Governance Institute of Australia

Survey on the practice of minutes

Report on results

April 2018

Executive summary

The survey indicates that the principal function of meeting minutes is to serve as a record of the key points of discussion, to record decisions and the reasons for decisions and agreed actions. The company secretary is responsible to the chair for the preparation and retention of the minutes. The chair and the other members of the board are responsible for confirming their accuracy, with an item of business at the succeeding board meeting usually being to approve the minutes of the previous meeting.

In addition to the date, time, venue, how it was held and those present or providing apologies, there is a range of other preliminary information that should be included in minutes such as, start and finish time, declarations of interest and the capacity in which directors or others are in attendance. Many also consider it good practice to include 'legal boilerplate wording' such as consideration of conflicts of interest. Minutes should be written in reported speech and a number of respondents observed that the chair will be an important influence on the style of minutes. Minutes should not be a verbatim record of the meeting. Individual's names should be included when appropriate, such as, dissenting views, conflicts of interest, apologies and absentees. Approximately half of the respondents agreed with the traditional view that board minutes should document the reasons for the decision and include sufficient background information for future reference. The level of detail required is a matter of judgment and most company secretaries have the requirements of the 'business judgment rule' in mind when drafting minutes.

Most company secretaries consider that where papers are received for noting, the board minutes should simply indicate that the report was received and noted, unless there is additional discussion that needs to be documented. It is sufficient to include a reference to presentations or other papers — including copies of these materials in the minutes is not common practice.

Almost half of the survey respondents agreed that minutes should be drafted to facilitate regulatory oversight and many commented that minutes are drafted in the expectation that a regulator may wish to see them. The most common secondary users of board minutes are auditors. There is also a perceived risk of minutes being discovered during a discovery process, particularly where legal advice may be under discussion. For these reasons it is important to avoid excessive detail and it may be prudent to obtain legal advice about maintaining legal professional privilege.

Most respondents consider that dissenting views should only be recorded in minutes at the request of the director (dissenter) and a number of responses referred to the important role the chair has to play in these circumstances. Almost all respondents consider directors should have an opportunity to suggest amendments to minutes before their approval at the next meeting. Most respondents consider minutes are not for publication and there are risks attached to publishing minutes, although in certain sectors, publication is required. Holding unminuted or 'informal' meetings should be discouraged, but respondents provided some helpful suggestions for dealing with any decisions or actions from 'in camera' or 'director only' sessions.

Almost half of respondents consider conflicts of interest should be declared and/or noted in board minutes. Interestingly almost half of respondents consider 'conflicted' directors should receive full minutes with no redactions. In terms of style, the chair is the strongest influence on the content and style of board minutes. Executives should be permitted to provide technical input on sections of the minutes relating to their presentations, providing there is no conflict with the company secretary's notes, which should always take precedence. Once the minutes have been approved they should not be amended. Errors discovered subsequently should be agreed and minuted and the amendment noted on the original minutes. There was a range of suggestions and views on dealing with material events arising between the board meeting and the review of the minutes.

Most respondents allow auditors full access to board minutes and provide copies, although a number of respondents observed they do not allow auditors to take copies, but do allow access so they can make

notes. There was a range of views about giving regulators access to minutes. Approximately one third of respondents consider a regulator's legal right to access should be established and it will depend on the regulator and their statutory power. Except pursuant to a court order, most respondents would not allow anyone else access to board minutes.

The company secretary's notes are retained until the minutes are approved and then destroyed, because otherwise these notes would be discoverable or discloseable in litigation. The practice of recording board meetings is not widespread and would only take place in limited circumstances and the recordings destroyed once the board approves the minutes.

Many survey respondents took the time to provide a range of additional comments, demonstrating that the topic of minutes is of great interest to Governance Institute's members, probably best summarised by the following response:

.. people frequently pay little to no regard to the very difficult and exacting task that minute taking and drafting is. It requires an understanding of the business, of the law and regulation, a superior command of the English language and a nuance of language. Regard has to be had to potential regulatory scrutiny of the minutes. The minutes are relied upon to substantiate what it is that the board decided to do, and will be relied upon when directors are seeking to defend a position in court. As such, it is more than mere note taking — it is a skill honed by years of experience, and needs to be acknowledged as that.

1 About this report

Taking minutes of meetings is administrative good practice. It creates a record of what has been agreed, and by whom; and of what is to be done, by when and by whom. For such a basic aspect of the administration of business of all kinds, it is surprising that there is little formal guidance about how this might most effectively be done.

As the first thought leadership project undertaken by International Institute of Chartered Secretaries and Administrators (ICSA) — of which Governance Institute is the Australian Division — we sought input from all those whose day-to-day work this is across different sectors through member surveys. Similar surveys were carried out across other ICSA divisions: Canada, Hong Kong/China, New Zealand, Southern Africa and Zimbabwe during 2016 and 2017. The aim of these surveys was to determine what sort of guidance about minute taking ICSA members should provide to their members. Of all the Divisions which carried out the survey, Australian responses provided the richest source of data. Members will find many useful insights in these responses.

Survey and methodology

The Australian survey consisted of text outlining Governance Institute's existing position on various minutes-related issues derived from our suite of Good Governance Guides and best practice documents, followed by 35 questions asking respondents to confirm or otherwise comment on those positions.[1]

The survey was emailed to Governance Institute's members during early 2017 and 260 members took the time to respond. While the response rates for questions dropped after Question 20, 85 respondents provided a response to the final free text question. All percentages have been rounded in the report text. All responses to the survey remain anonymous and results are only presented in aggregate and are not attributable to any one participant.

Acknowledgments

Governance Institute acknowledges its members who assisted in compiling the survey and reviewing the report and the Chair of the ICSA Thought Leadership Committee, Edith Shih, who arranged for the compilation of the data for this report.

[1] This text is italicised in the body of the report.

