

CHAIRMAN OF THE BOARD

2ND EDITION

AUSTRALIAN INSTITUTE
of COMPANY DIRECTORS

CHAIRMAN OF THE BOARD

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Foreword

The chairman of the board in today's environment, regardless of the size or mission of the organisation, is expected to perform like the conductor of a world class orchestra. He or she must ensure that all of the musicians, talented as they are in their own right, come together to create a command performance – the future of the orchestra depends upon this.

Similarly, in the boardrooms around Australia, the chairman must take the lead and assist the other talented and capable directors around the table to produce a positive result for all stakeholders. This must be done in an increasingly complex environment, balancing the huge workload of today's boards with what is expected by their stakeholders. The future of the entity, and the many who rely on it, depends on this performance.

In recognition that chairmanship is now such a vital role – not only to each entity with a board but to Australia's economy – the chairman's position description now reads like a rather demanding full-time role.

For instance, the year's agenda must be set, each meeting's agenda prepared, minutes reviewed and risk mitigation balanced by performance. All of this and more while catering for a diversity of views and backgrounds represented around the table, ensuring director duties and responsibilities are met, mentoring and monitoring the CEO, and overseeing that a culture of governance is established and maintained.

No small ask. And if you are the chairman of a smaller entity, whether private or not-for-profit, you may be required to do all of this, and more, with little or no support or remuneration.

Ultimately, as chairmen we must not only be expert facilitators overseeing directors' duties and governance, but also keep an eye on our use-by-date with a succession plan at the ready in order to exit at the "right time".

Being a chair is a privilege – a role you can only be voted into (and out of) by your peers. And like an orchestra's conductor, working toward your best possible performance means working toward the best possible performance of your fellow directors.

As such, I commend this book to all chairmen and hope that the information contained within it, as well as the comments from the many experienced chairmen throughout it, will inspire and support you in your role.

David Crawford AO FAICD

Chair, Chairman's Forum

The Australian Institute of Company Directors

December, 2012

(Acknowledgement is due to my esteemed colleague and expert chairman, David Gonski, who has often referred to the chairman of the board as the conductor of an orchestra.)

Chapter One

Chairmanship in Context

Chairmanship today is shaped from many directions, including legislation, common law, regulators, company constitutions and charters, current economic factors, societal expectations and, of course, through contemporary practice in boardrooms around the country.

The sections in this chapter cover some of the formal mechanisms and current practices that shape the *position* of chairman,¹ whereas the discussion of the *role* is contained in Chapter 2.

What follows is not exhaustive. It is important to understand the various ways your position as chairman is specifically affected.

Formal mechanisms affecting chairmanship

The Corporations Act 2001

Chairmanship

In Australia, the *Corporations Act 2001*² (the Corporations Act or the Act) sets out the laws that govern company directors,³ but does not specifically define the chairman's role.

However, some of the procedural duties relating to chairmen are referred to in the following sections of the Act:

-
- 1 Within the *Corporations Act 2001*, the term used is 'chair'. Throughout this book, 'chair', 'chairman' and 'chairmen' are used and at all times these terms are intended to be non-gender-specific.
 - 2 To view the *Corporations Act 2001* in detail visit www.austlii.edu.au/au/legis/cth/consol_act/ca2001172/. Sections shown may not be complete. Please refer to the section within the actual Act to read in full.
 - 3 For more about the duties and responsibilities of company directors, please see *Duties and Responsibilities of Directors and Officers* 20th Edition by Professor Robert Baxt AO FAICD*Life*, published by the Australian Institute of Company Directors, 2012.

Section 248E Chairing directors' meetings (replaceable rule⁴ see section 135)

- 1) The directors may elect a director to chair their meetings. The directors may determine the period for which the director is to be the chair.
- 2) The directors must elect a director present to chair a meeting, or part of it, if:
 - a) a director has not already been elected to chair the meeting; or
 - b) a previously elected chair is not available or declines to act, for the meeting or the part of the meeting.

Section 248G Passing of directors' resolutions (replaceable rule see section 135)

- 1) A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution.
- 2) The chair has a casting vote if necessary in addition to any vote they have in their capacity as a director.

Note: The chair may be precluded from voting, for example, by a conflict of interest.

