must be clearly stated. The recommendation contained in a board paper, if worded carefully, form the basis of the minutes.

Papers to be submitted should be vetted and supported by a senior officer, such as the CEO or company secretary prior to going to the board.

Is there anything else I should consider?

You should take particular care at all times to ensure the confidentiality and security of all board papers provided to you.
Minutes are the record of the issues discussed, decisions made and actions arising from the board and committee meetings. For companies incorporated in Australia, for example, the Corporations Act 2001 requires that minutes of meetings be kept, signed and preserved as a complete, accurate and objective account of the proceedings of meetings.

As legal and regulatory requirements of directors become more onerous, minutes are an important record to show that the board has done what is required to discharge its duty of care.

**How will I know whether the board minutes are appropriate?**

Minutes should be clear, concise, well structured and unambiguous. They should not contain superfluous information nor be a verbatim recording of the dialogue at the meeting.

The minutes must clearly set out the decisions the board or committee made during the course of the meeting and reflect the consensus nature of board decisions. It may also be useful for them to evidence the process the board has worked through in reaching its decisions. This may include recording matters discussed, questions asked of management and any additional information requested or on which the board relied which is not included in the board papers.

There may be circumstances that require the decision of the board, where it is not practical to bring the board together. In these circumstances, the use of circulating resolutions for directors to sign may be appropriate.

**What is the process for finalising the minutes of each meeting?**

Minutes will generally be prepared by the company secretary from notes taken during the meeting.

A draft will be provided for the chairman’s review within a short time frame after the meeting while discussions and decisions are still fresh in his or her mind.

The chairman will review the draft minutes and arrange for any appropriate amendments to be made.

A revised draft of the minutes is then usually circulated to all directors. This may be as soon as immediately after the chairman’s review, or alternatively, the draft minutes may be circulated with the papers for the next meeting and ratified at that meeting.

You must make a careful review of the draft minutes to ensure you are happy with the record made and that any concerns you may have are raised before the minutes are approved.

**How can the board track the outstanding issues it has asked management to address?**

A board will often identify additional information it requires, initiatives it would like management to implement or other matters for management action or attention.

In order to keep track of these matters, an action items list should be maintained by the company secretary,
updated after each meeting and distributed along with the minutes of the meeting.

It is good practice to have a brief description of the action to be taken, cross referenced to the relevant item in the minutes. The list should also note the responsible person and the date by which the action is to be completed.

A review of the action items should be a standing item on the board’s agenda to ensure management are progressing with specific tasks in line with the board’s expectations.

When an action has been completed to the board’s satisfaction, this should be reflected on the action list prepared after that meeting noting the date of completion and removed from subsequent lists.
2.11 Access to papers and advice

In order to effectively discharge your duties as a director, there may be occasions where you need to seek external independent advice, at the organisation’s expense. Clearly, this needs to be carefully managed. Seeking additional information and advice from within the organisation, be it from senior management or staff also needs to be managed appropriately.

What happens if I feel we need to seek external advice on a matter before the board?

On occasion, there may be issues before the board or decisions to be made on which you and/or the board feel it would be prudent to seek independent advice prior to reaching a formal conclusion. Situations may arise where you, the board or a board committee may wish to obtain independent legal or financial advice. It is within your rights to pursue this; however, controls need to exist to ensure the process is properly managed.

If there is a board charter in place, it will usually set out the procedure for seeking external advice. Typically this will provide that:

- with the consent of the chairman of the board, an individual director or a board committee may engage outside advisors at the expense of the organisation
- where it is appropriate, and at the discretion of the chairman, the advice will be circulated to all members of the board or committee
- all directors have access to the company secretary.

Are there any specific things I need to consider when speaking to the organisation’s employees?

It is common for individual directors to seek additional information on a particular issue from within the organisation. Directors are usually encouraged to take appropriate steps to clarify their understanding of an issue in advance of a board meeting rather than use up valuable board time for this purpose.

As a director, you are entitled to communicate directly with management; however, you should be sensitive to their existing responsibilities.

Established channels of communication between management and the board allow the board to seek and satisfy their information needs without undue disruption to the core activities of management.

It is not uncommon to have clear protocols in place addressing the interaction of the directors and organisation personnel. This facilitates a director’s access, provides a measure of protection for employees in their dealings with the board and ensures prompt responses to director queries.

An employee access protocol is also often set out in a board charter and will typically provide that:

- directors are free to speak directly with the CEO or a member of the senior management team who has prepared the particular paper for the board
- any contact with other personnel is to be arranged by the CEO at the request of the director.
Where it is appropriate, directors should be encouraged to communicate with organisation personnel on an informal/social basis. This may include chatting with staff who have been in attendance at a board meeting, encouraging directors to attend staff related social functions and in some instances, specifically arranging opportunities for directors to meet the organisation’s personnel. If these activities are taking place, it is important that director respect the context of those discussions and temper any questions accordingly.

Can I access information once I am no longer a director?

You should make appropriate arrangements with the organisation before you leave the board to ensure you will have subsequent access to board papers and minutes relating to the period in which you were an active director. This should cover a set period after you have resigned, often depending on statute of limitations legislation, and should allow for copies of papers to be made at the organisation’s expense.

You may consider entering into a formal “Deed of Indemnity and Access” or equivalent legal contract with the organisation.

A “Deed of Indemnity and Access” will:

- confirm the indemnity provided by the organisation in favour of its directors and certain officers (and former directors and officers) under the organisation’s constitution;
- include an obligation upon the organisation to maintain an adequate directors and officers liability insurance; and
- provide right of access to organisation documents for directors and former directors.
Managing, protecting and enhancing reputation has become one of the greatest challenges facing today’s board. The reputation of a business is a critical factor in the determination of its value. The values and ethics of the organisation need to be explicitly managed.

The increasing scrutiny by regulators, lobbyists, non-governmental organisations, consumer groups and the media have the potential to affect an organisation’s market perception and hence value. It is therefore important that the organisation’s values, and its code of conduct, address the legal and other obligations owed to important stakeholders, including, for example, trade practices laws, privacy laws, employment laws, occupational health and safety, equal opportunity in the workplace, superannuation and environmental regulations.

Why have a code of conduct?
A code of conduct is a formal expression of the organisation’s values and ethics. A code of conduct should:

- guide directors and senior executives, as a minimum, as to the practices necessary to maintain confidence in the organisation’s integrity. Other members of staff should also have a code of conduct relevant to them which may be the same as that for directors and senior executives or may be a complementary version;
- promote responsibility and accountability of individuals for reporting and investigating reports of unethical practices; and
- ensure compliance with legal and other obligations to legitimate stakeholders.

An organisation’s code of conduct recognises the important role that business ethics play in the success of today’s business, encouraging the board to actively develop an organisational culture that is established on transparency, accountability and integrity.

What does acting ethically mean for directors?
The board is responsible for setting guidelines for business behaviour and provide guidance to directors, management and employees through formal policies and guidelines to help them recognise and address ethical issues. These policies should set the standard of ethical behaviour required of directors and officers and address issues such as conflicts of interest, insider trading, political contributions and the improper use of company information.

In establishing a climate that encourages transparency, accountability and fiduciary responsibility within organisation, the board should:

- ensure its independence from management;
Corporate governance is consistently evolving to reflect the current corporate, economic and legal environment. This information sheet provides generic guidance on corporate governance practices. There will be specific legal and regulatory requirements in each country which are relevant to individual organisations. To be effective, corporate governance practices need to be tailored to the particular needs, objectives and risk management structure of an organisation. No person should undertake or refrain from any action based on the information in this publication without seeking advice from their professional advisers.

Insider trading

Insider trading is prohibited by law in most countries. In Australia, both the Corporations Act 2001 and ASX Listing Rules require disclosure of any trading undertaken by directors or their related entities in the company’s securities. The company should establish a policy governing the trading of securities by its directors and officers to ensure compliance with legal requirements as well as ensuring public confidence. The policy should also provide for the assessment of its effectiveness in ensuring compliance, this may involve the internal audit function.

A potential insider is a person likely to possess inside information that could materially affect the price of a company’s securities. This includes directors, the CEO, the CFO and other employees of the company who are involved in material transactions within the company or have powers to influence the conduct of the company’s affairs.

The company’s code of conduct and share trading policy should be made readily available to investors and the public to ensure market confidence.

Triple bottom line reporting (TBL) and Corporate Social Responsibility

Triple bottom line reporting (TBL) and Corporate Social Responsibility are emerging concepts which focus a business on not just economic performance, but also on the environmental, social or other impacts its activities have. These ideas are based on the concept that society depends on the economy, and the economy depends on the global ecosystem, the health of which represents the ultimate bottom line.

Many organisations see TBL and Corporate Social Responsibility reporting (or similar wider issues) as a tool through which businesses can build and maintain public trust and thus their reputation.

Some potential benefits of an organisation choosing to report on matters wider than economic performance include:

- more informed and accountable decision making process and greater transparency
- enhancement of reputation and brand
- effective communication to stakeholders of an organisation’s principles and practices
- improved access to investors
- identification of resource and cost saving opportunities
- reduced risk profile
- link improvements in sustainability performance with financial opportunities
- linking environmental and social risks with current financial performance

However, prior to adopting such an approach in reporting, an organisation must consider whether it is aligned to the overall business strategy. The board should also ensure that management and staff are committed to the conversion to wider accountability and that it has adequate resources for its implementation.
3.2 Stakeholder relations

The board’s primary responsibility is to the organisation and by extension, to the shareholders or primary stakeholders of the organisation. However, as a director, you also need to consider the interests, expectations and legal rights of a wider group of stakeholders impacted by the actions of the organisation.

Who are these other stakeholders?

Stakeholders whose interests are relevant for legal, contractual or commercial considerations include:

- employees
- customers
- creditors
- institutional investors
- financiers/bankers.

**Employees**

Directors generally do not owe a legal fiduciary duty to employees, but the board must be aware of:

- the importance of employee support and commitment to enable the company to achieve its objectives
- the specific obligations imposed by other legislation including occupational health and safety laws.

**Customers**

Without the customers there is no business. This evidences their importance to the organisation and the board. Understanding and responding to the needs or concerns of customers should not be left solely to management. It requires board attention.

Boards should take an active interest in how the organisation handles and resolves customer complaints. Pertinent statistics and key emerging issues outlined in customer complaints should be reported to the board on a periodic basis.

In addition, privacy legislation relating to the use and disclosure of a customer’s personal details will require an organisation to ensure an appropriate compliance policy is in place. This policy should be approved by the board.

**Creditors**

The board’s positive duty to creditors has been widely discussed and confirmed in case law and should be a particular focus for the board in times of financial difficulty.

Creditors have individual rights against directors in some circumstances (for example, for debts incurred by the company trading while insolvent).

**Institutional investors**

Investors base decisions on the information they receive, most of which comes from the organisations themselves. It is therefore, important to understand and respond appropriately to the needs and expectations of the shareholders as a group and to recognise that it is the institutional investors and shareholder advocacy groups that will be most vocal in their demands.

Whilst publicly listed organisations are subject to specific rules relating to the disclosure of company information and the briefing of analysts and institutional investors, all companies need to ensure they balance the expectations...
and demands of this group of shareholders against the interests of their shareholders as a whole, and to ensure there is fair, equitable and consistent treatment of all shareholders.

Publicly listed organisations will require written policies and procedures that ensure compliance with capital market disclosure requirements and requirements in relation to accountability by its directors and officers. The policies and procedures should provide for the timely and factual disclosure of all material information in a clear and objective manner that allows use by investors when making investment decisions. These policies and procedures would normally be publicly available. In Australia, for example, these documents are required to be published on the company’s website under a clearly marked corporate governance section.

**Financiers**

Careful attention must be paid to the organisation’s obligations to its banks and financial institutions. Many lenders will have covenants in place that require the organisation to adhere to predetermined ratios and other requirements in order to satisfy financing arrangements.

As a director, you need to have a clear understanding of these requirements and ensure that management are appropriately monitoring the organisation’s position to ensure these covenants are not breached and penalties or other consequences are not triggered.

In addition, care should be taken to establish open communication with the organisation’s financiers, engaging them in dialogue on a periodic basis and responding positively to their information needs and requests.

Positive relations with the organisation's financiers are important when facilities need to be extended, reviewed or revised.

**Are there responsibilities to the wider community?**

Environmental and trade practices law and public expectations require organisations to be socially responsible in their operations and dealings with the community. These are not fiduciary duties but are significant legal and moral obligations that need to be considered as part of the organisation’s decision-making processes and in the conduct of its business activities. Failure to understand and respond appropriately to relevant issues may have adverse financial, reputational or other consequences for the organisation. Some organisations are choosing to use a ‘triple bottom line’ system of reporting which reports on social and environmental aspects as well as economic performance. Others may prepare corporate social responsibility reports or sustainability reports. The decision on what and how to report is driven by the board’s consideration of its stakeholders and their information needs.

**How to manage stakeholder relations?**

A useful way to manage stakeholder relations, and one which is required in some countries, is to establish and disclose a written code of conduct, one part of which guides the organisation’s compliance with legal and other obligations to legitimate stakeholders.

The board will be responsible for setting the tone and culture of the organisation and overseeing the compliance with the code including the management of stakeholder requirements. The code of conduct should address the organisation’s legal obligations as well as provide an avenue for employees to alert management and the board of potential misconduct without fear of retribution. The code of conduct may also provide for the handling of complaints by customers and other third parties.
The board’s principal responsibility is to the shareholders of the company. The annual general meeting (AGM) provides the forum for the board to meet with the shareholders to discuss the performance of the company and attend to a range of matters for which the specific approval of the shareholders is required. It is the shareholders who provide capital, so it is important that they have this forum to discuss company performance and related matters.

For large organisations, the AGM can be a time consuming and expensive event. Many SME’s do not have the diversity of shareholders or face the same media scrutiny of their AGMs. However, this should not be used as a basis to underestimate the importance of the meeting.

What is the secret to an effective AGM?

One of the key elements to a successfully run AGM is the time spent in preparation. Careful preparation is required to get the right messages across, particularly in potentially difficult situations.

The messages will vary. However, it is just as important that a shareholder in a small company understands the performance of the company and the key matters that have contributed to that performance as it is for a shareholder in a large company. It is equally important that shareholders be given the opportunity to ask the directors questions and to exercise their statutory rights (for example, by voting on the appointment of directors).

The following comments assume the company has external shareholders who will attend the AGM and seek information from the board. However, all companies can draw on the information provided below to avoid a perfunctory AGM or, worse still, one that happens on paper only.

What preparations should we make?

You should define and address the corporate objectives for the meeting. What is it that the shareholders need to know? What do you want the meeting to achieve?

Your objective may be something as simple as conveying a clear vision for the company that any shareholder would be able to repeat in one sentence or providing a non-technical explanation of the company’s performance so each shareholder understands the factors reflected in the year’s operating results.