2 Legal and regulatory framework

Unlike company general meetings, board meetings are almost entirely unregulated by the Corporations Act 2001 (Corporations Act). The only references to minutes are under:

- *s 251A, which requires that a company must keep minute books in which it records, within one month, the proceedings and resolutions of directors' meetings (including meetings of a committee of directors). The company must also ensure that the minutes of a directors' meeting are signed by the chair of the meeting (or the chair of the next meeting) within a reasonable time. If minutes are recorded and signed in this way, they are evidence of the proceedings and resolutions passed, unless the contrary is proved*
- *s 253M — the s 251A equivalent for a Responsible Entity*
- *ss 191 and 196 — recording of a material personal interest in the minutes*
- *s 198E — delegations to be recorded in minute book*
- *s 601JH — where a Responsible Entity has a compliance committee, that committee needs to keep minutes*
- *s 601JJ — where a Responsible entity has a compliance committee, any direct or indirect pecuniary interests a members of the compliance committee may have in any matter to be determined by the committee need to be recorded in the compliance committee minutes.*

Minutes of board meetings form part of the company's records and can be held as hard copies or in electronic format — but must be capable of being reproduced in hard copy form (see s 1306 of the Corporations Act). The decision on which format to use should be confirmed at a board meeting and formally recorded.

For companies, directors' duties are set out in ss 180–184. They cover duties to act with reasonable care and diligence; act in good faith in the best interests of the company and for a proper purpose; and not to improperly use their position or information. Statutory duties do not replace fiduciary and common law duties to act in good faith, in the best interests of the company and for a proper purpose and not to use their position to obtain personal advantage but overlap with those duties.

All directors and the company secretary are the officers who are potentially liable for any breach of the statutory duties.

Directors (but not officers) also have a statutory duty to take action in a timely manner to prevent the company trading while it is insolvent or where there are reasonable grounds for suspecting that the company is insolvent or will become insolvent if the company incurs a particular debt.

Similar requirements can be assumed under common law in other sectors or may be specified in regulation (for example, the governance standards applying to the responsible entities — directors — of charities registered with the Australian Charities and Not-for-Profits Commission).

It is therefore important that the minutes of board meetings are drafted in such a way as to demonstrate that the board members have observed their responsibilities to the company and complied with their legal and regulatory duties.

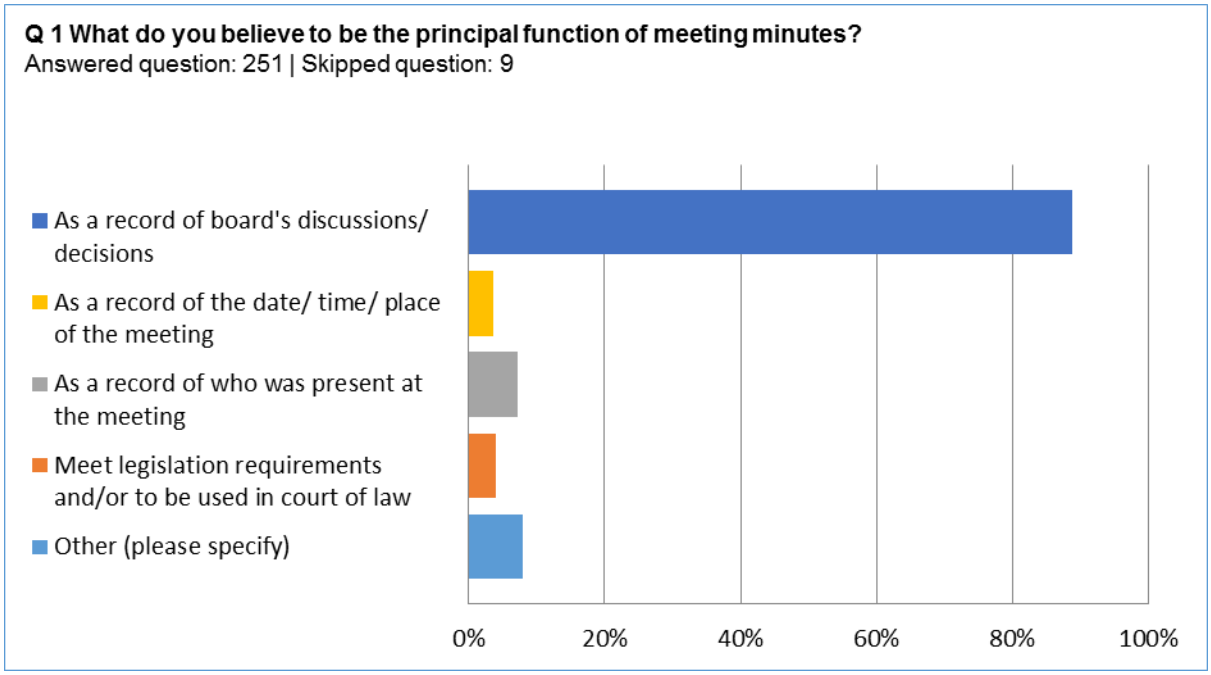
Board meetings are an internal matter and therefore the conduct of board meetings is governed by the organisation's constitutional documents. For example, every company must conduct its board meetings in accordance with its constitution.

Question 1 — What do you believe to be the principal function of meeting minutes?

Response

Most respondents (88 per cent) consider the principal function of meeting minutes is to serve as a record of the board's discussions and decisions. Other respondents referred to the principal function as: to serve as a record of the date, time, place and attendees at a meeting, to meet the requirements of legislation or for use in court.

Among the group who answered 'other', several considered the principal purpose to be to provide evidence that the directors have discharged their duties and met their fiduciary responsibilities.



Question 2 — Are you aware of any other significant legal or regulatory requirements which we should specifically reference in guidance?