Section 249U Chairing meetings of members (replaceable rule see section 135)

- 1) The directors may elect an individual to chair meetings of the company's members.
- 2) The directors at a meeting of the company's members must elect an individual present to chair the meeting (or part of it) if an individual has not already been elected by the directors to chair it or, having been elected, is not available to chair it, or declines to act, for the meeting (or part of the meeting).
- 3) The members at a meeting of the company's members must elect a member present to chair the meeting (or part of it) if:
 - a) a chair has not previously been elected by the directors to chair the meeting; or
 - b) a previously elected chair is not available, or declines to act, for the meeting (or part of the meeting).

⁴ According to ASIC, "The basic rules for internally managing a company are included in the *Corporations Act 2001* as 'replaceable rules'. A company may use the replaceable rules for its internal governance. This means the company does not need to have its own written constitution with the expense of keeping the constitution up to date with the law, even in the event that the replaceable rules are amended". For more information, visit www.asic.gov.au.

- 4) The chair must adjourn a meeting of the company's members if the members present with a majority of votes at the meeting agree or direct that the chair must do so.

Section 250BB Proxy vote if appointment specifies way to vote

- 1) An appointment of a proxy may specify the way the proxy is to vote on a particular resolution. If it does:
 - a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way; and
 - b) if the proxy has 2 or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands; and
 - c) if the proxy is the chair of the meeting at which the resolution is voted on, the proxy must vote on a poll, and must vote that way; and
 - d) if the proxy is not the chair – the proxy need not vote on the poll, but if the proxy does so, the proxy must vote that way.

Note: A company's constitution may provide that a proxy is not entitled to vote on a show of hands (see subsection 249Y(2)).

- 2) If the chair contravenes subsection (1), the chair commits an offence if the appointment as a proxy resulted from:

Section 250E How many votes a member has (replaceable rule see section 135)

Company with share capital and company without share capital re the Chair's casting vote

- 3) The chair has a casting vote, and also, if they are a member, any vote they have in their capacity as a member.

Note 1: The chair may be precluded from voting, for example, by a conflict of interest.

Section 250S Questions and comments by members on company management at AGM

- 1) The chair of an AGM must allow a reasonable opportunity for the members as a whole at the meeting to ask questions about or make comments on the management of the company.
- 2) An offence based on subsection (1) is an offence of strict liability.

Section 250SA Listed company – remuneration report

At a listed company's AGM, the chair must allow a reasonable opportunity for the members as a whole to ask questions about, or make comments on, the remuneration report. This section does not limit section 250S.

Section 250T Questions by members of auditors at AGM

- 1) If the company's auditor or their representative is at the meeting, the chair of an AGM must:
 - a) allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or the auditor's representative questions relevant to:
 - i) the conduct of the audit; and
 - ii) the preparation and content of the auditor's report; and
 - iii) the accounting policies adopted by the company in relation to the preparation of the financial statements; and
 - iv) the independence of the auditor in relation to the conduct of the audit; and
 - b) allow a reasonable opportunity for the auditor or their representative to answer written questions submitted to the auditor under section 250PA.
- 2) An offence based on subsection (1) is an offence of strict liability.

Section 250BD Proxy voting by key management personnel or closely related parties

- 1) A person appointed as a proxy must not vote, on the basis of that appointment, on a resolution connected directly or indirectly with the remuneration of a member of the key management personnel for the company or, if the company is part of a consolidated entity, for the entity if:
 - a) the person is either:
 - i) a member of the key management personnel for the company or, if the company is part of a consolidated entity, for the entity; or

- ii) a closely related party of a member of the key management personnel for the company or, if the company is part of a consolidated entity, for the entity; and
- b) the appointment does not specify the way the proxy is to vote on the resolution.

Note 4: Failure to comply with this subsection is an offence: see subsection 1311(1).

- 1) Subsection (1) does not apply if:
 - a) the person is the chair of the meeting at which the resolution is voted on; and
 - b) the appointment expressly authorises the chair to exercise the proxy even if the resolution is connected directly or indirectly with the remuneration of a member of the key management personnel for the company or, if the company is part of a consolidated entity, for the entity.

Section 251A Minutes

- 1) A company must keep minute books in which it records within 1 month:
 - a) proceedings and resolutions of meetings of the company's members; and
 - b) proceedings and resolutions of directors' meetings (including meetings of a committee of directors); and
 - c) resolutions passed by members without a meeting; and
 - d) resolutions passed by directors without a meeting; and
 - e) if the company is a proprietary company with only 1 director – the making of declarations by the director.

Note: For resolutions and declarations without meetings, see sections 248A, 248B, 249A and 249B.