The chairman’s address should identify the successes and make concessions where appropriate. The CEO is also likely to address the AGM and to offer some comment on the financial and operating performance of the company since the last AGM. Discussions should represent a balanced account of the company’s performance and not gloss over problems. The CEO and chairman should ensure that their speeches are co-ordinated, consistent and do not unnecessarily overlap each other.

Pre-empting the likely questions and developing appropriate responses in advance is an effective approach to ensure the board and particularly the chairman, will be able to respond in an informed manner to any shareholder questions.

The board should ensure it is fully briefed by management on any shareholder issues that may have been raised since the last AGM and that they are firmly across the details of any major issues affecting or likely to affect the company. In addition, you should ensure that any shareholder issues raised at the last AGM have been appropriately addressed.

Each director standing for election or re-election should consider how they plan to introduce themselves, what they want the shareholders to know about their skills and competencies and their capacity to contribute to the company in the future.
Corporate governance is consistently evolving to reflect the current corporate, economic and legal environment. This information sheet provides generic guidance on corporate governance practices. There will be specific legal and regulatory requirements in each country which are relevant to individual organisations. To be effective, corporate governance practices need to be tailored to the particular needs, objectives and risk management structure of an organisation. No person should undertake or refrain from any action based on the information in this publication without seeking advice from their professional advisers.

Being prepared for any eventualities is vital to a successful AGM. It may be appropriate to rehearse presentations and the answers to questions to ensure the board shows itself to be capable and competent in what can be quite stressful circumstances.

You should also ensure you are fully briefed on the format and conduct of the meeting, the key strategies to facilitate the smooth running of the AGM and when and on what you may personally be required to speak.

It is advisable for the external auditor to attend the AGM to respond to any questions raised by the shareholders regarding the conduct of the audit, or the preparation and content of the audit report.

The chairman of the company should allow a reasonable opportunity for members to ask the auditor questions concerning the conduct of the audit of the preparation and content of the audit report. Some countries set out specific legal requirements in relation to AGMs and attendees and these will need to be followed.

Is there anything else we need to do to ensure the smooth running of the meeting?

Prior to the AGM, a notice of meeting will be sent to all shareholders. The notice should disclose all logistical matters the shareholder will need to know, the matters on which shareholders are being asked to vote and details of proxy arrangements. A notice of the AGM may be distributed electronically.

Procedures and relevant checklists should be in place to ensure that the company’s constitution, the requirements of the relevant corporate legislation in the country of your company’s incorporation, and other relevant requirements regarding AGMs are complied with.

Appropriate arrangements need to be put in place to ensure the formalities are addressed for all resolutions passed and arrangements exist for a poll to be conducted if required.

A running sheet/agenda for the meeting is useful to ensure, as far as possible, the meeting tracks to a pre-determined schedule.

Is anything required of the company after the meeting?

After the meeting, there will be a number of tasks to be completed.

The company secretary will need to prepare minutes of the meeting, ensuring they are an appropriate and comprehensive reflection of the content of any discussion. The minutes should set out the results of voting, including proxy numbers.

Any items taken on notice at the AGM will need to be addressed and commitments made need to be honoured (for example, investigating a particular issue as a result of a shareholder’s question).

Shareholders’ may wish to receive a copy of the record of the meeting and this should be arranged. Any other post AGM obligations on the company should also be addressed.

The board and management may also find it useful to have a de-brief session to discuss what went well, what did not and what can be improved in the future. This kind of discussion will assist in planning for the next AGM.

Communicating with shareholders

Companies should design and disclose a communication strategy to promote effective communication with shareholders and encourage effective participation at general meetings of shareholders.

This may include setting out transparency issues, such as publishing information on websites, or setting out how the company plans to take advantage of electronic communication including the use of websites, web castings, teleconferencing and emails where possible to complement the release of material to shareholders and the public.
As a director, you have specific and significant responsibilities. You need the appropriate skills and knowledge to be able to discharge these responsibilities and to provide the oversight and supervision your organisation requires.

What induction process should I undertake when I join a new board?

A personal induction process

When you are newly appointed as an external or non-executive director of an organisation, you may not have an existing, detailed knowledge of that organisation. Where this is the case, you should take immediate, proactive steps to understand the pertinent aspects of the organisation and its operations.

In particular, you should ensure you have:

- an appropriate level of knowledge of the industry(s) the organisation operates in
- a clear understanding of the organisation’s business operations
- a clear understanding of the organisation’s financial circumstances
- a clear understanding of the organisation’s strategy and direction and a high level knowledge of the business risks that may affect its success
- access to relevant background information on key employees and the other members of the board.

Ask management to facilitate this induction process and assist you by collecting relevant materials for your review. As a guide, you might request:

- the annual financial reports for the last three years
- recent management accounts and management reports
- external correspondence with relevant third parties - for example, management letters from the organisation’s auditors
- copies of internal audit reports
- an organisational structure diagram
- the strategic plan and/or current year business plan including the budget
- a copy of the organisation’s strategic risk profile
- copies of the board and/or committee charters and minutes of recent meetings.

Not all these materials will be available for all organisations but this list provides a useful checklist. You should augment this list as you see fit.

Once you have had an opportunity to review these materials, you should seek to meet with key members of the management team to address any questions you may have.

You may have requested the background information listed above as part of your personal due diligence process prior to accepting a board appointment. Where this has not been done, it should be your first step after your appointment.

The CPA Australia publication “Finding the Right Board for you” provides further guidance on issues to consider when contemplating joining a new board.
**Formal induction training**

In situations where there are periodic substantial changes to the membership of the board (for example, in the public sector) or the organisation is of a reasonable size, you may find there is a formal induction program in place in which all new directors participate.

Typically this would include providing you with the materials listed above, presentations from key members of the management team, site visits and similar activities to develop your knowledge of the organisation in a timely and resource efficient manner.

**Training for executive directors**

If you are a senior member of the management team who has been asked to join the board, you clearly will not require all the information listed above. However, you should give careful consideration to aspects of the business that might be outside your area of direct responsibility. You need to ensure you have an appropriate knowledge of those activities to enable you to discharge your broader oversight responsibilities as a board member.

It is imperative that, in accepting the appointment to the board, you clearly appreciate that the roles and responsibilities of a director differ from those of management - the role is not simply an extension of your management responsibilities.

It may be appropriate to consider participating in specific director related training to help you understand your new role.

**Continuing professional training**

As a director, it is important that you work to stay up-to-date in relation to matters relevant to the company, the industry and the particular areas of expertise for which you have been invited on to the board in the first place. In many instances, management will assist you to do this. However, you might like to objectively consider your own needs in this regard and undertake relevant training, attend relevant seminars or identify and review relevant materials on your own initiative.

In addition, if you do not have a reasonable understanding of financial reporting you should look to undertake specific training to ensure you are in a position to make an informed review of the organisation’s financial performance, management accounts and annual financial reports. This is an important skill for all directors but is of particular importance if you are asked to sit on the organisation’s audit committee.
Succession planning for the CEO and management is a critical issue for many organisations. An effective board will ensure that there are policies in place to establish succession and selection criteria for the CEO. Planning for the succession of the board members themselves, also requires careful attention to ensure the board is equipped with the appropriate skills and experience to ensure the organisation can address its current and future challenges.

Do we need to consider succession planning for the CEO?

Selecting a CEO is an extremely important decision for any board. No matter how good the incumbent, a board will, at some point in time be required to appoint his or her successor.

This is a decision that can have an enormous impact on the organisation and its future performance. With this in mind, the process of selecting a CEO should be rigorous, carefully instigated and well planned.

Before the selection process or even the search process begins, the board needs to determine what the organisation needs in its CEO if it is to succeed and the relative importance of each of those requirements.

Some key attributes and competencies for a CEO include:

- strategic thinking
- sound ethics and values
- capacity for decision making
- knowledge of the organisation or at least the industry
- sound communication skills
- energy
- intelligence
- relevant experience
- leadership qualities
- team building skills.

Personal chemistry between the individual and the board is also an important consideration.

Outlining these requirements on a proactive basis, in a rational and structured manner, coupled with effective periodic performance evaluations, will also assist the board should it be required to make a decision to replace the CEO.

Where do we look for a successor?

For many organisations, the first place to look for a successor is within the organisation itself.

Identifying potential candidates and nurturing them is part of a successful succession plan. This may include having an executive development program which establishes clear career paths, is comprehensive, robust and addresses the development needs of individual managers.

Time spent in front of the board over time, be it formally through presentations at board meetings or informally, allows the board to gauge an individual’s capabilities and CEO potential.

It is common practice for the board to engage executive recruitment or selection specialists to look internally and externally to identify potential candidates for a vacancy. Indeed, even if there is a good candidate within the
organisation, it is important to look at the other candidates on the market and make an informed assessment as to the best candidate for the role.

In family run companies, there may be the expectation of family members growing through the ranks. However, the board must make its decision in the best interests of the company and all shareholders, even if this results in the conclusion that an external party needs to be recruited for the position.

Why do we need a board succession plan?
An organisation’s constitution will usually specify the number of years a director may remain on the board of a company before he or she is required to submit themselves for re-election. This may result in the voluntary or involuntary retirement of a director. To minimise disruption and ensure continuity of knowledge, it is important that the board ensures the rotation is staggered so only a portion of the board is up for re-election at any annual general meeting.

A director may also leave the organisation for other reasons and the board must be prepared for this.

A simple first step in board succession planning is to establish a criteria matrix for the board, identifying the mix of skills, expertise and experience that are particularly important to the organisation at a particular point in time and the individual skills of the current board members.

The board can use the matrix to clearly identify the skills it will need to replace if a particular director retires and to identify any skill deficiencies that need to be addressed in the immediate to short term.

How does the board go about identifying an appropriate non-executive director to join it?
Selecting a non-executive director can be a daunting task. Often existing board members rely on their own personal network in the search for potential directors. This approach needs to be adopted with caution as it may not expose you to the most appropriate candidates.

Increasingly, many boards are seeking the assistance of executive search firms. The board will brief the search firm on their required skill sets and the search firm will provide a list of potential candidates.

The CPA Australia Directors’ Register may also be a useful starting point for some organisations.

The chairman and managing director or an appropriate board committee then interview potential candidates to assess their suitability and make a recommendation to the board.

Should we also consider the chairman’s succession?
The role of the chairman requires a specific set of skills. Accordingly, the board needs to be able to respond to both the known future retirement of a chairman and his or her sudden departure.

Planning for succession may include identifying likely candidates currently on the board and on other boards and appointing a deputy or vice chairman.
The level and composition of remuneration for non-executive directors and executives should be sufficient and reasonable to attract and maintain talented individuals to fulfil those roles. A clear relationship between the organisation’s performance and executive remuneration also needs to be demonstrated.

A remuneration policy should be designed in such a way that it provides an adequate incentive to motivate directors and management to pursue the long-term growth and success of the organisation, within an appropriate control framework. To mitigate reputational and governance risk it is important that the organisation’s remuneration policy be understood by all the organisation’s stakeholders.

It is also important for the organisation to clearly distinguish the structure of non-executive directors’ remuneration from that of executives.

What elements should a non-executive director remuneration package contain?

Non-executive directors are normally remunerated by way of fees (in the form of cash, non-cash benefits, superannuation contributions and equity).

It is considered best practice that non-executive directors do not receive options or bonus payments, participate in schemes designed for the remuneration of executives or be provided with retirement benefits other than statutory superannuation as this could be perceived to impact on their independent status.

However, sometimes smaller companies find that, due to cash restraints, they need to use options to obtain non-executive directors of an appropriate level of expertise.

What elements should an executive remuneration package contain?

Executive remuneration packages should involve a balance between fixed and incentive pay.

Fixed remuneration reflects the level of responsibility undertaken by the individual and the labour market conditions relative to the scale of the business.

Performance-based remuneration, by way of short term and long term incentive plans, can be an effective tool in promoting the interests of the organisation and stakeholders, when designed to provide rewards for materially improved organisation performance.

Short term incentive plans commonly comprise cash based incentives delivered on an annual basis. Performance is usually assessed against a “scorecard” of financial and non-financial measures at an individual and organisation level.

Long term incentive plans commonly comprise cash or equity based incentives delivered over a three to five year timeframe. Performance is generally assessed at the organisation level against an appropriate peer group of organisations, using relative (rather than absolute) measures.

Termination payments should be agreed in advance, including detailed provisions in case of early termination, with a clear articulation of performance expectations.

Employment contracts should clearly define the individual’s role, and the terms under which the role is accepted, to avoid ambiguity or conflict upon cessation of employment.
What needs to be considered?

Company Law

Many countries will have specific legislation which applies to remuneration. For listed companies in Australia, corporations law requires a remuneration report to be included in the annual report (including disclosure of all remuneration to directors and to the top 5 most highly remunerated executives), AGM discussion on executive and director remuneration, and the remuneration report to be subject to a non-binding shareholder vote.

Other legal issues to be considered when using equity include gaining exemptions from prospectus requirements, the drafting of offer documents, the conditions relating to offers (particularly for unlisted entities) and employment law requirements.

Accounting Standards

International and country specific accounting standards usually address remuneration disclosures. In Australia, for example, AASB 1046 requires disclosing entities to disclose all employment conditions, remuneration, equity, related party and loan information for ‘specified’ executives and directors. International standard, IFRS 2 requires companies to expense the cost of share-based awards to employees (including options) over the vesting period. The future impact of the equity expense should be modelled.

Taxation

There are various taxation consequences of providing equity-based remuneration for both the organisation and the director/employee.

Corporate tax considerations may include the tax deductibility of shares provided, payroll tax and options to defer tax if an employee equity plan is designed.

Valuation and modelling

Valuation of equity provided to employees is required for various purposes which include:

- expensing and disclosure requirements;
- determining the allocation strategy;
- taxation purposes; and
- modelling to forecast the cost to the organisation and impact on capital management strategies.

The choice of valuation method needs to be understood.

Other guidelines

In most countries there are other bodies and agencies which produce guidelines in relation to the determination and/or disclosure of remuneration. In Australia, for example, Principle 9 of the ASX Corporate Governance Council Principles of Good Corporate Governance make several recommendations, including:

- disclosure of remuneration policies and the design of plans;
- the establishment of a remuneration committee;
- a clear distinction between non-executive director and executive remuneration;
- equity-based remuneration to be approved by shareholders.

There are also guidelines established by various stakeholder bodies, such as the Australian Shareholders Association, Business Council of Australia and the Investment & Financial Services Association.

What does a remuneration committee do?

Although more relevant for larger organisations, a remuneration committee can provide an efficient mechanism for determining appropriate remuneration policies and overseeing remuneration risk management and controls.

For smaller organisations, where such efficiencies may not be apparent from a formal committee structure, the board may meet outside regular meetings to specifically consider remuneration issues.