Response

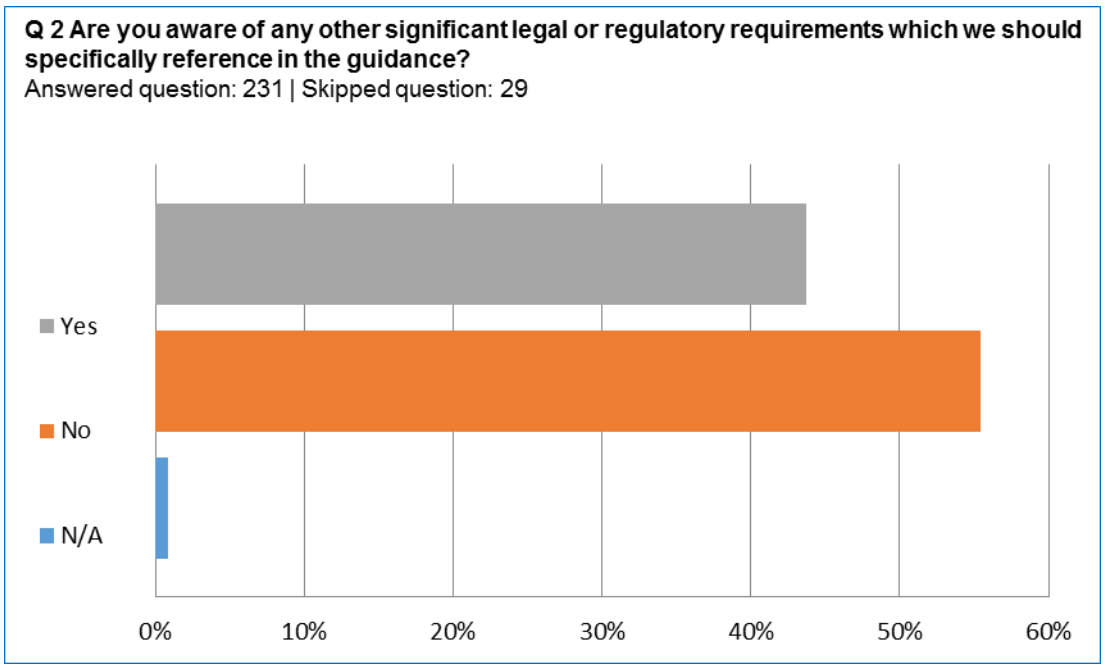
Just over half (55 per cent) of respondents were not aware of other significant legal or regulatory requirements which should be referenced in guidance.

Free text answers cited a range of other requirements including:

- legislative requirements for various public sector entities or committees to record and retain records of meetings

- Recommendation 1.4 of the *Corporate Governance Council's Corporate Governance Principles and Recommendations*[2]
- the requirements of various regulators including: the Australian Charities and Not-for-profits Commission, the Australian Competition and Consumer Commission, the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investments Commission (ASIC) and the Australian Taxation Office (ATO)
- the regulatory framework surrounding minutes as evidence
- case law, including the decision in the *James Hardie* case[3]
- work, health and safety legislation
- the business judgment rule
- requirements for superannuation fund trustees
- the various pieces of state associations' and archives legislation and the Office of the Registrar of Indigenous Corporations
- recording conflicts of interest.

The wide range of other requirements indicates the breadth of issues that the person responsible for taking the minutes may need to consider, and that requirements will vary, depending on the sector in which the company operates.



[2] Recommendation *1.4 in the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations*, 3rd ed (2014) states that 'The company secretary of a listed entity should be accountable directly to the board, through the chair, on all matters to do with the proper functioning of the board'. The commentary to this recommendation states that 'The role of the company secretary should include: … ensuring that the business at board and committee meetings is accurately captured in the minutes'.

[3] *Australian Securities & Investments Commission v Hellicar & Ors* [2012] HCA17.

3 Responsibility for the production of minutes

The governing body of an organisation is responsible for its management and for ensuring that the organisation is run lawfully.

For listed public companies, Recommendation 1.4 indicates that the company secretary is the person responsible for producing the minutes.[4] The role of company secretary will vary according to the size and circumstances of the organisation. In smaller organisations it is likely to be a multi-functional role. Sometimes the legal counsel and company secretarial roles are merged. Capacity to undertake company secretarial responsibilities can arise through experience or qualification. Nevertheless, specific knowledge is required not only in the law but also the practice of meetings. As the professional body responsible for encouraging good governance, Governance Institute recommends education for those seeking to fulfil the role.

Question 3 — Who do you believe should be responsible for the production of minutes?

Response

The overwhelming response was that the company secretary should be responsible for production of minutes. There was some overlap in responses in that 16 per cent of respondents believe the chair should be responsible for production of the minutes, presumably referring to the chair's role in approving the draft minutes.

Several respondents referred to it being important that the person responsible for the minutes is:

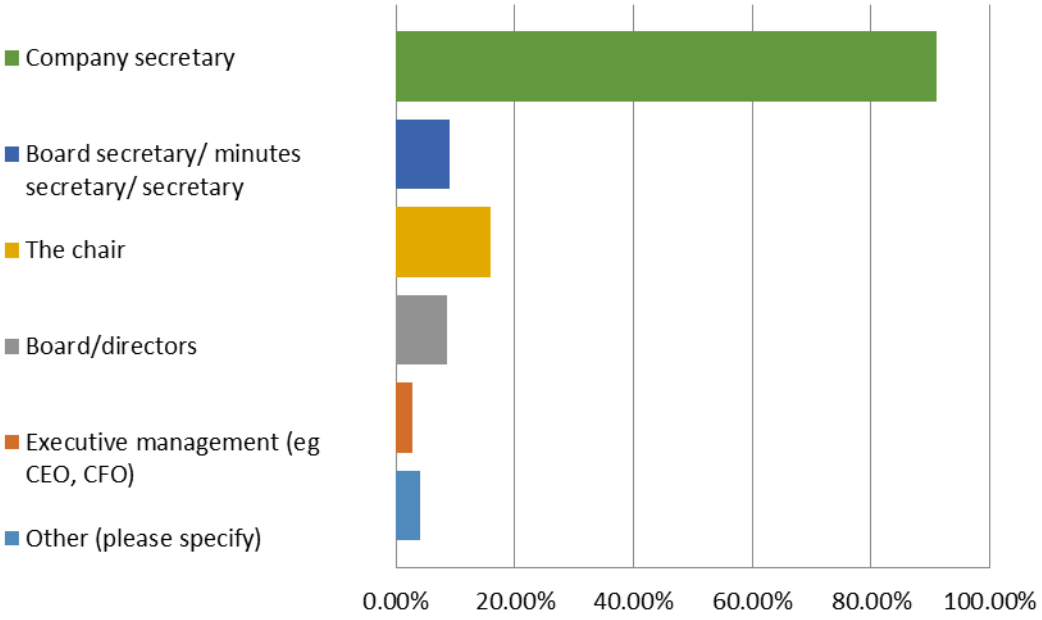
'A person with the relevant experience or qualification to undertake the task. In my experience someone with professional qualifications in accounting or law or who has otherwise undertaken a governance course directed to company secretaries rather than director courses because the focus is different.'

Free text responses emphasised the importance of proper training in taking minutes and that the person responsible for the minutes should have this as a specific responsibility. The clear view is that producing minutes is not something that should be left to a junior member of staff without the appropriate experience and training.