- 2) The company must ensure that minutes of a meeting are signed within a reasonable time after the meeting by 1 of the following:
 - a) the chair of the meeting;
 - b) the chair of the next meeting.
- 3) The company must ensure that minutes of the passing of a resolution without a meeting are signed by a director within a reasonable time after the resolution is passed.

- 4) The director of a proprietary company with only one director must sign the minutes of the making of a declaration by the director within a reasonable time after the declaration is made.
 - 5) A company must keep its minute books at:
 - a) its registered office; or
 - b) its principal place of business in this jurisdiction; or
 - c) another place in this jurisdiction approved by ASIC.
- 5A) An offence based on subsection (1), (2), (3), (4) or (5) is an offence of strict liability.

Section 252S Chairing meetings of members

- 1) The responsible entity may, in writing, appoint an individual to chair a meeting called under section 252A or 252B.
- 2) The members present at a meeting called under section 252A or 252B must elect a member present to chair the meeting (or part of it) if:
 - a) a chair has not previously been appointed to chair the meeting; or
 - b) a previously appointed chair is not available, or declines to act, for the meeting (or part of the meeting).
- 3) The members present at a meeting called under section 252C, 252D or 252E must elect a member present to chair the meeting. This is not so if the meeting is called under section 252E and the Court has directed otherwise under section 1319.

The powers of the board

The board's power is conferred in a variety of ways, including the *Corporations Act 2001* replaceable rules and/or the company or organisation's constitution, and shareholders in general meetings.

The Corporations Act allows a great deal of latitude in terms of delegation. The directors can use the company's charter to establish the scope and limits of management's authority, which matters are reserved for the board and which are delegated, the reporting relationship and a job description for the senior executive.

Most public companies adopt their own constitutions, and it is this document, even with comparable provisions to the Act, that governs the powers of the board.

Where a constitution has not replaced it, Sections 198A, C and D of the Act, collectively form the basis of the powers of the board, as summarised below:

- **Section 198A Powers of directors** provides that the business of a company is to be managed by or under the direction of the directors. And the directors may exercise all the powers of the company except any powers that this Act or the company's constitution (if any) requires the company to exercise in general meeting.
- **Section 198C Managing director** provides that the directors of a company may confer on a managing director any of the powers that the directors can exercise. The directors may revoke or vary a conferral of powers on the managing director.
- **Section 198D Delegation** provides that unless the company's constitution provides otherwise, the directors of a company may delegate any of their powers to: a committee of directors; or a director; or an employee of the company; or any other person. The delegate must exercise the powers delegated in accordance with any directions of the directors. The exercise of the power by the delegate is as effective as if the directors had exercised it.

Director rights and powers – a refresher

The Act grants considerable powers to directors – broadly, they are responsible for the management of the company's business and may exercise all the powers of the company for that purpose.

To enable directors to perform their duties and exercise their powers effectively during their tenure, directors also have certain rights and entitlements from the company they direct and in defending themselves in legal proceedings after ceasing to be a director.

Under the Corporations Act the main rights of directors are captured in four sections, and are summarised below:

- **Section 173 Right to inspect and get copies** gives currently serving directors the right to inspect books, other than financial records, at all reasonable times for the purposes of a legal proceeding to which they are party or wish to bring against others, or believes may be brought against

them. Furthermore, the Act grants former directors the right to inspect books including financial records for up to seven years after ceasing to be a director. Again this only applies for the purpose of a legal proceeding. A company cannot refuse access. This period of access may be extended by the company's deeds of access.

Information can only be used by the director for the purposes of the company, e.g. if an ex-director and the company are in litigation with each other if may be difficult for the ex-director to establish that access to documents are for the purposes of the company.

Directors will want to ensure that the company keeps a complete set of board materials in chronological order from the date they join the company until seven years after they leave and confirm that copies will be available should they be needed.

- **Section 198A Powers of directors** provides that “the business of a company is to be managed or under the direction of the directors”.
- **Section 199B Insurance premiums for certain liabilities of director, secretary, other officer or auditor** provides that directors can obtain insurance against liability in certain circumstances but they cannot get insurance for certain breaches of the *Corporations Act 2001*. It is important to have appropriate Directors and Officers Insurance (D&O), not the least because an indemnity will be of little assistance if the company has insufficient funds to meet a claim by a director for indemnity.
- **Section 290 Right to director access** provides the right of access for a currently serving director to “financial records” (which are defined in a relatively limited way) at all reasonable times. A director may apply for a court order to allow another person to inspect and make copies of the records on their behalf. The court must be satisfied that the applicant is acting in good faith and that the inspection is to be made for a proper purpose. At common law a director is entitled to inspect, and to take copies of, the books and accounts of the company. The director may exercise that right personally or employ a proper agent to make the examination for him or her.