Details about the role of a remuneration committee are set out in the information sheet 2.5 Board Committees.
3.7 The audit committee

The most common committee of the board is the audit committee. The existence of an independent audit committee is recognised internationally as an essential part of good corporate governance. An audit committee is particularly relevant in medium sized organisations, not for profit companies and public sector entities as well as listed companies. Public sector organisations often have a finance committee in addition to their audit committee.

What does the audit committee do?

In recent times, there has been a trend towards audit committees extending their mandate beyond purely financial and audit matters to include compliance and risk management as areas of focus.

Accordingly, the audit committee often takes prime responsibility for:

- reviewing the organisation’s annual financial reports and recommending them for board approval
- overseeing the relationship, appointment and work of the external and internal auditors
- reviewing compliance related matters and internal controls
- overseeing the company’s risk management framework and processes.

The specific roles of the audit committee and even its name should be tailored to meet your organisation’s needs. Examples include the Board Audit Committee, the Audit and Risk Committee or the Audit and Finance Committee.

A number of the roles an audit committee may perform are important even where the organisation’s financial statements are not subject to an annual audit.

Who should be on it?

Regardless of the size or nature of your organisation, the audit committee’s contribution will be enhanced if it has a degree of independence from management. Larger or listed organisations should aim for only non-executive directors, a majority of whom are independent to allow for a full degree of objectivity from the matters being considered.

Given the heavy financial focus of an audit committee, members should have basic financial literacy and be able to understand and actively challenge information presented. It is helpful for at least one member to have financial expertise (i.e. a qualified accountant or other financial professional) and some members who have specific industry knowledge relevant to the organisation.

The important criterion is that members are able to assess and constructively challenge information and recommendations presented to them by management.

Members should also be able to have candid discussions with their internal and external auditors over their proposed audit scope, areas where they believe financial risk exists and any recommendations made.

What will it do?

The audit committee should have a formal charter which clearly sets out its roles and responsibilities, composition, structure, membership requirements and powers. When properly structured and given a clear mandate, audit committees can be of great value to companies and shareholders. The audit committee can enhance the credibility of financial reports and strengthen communication between auditors and management, which can, in turn, improve the quality of information.
provided to the shareholders or stakeholders and other users of the organisation’s financial statements.

Under the broad responsibilities, the following matters may be within the remit of the audit committee:

Oversight of

- Financial reporting, including accounting policies, disclosures, management reviews and other public statements
- Audit relationships, including the appointment, direction and performance of the external auditor, and the charter, authority and effectiveness of the internal audit function
- Compliance matters, including regulatory and statutory compliance procedures, codes of conduct and whistleblowing policies and ethical matters
- Internal controls, including management’s systems for ensuring effectiveness
- Risk management, including understanding key risk areas, fraud considerations and links to business objectives.
4.1 Selecting an external auditor

The objective of an external audit is to determine whether, in the auditors’ opinion, the financial report is in accordance with the relevant corporate legislation in the country of your organisation’s incorporation and other mandatory reporting requirements. In doing so, the auditor expresses an opinion as to whether the financial statements and notes to the financial statements give a true and fair view of the organisation’s financial position at the end of the financial year and its performance during that year and whether they have been prepared in accordance with the relevant accounting standards and regulations.

The advice of an external auditor with a wide and deep understanding of the organisation’s operations can be of enormous help to you and your fellow directors. It is therefore important to select the right external auditor for your needs.

Do we need an external audit?
Legislation and the organisation’s charter will normally determine if an external audit is required. For companies incorporated in Australia, for example, the Corporations Act 2001 sets out the criteria for determining which organisations are legally required to prepare a financial report and when an external audit is required. This provides that listed entities, other public companies, registered schemes, large and some small proprietary companies are required to prepare a financial report which must be audited.

Many companies, such as “small proprietary” and many other organisations may not require an external audit by legislation or by their charters. However, they may still prepare an audited financial report to meet the requirements of their shareholders or their bankers.

What is the board’s role in selecting an external auditor?
The board is usually responsible for the initial appointment of the external auditor. For a listed company, this appointment is then ratified by the members at the next annual general meeting. The appointment process itself is overseen by the audit committee or the board.

Public sector entities, by contrast, may be allocated an external auditor by a relevant Auditor General or similar and so the board has little to no role in the appointment.

How do we go about selecting an external auditor?
The independence of the auditor is a key issue to be addressed but there are no set rules that you must apply in selecting an auditor. Whichever selection method you use, it is important to determine at the outset what attributes you require of your external auditor to ensure the selection process is sufficiently robust. In most circumstances the person engaged will be a registered company auditor and be a member of an accredited professional body.

Many large organisations undertake a formal tendering process. In this instance, the organisation will set out its requirements and seek a formal written response and often a formal presentation from a number of audit firms.

It is important for the audit committee to ensure the prospective auditors have been provided with a sufficiently detailed understanding of the organisation, its operations, its key personnel and any other information including group structures and financial statements that will have a direct bearing on each firm’s ability to develop an appropriate proposal and fee estimate for your organisation.

The audit committee and senior management may make separate reviews of the audit proposals. Where there are a number of proposals, or if proposals are detailed, management will usually provide the audit committee with a high level summary of each.
Management should be encouraged to nominate their preferred choice of auditor and to provide a detailed critique in support of their recommendation. Management are often well placed to provide important insight and advice on the appointment.

If there is an audit committee, it will usually consider the appointment in conjunction with senior management and will then make a formal recommendation to the board.

It is important that the audit committee/board take appropriate steps to inform themselves on the prospective auditors and to ensure they have been appropriately diligent in considering management’s recommendation and forming their own views.

The selection process in a small organisation need not be this formal. However, the board must ensure that it is clear as to its own needs and expectations and those of management, that these are communicated to the prospective firms and they form the basis of the organisation’s decision. The organisation should insist on a formal letter of engagement before any audit work commences.

Some organisations may already have an audit firm in mind and may choose to approach them exclusively.

What should we look for in an external auditor?

In selecting an external auditor, the final decision should not come down to price.

You should give particular consideration to whether:

- the fee is sufficient for the work you require
- the work is to be undertaken by people with an appropriate level of seniority, skill and knowledge
- you are satisfied that the work the auditors propose to do is sufficient to meet your needs and expectations

A number of other considerations may determine the appropriateness of an external auditor. These may include:

- actual and perceived independence from your organisation
- an appreciation for the level of knowledge they have of your organisation and the business, operational and financial risks you face
- their experience of auditing within your industry
- whether they are the auditors of your direct competitors and how they will ensure confidentiality of information
- the calibre of the team put forward
- the personal chemistry of the partner, the board and senior management – mutual respect is critical.

Once selected, it is important to establish an ongoing relationship with your external auditors. They are a key source of independent information and advice for the board and should be utilised where appropriate.
4.2 The external audit relationship

As a board, or audit committee member, you must have a clear understanding of what your external auditor does, and perhaps more importantly, what they don’t do, to arrive at their audit opinion. The responsibility for ensuring that an audit is of a high quality, is sufficiently challenging, probative and independent, is as much the board’s as it is the auditor’s. It is therefore critical to ensure that you have an open and frank dialogue with your external auditor, with or without the presence of management.

When is the right time to liaise with our auditor?

The board or the audit committee should meet with the auditor at least during the following stages of the audit:

- Pre-commencement – to approve the scope of the audit service, discuss the auditor’s independence and agree the audit engagement letter.
- Planning – understand the planned audit approach, discuss any emerging issues and to ensure the auditor’s plan is aligned to the needs and concerns of the board.
- During the audit – to be updated of significant matters relevant to the audit.
- Resolution and completion - to discuss the auditor’s findings.

Depending on the size of the organisation and the auditor’s level of involvement with its activities during the year, the audit committee may also find it useful to draw on the knowledge and experience of the external auditor by meeting them throughout the year.

Auditors may also meet with individual directors as part of their audit.

Pre-commencement phase

Whether evaluating a current auditor or appointing a new auditor, the board and the audit committee should review the auditor’s performance, specifically considering:

- The firm’s professional capabilities, resources and personnel assigned to the audit
- The firm’s audit approach – the policies, procedures, risk assessment and conduct a firm employs in its performance of the audit
- The audit team’s knowledge of the industry in which the organisation operates
- Geographic coverage of the audit.
- Fees charged by the auditor in respect of different categories of work, for example, audit-related, tax and other non-audit services.
- Rotation of individuals of the audit firm who have played a significant role in the audit.
- Auditor independence and conflict of interest situations.

In addition, country specific corporate legislation will set out specific provisions in relation to external auditors and organisations required to be audited. You will need to ensure that your organisation has complied with these requirements as well as those imposed by any relevant stock exchange your organisation may be listed on.

Annual planning phase

Prior to setting the proposed audit scope, the board and/or audit committee should have discussions with the auditor on the organisation’s key risks which could give rise to a greater risk of material misstatement in the financial statements. Based on this understanding of the organisation, the external auditors are able to prepare a detailed audit scope and approach which will enable you to obtain an understanding of what to expect from the external audit. It is at this point that you may wish to raise relevant questions which provide you with an understanding of the following:

- the objectives of the audit
- the organisation’s financial reporting requirements and the timetable in place to meet them
- the extent to which the auditor assesses the internal control systems
the impact of recent changes in accounting principles or regulatory requirements on the preparation and presentation of your financial report

how the auditor will coordinate their work with any internal auditors

what the auditor perceives as risk areas to be tested

how the auditors have arrived at their materiality level, how this will be applied and whether this is in line with your own understanding of the risks of the business and the related industry

how any recent actions by the organisation, for example, mergers, acquisitions, restructures and unusual transactions will affect the audit or the audit report

the auditor’s approach, and responsibility, to detect fraud, errors and illegal acts and whether this is sufficient given your understanding of the organisation’s operations and business environment

if there are numerous sites or business locations, which ones will be visited during the course of the audit, and how this was determined

how the auditor will present significant issues raised as a result of the audit and how these will be communicated with the board or audit committee

what steps the auditor will take to maintain independence.

During the audit

There should be a regular dialogue between the board and/or audit committee and the external auditor. This enables the overall effectiveness of the external audit process to be evaluated and also provides opportunities for the board to receive feedback from the auditor on the organisation’s system of governance and controls.

Good practice is for the board and/or audit committee to invite the external auditor to comment on:

the manner in which management and the board/audit committee has operated and responded to significant issues raised by the auditor

the organisation and board’s responsiveness to recommendations and requests

the effectiveness of governance processes from the auditor’s perspective

Upon audit completion

Normally, the audit committee, management and the external auditor meet to review the financial statements and the results of the audit.

The external auditor often provides specific comment on, and develops suggestions for improvements to, the organisation’s operations and internal control.

The audit committee should:

determine how the organisation should act on advice received from the external auditor and direct management accordingly

monitor actions taken by management to resolve issues raised by the external auditor including identified weaknesses in internal controls and fraudulent or illegal acts

discuss any difficulties which the auditor encountered in the performance of the audit including any restrictions senior management may have imposed or sought to impose on their activities

take steps to understand any matters (resolved or unresolved) on which the auditor and management disagreed

ensure the accepted recommendations as reported in the external auditor’s management letter are adopted and addressed by management on a timely basis

investigate the reasons for any material adjustments to the financial statements.

The board may also require the external auditor to attend the organisation’s annual general meeting.
Is there anything else we should be doing to enhance the external audit?

The audit committee should make a periodic assessment of the external auditor’s performance. The frequency will vary with an organisation’s size but large organisations will perform an annual review. This will usually involve securing feedback from senior management regarding the quality of the services and combining these with the directors’ views.

Any concerns should be discussed with the partner in charge of the external audit.

Open and candid discussions among all parties can lead to a constructive resolution of any matters of concern.

Why is auditor independence important?

While your focus will primarily be on the effectiveness of the audit, you should also be aware of the other services your auditor may be providing. Management may engage the audit firm for a variety of special services.

To perform their audit work effectively, the auditor must be objective and independent of the organisation. You should therefore consider both the actual and the perceived effect on the auditor’s objectivity of any relationships the auditor has with, and the other services they provide to, both management and the organisation. The audit committee or board as a whole, should determine to its own satisfaction that the independence and objectivity of the auditor has not been compromised.

Balance is an important consideration – the auditors should have excellent relations with senior management to assist them to do their job effectively and efficiently. Equally, the organisation may benefit from the auditor’s participation in other projects as they have a detailed and thorough understanding of the organisation, its culture and the particular issues it faces.

It may be appropriate to set specific guidelines upfront in conjunction with the auditor to ensure all parties have a clear understanding of how these issues are to be managed.

Are there specific auditor independence rules?

Some counties set out specific provisions in company legislation or other regulations. You will need to be aware of those applicable to your organisation. If your company is incorporated in Australia, the audit reform effected by the Corporate Law Economic Reform Program (Audit Reform & Corporate Disclosure) Act 2004 (CLERP 9) is applicable to you. CLERP 9 imposes:

- some restrictions on the appointment of former auditors to the company as director or officer
- restrictions on multiple former audit firm partners becoming directors or officers of listed companies
- a requirement for an annual independence declaration by the external auditor
- a requirement for the company’s audit engagement letter to state that the auditor has to comply with the Corporations Act 2001 and its independence obligations
- a requirement for annual and ongoing audit committee and board review of auditor independence
- a requirement for rotation of audit partners.
Evaluating the Independent Auditor: Questions to consider

**PURPOSE OF THIS TOOL:** Under the Sarbanes-Oxley Act of 2002, the audit committee has the responsibility to hire, fire, and evaluate the independent auditor. In discharging this responsibility, the audit committee should answer a series of questions about its relationship with the independent auditor, and should ask key executives in the organization for their comments as well.

In considering information gathered through the process of evaluating the independent auditor, it is important that the audit committee give consideration to the source of the information. For example, if the CFO/controller comments that they believe the auditor went too far in certain areas, that would probably carry less weight in your deliberations than if the CFO/controller comments that certain areas were not tested adequately. As with all deliberative processes, the audit committee should consider the different perspectives and motivations of those having input into the deliberations.

**INSTRUCTIONS FOR USING THIS TOOL:** The sample questions included in this tool are only a starting point to evaluating the performance and effectiveness of the independent auditor. Audit committee members should ask follow-up questions as appropriate and required.