[4] Loc cit.

Q 3 Who do you believe should be responsible for the production of minutes?

Answered question: 244 | Skipped question: 16



4 Drafting minutes

4.1 Preliminary information

All minutes should begin by recording the date, time and venue where the meeting was held, and how it was held (that is, in person, by telephone etc.). They should record those directors and other attendees present, and whether any were not present for the whole meeting, together with apologies from directors unable to attend. The list of directors present should demonstrate there was a quorum. The required number of directors for a quorum will be set out in the organisation's constitution.

Question 4 — Is there any other preliminary information that you believe should be included in board minutes?

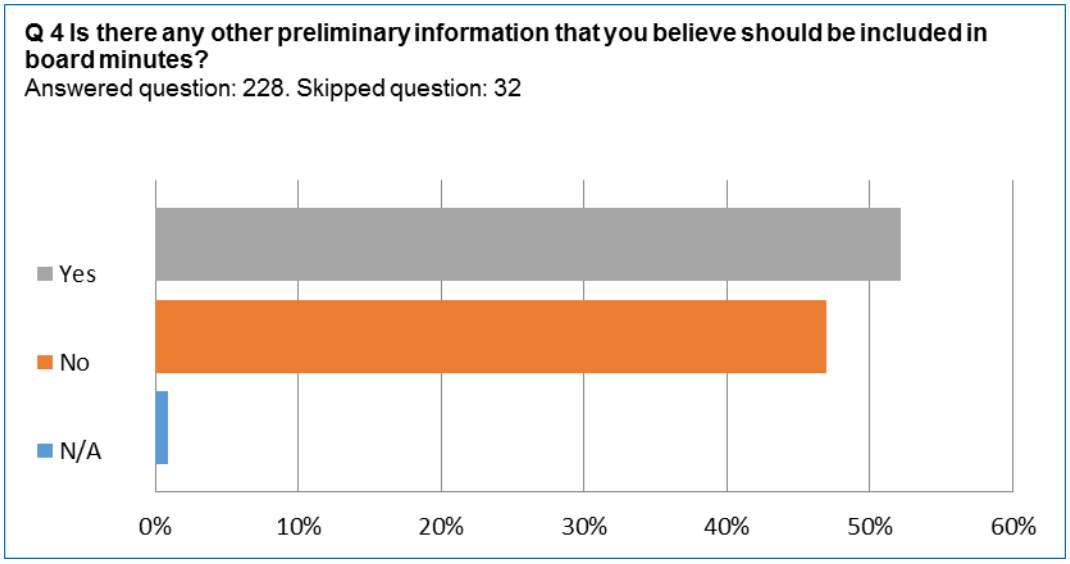
Response

Views on this issue were fairly evenly split — 47 per cent considered no further information, other than that referred to in the commentary above, is required, and 52 per cent considered other preliminary information is necessary.

The most commonly referred to type of other preliminary information was changes to the conflicts of interest register and declarations of interests. Other types of preliminary information included:

- who chaired the meeting, especially where there are provisions in one of the governing documents about how the chair is appointed
- confirmation that quorum and notice requirements are met — a number of respondents considered this should be explicitly referred to in the minutes despite the guidance above
- the starting and finishing time of the meeting, which may differ from the scheduled time and times of the arrival and departure of directors or other attendees and their organisation
- clear indication of time zone minutes are recorded in
- status of directors, for example, nominee directors and any shareholder representatives
- start and finish time for each agenda item to evidence the amount of time the board considered each agenda item
- any declarations from the directors or CEO that they may have become disqualified under a fit and proper policy
- welcome to, or acknowledgment of country
- where a director remains in the meeting during a vote in which they do not take part, this should also be included in the preliminary information as well as in the relevant section of the minutes
- type of meeting — regular, adjourned or additional and the number of the meeting if the company uses this convention
- whether agenda items were discussed in the order in which they are recorded in the minutes
- Australian Company Number at the top of each page (useful where there are multiple subsidiaries)
- apologies, any leave of absence granted to a director and whether any director is absent without apology or leave
- where a company is experiencing cash flow issues the chair should ask the directors at the conclusion of the meeting whether they believe the company is solvent
- confirmation of minutes of previous meeting (arguably more properly part of the meeting).

Responses provide a number of helpful suggestions for minute-takers to consider and indicate a wide range of practices to accommodate entities from different sectors.



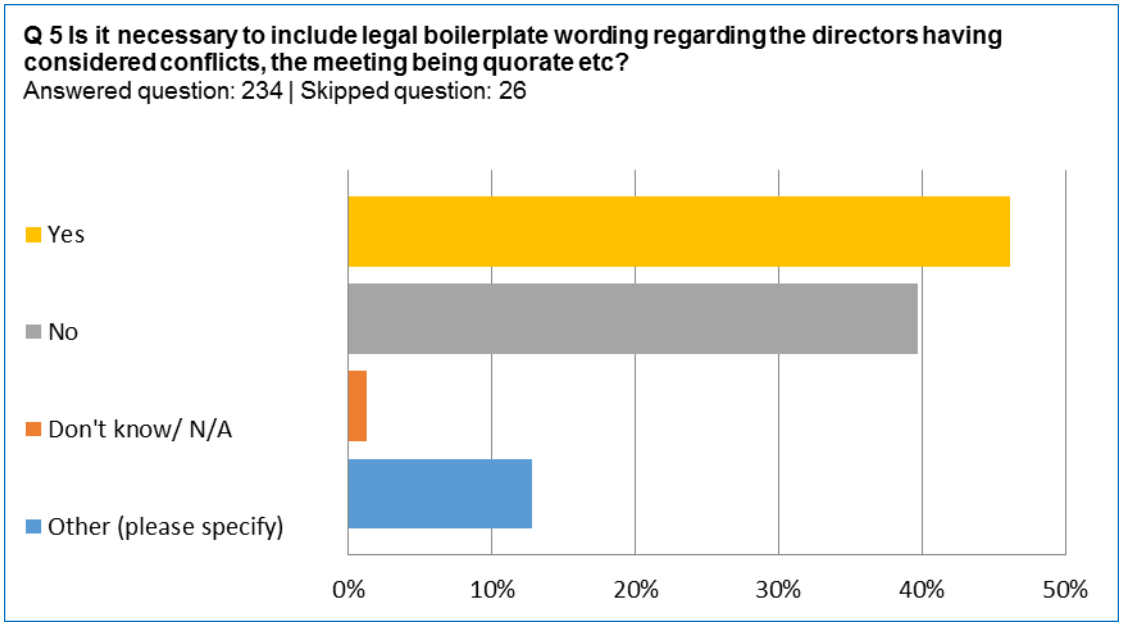
Question 5 — Is it necessary to include legal boilerplate wording regarding the directors having considered conflicts of interest, the meeting being quorate etc?