For a summary of the main legal requirements regarding holding a meeting of directors, see Appendix 3.

Company constitutions and charters

Where an entity does not rely solely on replaceable rules, the primary contract between the company, the board and the shareholders is the company's constitution.

The role of the chairman, and other areas relating to the chairman, such as remuneration, may or may not be specified in an individual constitution.

Many professional bodies, clubs, charities and not-for-profits (NFPs) have constitutions that specifically require the direct election of a chairman or president. Some constitutions provide for such officers to have special powers and responsibilities and others provide for direct appointment but without special powers.

Generally, experienced chairmen agree that a company's constitution must be a 'living' document often referred to and must, by law, be kept up-to-date with relevant laws.

"A new company constitution I have recently been involved in adopted the following formulation: 'The Directors may exercise all such powers of the Company as are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting, and the Directors shall be responsible for overseeing the proper management of the business of the Company.'"

Graham Bradley AM FAICD

Board charters

While all entities must use replaceable rules and/or a constitution, board charters are not required by law, however they are increasingly being used as the primary document outlining governance within the board.

As such, where a constitution may not outline a chairman's role, board charters generally do, as well as detailing many primary aspects of board composition, operations, matters reserved for the board and the like.

Board committee charters, used to outline their operation, will generally state that

chairmen of the board must not also be the chairman of the audit committee.⁵ For S&P/ASX 300 companies,⁶ this separation is a requirement. (See Board Committees in Chapter 2.)

Other than the board charter, the chairman's role can often be spelled out in other documents, including a 'board protocol' (a separate policy document), and in letters from the chairman to the board, which are discussed by the board and must then be adopted as policy to have any formal effect.

ASX Corporate Governance Principles

Australian listed companies must comply with Australian Securities and Exchange (ASX) Listing Rules,⁷ which set the standards and behaviour for publicly traded companies. In 2002, the ASX convened the ASX Corporate Governance Council to enhance governance in this sector and established the *ASX Corporate Governance Principles and Recommendations*⁸ (the ASX Principles). At the time of publishing, the most current version contains the 2010 Amendments.

Under Listing Rule 4.10.3, listed entities are required to benchmark their corporate governance practices against these recommendations and, where they do not conform, must disclose this and the reasons why. This is often referred to as the 'if not, why not' rule.

Chairmen and prospective chairs of a listed company are urged to be familiar with the ASX Principles (and any reviews and updates) as they establish important guidelines regarding the chairman role, and particularly in relation to committee membership.

The ASX Principles also recommend that listed companies publish the roles and responsibilities of the board and management, and suggests what these might cover.

The ASX Principles can also provide a helpful governance framework for other entities; the chairmen and directors of many unlisted companies use it to help shape their board structures and procedures.

5 For a more in-depth discussion about audit committees, see *Audit Committees: A guide to good practice*, 2nd Edition 2012.

6 See www.asxgroup.com.au for more information about governance rules applying to this type of listed entity.

7 For more information about ASX Listing Rules, visit www.asxgroup.com.au.

8 For more information about *ASX Corporate Governance Principles and Recommendations*, visit www.asx.com.au/governance/corporate-governance.htm.

Special circumstances relating to chairmanship

There are many companies and other organisations in which the chairman's position is different than under the *Corporations Act 2001*.

It is common for the chairmen of Government⁹ Business Enterprises to be appointed by the relevant minister, or by the governor in council. There may be special legislation which applies instead of, or as well as, the Act and there may also be a constitution which governs appointments.

Sometimes chairmen appointed under these circumstances are given specific powers and functions, sometimes they are given de facto powers as a result of ministerial directions or ad hoc intervention, and sometimes their powers are equivalent to those in the private sector.

In the private sector it is usual for parent companies to nominate the chairmen of wholly or partly owned subsidiaries and for joint venture partners to agree on the chairmanship, or the right to appoint the chairman, as part of the joint venture agreement.

In such cases the members of the board will make the formal appointment of the nominee, unless specific provision for some other procedure has been made in the company's constitution or the joint venture agreement. It is common for the chairmen appointed by parent companies to be given special powers or functions.

Circumstances differ widely in all of these special situations and chairmen of these companies, or other organisations, should study the relevant constitutions, any special legislation and any other relevant provisions or practices, such as ministerial directions.