<table>
<thead>
<tr>
<th>Evaluation of the Independent Auditor</th>
<th>Yes</th>
<th>No</th>
<th>Not sure</th>
<th>Comments</th>
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</thead>
<tbody>
<tr>
<td><strong>Questions for Audit Committee Members</strong></td>
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<tr>
<td>1. Did the auditor meet with the audit committee when requested?</td>
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<td>2. Did the auditor address issues of “tone at the top” and antifraud programs and controls in place in the organization?</td>
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<td>3. Did the auditor inform the audit committee of any risks, of which the committee was not previously aware?</td>
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<td>4. Did the auditor adequately discuss issues of the quality of financial reporting, including the applicability of new and significant accounting principles?</td>
<td>C</td>
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<td>5. Did the auditor communicate issues freely with the audit committee, or did the auditor seem protective of management?</td>
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<td>6. Does it appear that management exercises undue influence on the independent auditor?</td>
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<td>7. Does it appear that the independent auditor is reluctant or hesitant to raise issues that would reflect negatively on management?</td>
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<tr>
<td>Questions for Audit Committee Members (cont.)</td>
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<td>8. Is the audit committee satisfied with the planning and conduct of the audit, including the financial statements and internal control over financial reporting (as applicable)?</td>
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<td>Yes</td>
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<td>9. Review all audit-related and nonaudit services conducted by the independent auditor in the prior year. Are you satisfied that the independent auditor remains independent and objective both in fact and appearance?</td>
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<td>Yes</td>
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<td>10. Understand the size of the firm and its total revenues firm-wide, for the office(s) providing a substantial amount of services to the organization, and the book-of-business of the partner-in-charge of the audit. Is the firm, the office or the partner dependent on the organization for a material percentage of its fee income? If so, the audit committee should consider whether this impairs the appearance of independence with respect to the organization.</td>
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<td>Yes</td>
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<td>11.a. How is the concurring partner (if applicable) compensated?</td>
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<td>Yes</td>
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<td>12. Is the audit committee satisfied with its relationship with the auditor? In making this determination, the audit committee should consider (a) whether the partner-in-charge of the audit participated in audit committee meetings, (b) whether the auditor was frank and complete in the required discussions with the audit committee, (c) whether the auditor was frank and complete during executive sessions with the audit committee, (d) whether the auditor is on-time in their delivery of services to the company.</td>
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<tr>
<td>Yes</td>
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<td>13. Was the audit fee fair and reasonable in relation to what audit committees know about fees charged to other companies, and in line with fee benchmarking data the audit committee might have available to it?</td>
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<td>Yes</td>
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<td>14. Did the independent auditor provide constructive observations, implications, and recommendations in areas needing improvement, particularly with respect to the organization’s internal control system over financial reporting?</td>
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<tr>
<td>Yes</td>
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</table>
### Chief Audit Executive

1. From your perspective in working with the independent auditor, are you satisfied with the scope, nature, extent, and timing of testing performed by the independent auditor?  
   - Yes: C  
   - No: C  
   - Not sure: C  

2. Did the independent auditor work with you to ensure the coordination of audit efforts to assure the completeness of coverage, reduction of redundant efforts, and the effective use of audit resources?  
   - Yes: C  
   - No: C  
   - Not sure: C  

3. a. Are you satisfied with the knowledge, skills, and abilities of the staff assigned to do the audit work?  
   - Yes: C  
   - No: C  
   - Not sure: C  

   b. Are you satisfied with the engagement leadership assigned, including the partner(s), manager(s) and fieldwork leaders?  
   - Yes: C  
   - No: C  
   - Not sure: C  

4. a. Did the independent auditor work with the internal auditors according to the plan?  
   - Yes: C  
   - No: C  
   - Not sure: C  

   b. Was cooperative work conducted in the spirit of professionalism and mutual respect?  
   - Yes: C  
   - No: C  
   - Not sure: C  

5. Are you satisfied that the independent auditor remains independent of the company in spite of any audit-related, or nonaudit services the auditor provides to the organization?  
   - Yes: C  
   - No: C  
   - Not sure: C  

6. a. Are you aware of any other information that might impair the independence of the independent audit firm?  
   - Yes: C  
   - No: C  
   - Not sure: C  

   b. Are you aware of any individuals on the audit team that might not be independent with respect to the company for whatever reason?  
   - Yes: C  
   - No: C  
   - Not sure: C  

7. a. If the choice were yours, would you hire the firm to conduct next year’s audit?  
   - Yes: C  
   - No: C  
   - Not sure: C  

   b. If so, what changes would you make?  
   - Yes: C  
   - No: C  
   - Not sure: C  

### CFO/Controller

1. From your perspective in working with the independent auditor, are you satisfied with the scope, nature, extent, and timing of testing performed by the independent auditor?  
   - Yes: C  
   - No: C  
   - Not sure: C  

2. Are you satisfied with the knowledge, skills, and abilities of the staff assigned to the audit work?  
   - Yes: C  
   - No: C  
   - Not sure: C  

3. Are you satisfied with the engagement leadership assigned, including the partner(s), manager(s), and fieldwork leaders?  
   - Yes: C  
   - No: C  
   - Not sure: C
<table>
<thead>
<tr>
<th>Evaluation of the Independent Auditor</th>
<th>Yes</th>
<th>No</th>
<th>Not sure</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. a. If the choice were yours, would you hire the firm to conduct next year’s audit?</td>
<td>C</td>
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<td>C</td>
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<tr>
<td>b. If so, what changes would you make?</td>
<td>C</td>
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<td>C</td>
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</table>

**Notes:**

**Independent Auditor**

1. Is the firm registered with the PCAOB as required if the firm audits public companies? | C   | C  | C       |          |

2. What were the results of the firm’s peer review and/or PCAOB inspection? | C   | C  | C       |          |

**Other Comments, Further Questions**
An effective internal audit function can play a valuable role in assisting directors to fulfil their responsibilities and helping the organisation to achieve its business objectives. The need for an internal audit function will usually be governed by the size, risks and complexity of a business.

What is internal audit?
Internal audit is commonly used as an independent appraisal activity for the review of operations within an organisation.

It can offer counsel on an organisation’s risks, controls and corporate governance while assisting the organisation to meet a wide range of business objectives – from reliability of financial information used in decision making, to effective and efficient use of resources for enhanced quality, productivity and profitability.

Internal audit is an internal control, that should be independent of management, and which functions by measuring, evaluating and providing an objective view of the effectiveness of controls for the benefit of the board and senior management.

What the internal audit function encompasses and how it reports, varies between organisations depending on their needs and structures.

Do we need an internal audit function?
An internal audit function can assist your board to discharge its oversight responsibilities for the organisation’s control environment.

In determining the need for an internal audit function, you should consider:
- the size and scale of the organisation
- the organisation’s complexity/diversity
- the organisation’s overall risk profile
- the history of past issues and incidents
- cost benefit considerations
- any other relevant internal and external issues
- the existence of alternative mechanisms to provide adequate assurance on compliance and the operation of internal controls.

If you determine that an internal audit function is not required, on even a part time or outsourced basis, the board should take any necessary steps to ensure it receives other, appropriate assurance that the system of internal controls exists and is operating effectively.

What is an internal audit charter?
An internal audit charter empowers the internal audit function and typically:
- provides for internal audit to have full, free and effective access at all reasonable times to all records, documents and employees of the organisation
- provides for internal audit to have direct access to the chairman of the audit committee
sets out the reporting lines
establishes the independent status of the internal audit function and its personnel.

Should you outsource the internal audit function?
An outsourced internal audit function may have significant advantages for small and medium sized organisations that require only a limited amount of internal audit work each year that does not justify hiring an appropriately skilled employee.

Other advantages include:
access to a wider range of skills which small, traditional internal audit departments may lack
a solution to difficulties faced by organisations of all sizes in retaining specialist auditors (for example, IT or treasury specialists)
enhanced independence of the internal audit function from operational management.
4.5 Overseeing the work of the internal audit function

Increasingly, the board is expected to understand and take responsibility for ensuring the internal audit function is being properly and fully utilised. This is likely to be a role for the audit committee and will include considering the adequacy, qualifications and abilities of the internal audit staff.

There is an increasing move among best practice bodies to promote the idea that the head of the internal audit function is properly responsible to the board through the audit committee, and not to management. Boards wanting to show leadership will ensure the internal audit function is directly responsible to the audit committee if there is one, and in any instance has clear authority and board support.

In addition, the audit committee should give specific consideration on an annual basis to:

- the adequacy and appropriateness of the internal audit work plan in view of the organisation’s risk profile
- the appropriateness of the internal audit charter/mandate and whether it has kept pace with the organisation’s activities and information and control systems
- the interrelationship of the work of the internal auditor and the work of the external auditors and the scope for synergies and savings
- the performance of internal audit and whether it is both meeting the board’s expectations and adding value to the business
- the adequacy of its resources and the proposed allocation of those resources
- the skills of the internal auditors and their capacity to understand the internal control implications of significant operational or technological changes occurring within the organisation
- the independence of the internal audit function and the level of cooperation received from management
- meeting separately with management and the internal auditors to ensure free, frank and open communications.

Throughout the year the audit committee should:

- monitor management’s progress in addressing issues identified and recommendations made by internal audit
- monitor progress against the internal audit work plan
- ensure the internal auditor has unrestricted access to the audit committee through the chairman of the committee.

Assessing internal audit effectiveness

The audit committee should evaluate whether the organisation is fully utilising internal audit skills and providing necessary support. Some questions to ask include:

- Is the internal audit charter appropriate? Has it been updated to reflect the organisation’s current activities, risks and information and control systems?
- Does internal audit have adequate resources, both in terms of skills and funding?
- Would the function be better resourced and delivered if it was outsourced to an external supplier?
- How is the internal audit program determined?
- Does internal audit investigate areas significant to the key operational and financial risks faced by the business?
Does the organisation act on recommendations from internal audit and monitor the changes made?

Do the internal auditors have an effective working relationship with the external auditors, and with organisation personnel involved in risk management processes?

The audit committee should also take responsibility for approving or concurring the appointment, replacement or dismissal of the internal auditor, head of the internal audit department or the outsourced internal audit service provider.
5.1 Performance assessment

Annual CEO performance evaluations are common practice for many boards. However, the board’s performance assessment responsibilities may also extend to include assessing the performance of the organisation and undertaking self assessment.

How do we approach assessing the CEO’s performance?

Proper evaluation by the board of the performance of senior executives and particularly the CEO is imperative. A once a year chat over lunch is not sufficient.

To handle the delicate task of providing feedback and making a consequent determination in relation to the CEO’s remuneration, an effective board:

- has a documented process in place that combines development plans, ongoing monitoring and periodic formal performance assessments
- does not limit itself to providing feedback as a one off, stand alone event
- establishes clear-cut and comprehensive performance criteria and related metrics, together with qualitative measures for evaluating performance
- establishes a balance of measures linked to the corporate strategy and business plan that ensure the CEO maintains a long-term vision while keeping a close focus on short-term performance
- agrees the performance measures and targets with the CEO at the beginning of the appraisal period
- includes external benchmarks, comparison with peers and decision making ability in the assessment criteria
- has a clear, fair, relevant and competitive remuneration policy in place which appropriately ties the CEO’s remuneration to the organisation’s long term performance.

Some boards find it useful to use a consultant to assist them in developing the evaluation and analysing and communicating the results. However, the board must not view this assistance as a means to avoid or distance themselves from the assessment process.

How do we measure the performance of the organisation?

The board is expected to monitor the performance of the organisation and to assess that performance in light of the goals and expectations reflected in the budget and business plan. This provides an important insight into the effectiveness with which management is implementing the approved strategy and operating plans and the appropriateness of those plans.

Specific and relevant key performance indicators (KPIs) which include both financial and non-financial measures provide a useful snapshot of the performance of the organisation for the board, management and external stakeholders.

Frequently used KPIs relevant to SMEs include:

- revenue growth
- earnings before interest and tax
- profit margin
- accounts receivable and/or inventory turnover
- return on equity and/or assets
- debt to equity
- interest coverage
- number of customer complaints per month
- number of man days lost
- number of debtor days outstanding
- actual capital expenditure versus target
- customer brand awareness (% recall)
- compliance incidents.

If the use of KPIs is to be effective:

- the KPIs must be comprehensive, tailored to your organisation and consistent with the business plan and corporate strategy
targeted performance levels must be set and performance trends tracked over time

the KPIs must be reported to the board on a regular basis with adequate commentary on achievement or failure to meet the target objectives for each KPI.

Why do we need to assess the board’s performance?

Board performance assessment provides an excellent opportunity for a board to explore a wide range of issues and ensures a consistent message to management.

“...boards want to be seen to be applying the same degree of continuous improvement and reviews as is expected of the CEO and the senior executive team. If board’s don’t deal themselves with performance issues they are hardly entitled to insist that management does”.

Done well, board assessment can be an extremely productive process. A robust and successful assessment process will give the board:

- a balanced view of its performance identifying the positive aspects of the board’s operations and areas for improvement
- a benchmark against which the board can assess its progress and performance over time
- a basis to establish agreed performance objectives for the board.

Whilst board dynamics and performance are clearly at the heart of board assessment, a comprehensive process can also address key aspects of the board’s operations including:

- structure, roles and responsibilities of the board
- size and diversity
- group dynamics and the conduct of meetings
- the processes for recruitment and remuneration of directors and senior management
- information flows, attention to key issues (ie strategy)
- the structure, role and performance of committees

How do we approach the board assessment process?

There are a number of different ways to undertake a board assessment. The most appropriate approach will be governed by the size, structure and dynamics of the board and the personal views of the chairman and your fellow directors.

Some boards adopt a very restricted view of the assessment process limiting themselves to the chairman having an informal discussion with individual directors on the board’s effectiveness.

Other boards undertake a more formal approach and use a combination of:

- external facilitators
- assessment questionnaires
- confidential non-attribution interviews
- a workshop discussion of the findings.

The use of a facilitator can be a key to the success of the process as it allows directors to express their views and concerns confidentially, on a no-names basis, knowing that these matters will be raised for attention in an environment that is focussed towards constructive discussion and performance enhancement.

The most comprehensive programs go further than this and include:

- 360 degree feedback, which incorporates the views of management
- assessment of the performance of the chairman
- assessment of the performance of individual directors.

If your organisation prepares or is required to prepare a governance statement for inclusion in the annual report you should consider including a description of the board’s assessment process for performance evaluation of the board, its committees and individual directors and key executives.

---

1 Stan Wallis, Chairman of AMP and Coles Myer Limited, 2000 Corporate Public Affairs Oration: “Corporate Governance – Conformance or Performance”, June 2000
**5.2 Board performance assessment – a sample guide**

This simple tool is designed to assist in assessing the effectiveness of the board. The tool takes the form of a series of assertions which should be awarded a rating on a scale of 1 to 5 by individual directors or by the board as a whole. Once complete, the matters should be discussed at a board meeting. Discussions facilitated by a third party are often able to bring additional value to the process.†.