Response

Responses were almost evenly split: 46 per cent saw a need for legal boilerplate wording and 40 per cent saw no need. Of those who saw the need to include additional wording the consensus was that conflicts of interest should be included, but that quorum should not. As one respondent observed:

'Quorum is generally an SBO (statement of the bleeding obvious) and so does not need to be noted. Conflicts of interest is real and so should be noted explicitly. Some boards note solvency. I do not think it is necessary, unless the entity is in or close to difficulty.'

At least three respondents referred to the culture or experience of the board as determining whether additional wording is necessary. One respondent commented that directors of an entity which holds a Registrable Superannuation Entity Licence and Australian Financial Services Licence need to confirm at the start of the meeting that they are not a disqualified person.



4.2 Style of writing

The company secretary will take notes at board meetings from which they will write up the minutes. Minutes need to be written in such a way that someone who was not present at the meeting can follow the decisions that were made. Minutes can also form part of an external audit and a regulatory review, and may also be used in legal proceedings. When writing minutes, it is important to remember that a formal, permanent record is being created, which will form part of the 'corporate memory'.

Minutes should give an accurate, balanced, impartial and objective record of the meeting, but they should also be reasonably concise. The importance of accuracy should not be underestimated as the minutes of a meeting become the definitive evidence of what happened at that meeting and who attended. Courts will rely on them as being evidence, unless proved otherwise.

Historically, the convention has been that:

- *minutes should be written in reported speech, that is, past tense, and in the conditional mood for future actions (that is, would and should, rather than will and shall)*
- *the board has collective responsibility for its decisions, therefore the naming of individuals should be avoided wherever possible, although this is not the rule in some specific sectors.*

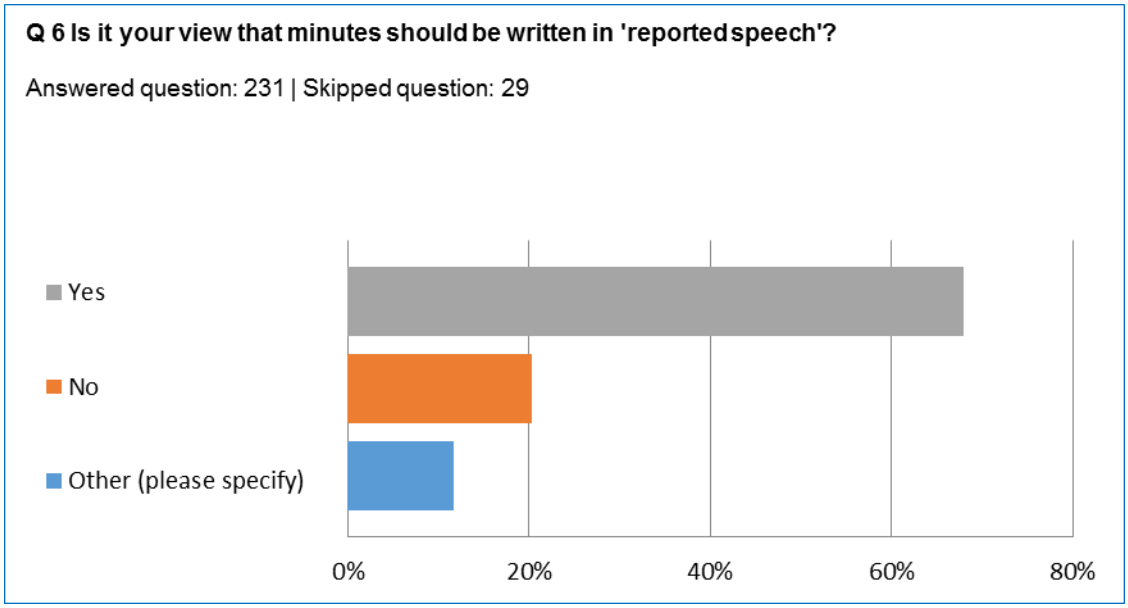
Question 6 — Is it your view that minutes should be written in 'reported speech'?

Response

Most respondents (68 per cent) confirmed the convention that minutes should be written in reported speech, although a significant group (20 per cent), consider reported speech should not be used. A summary of free text comments included:

- 'will' and 'shall' is important where policy is being outlined or there are actions
- provided the minutes reflect the meeting, bullet points are acceptable

- reported speech can provide a preferred approach, but there are many other considerations
- plain grammatical English is important.