Australian Charities and Not-For-Profits Commission

In the federal government's 2011-2012 budget it announced reform of the NFP sector and established the Australian Charities and Not-For-Profits Commission (ACNC),¹⁰ an independent statutory office tasked with providing regulatory oversight of NFPs.

New legislation passed through both Houses of Parliament on 31 October, 2012 and comprises two Bills: *the Australian Charities and Not-For-Profits Commission*

9 For a more in-depth discussion about public sector boards, see *All Above Board: Great governance for the government sector* 2nd Edition by Julie Garland McLellan, 2011.

10 For more detail, visit <http://acnctaskforce.treasury.gov.au>.

Bill 2012 and the Australian Charities and Not-For-Profits Commission (Consequential and Transitional) Bill 2012 (collectively known as the ACNC Bills). The objects of the ACNC Bills are as follows:

- to maintain, protect and enhance the public trust and confidence in the NFP sector;
- to support and sustain a robust, vibrant, independent and innovative NFP sector; and
- to promote the reduction of unnecessary regulatory obligations on the NFP sector.

These objects will be pursued through:

- the establishment of a national regulatory framework specifically focused on NFP entities to reflect the unique goals, structures and funding arrangements of NFPs;
- the establishment of the ACNC Commissioner who will be responsible for:
 - registration of entities according to type and subtypes;
 - administering the national regulatory framework; and
 - assisting registered entities to comply with and understand their regulatory obligations.

Registration with the ACNC will be voluntary, however charities must register to access Commonwealth tax concessions and other concessions, exemptions and benefits.

At present, it is not known whether the role of NFP board chairmen will be affected. If you are a chairman of an NFP board, it is vital to keep abreast of any developments affecting this sector.

The Australian Institute of Company Directors is taking a keen interest in the reform process and along with making submissions, will be preparing its own NFP governance guidelines.

Recent legal cases

There have been a handful of high profile legal cases over the last decade focused on director duties and including the actions of individual chairmen. However,

none have definitively resulted in defining the chairman's role, though most agree that chairmen generally have more responsibilities than other board members.

What is at stake is whether this higher level of responsibility creates a defined higher level of liability.

These cases are discussed in Appendix 2.

The position of chairman

Independence

The ASX Corporate Governance Council emphasises that the chair should be an independent¹¹ non-executive director – free from potentially conflicting relationships with the organisation, including being an executive or professional adviser within the last few years, being a substantial shareholder or supplier, and having no material contractual relationships with the organisation.

Appointing the chairman

Appointing the chairman is a critical function of the board. At the minimum, the chairman must be a director of the company in order to be elected by the other directors.

Ideally, the board will have already identified one of the sitting board members as the chairman's successor. The chairman often leads this process and, if the board is unable to reach consensus, might consult an independent recruitment professional.

“In my experience there are many factors to consider when you are choosing a chairman. One is clearly finding the right person for the right time. If you have a calamity you need a strong person who takes the leadership role. If the company is going quite well you may need someone who is not so dominant and more collegiate. Change is always happening. It used to be that you sat out your time and became chairman by natural progression.” David Gonski AC FAICD*Life*

11 For more information, see the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations*, Recommendation 2.2. (2010 amendment).

If no one on the board has sufficient time and interest, appropriate leadership qualities or a sufficiently high profile for the role, a chairman can be recruited from outside the board. This requires particular care and, as it should involve the same rigorous search and selection process applied to finding any new director, it could be time consuming.

Although directors have the power to replace a chairman without notice and without giving a reason, so long as the deposed chairman has not been removed by shareholders (it is worth remembering that only shareholders can act to remove a director), he or she can remain on the board for the rest of his or her term, and also vote on the resolution to determine the new chairman.

While shareholders cannot elect or dismiss a chairman directly, they may refuse to re-elect him or her as a director. There have been instances where a chairman has been removed from the board by majority vote at a general meeting of shareholders. However, this approach can attract intense media scrutiny and the company's reputation may well be damaged. Where possible, the change should take place inside the boardroom.

Chairmen's remuneration

Chairmen usually have a larger workload than their colleagues and usually spend more time fulfilling their duties. Although, now it is not uncommon for chairmen of audit committees to carry a workload that can equal that of the chairman of the board.