1 = Hardly ever/Poor, 2 = Occasionally/Below average, 3 = Some of the time/Average, 4 = Most of the time/Above average, 5 = All of the time/Fully satisfactory

<table>
<thead>
<tr>
<th>Behaviours</th>
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<tbody>
<tr>
<td><strong>Setting strategy</strong></td>
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<tr>
<td>All Board members support and debate the organisation's strategy and values, enabling them to set the tone from the top.</td>
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<td><strong>Strategy</strong></td>
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<tr>
<td>All Board members have a clear understanding of the organisation’s core business, its strategic direction and the financial and human resources necessary to meet its objectives.</td>
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<td><strong>Board performance</strong></td>
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<td>The Board sets itself objectives and measures its performance against them on an annual basis</td>
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<td><strong>Managing Board meetings and discussions</strong></td>
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<td>Board meetings encourage a high quality of debate with robust and probing discussions.</td>
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<td><strong>Managing internal Board relationships</strong></td>
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<td>Board members make decisions objectively and collaboratively in the best interests of the organisation and feel collectively responsible for achieving organisational success.</td>
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<td><strong>Managing the Board’s relationship with others</strong></td>
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<td>The Board communicates effectively with all of the organisation’s stakeholders and seeks their feedback.</td>
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<td><strong>Board members’ own skills</strong></td>
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<td>Board members recognise the role which they and each of their colleagues is expected to play and have the appropriate skills and experience for that role</td>
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<td><strong>Reaction to events</strong></td>
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<tr>
<td>The Board responds positively and constructively to events in order to enable effective decisions and implementation and to encourage transparency.</td>
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<td><strong>Chairman</strong></td>
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<td>The chairman’s leadership style and tone promotes effective decision-making, constructive debate and ensures that the Board works as a team.</td>
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† See information sheet 5.1 Performance assessment
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<th>Behaviours</th>
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<td><strong>Chairman and CEO relationship</strong></td>
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<td>The chairman and the chief executive work well together and their different skills and experience complement each other</td>
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<td><strong>Attendance and contribution at meetings</strong></td>
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<tr>
<td>All Board members attend and actively contribute at meetings</td>
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<td><strong>Open channels of communication</strong></td>
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<tr>
<td>The Board has open channels of communication with executive management and others and is properly briefed</td>
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<tr>
<td><strong>Risk and control frameworks</strong></td>
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<tr>
<td>The Board’s approach to reviewing risk in the organisation is open and questioning, and looks to learning points from events, rather than blame</td>
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<td><strong>Composition</strong></td>
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<td>The Board is the right size and has the best mix of skills to ensure its optimum effectiveness.</td>
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<td><strong>Terms of reference</strong></td>
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<tr>
<td>The terms of reference for the Board are appropriate, with clearly defined roles and responsibilities, ensuring that the right issues are being addressed</td>
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<td><strong>Committees of the Board</strong></td>
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<tr>
<td>The Board’s committees are properly constituted, perform their delegated roles and report back clearly and fully to the Board.</td>
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<td><strong>Company secretary</strong></td>
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<td>The company secretary acts as an appropriate conduit for the provision of information to the Board and support to the chairman and the non-executive directors.</td>
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<td><strong>Executive directors</strong></td>
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<tr>
<td>The contribution of the executive directors, as members of the Board rather than as senior executives, is effective</td>
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<td><strong>Non-executive directors</strong></td>
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<tr>
<td>The non-executive directors contribute effectively to the development of strategy and the monitoring of the performance of management, providing both support and challenge.</td>
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<td><strong>Meetings and administration</strong></td>
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<tr>
<td>The Board meets sufficiently often, and with information of appropriate quality and detail, such that agenda items can be properly covered in the time allocated</td>
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<td><strong>Timeliness of information</strong></td>
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<td>Information is received in sufficient time to allow for proper consideration, with scope for additional briefing if necessary</td>
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<td><strong>Agenda items</strong></td>
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<td>The Board cycle agenda covers all matters of importance to the organisation, is prioritised and includes consideration of corporate reputation, its enhancement and the risks surrounding it</td>
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<td><strong>Annual General Meeting</strong></td>
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<tr>
<td>The company makes best use of its Annual General Meeting</td>
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<tr>
<td>Processes</td>
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<td><strong>External stakeholders</strong></td>
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<tr>
<td>The Board has defined its external stakeholders and ensures that the organisation has the right level of contact with them.</td>
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<tr>
<td><strong>Risk management</strong></td>
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<tr>
<td>The Board uses an active and well-structured process to manage risk, taking account of the organisation’s activities and the breadth of functions across the business.</td>
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<tr>
<td><strong>Induction and training</strong></td>
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<tr>
<td>Board members receive proper induction on appointment and ongoing training is available to meet development needs.</td>
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<td><strong>Succession planning</strong></td>
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<tr>
<td>There is appropriate succession planning for key Board members and senior executives.</td>
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<tr>
<td><strong>Performance evaluation</strong></td>
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<tr>
<td>Board members are individually subject to an annual performance evaluation that measures their contribution and commitment.</td>
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Dated: April 2005

Corporate governance is consistently evolving to reflect the current corporate, economic and legal environment. This information sheet provides generic guidance on corporate governance practices. There will be specific legal and regulatory requirements in each country which are relevant to individual organisations. To be effective, corporate governance practices need to be tailored to the particular needs, objectives and risk management structure of an organisation. No person should undertake or refrain from any action based on the information in this publication without seeking advice from their professional advisers.

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This simple tool is designed to assist assessing the effectiveness of the audit committee. The tool takes the form of a series of assertions which should be awarded a rating on a scale of 1 to 5 by individual audit committee members, or by the committee as a whole. The matters highlighted should be discussed at the next audit committee or board meeting.

1 = Hardly ever/Poor, 2 = Occasionally/Below average, 3 = Some of the time/Average, 4 = Most of the time/Above average, 5 = All of the time/Fully satisfactory

<table>
<thead>
<tr>
<th>Behaviours</th>
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<th>2</th>
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</thead>
<tbody>
<tr>
<td><strong>Understanding of core business</strong></td>
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<tr>
<td>All Audit Committee members have a good understanding of the different risks inherent in the group’s business activities</td>
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<tr>
<td><strong>Focus on appropriate areas</strong></td>
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<tr>
<td>The Audit Committee focuses on the right questions and is effective in avoiding the minutiae</td>
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<tr>
<td><strong>Quality of interaction with external auditors</strong></td>
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<tr>
<td>The Audit Committee actively engages with the external auditors regarding scope of work, audit findings and other relevant matters</td>
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<tr>
<td><strong>Quality of interaction with internal audit</strong></td>
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<tr>
<td>The Audit Committee demonstrates an appropriate degree of involvement in the work of internal audit and its findings</td>
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<tr>
<td><strong>Understanding of key financial issues</strong></td>
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<tr>
<td>The Audit Committee has a good understanding of the key financial issues, including quality of earnings, critical accounting policies and complex transactions</td>
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<tr>
<td><strong>Understanding of how assurance is gained</strong></td>
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<tr>
<td>The Audit Committee understands the interaction between the various sources of assurance available to it</td>
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<tr>
<td><strong>Rigour of debate</strong></td>
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<tr>
<td>Audit Committee meetings encourage a high quality of debate with robust and probing discussions</td>
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<td><strong>Reaction to bad news</strong></td>
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<tr>
<td>The Audit Committee responds positively and constructively to bad news in order to encourage future transparency</td>
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<tr>
<td><strong>Quality of chairmanship</strong></td>
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<tr>
<td>The chairmanship operates satisfactorily in terms of promoting effective and efficient meetings, with an appropriate level of involvement outside of the formal meetings</td>
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<tr>
<td><strong>Frank, open working relationship with executive directors</strong></td>
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<tr>
<td>The Audit Committee members have a frank and open relationship with the</td>
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</table>

1 See information sheet 5.1 Performance assessment
Corporate governance is consistently evolving to reflect the current corporate, economic and legal environment. This information sheet provides generic guidance on corporate governance practices. There will be specific legal and regulatory requirements in each country which are relevant to individual organisations. To be effective, corporate governance practices need to be tailored to the particular needs, objectives and risk management structure of an organisation. No person should undertake or refrain from any action based on the information in this publication without seeking advice from their professional advisers.

### Behaviours

<table>
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<tr>
<th>Behaviour</th>
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<tbody>
<tr>
<td>executive directors, whilst avoiding the temptation to become “executive”</td>
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<tr>
<td><strong>Open channels of communication</strong></td>
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<tr>
<td>The Audit Committee has open channels of communication with company contacts which facilitates the surfacing of issues</td>
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<tr>
<td><strong>Perceived to have a positive impact</strong></td>
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<tr>
<td>There is an appropriate balance between the monitoring role of the Audit Committee and it being an “influencer for good”</td>
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### Processes

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<tr>
<td><strong>Members with appropriate skills and experience</strong></td>
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<tr>
<td>The Audit Committee comprises members with an appropriate mix of skills and experience, including recent and relevant financial experience</td>
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<tr>
<td><strong>Clear terms of reference</strong></td>
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<tr>
<td>There are clear terms of reference, with clarity as to role vis a vis the Board as a whole</td>
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<tr>
<td><strong>Clear as to risk management responsibilities</strong></td>
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<tr>
<td>The Audit Committee is clear as to its role in relation to risk management</td>
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<tr>
<td><strong>Structured and appropriate annual agenda</strong></td>
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<tr>
<td>There is a structured annual agenda of matters to be covered with focus on the right areas</td>
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<tr>
<td><strong>Sufficient number of meetings and access to resources</strong></td>
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<tr>
<td>The number and length of meetings and access to resources is sufficient to allow the Audit Committee to fully discharge its duties</td>
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<tr>
<td><strong>Concise, relevant and timely information</strong></td>
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<tr>
<td>Audit Committee papers are concise, relevant and timely and are received sufficiently far in advance of meetings</td>
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<tr>
<td><strong>Right people invited to attend and present at meetings</strong></td>
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<tr>
<td>Executive management and others are asked to present on topics, as appropriate</td>
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<td><strong>Meetings held sufficiently far in advance of Board meetings</strong></td>
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<tr>
<td>Audit Committee meetings are held sufficiently far in advance of Board meetings to permit resolution of issues raised</td>
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<td><strong>Attendance and contribution at meetings</strong></td>
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<tr>
<td>All Audit Committee members attend and actively contribute at meetings</td>
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<tr>
<td><strong>Sufficient time and commitment to undertake responsibilities</strong></td>
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<tr>
<td>All Audit Committee members have sufficient time and commitment to fulfil their responsibilities</td>
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<tr>
<td><strong>Ongoing personal development to remain up to date</strong></td>
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<tr>
<td>Audit Committee members undertake ongoing personal development activities to update their skills and knowledge</td>
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<tr>
<td><strong>Private meetings with internal and external auditors</strong></td>
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<tr>
<td>Private meetings of the Audit Committee, and not just its chairman, are held at least annually with both the external auditors and internal audit</td>
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<td><strong>Role in relation to whistle-blowing</strong></td>
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<tr>
<td>The Audit Committee has been informed of the whistle-blowing procedures in place within the organisation and undertakes its defined role in relation to them</td>
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6.1 Delegations of authority

The board’s responsibilities include ensuring there are appropriate policies in place, supported by an effective framework of internal controls. One element of this framework is the formal delegations of authority from the board to the CEO and management and the board’s ongoing oversight and review of those delegations.

Policy formation and delegations of authority

As the board is ultimately responsible for all the actions and decisions made by the organisation, it must set in place specific policies to guide organisational behaviour, for example, codes of conduct, risk management policies and remuneration policies. In achieving the aims of these policies, the board needs to establish procedures and controls to implement the policies and be responsible for the assessment of efficiency and effectiveness of the policies and procedures.

However, it is important to remember that such broad-based policy development does not cross into management’s role in the day-to-day running of the business. To ensure that the line of responsibility between board and management is clearly delineated, the board must develop policies in relation to delegations of authority.

What are delegations of authority?

In strict terms, the authority to enter into commitments or to take action on behalf of the organisation vests in the board. However, this is not consistent with the notion of an empowered responsible management team and does not recognise the practicalities – it is clearly not possible and not appropriate for the board to sign every cheque or approve every transaction.

Delegations of authority are the mechanism to devolve the power to do these things to the CEO and to other senior personnel within the organisation. However, the board must recognise that delegating its authority does not allow it to abrogate the associated responsibility.

To be effective, the instrument that gives effect to the delegations of authority must:

- be written in simple language
- cover the range of activities in which the organisation is engaged or expected to participate
- be appropriate to facilitate the smooth and efficient operation of the organisation
be targeted to appropriately empower management to make the operational decisions expected of them

- clearly state the maximum authority levels for each level of management for budgeted and unbudgeted expenditure

- be communicated to all personnel to ensure all staff are aware of their responsibilities

- be backed up by appropriate oversight, supervision and review to ensure the delegations are appropriate, up to date and are being complied with

- be reviewed on a regular basis to ensure the delegations continue to be appropriate.

The board may clarify their responsibilities and those of management through a statement of matters reserved for the board or through the board charter or a similar document. The role of the board is to carry out the tasks it has reserved for itself and oversee management’s performance of the tasks delegated to them.

The statement of matters reserved for the board, a summary of the board charter and/or a statement of delegations of authority to management could be made publicly available.

What should be covered in the delegations of authority?

As with any policy, the nature and structure of the delegations will vary from organisation to organisation. What may be material to one organisation, and require board approval, may only require divisional approval in another organisation. It is also important that the policy fits the agreed risk appetite of the board.

Typically delegations will be expressed in both monetary and other terms and will cover authority to:

- enter into strategic commitments
- incur costs associated with core business processes and the ordinary operations of the organisation
- commit the organisation to capital expenditure
- enter into contractual commitments, for example, leases and guarantees
- commit to the payment of bonuses
- make decisions on staffing matters including appointments, terminations, remuneration, promotions, bonuses, training and the use of contractors and temporary staff
- commence or conclude litigation
- undertake specific treasury related transactions
- authorise payments.
Risk is generally associated with the possibility of something bad happening. However, many organisations are taking a wider view. While most organisations focus on preventing major hazards, an increasing number look at a range of uncertainties and a few organisations have broadened their perspective to see risk in terms of opportunity.

What is risk management?

Enterprise wide risk management establishes processes for identifying, analysing and managing those risks which could prevent an organisation from achieving its business objectives or strategies. It includes making links between risks/rewards and resource priorities. Risk management involves putting control activities in place to manage risk throughout the organisation by developing tailored risk management plans.

What do we need to consider in establishing a risk management framework?

The board should establish policies on risk oversight and management. However, risk management is only truly both effective and efficient when line management takes direct responsibility.

The board must recognise that it is not directly responsible for managing risk but that it can make a significant contribution to the risk management culture within the organisation. As a director, you cannot be sure all key risks are covered if you do not have confidence in management’s ability to identify them. Hence, as a board, you should look at management’s process to proactively identify and deal with significant risks, ask management to comment on critical risks and ensure growth objectives are balanced with considerations of risk.

The risk management policy should include the following key components:

- Acknowledgement of the board’s role to oversee the establishment and implementation of a system of risk management and internal controls.
- Requirement for the effectiveness of the system and its implementation to be reviewed at least annually.
- A description of the material risks facing the organisation.
- A description of the system for identifying, assessing, monitoring and managing material risks in the organisation. This should also include the organisation’s internal compliance and control system.
- A description of how the effectiveness of the organisation’s risk management system and its implementation is assessed.