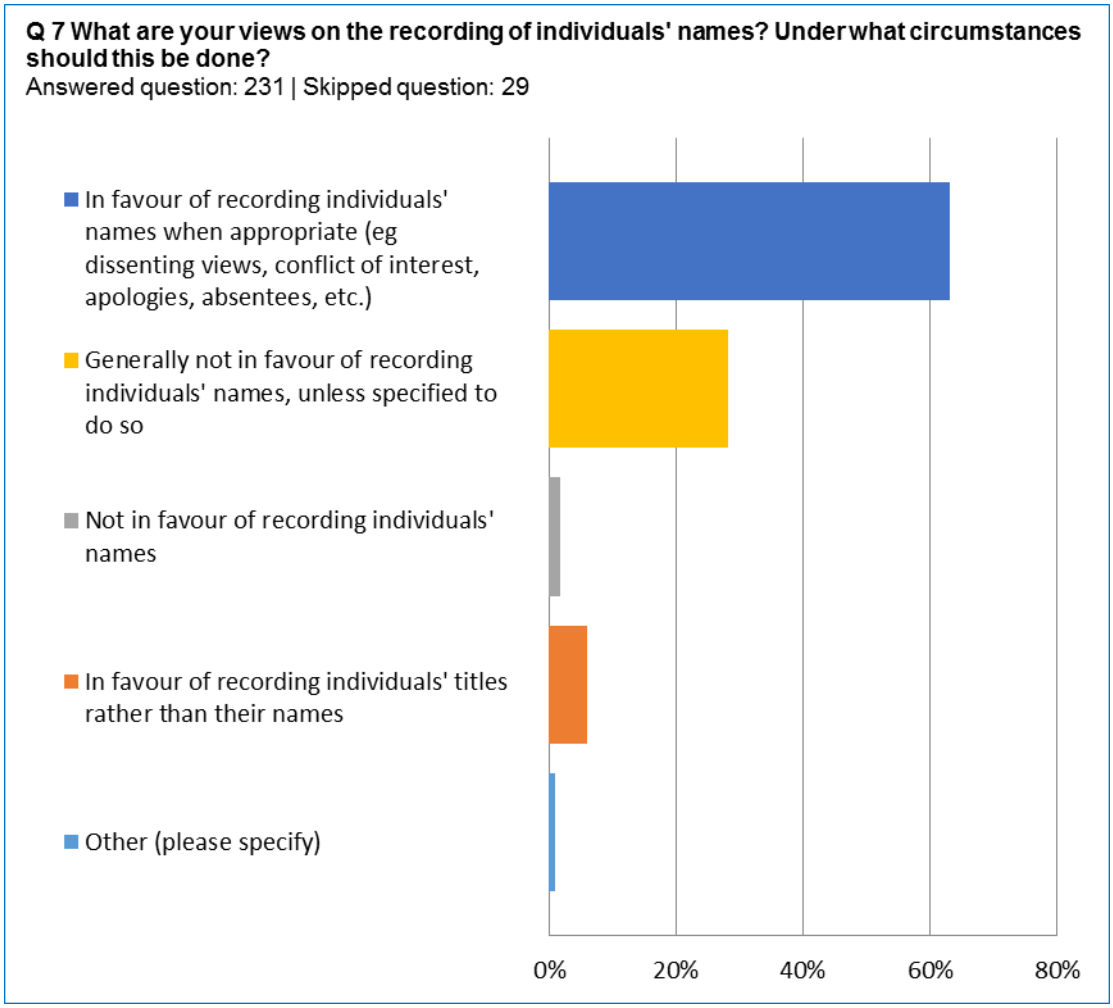
The chair of a meeting has the most important influence on both the conduct of meetings and, very often, on the style of the minutes produced. The chair has a responsibility under common law to ensure that all entitled to speak at the meeting have the opportunity to have their say, and this must include responsibility for allowing sufficient time for discussion in order to tease out the issues and for ensuring there is sufficient due diligence for transactions. This should be reflected in the minutes.

Question 7 — What are your views on the recording of individuals' names? Under what circumstances should this be done?

Response

Almost two thirds of respondents (63 per cent) are in favour of recording individuals' names when appropriate, such as, dissenting views, conflicts of interest, apologies and absentees. On the other hand, 28 per cent of respondents were not in favour of recording individuals' names, unless asked to do so. One respondent observed:

'This should be the person's responsibility to request that it was recorded in a particular fashion. If there is/was a contentious matter then the chair has the obligation to inform the 'recorder' that more details than 'boiler plate' are required.'



4.3 Level of detail in minutes

This is one of the most contentious issues around the minuting of meetings. Minutes should be neither too long nor too short. They should be detailed enough to confirm that the directors were aware of and have complied with their obligations and duties. However, exactly how this might work is open to debate.

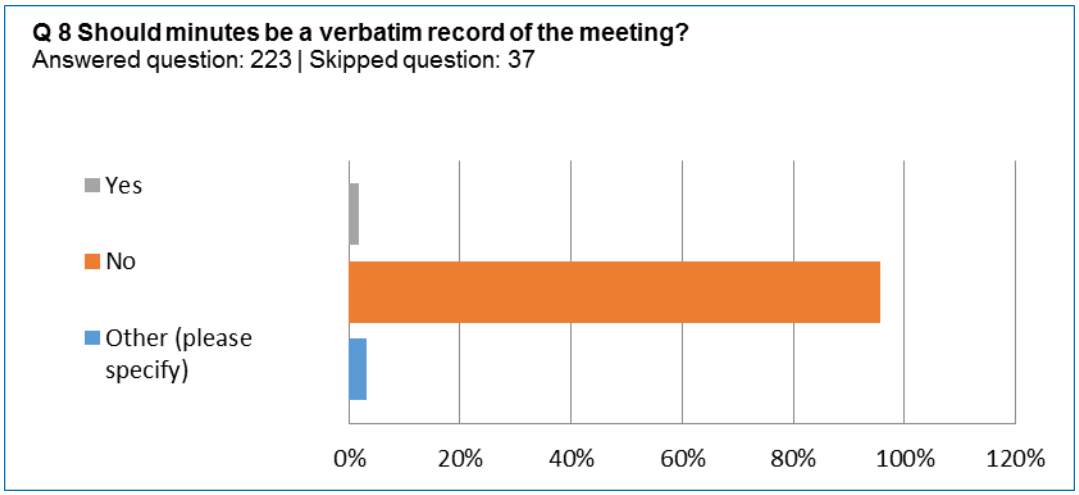
A 'happy medium' between pure minutes of resolution and minutes of narration is appropriate for contemporary corporate practice. Too much information can be as unhelpful as too little information. The information included in the minutes should be guided by the need for clarity.

***Minutes should not be a verbatim record**. They should document the key points of discussion but focus on the decision or, in the case of a committee meeting, any recommendation to the board. A decision of the board should be clearly minuted and the usual wording is 'It was resolved that …'. Likewise board committees would note 'It was agreed that …'.*

Question 8 — Should minutes be a verbatim record of the meeting?

Response

A resounding no was the response to this question — 95 per cent of respondents. One respondent commented that it depends on the relationship between board members — if they accept a simple record this is appropriate if not, a skilled recorder such as a Hansard or court reporter may be needed. One respondent commented that verbatim records are not good and is the sign of an inexperienced company secretary.