Along with their duties relating to chairing board meetings, chairmen will typically attend many committee meetings, even though not formal members of those committees. In addition, chairmen undertake numerous tasks outside board meetings, and are more frequently called upon to meet with key investors, with governance and proxy advisors, with remuneration consultants and will typically meet privately with the company's auditors at least once or twice per year.

Of course, the chairman's relationship with the CEO will command a significant and justifiable portion of the chairman's time (see the section, Managing key relationships in Chapter 2 for more detail about chairman/CEO interactions).

In setting chairmen's fees, it is important to consider the time and travel demands required and the potentially increased risk of heightened legal responsibility flowing from recent legal cases (see a discussion of these cases in Appendix 2).

As with fees paid to directors, committee chairmen and committee members, the remuneration of chairmen is usually set by the board after careful consideration of market relativities, and often with advice from independent remuneration consultants to the board or remuneration committee.

It has become normal practice in Australia for chairmen of public companies to receive two to three times the base fee for ordinary directors. It is also normal, however, for the chairman not to receive additional remuneration for being a member of board committees, even though it is normal for the chairman to serve on at least one board committee and often to chair the nomination and remuneration committee. Within this sector it is usual for the chairman to be paid a flat fee with no offer of options, bonuses and the like.

Of course, chairmen of many NFP boards volunteer their time and receive no remuneration, however reimbursement of their board related expenses is typical and generally there is an operating budget for the board itself.

Combining the CEO and chairman roles

Corporate governance approaches around the world differ in their views on whether an organisation is better served when the roles of CEO and chairman are combined. For example, in Australia the ASX Principles require compliance or an explanation for this practice in listed companies; while in America, it is quite common in companies of all sizes.

The benefits of combining the roles include faster and easier decision-making, less conflict over authority and less potential for confusion when issues are not clearly operational or strategic. However, keeping the roles separate reduces the potential for conflicts of interest and the likelihood that the board agenda will be dominated by operational matters at the expense of governance and longer-range strategy. As such, no *one* person has undue power over board processes. Furthermore, the board, chaired independently, is better able to exercise its role of overseeing management.

Deputy chairmen and lead independent director

A deputy chairman can play a useful role in chairing meetings if the chairman is unable to attend and can also assist with liaising with other directors if the board is large. The deputy can also be a natural successor, though, if a change in chairman

is associated with other changes in the board, the succession may be challenged. Generally, most boards see no need to appoint an official second in command.

Some Australian boards have adopted the practice, widely followed in Britain, of appointing a senior non-executive director as the 'lead independent director'. This is done especially where there is a major shareholder with representative directors on the board.

The lead independent director can be useful for sounding out other directors on the chairman's behalf, particularly on a sensitive matter, and where the chairman may have a conflict of interest. He or she would also normally be expected to organise the election of a new chairman. In the absence of a lead independent director, the board would need to appoint another senior director to act in this role.

Succession

Most chairmen take responsibility for designing the succession plan for the board as a whole, in consultation with the nomination committee. This will include planning for his or her potential successors. It is important that the nomination committee be closely involved in this process and, when settling or changing board committee membership, or recruiting new directors, the board has an eye out for potential future chairmen.

"In my view, the key to successful chair succession is 'quiet soundings'. If there is only one candidate it is, of course, easy, but if there is more than one, the more open the 'electoral' processes, the more likely it is that the unsuccessful candidate will not only lose the race but also lose face. This can lead to unnecessary bitterness."

Peter Duncan FAICD

In listed companies it is unusual to find set term limits for directors or chairmen, and it is often important to ensure continuity at board and chairman level, particularly if a change of CEO leadership is on the horizon.

Once the decision is made that it would be in the interest of the company for the chairman to retire, it is good practice for the succession process to be handled by either a lead independent director or chair of the nomination committee, rather than the chairman directly.

Experienced chairmen agree that the chairman should step back from the process after expressing his or her view on the merits of possible successors. It is rarely a good idea for a retiring chairman to remain a non-executive director after retirement.

“The question is often asked whether a chairman should be asked to remain on the board after they stand down from that role. In favour of this is the fact that corporate knowledge may be lost from his or her departure. Against this is the difficulty of the new chairman being able to make changes, establish his or her authority and do things their way without concern for offending their predecessor. In general, the negative surpasses the positive.

There is also the question of whether a chairman who has been the CEO (either permanently or for a short term) can be or continue to be an independent chairman. There is strong argument that a person in such circumstances is tainted and to get the best from the existence of an independent chairman it is generally wise for such a person not to be or continue to be the chairman.” David Gonski AC FAICD *Life*