It is advantageous for a description of the organisation’s risk management policy and internal compliance and control system to be made available, to ensure informed decision making by current and potential investors.

Key management initiatives the board should encourage and oversee directly include:

- Articulating a clear unambiguous risk management policy that defines the organisation’s expectations and the internal accountabilities for management of risks.
- Positioning risk management as the responsibility of each manager and employee as they go about their duties.
establishing a robust approach to risk management which provides the organisation with a framework for:

- identifying the risks related to the organisation’s objectives as detailed in its strategic plan including potential and actual barriers and critical success factors
- identifying new risks as they emerge and changes in previously identified risks
- deciding what initiatives, programs or other actions are needed to deal with the risks in a positive, proactive, cost effective way
- identifying or designing and implementing controls to ensure the actions are carried out as planned
- ensuring appropriate information systems and systems of internal control exist to facilitate reporting on risk exposures and mitigation strategies
- monitoring the entire process and reporting to the board or relevant committee.

For larger organisations, the board may find it useful to obtain statements or declarations from the CEO and/or CFO in relation to their risk management procedures.

The board should work with management to ensure the most common pitfalls in the risk management process are avoided. These include:

- not using common terminology – everyone has a different internal definition of risk
- short-cutting the process, focusing on risk first rather than strategic objectives
- putting implementation responsibility too low – it must be senior management
- continuing to engage in activities and initiatives which are not aligned to company objectives (long-outdated goals)
- identifying risk as a one-off activity without setting up a mechanism to identify future risks.

What is the board’s ongoing role in overseeing the risk management framework?

The board’s ongoing role is to ensure areas of significant business risk are identified and that management has put arrangements in place for managing these risks. Your board should ensure it understands the organisation’s overall risk profile and is informed of high-level risks and changes so they can identify key concerns.

Within the board, risk management issues are often delegated to the audit committee. Where risk is concerned with financial reporting or legal and regulatory requirements, this has seemed the logical place to consider risk. However, if the organisation is considering risks related to strategic issues, marketing, customer care, technology, supply chain and other operational matters, it may be more appropriate to consider delegation to another specific board committee.

An effective board and/or committee should:

- ensure there is an effective on-going process to identify risk, measure its potential impact against a varied set of assumptions and proactively manage it
- ensure management has reached consensus on the objectives, linked to the enterprise wide framework, of each business unit, and which managers “own” which process. Risk management should be integrated into the way management runs the business. Performance metrics and compensation plans should be linked to risk management effectiveness
- ensure that management does not just look at existing risks, but also has processes in place to identify new risks as they emerge
- be certain it is apprised of the most significant risks and can determine whether the right actions are in place.
6.3 The internal control framework

A comprehensive, well-designed, fully implemented and effective internal control framework provides the right environment for the efficient running of the organisation’s operations, provides comfort as to the organisation’s compliance with applicable laws and regulations and reduces the risk of financial statements being materially misstated.

What is an internal control framework?

An organisation’s internal control framework is made up of the policies, procedures, monitoring and communication activities, standards of behaviour and other initiatives that, combined:

- meet strategic objectives
- allow the organisation to respond appropriately to significant business, operational, financial and compliance risks
- safeguard assets from inappropriate use and loss from fraud or error
- help ensure the quality of internal and external reporting, through the maintenance of proper records and information flows
- facilitate compliance with applicable laws, regulations and internal policies.

A comprehensive internal control framework will include financial, operational and compliance controls.

What is the board’s role in implementing an effective internal control framework?

The overall responsibility for an effective internal control framework is the board’s – it must require the implementation of the framework, approve key policies and ensure management give appropriate attention to the project. However, it is important to recognise that the implementation and operation of the framework and the development of the component procedures are management’s roles.

The board typically delegates many of its responsibilities for the internal control framework to the audit committee which is better placed to give it adequate and ongoing attention.

Where this is the case, it is vital that there is a clear understanding between the full board and the audit committee as to the nature and extent of the committee’s responsibilities.

Some organisations may require the CEO and CFO to give annual certification to the board that:

- the organisation has a sound system of risk management and internal compliance and control which implements policies adopted by the board;
- the organisation’s risk management and internal compliance and control system is operating efficiently and effectively.
Do we have any ongoing responsibilities for internal controls?

The board/audit committee has the responsibility for the ongoing oversight of the internal control framework. This is an important key to reinforcing the organisation’s commitment to and culture of internal control.

Typically, the audit committee or the board discharges its internal control oversight responsibility by:

- having an ongoing focus on the operation of the control framework
- considering the risks to which the organisation is exposed, the assessed likelihood and potential impact of each risk, the company’s risk appetite and the efficiency and cost effectiveness of the processes which management has implemented to manage those risks
- requiring appropriate periodic reports from management, internal audit and the external auditors
- requiring regular reviews of the effectiveness of aspects of the internal control framework.

What do the external and internal auditors review?

It is important that the audit committee and the board clearly understand the degree to which internal and external auditors review controls. Reviewing the annual internal and external audit plans and engaging in open and frank dialogue with the auditors will ensure you are clear on what comfort you can draw from their work.

The external auditor is required to test internal controls only over the areas where they intend to rely on particular controls in the financial statement audit. The internal audit plan however, will cover some or all of the operational, financial and compliance controls. In many instances, limited resources may mean that the internal audit plan may need to cover only certain controls in one period, and focus on other controls the following year.
7.1 Effective budgeting

Budgeting is the detailed operational link between an organisation’s strategic outlook/plan and its business plan, and the day to day operations for the forthcoming period. If the budget does not reflect the organisation’s assessment of risks, opportunities and strategies, then any performance evaluation against it, is almost meaningless.

What are the keys to an effective budget process?

A budget is a statement of management’s and the board’s expectations for the performance of the organisation in the forthcoming year. It is imperative that a detailed budget ties to the financial analysis prepared in conjunction with the business and strategic plans. It establishes the agreed allocation of resources and can be an effective tool to determine financial viability and cash flow health.

An effective budget is also a three way budget which includes not only profit and loss projections, but a projected statement of financial position and a cash flow statement for each month.

Why is a three way budget so important?

The income statement (profit and loss statement/ statement of financial performance) is only one aspect of the financial results of an organisation. A complete and comprehensive picture of performance of any organisation can only be assessed in conjunction with the organisation’s balance sheet and the cash flow statement.

For example, the income statement of an organisation is influenced by amounts already included in the balance sheet. This may include prepayments, inventory, depreciation of fixed assets and interest on overdraft and bank loans.

The cash flow statement allows an organisation to measure its working capital management, but also allows for the calculation of bank facilities required at a particular point in time, based on the forecast activity level. This can lead to a more correct calculation of borrowing costs, and better working capital management.

If management only prepares a budgeted income statement, without a detailed interlocking balance sheet and cash flow statement, they are only looking at part of the picture and may put the organisation at risk as there is no check on what particular strains a profit and loss budget will put on the organisation’s working capital, existing bank facilities and covenants.

In order to make an intelligent review, a budgeted income statement must, as a minimum:

- be based on an opening balance sheet
- define the assumptions on which it is based
- include a monthly budgeted balance sheet and a budgeted cash flow with supporting assumptions.

What is the board’s role?

The board plays a particularly crucial role at different stages of the budgeting process. The board:

- is involved in the planning stage by setting the financial parameters in the strategic and more detailed business plan
approves the final budget and ensures that it is consistent with the strategic and business plans. As part of this process the board should challenge management on the budget assumptions.

What should we be reviewing throughout the year?

Actual income statement performance on a monthly and year to date basis should be tracked against the respective budgeted periods. Monthly cash flows and key balance sheet items should also be compared against budget.

Information provided to the board should include graphical analysis to aid interpretation and the identification of trends.

It is not enough for management to provide the board with this financial data without some form of critical analysis. Management should ensure there is adequately descriptive, yet concise, commentary on key ratios and any significant variances from budgeted results.

In addition, as the year progresses, it is useful to reassess the annual budget and assumptions made with known factors which may impact the achievement of budgeted results. These adjustments, or revised forecasts, should also be:

- reviewed and approved by the board
- compared, on a monthly and year to date basis, to the actual and budgeted performance with commentary in the financial information provided to the board
- prepared on a periodic (typically a quarterly) basis.
The way business views compliance with laws and regulations is changing. This has partly been driven by regulators and partly by the courts, but predominantly by boards understanding that they need to ensure compliance is managed as part of the way the organisation does business.

In recent times, there has been a shift away from the backward-looking checklist approach to compliance, towards frameworks that embed compliance as part of the business process, ensure all employees understand their compliance responsibilities, use risk management solutions to minimize the risk of compliance failure and provide greater comfort for senior management and the board.

What is a compliance framework?
An organisation’s management of the regulatory and legal requirements affecting it is often achieved through a number of specific compliance programs, for example, a trade practices compliance program or an environmental compliance program. These programs may include training and a range of other initiatives to ensure the relevant obligations are appropriately addressed.

A well designed compliance program will:

- aim to prevent and to respond to breaches of specific laws, regulations, codes or organisational standards occurring in the organisation
- contribute to a culture of compliance within the organisation,

A compliance framework integrates the specific compliance programs and the needs of the component business units to provide a comprehensive, robust and consistent approach to compliance.

Typically the development of a compliance framework which draws together existing compliance programs will result in enhancements or modifications to those programs and the development of new programs to address identified areas of exposure.

A key feature of an effective compliance framework is that it makes compliance every employee’s responsibility and allows the business to focus on the future and not waste time, effort and money fighting fires.

Is a risk management approach to compliance appropriate?
A risk management approach to compliance does not ignore or seek to minimise the need to comply with the law. Instead, it recognises compliance as a type of risk, approaches it as a ‘whole of business issue’ and enhances the organisation’s ability to address its obligations in a structured manner.

How important is compliance?
The extent and complexity of compliance requirements is increasing. Failures in these areas may result in costs through litigation and/or penalties but may have far more significant implications for an organisation. Compliance failures may result in damage to the organisation’s reputation or, in the worst case scenario, the death or injury of an employee, customer or third party.

Today, there is an established nexus between corporate behaviour, customer satisfaction and shareholder value which few organisations can afford to ignore.

What do we need to do to ensure the board’s oversight of the compliance framework is effective?
The organisation’s response to compliance is an issue driven by the board. In the first instance, you should take the appropriate steps to ensure management:

- understands the external and internal compliance requirements facing the organisation
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In some organisations, the audit committee may expand its mandate to incorporate oversight of the compliance framework and any emerging or other compliance issues including litigation and contact with regulators. However, care must be taken not to overburden the audit committee.

An alternative approach is to establish a separate board committee purely for consideration of compliance matters. A third option gives a committee, other than the audit committee, responsibility for the oversight of both compliance and the organisation’s broader risk management framework.

The solution for your organisation will naturally depend on the size and complexity of your organisation and the needs of the board. However, it is important to balance the workload of the audit committee against having too many committees and the need to ensure the appropriate sharing of information between committees and the board. Indeed, where a compliance framework is being implemented for the first time, it may be appropriate to retain initial oversight responsibility at a board level.

The oversight of the compliance framework should include:

- reviewing the effectiveness of the organisation’s system for monitoring compliance with laws and regulations
- receipt of periodic reports
- ensuring testing of compliance with laws, regulations and organisational policies is incorporated into the internal audit plan
- understanding the nature of any significant issues that come to light and management’s investigation and follow-up, including disciplinary actions
- reviewing trends in compliance and management’s plans to address systemic issues
- reviewing findings and reports of examinations by regulators
- ensuring that management has reflected the impact of significant issues in the financial reports.

Periodic briefings and information from the internal auditor, general counsel, compliance officer, external auditors and management can provide much of the information the board needs.

In addition, each director should ensure he/she has a good understanding of the legislative and regulatory environment in which the company operates.

How can I assess how well our current compliance management measures up?

It may be prudent to perform a high level compliance diagnostic for your organisation. Statements you should be able to use to describe your organisation include:

- compliance risk management is on the board’s agenda
- we fully understand how compliance risks affect our reputation
- the organisation is flexible, adapts well to a changing regulatory environment
- our IT meets our compliance management needs
- our compliance management information is relevant and timely
- management accountability for compliance in all areas of the business is clear
- performance objectives include compliance
- internal audit and/or other functions monitor compliance risk
- we have identified new legislation that will impact us
- our IT systems, including internet sites, are secure
- we manage contracts effectively
- we protect the privacy of our customers, employees and suppliers
- our environmental risks are managed
- we have an effective compliance framework
- we can demonstrate that a culture of compliance is evident in our organisation.
Early warning signs of failure

In today’s competitive business environment, more and more businesses are facing the need to either restructure or wind down poorly performing business units. Every board must ensure it is in a position to be able to identify the early warning signs that the organisation, or one of its component businesses, is struggling.

Why do organisations fail?

There are many reasons why a business may eventually fail. However, there are a number of factors that appear to be common to those businesses which find themselves in financial difficulty, and which are ultimately forced to cease operations.

While failure to change is at the root of many insolvencies, one or more of the following factors may contribute to the early demise of a business:

- undercapitalising/over-gearing
- inadequate planning
- poor information systems
- overtrading/growing too fast
- inadequate cost control
- lack of/poor management succession planning
- over reliance on a single customer/product
- price/margin competition
- fraud.

How do we avoid this situation?

The prediction and prevention of corporate failure hinges on actively looking for and identifying early warning signs that, if left unchecked, may cause an organisation to make vital mistakes. One critical error or too many mistakes at the wrong time, can be terminal for any business.

There are a number of potential operational errors that directors, audit committee members and other vigilant corporate executives should always be on the lookout for in order to put themselves in a proactive position to safeguard the business. They range from management and internal structural issues, to financial awareness and simple, basic mistakes that could impact at any level.

If the early warning signs are recognised by the board and/or management, it may be possible to either:

- turn the trading performance of the business around
- or
- commence an orderly wind-down of operations and assets to avoid further losses from being incurred.

What are the “early warning” signs? What should I be looking for?