What might be termed a traditional view is that minutes should document the reasons for the decision *and include sufficient background information for future reference. In simple terms, the purpose of minutes is to record what was done, not what was said. If the board or committee require action to be taken, the minutes should make clear who has responsibility for the action and the date by which it should be completed.*

The statutory business judgment rule (s 180 (2)) provides that directors and officers who make business judgments are taken to meet their statutory duty of care and diligence, if they:

- *make the judgment in good faith for a proper purpose*
- *do not have a material personal interest in the subject matter of the judgment*
- *inform themselves about the subject matter of the judgment to the extent that they reasonably believe to be appropriate*
- *rationally believe that the judgment is in the best interests of the corporation.*

It is considered good governance to have robust processes and procedures in place to:

- *ensure, to the extent possible, that business judgments of directors and officers are made with full knowledge and understanding*
- *the minutes of directors' meetings adequately record the process followed in coming to that business decision, whether it be to take or not to take certain action.*

For the benefit of the business judgment rule to be available, among other things, the minutes need to reflect that the directors have acted in good faith, for a proper purpose and in the absence of a material

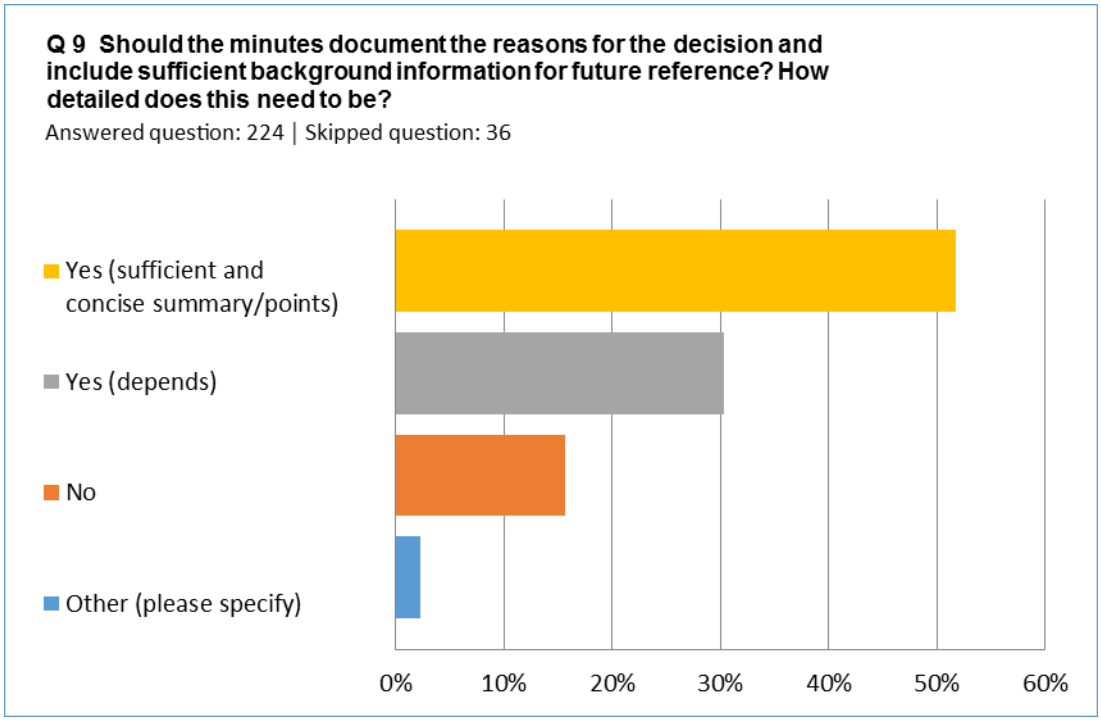
personal interest, and came to a rational decision which was reasonable for each of them to reach, in light of their own skills and experience and in light of circumstances known to the company at the time. A different view is that the minutes are the record of who was at the meeting, the matters under discussion, the decisions made and the material that was relied on to make decisions. The minutes may therefore rely on the board papers and not seek to repeat or paraphrase them.

Question 9 — Should the minutes document the reasons for the decision and include sufficient background information for future reference? How detailed does this need to be?

Response

Just over half (52 per cent) of survey respondents agreed with the traditional view that the minutes should document the reasons for the decision and include sufficient background information for future reference. Approximately one third (30 per cent) of respondents said 'yes, but'. The following summary of the free text responses seems a common sense approach:

'As major business items to be discussed at a board meeting should be set out in a board paper distributed prior to the meeting, the recommended resolution and reasons for the resolution would be documented in the paper. The minutes should reference that the paper was presented (there may have been executives admitted to the meeting to present the paper) and discussed. This would provide sufficient detail.'



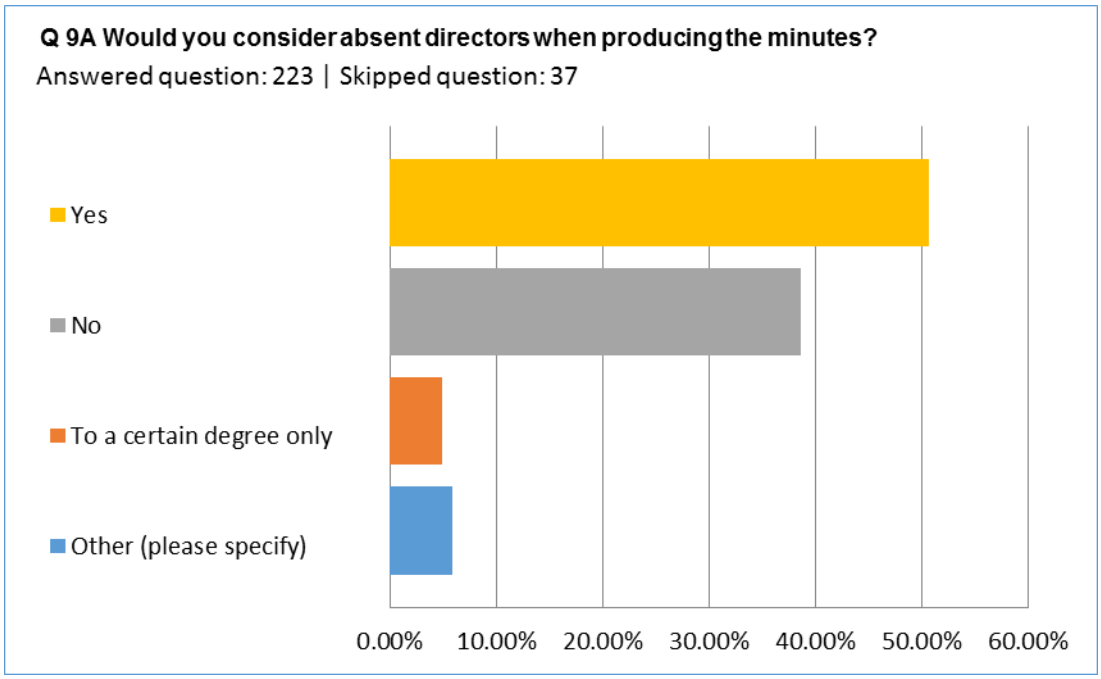
Another traditional view is that the minutes should document reasons and provide sufficient background information *to allow an absent director to understand why the board has taken the decision that it has.*

Question 9A — Would you consider absent directors when producing the minutes?