In addition to the matters listed above as the factors that contribute to the demise of an organisation, you should pay careful attention to:

**Management and internal structures**

- Beware of autocrats or dictators – people who operate alone or surround themselves with “yes-men”
- Check for balance and complementary skills sets in the key management teams
- Recognise and respond to unplanned or inappropriate succession
- Be alert to staff turnover that is too high - realise that it is often the good people who are the first to "walk"
- Be alert to staff turnover that is too low – every business needs an ongoing injection of new ideas
- Don’t tolerate poor industrial relations
- Management that focuses on the past or is nostalgic for “the good old days”
- Advice from external advisers, the marketplace, customers, or employees that is ignored
- Be alert to management who are unable, or reluctant, to take leave
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Markets and products
- Be aware of cyclical markets which may put businesses under pressure
- Don’t put all your eggs in one basket by over relying on a single customer or supplier
- Recognise poor market research which will compromise the quality/relevance of your strategic planning and your knowledge of your customers
- Monitor product quality
- Consider the adequacy of marketing activity
- Be alert to declining sales in a robust industry and/or rising costs of production

Financial issues
- Focus on debtors paying outside trading terms and creditors and suppliers dealing with the business on “cash only” terms
- Review cash flow/cash burn rate
- Review business plans for realism, accuracy and sensitivity
- Question inadequate or absent management reports, particularly management accounts
- Check the availability and adequacy of long term finance
- Review the adequacy/appropriateness of gearing levels
- Ensure there is a good relationship with the company’s financiers, especially any secured lenders and that this is supported by frequent dialogue and good information flows
- Query excessive remuneration of management or directors

Basic mistakes
- Big projects – approach these with caution as they may have the capacity to divert funds and management concentration with potentially disastrous consequences
- Inappropriate or poorly executed acquisitions - these can be very unhappy affairs that can bring down the acquirer

Unsustainable growth – there is an established nexus between unduly high sustained growth rates and a substantially increased risk of failure.

What action can the board take if there are signs the business is struggling?
The key to preventing business failure is for the board and management to identify the warning signs early and to take corrective action as soon as possible. The board needs to be prepared to make the decision to quit a non-performing asset early, or to at least put controls in place to prevent further losses from being incurred.

Management needs to be held accountable to the board for the performance of the business, as many of the key factors resulting in business failure can be traced back to poor management decisions. However, this does not absolve the board from its responsibilities. The board supervises management and makes major decisions. The board must be prepared to act and act quickly even if this means it is effectively admitting that it erred in one or more of its decisions.

When there are signs of difficulty, management and the board need to work together, agree the approach to manage the situation and monitor progress.

If the board suspects that the business is struggling in one or more areas, it is often advisable to seek independent advice. This may in the first instance be the organisation’s accountant, or for an independent assessment, an external business advisory firm may be engaged to review the non-performing areas of the business. In most countries, there are a number of different legal or informal options which can be explored for struggling organisations.

A review initiated by a proactive board, is preferable to a review initiated by the organisation’s financiers as a result of covenants being breached or other concerns.
As a director, you need to take proactive steps to understand the full range of legislation that applies to the organisation and to keep up to date with any relevant changes to the legislative framework. Being aware of the range of key regulatory and commercial issues will assist you to assess how well the organisation is managing its obligations and activities.

This information sheet includes a brief, high level synopsis of a number of the regulatory issues and technology matters relevant particularly to the Australian market, which you should consider.

**IT strategy**

IT systems are a core element of most businesses, and it is likely that they are a critical factor in determining the success of your business. Whilst enabling competitive advantages and timely analysis, IT systems also represent one of the larger costs for any business. Failure to properly align the IT resources to overall business objectives and requirements can significantly impair operational and financial performance.

Given the importance of IT systems, all businesses should have an IT strategic plan to ensure the most effective and cost efficient processing is attained on an ongoing basis. A good IT strategic plan includes both short-range and long-range plans and should address, but not be limited to:

- forecasted changes in the business which would impact processing requirements
- anticipated changes in software applications, or even replacement of applications due to obsolescence or costly ongoing maintenance
- operating software changes and enhancements to ensure vendor maintenance agreements are not violated
- hardware purchases anticipated due to cost benefit considerations, outgrowing the current hardware capacity, insufficient response time, or lack of adequate storage capacity.

It is critical that every organisation has appropriate oversight of its IT systems. The size of the organisation will determine how this is best split between the board and management.

Key matters for attention include:

- ensuring IT systems effectively and efficiently enable a business to reach its objectives
- approving and monitoring performance against the IT strategy
- review and approval of any major changes to hardware, software development applications or acquisitions, projects, resource allocation, disaster recovery and emergency procedures and MIS policies and procedures.

The combination of a robust IT strategy and diligent oversight will better enable your business to meet its plans and objectives.

**E-Business**

E-business, is continuing to change the way many companies do business, and the related risks and internal controls are of increasing importance to the board and the audit committee.

E-Business encompasses:

- e-commerce - performing business transactions using internet technology
- e-content - publishing content on internet web sites
- e-collaboration - sharing data and applications between internet-based tools and users.

The complexity, challenge and change brought about by e-business create risks. Effectively managing these risks, will, in many cases, have a major impact on achieving business objectives and enhancing shareholder value. Both the board and management must understand the various risks and review the
company’s risk management policies and practices to ensure they are appropriately addressed.

In addressing and managing the risks arising from e-business, you should consider the following:

- customer privacy, confidence and loyalty
- operational resilience
- legal and regulatory issues
- taxation issues
- change processes
- relationships with suppliers and business process optimisation.

Occupational Health and Safety, workers compensation and environmental protection

Occupational health and safety legislation is common in many countries and impose upon employers a duty to provide a safe workplace and systems of work for all employees and contractors.

Specific regulations and codes of practice, which support local occupational health and safety legislation also vary in coverage and implementation given the legislation has only emerged over the past 20 years. However, all have similar principles and requirements such as manual handling, dangerous goods, and hazardous substances.

Like occupational health and safety, the legislation governing workers compensation also varies between the states and territories, with the main differences arising in the amount of compensation paid and who is deemed to be covered by the legislation.

Environmental protection legislation is also managed independently by the states and territories. The principal requirement of all environmental legislation is to protect the environment and to prescribe penalties for those who contribute to the pollution or other destruction of the environment. The execution of the legislation varies with the jurisdiction, as do penalties and fines for breaches.

A common feature of much of the legislation in this area is the personal liability that attaches to each individual director and which is not covered by any form of professional indemnity or other insurance. Vigilance is clearly important but it must be balanced against your other responsibilities.

The challenge for all chief executive officers and board members is to ensure:

- the organisation has established systems for monitoring and reporting compliance with all the applicable state, territory and federal legislation on these issues
- they receive regular and comprehensive reports on the organisation’s performance against its own standards and other appropriate indicators.

Superannuation

The provision of superannuation for employees is compulsory. However, the board should consider whether the organisation’s current superannuation arrangements provide the best fit with its overall remuneration strategy. Superannuation is subject to increased regulatory scrutiny and the board should ensure legislative requirements are met in an effective manner.

Some key factors which you should consider are:

- What industrial relations issues exist in relation to superannuation?
- If superannuation is outsourced, how is the arrangement and the performance of outsourced providers monitored?
- For a standalone fund, how does it achieve economies of scale and provide a range of services at a competitive cost?
- Are there hidden employer costs associated with running the fund?
- Are sufficient resources available to avoid the reputation risk associated with a poorly managed in-house fund?
- Is the benefit design appropriate for attracting and retaining staff?
- Is the funding at a sufficient level to provide security of benefits?
Under any scenario, a process should exist for identifying who is an employee for Superannuation Guarantee purposes and at what level contributions should be made.

Privacy

In recent years, society has recognised the increasing importance of protecting one’s privacy. In Australia, the Privacy Amendment (Private Sector) Act 2000 (the Act) came into effect regulating the manner in which personally identifiable information is collected, stored, used and disclosed.

Individuals now have the right to know what information is collected about them, what it will be used for, who it will be shared with, as well as having the right to access information held on them by any large organisation.

If your company is incorporated in Australia, it must have:

- appointed a person to be responsible and accountable for privacy compliance within your organisation
- developed and publicised a privacy statement
- ensured it has the appropriate policies and procedures in place to meet the requirements of the legislation
- ensured all staff dealing with personal information are aware of the privacy legislation, and how the company is addressing its responsibilities.

On an ongoing basis, you should ensure the organisation is:

- only collecting personal information if it is necessary for its business activities
- communicating with the individuals it has contact with to let them know who it is, how it collects personal information and what it will do with it
- using and disclosing personal information in the manner the individual has consented to at the time of collection
- allowing individuals to access and correct their personal information
- monitoring privacy compliance on an ongoing basis, and reassessing its responsibilities as the business changes.

In addition, you should be aware that a number of Australian states have specific public sector privacy legislation in place and Victoria has specific privacy requirements applying to both the public and private sectors in the Public Health Records Act 2001. Clearly, where these apply to your organisation, you will also need to understand the requirements of this legislation.

Industry codes

Industry codes form an important part of the regulatory environment and tend to deal with consumer and small business protection issues not covered by legislation.

Codes are voluntary and must be adopted by an organisation in order to bind that organisation. Codes tend to prescribe certain standards of behaviour and practice for organisations in their dealings with customers. They usually cover:

- disclosure
- principles of conduct
- privacy
- dispute resolution.

Compliance with codes is unenforceable at law although industry regulators have roles to play in their administration. For example, the Australian Securities and Investments Commission (ASIC) monitors compliance by financial services organisations with codes, and issues public reports on its findings.

Membership of industry codes tends to be voluntary although some industry associations require all members of the association to adopt their code. You should ensure you are aware of any industry codes which your organisation may have or should have adopted and what responsibilities these involve.
8.2 ASX Corporate Governance Council: Principles and recommendations

If your company is listed on the Australian Stock Exchange, the ASX Corporate Governance Council Principles of Good Corporate Governance and Best Practice Recommendations are applicable to you.

The ASX Corporate Governance Council was established on 15 August 2002 for the purpose of developing and delivering an 'industry-wide, supportable and supported framework for corporate governance which could provide a practical guide for listed companies, their investors, the wider market and the Australian community'.

The Council released a set of 28 Best Practice Recommendations relating to 10 key principles of good corporate governance in March 2003. Commentary and guidance is provided for each recommendation. The recommendations are not mandatory, however companies are required to adopt an 'if not, why not' approach and provide explanations for any departures from the recommendations.

The 10 principles and 28 recommendations

A company should:

1 Lay solid foundations for management and oversight
   Recognise and publish the respective roles and responsibilities of board and management.
   Recommendation 1.1
   Formalise and disclose the functions reserved to the board and those delegated to management.

2 Structure the board to add value
   Have a board of an effective composition, size and commitment to adequately discharge its responsibilities and duties.
   Recommendation 2.1
   A majority of the board should be independent directors.
   Recommendation 2.2
   The chairperson should be an independent director.
   Recommendation 2.3
   The roles of chairperson and chief executive officer should not be exercised by the same individual.

3 Promote ethical and responsible decision-making
   Actively promote ethical and responsible decision-making.
   Recommendation 3.1
   Establish a code of conduct to guide the directors, the chief executive officer (or equivalent), the chief financial officer (or equivalent) and any other key executives as to:
   3.1.1 the practices necessary to maintain confidence in the company's integrity
   3.1.2 the responsibility and accountability of individuals for reporting and investigating reports of unethical practices.
   Recommendation 3.2
   Disclose the policy concerning trading in company securities by directors, officers and employees.
   Recommendation 3.3
   Provide the information indicated in Guide to reporting on Principle 3.

4 Safeguard integrity in financial reporting
   Have a structure to independently verify and safeguard the integrity of the company's financial reporting.
   Recommendation 4.1
   Require the chief executive officer (or equivalent) and the chief financial officer (or equivalent) to state in writing to the board that the company's financial reports present a true and fair view, in all material respects, of the company's financial condition and operational results and are in accordance with relevant accounting standards.
   Recommendation 4.2
   The board should establish an audit committee.
   Recommendation 4.3
   Structure the audit committee so that it consists of:
   - only non-executive directors
   - a majority of independent directors
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Recommendation 4.4
The audit committee should have a formal operating charter.

Recommendation 4.5
Provide the information indicated in Guide to reporting on Principle 4.

5 Make timely and balanced disclosure
Promote timely and balanced disclosure of all material matters concerning the company.

Recommendation 5.1
Establish written policies and procedures designed to ensure compliance with ASX Listing Rule disclosure requirements and to ensure accountability at a senior management level for that compliance.

Recommendation 5.2
Provide the information indicated in Guide to reporting on Principle 5.

6 Respect the rights of shareholders
Respect the rights of shareholders and facilitate the effective exercise of those rights.

Recommendation 6.1
Design and disclose a communications strategy to promote effective communication with shareholders and encourage effective participation at general meetings.

Recommendation 6.2
Request the external auditor to attend the annual general meeting and be available to answer shareholder questions about the audit.

7 Recognise and manage risk
Establish a sound system of risk oversight and management and internal control.

Recommendation 7.1
The board or appropriate board committee should establish policies on risk oversight and management.

Recommendation 7.2
The chief executive officer (or equivalent) and the chief financial officer (or equivalent) should state to the board in writing that:

7.2.1 the statement given in accordance with best practice recommendation 4.1 (the integrity of financial statements) is founded on a sound system of risk management and internal compliance and control which implements the policies adopted by the board

7.2.2 the company’s risk management and internal compliance and control system is operating efficiently and effectively in all material respects.

Recommendation 7.3
Provide the information indicated in Guide to reporting on Principle 7.

8 Encourage enhanced performance
Fairly review and actively encourage enhanced board and management effectiveness.

Recommendation 8.1
Disclose the process for performance evaluation of the board, its committees and individual directors, and key executives.

9 Remunerate fairly and responsibly
Ensure that the level and composition of remuneration is sufficient and reasonable and that its relationship to corporate and individual performance is defined.

Recommendation 9.1
Provide disclosure in relation to the company’s remuneration policies to enable investors to understand:

(i) the costs and benefits of those policies and

(ii) the link between remuneration paid to directors and key executives and corporate performance.

Recommendation 9.2
The board should establish a remuneration committee.

Recommendation 9.3
Clearly distinguish the structure of non-executive directors’ remuneration from that of executives.

Recommendation 9.4
Ensure that payment of equity-based executive remuneration is made in accordance with thresholds set in plans approved by shareholders.

Recommendation 9.5
Provide the information indicated in Guide to reporting on Principle 9.

10 Recognise the legitimate interests of stakeholders
Recognise legal and other obligations to all legitimate stakeholders.

Recommendation 10.1
Establish and disclose a code of conduct to guide compliance with legal and other obligations to legitimate stakeholders.
8.3 ASX Corporate Governance Council: Disclosures

If your company is listed on the Australian Stock Exchange, the ASX Corporate Governance Council Principles of Good Corporate Governance and Best Practice Recommendations are applicable to you. These, and the Listing Rules, require certain disclosures in relation to the principles.

The ASX Corporate Governance Council recommendations are not mandatory, they are guidelines that are designed to ‘produce an efficiency, quality or integrity outcome’. As a result, the ASX has employed an ‘if not, why not’ approach. Companies are encouraged to adopt the recommendations as best practice, however where it is believed that a recommendation is inappropriate to the particular circumstances of a company, it has the flexibility not to follow it. Companies are required, through the Listing Rules, to disclose in their annual reports the extent of compliance with and explain any departures from the best practice recommendations.

In addition, the following disclosures are recommended by the ASX:

<table>
<thead>
<tr>
<th>Document</th>
<th>Recommendation</th>
<th>Place of publication</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board Charter or summary thereof</td>
<td>1.1</td>
<td>Website</td>
</tr>
<tr>
<td>Statement of matters reserved for the board</td>
<td>1.1</td>
<td>Website</td>
</tr>
<tr>
<td>Statement of Delegated Authority to Management</td>
<td>1.1</td>
<td>Website</td>
</tr>
<tr>
<td>Formal Letter of Director’s Appointment (Non-executive)</td>
<td>1.1</td>
<td>Not required to be published to the public, but recommended to be given to new directors.</td>
</tr>
<tr>
<td>Disclosure of interests affecting ‘independence’</td>
<td>2.1</td>
<td>Annual report</td>
</tr>
<tr>
<td>Nomination Committee Charter or summary thereof</td>
<td>2.4</td>
<td>Website</td>
</tr>
<tr>
<td>Description of the procedure for the selection and appointment of new directors to the board</td>
<td>2.4</td>
<td>Website</td>
</tr>
<tr>
<td>Nomination Committee’s policy for ensuring that the appointment of directors is designed to produce an effective board</td>
<td>2.4</td>
<td>Website</td>
</tr>
<tr>
<td>Directors’ details</td>
<td>2.5</td>
<td>Annual report</td>
</tr>
<tr>
<td>Directors’ Code of Conduct or summary thereof</td>
<td>3.1</td>
<td>Website</td>
</tr>
<tr>
<td>Securities trading policy or summary thereof</td>
<td>3.2</td>
<td>Website</td>
</tr>
<tr>
<td>Audit Committee Charter</td>
<td>4.4</td>
<td>Website</td>
</tr>
<tr>
<td>Audit Committee member details</td>
<td>4.5</td>
<td>Annual report</td>
</tr>
<tr>
<td>Information on procedures for the selection and appointment of the external auditor and for the rotation of external audit engagement partners</td>
<td>4.5</td>
<td>Website</td>
</tr>
<tr>
<td>Continuous Disclosure Policy and Procedures or summary thereof</td>
<td>5.1</td>
<td>Website</td>
</tr>
<tr>
<td>Policy on shareholder communication or a description thereof</td>
<td>6.1</td>
<td>Website</td>
</tr>
<tr>
<td>Risk Management Policy and Internal Compliance and Control System</td>
<td>7.1</td>
<td>Website</td>
</tr>
<tr>
<td>Document</td>
<td>Recommendation</td>
<td>Place of publication</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>Description of Risk Management Policy and Internal Compliance and Control System</td>
<td>7.3</td>
<td>Website</td>
</tr>
<tr>
<td>Description of whether a performance evaluation for the board and its members has taken place in the reporting period and how it was conducted</td>
<td>8.1</td>
<td>Annual report</td>
</tr>
<tr>
<td>Description of performance evaluation process of the board, its committees and individual directors and key executives</td>
<td>8.1</td>
<td>Website</td>
</tr>
<tr>
<td>Description of Executives Remuneration Policy</td>
<td>9.1</td>
<td>Annual report</td>
</tr>
<tr>
<td>Remuneration Committee Charter or summary thereof</td>
<td>9.2</td>
<td>Website</td>
</tr>
<tr>
<td>Description of Non-Executives Remuneration Policy</td>
<td>9.3</td>
<td>Annual report</td>
</tr>
<tr>
<td>Remuneration Committee member details</td>
<td>9.5</td>
<td>Annual report</td>
</tr>
<tr>
<td>Corporate Code of Conduct or summary thereof</td>
<td>10.1</td>
<td>Website</td>
</tr>
</tbody>
</table>
If your company is incorporated in Australia, the *Corporate Law Economic Reform Program (Audit Reform & Corporate Disclosure) Act 2004 (CLERP 9)* is applicable to you. CLERP 9 includes a number of disclosure amendments to the Corporations Act 2001. These are summarised below.

### Summary of CLERP 9 Disclosure Requirements

<table>
<thead>
<tr>
<th>Requirements/Issues</th>
<th>Timing</th>
<th>Effective time of application</th>
<th>Applicable entities</th>
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<tbody>
<tr>
<td><strong>Directors’ report</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Statement by directors that the Board has received a declaration from the CEO/CFO</td>
<td>Financial years commencing on or after 1 July 2004.</td>
<td>2005 Annual Report</td>
<td>Listed entities</td>
</tr>
<tr>
<td>under section 295A on the financial records and financial statements.</td>
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<td></td>
</tr>
<tr>
<td>If additional ‘true and fair’ information is included in the financial report, the</td>
<td>Financial years commencing on or after 1 July 2004.</td>
<td>2005 Annual Report</td>
<td>All entities preparing financial reports</td>
</tr>
<tr>
<td>directors’ report must set out the reasons for including the information, and its</td>
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<td></td>
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<tr>
<td>location in the financial report.</td>
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<tr>
<td>Listed companies must include information on the operations, financial position</td>
<td>Financial years commencing on or after 1 July 2004.</td>
<td>2005 Annual Report</td>
<td>Listed entities</td>
</tr>
<tr>
<td>and business strategies and prospects.</td>
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</tr>
<tr>
<td>The name of each officer of the company who was a former partner or director of</td>
<td>All reports prepared after the commencement of the CLERP 9 Act.</td>
<td>2004 Annual Report</td>
<td>All entities preparing financial reports</td>
</tr>
<tr>
<td>the entity’s current audit firm or audit company.</td>
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</tr>
<tr>
<td>Listed entities must include qualifications and experience of each person who is</td>
<td>Financial years commencing on or after 1 July 2004.</td>
<td>2005 Annual Report</td>
<td>Listed entities</td>
</tr>
<tr>
<td>a company secretary of the company at the year end.</td>
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</tr>
<tr>
<td>Where an auditor is relying on a declaration from ASIC modifying auditor rotation</td>
<td>Financial years commencing on or after 1 July 2006.</td>
<td>2007 Annual Report</td>
<td>Listed entities</td>
</tr>
<tr>
<td>requirements, a copy of that notice.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disclosure of non-audit services by auditors.</td>
<td>Financial years commencing on or after 1 July 2004.</td>
<td>2005 Annual Report</td>
<td>Listed entities</td>
</tr>
<tr>
<td>Details of directorships of other listed companies held by each director in 3</td>
<td>Financial years commencing on or after 1 July 2004.</td>
<td>2005 Annual Report</td>
<td>Listed entities</td>
</tr>
<tr>
<td>years prior to end of the financial year to which the report relates.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A copy of the auditor’s independence declaration under section 307C.</td>
<td>Financial years commencing on or after 1 July 2004.</td>
<td>2005 Annual Report</td>
<td>All entities preparing financial reports</td>
</tr>
<tr>
<td>Requirements/Issues</td>
<td>Timing</td>
<td>Effective time of application</td>
<td>Applicable entities</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>The ‘Remuneration Report’ within the directors’ report</td>
<td></td>
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</tbody>
</table>
| Shareholder approval is required where the value of the benefit given in connection with the retirement from office, when added to the value of all other payments (if any) already made or payable in connection with the person’s retirement of office, exceeds the greater of:  
| † The person’s average remuneration for the last 3 years multiplied by the time (in years) the person has held an office in relation to the company (capped at 7 years); and  
| † The person’s remuneration for the last 12 months.                                 | Agreements entered into on or after 1 July 2004. | 2005 Annual Report | Listed entities     |
| Discussion on board policy in relation to the remuneration of directors, secretaries and senior managers. | Financial years commencing on or after 1 July 2004. | 2005 Annual Report | Listed entities     |
| Discussion of the relationship between the remuneration policy and the company’s performance, including details of the performance for the last 4 financial years. | Financial years commencing on or after 1 July 2004. | 2005 Annual Report | Listed entities     |
| Details of performance conditions that apply to any element of remuneration.        | Financial years commencing on or after 1 July 2004. | 2005 Annual Report | Listed entities     |
| Details of remuneration of each director and each of the 5 named company executives (and in certain instances, group executives) receiving the highest annual remuneration. | Financial years commencing on or after 1 July 2004. | 2005 Annual Report | Listed entities     |
| Explanation of reasons for directors or executives receiving securities not subject to performance conditions as part of remuneration. | Financial years commencing on or after 1 July 2004. | 2005 Annual Report | Listed entities     |
| For each of the directors and named executives:  
| † Explanation of remuneration that is related to performance  
| † Value of any options that form part of remuneration taking into account those granted, exercised and lapsed  
| † Aggregate values, and percentage of remuneration, of options  
<p>| † If the person is employed under a contract: duration, notice, and termination payment details. | Financial years commencing on or after 1 July 2004. | 2005 Annual Report | Listed entities     |</p>
<table>
<thead>
<tr>
<th>Requirements/Issues</th>
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<th>Effective time of application</th>
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</thead>
<tbody>
<tr>
<td><strong>Annual General Meetings</strong></td>
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</tr>
<tr>
<td>Notices of meetings can be distributed electronically</td>
<td>Notices given after 30 September 2004.</td>
<td>30 September 2004</td>
<td>All entities</td>
</tr>
<tr>
<td>Notice of meeting must include information about the remuneration report resolution.</td>
<td>Financial years commencing on or after 1 July 2004.</td>
<td>2005 AGM</td>
<td>Listed entities</td>
</tr>
<tr>
<td>A notice of meeting must be worded and presented in a clear, concise and effective manner.</td>
<td>Notices given after 30 September 2004.</td>
<td>30 September 2004</td>
<td>All entities</td>
</tr>
<tr>
<td>ASIC is empowered to make regulations that specify certain information need not be included in a notice of meeting.</td>
<td>Notices given after 30 September 2004.</td>
<td>30 September 2004</td>
<td>All entities</td>
</tr>
<tr>
<td>A member can appoint a body corporate as well as an individual as their proxy.</td>
<td>Applies on and from 1 July 2004.</td>
<td>1 July 2004</td>
<td>All entities</td>
</tr>
<tr>
<td>ASIC is empowered to make regulations that prescribe methods for electronic verification for proxies.</td>
<td>Applies on and from 1 July 2004.</td>
<td>1 July 2004</td>
<td>All entities</td>
</tr>
<tr>
<td>Resolution put to shareholders that the remuneration report be adopted.</td>
<td>Financial years commencing on or after 1 July 2004.</td>
<td>2005 AGM</td>
<td>Listed entities</td>
</tr>
<tr>
<td>The chair of a meeting must allow members as a whole a reasonable opportunity to ask questions about or comment on the remuneration report.</td>
<td>Financial years commencing on or after 1 July 2004.</td>
<td>2005 AGM</td>
<td>Listed entities</td>
</tr>
<tr>
<td>Members can submit questions to the auditor concerning the auditor’s report or the conduct of the audit.</td>
<td>Financial years commencing on or after 1 July 2004.</td>
<td>2005 AGM</td>
<td>Listed entities</td>
</tr>
<tr>
<td>Company must make auditor’s list of questions available at AGM.</td>
<td>Financial years commencing on or after 1 July 2004.</td>
<td>2005 AGM</td>
<td>Listed entities</td>
</tr>
<tr>
<td>Lead auditor or a suitable representative must attend an audited body’s AGM</td>
<td>Financial years commencing on or after 1 July 2004.</td>
<td>2005 AGM</td>
<td>Listed entities</td>
</tr>
<tr>
<td>Chair of an AGM must allow the members as a whole a reasonable opportunity to ask questions of the auditor.</td>
<td>Financial years commencing on or after 1 July 2004.</td>
<td>2005 AGM</td>
<td>Listed entities</td>
</tr>
<tr>
<td>Annual reports can be distributed electronically.</td>
<td>Financial years commencing on or after 1 July 2004.</td>
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<td>All entities preparing financial reports</td>
</tr>
<tr>
<td><strong>Continuous disclosure reforms</strong></td>
<td></td>
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</tr>
<tr>
<td>A person involved in a listed entity’s contravention of the continuous disclosure provisions can be personally responsible for the contravention.</td>
<td>Contravention occurring on or after 1 July 2004.</td>
<td>1 July 2004</td>
<td>Listed entities</td>
</tr>
<tr>
<td>Requirements/Issues</td>
<td>Timing</td>
<td>Effective time of application</td>
<td>Applicable entities</td>
</tr>
<tr>
<td>------------------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>ASIC can issue ‘infringement notices’ where it has reasonable grounds to believe that a disclosing entity has contravened the continuous disclosure provisions (section 674(2) or 675(2)).</td>
<td>Contravention occurring on or after 1 July 2004.</td>
<td>1 July 2004.</td>
<td>Disclosing entities</td>
</tr>
<tr>
<td><strong>Audit Reforms</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The company cannot employ a member of an audit firm, or director of an audit company who was a professional member of that audit team as an officer until 2 years from the date of ceasing to be with the audit firm or company.</td>
<td>Time of departure occurring on or after 1 July 2004.</td>
<td>1 July 2004.</td>
<td>All entities requiring audit</td>
</tr>
<tr>
<td>The company cannot employ a lead or review auditor as an officer until 2 years from the date of ceasing to be with the audit firm or company.</td>
<td>Time of departure occurring on or after 1 July 2004.</td>
<td>1 July 2004.</td>
<td>All entities requiring audit</td>
</tr>
<tr>
<td>A company is restricted from employing more than one former audit firm partner or audit company director as officer of the company.</td>
<td>Time of employment commencing on or after 1 July 2004.</td>
<td>1 July 2004.</td>
<td>All entities requiring audit</td>
</tr>
<tr>
<td>Requires rotation of a person who plays a significant role in an audit for 5 years, or in 5 out of 7 years.</td>
<td>Financial year commencing on or after 1 July 2006.</td>
<td>1 July 2006.</td>
<td>Listed entities</td>
</tr>
<tr>
<td><strong>Register of information about relevant interests</strong></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Listed companies are required to keep a register of information about relevant interests received by the company after issuing a notice under section 672A or received after ASIC issues a section 672C notice.</td>
<td>Information about relevant interests received by a listed company on or after 1 January 2005.</td>
<td>1 January 2005.</td>
<td>Listed entities</td>
</tr>
<tr>
<td><strong>Presentation of prospectuses and other disclosure documents</strong></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Information in prospectuses and other disclosure documents in respect of securities must be ‘worded and presented in a clear, concise and effective manner’.</td>
<td>Disclosure documents lodged with ASIC on or after 1 July 2004.</td>
<td>1 July 2004.</td>
<td>Listed entities</td>
</tr>
<tr>
<td><strong>Whistleblowing provisions protecting employees who report contraventions</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provides protection for officers, employees and contractors of a company who report contraventions or suspected contraventions of the Corporations legislation to ASIC, the company’s auditor, a director or other authorised persons.</td>
<td>All disclosures made on or after 1 July 2004, including any disclosure of information about circumstances that arose before that day.</td>
<td>1 July 2004.</td>
<td>All entities</td>
</tr>
</tbody>
</table>