Response

While just over half (51 per cent) of survey respondents would take absent directors into account when producing the minutes, more than one third (39 per cent) would not, and another five per cent would take them into account to a certain degree. Several respondents noted that it would only be to note their non-attendance. A sensible approach to this issue seems to be encapsulated in the following response:

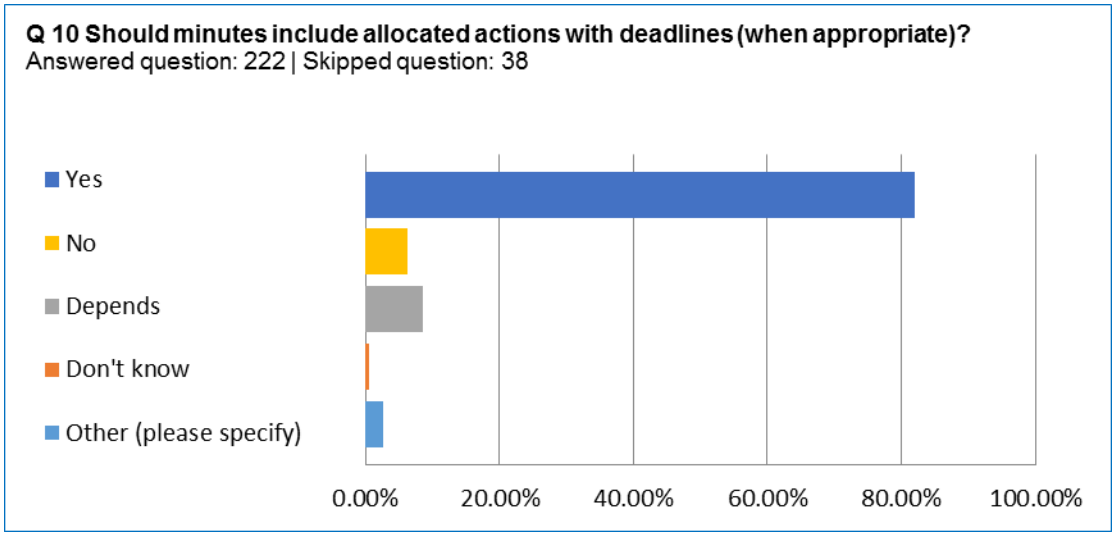
'The minutes should include sufficient background information for any reasonable person in the director's position to understand the decision.'



Question 10 — Should minutes include allocated actions with deadlines (where appropriate)?

Response

Over 81 per cent of respondents answered yes and several free text responses referred to the practice of maintaining a separate 'Actions arising' or 'Matters arising' table.



***If board papers are received for noting and no decision is required**, then unless there is material discussion that needs to be recorded, minutes should indicate that the relevant report was 'received and noted'.*

***Where reference is made to any board papers signed by the chair** a copy of those board papers must be retained in addition to the copy of the minutes themselves. Minutes may be stored electronically but must be capable of being reproduced in written form (s 1306(2)).*

Question 11 — Where papers are received for noting should the minutes indicate simply that the relevant report was received and noted unless there is additional discussion that needs to be recorded? If not, how should this be minuted?

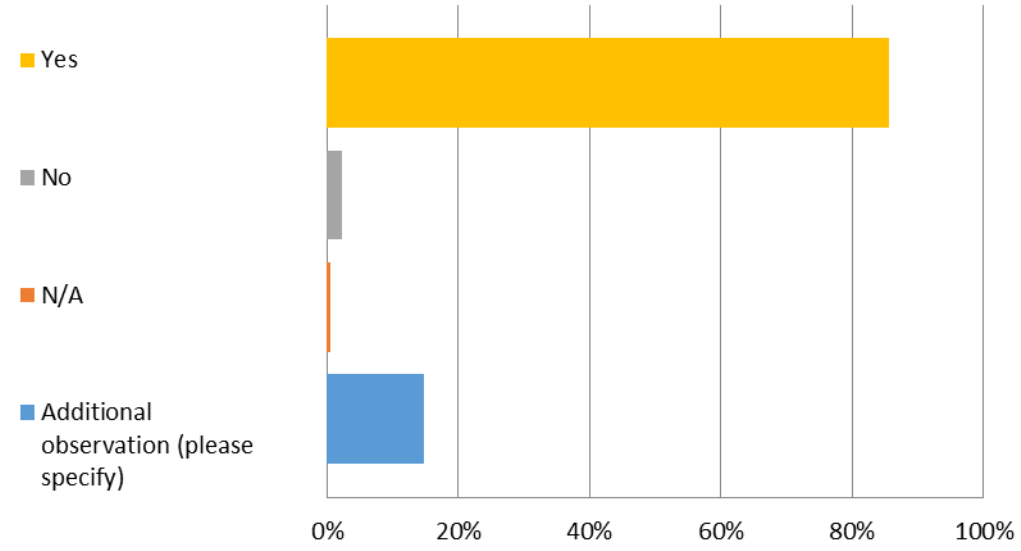
Response

The consensus (86 per cent of respondents) confirmed this as the appropriate practice. Some other practices were noted:

- if required, comments would also be included and any additional information tabled or discussed at the meeting might be recorded, if significant
- where management introduces or highlights key points in a report and there is no significant discussion, the minutes would record the name of the manager presenting the report and that the board noted the report
- minutes should not be used to repeat information
- recording discussion of items demonstrates that directors have applied their minds to any issues raised by a report for noting.

One respondent made the observation that if directors are merely 'noting' a paper is there a question as to whether the board is making a contribution to oversight and governance.

Q 11 Where papers are received for noting should the minutes indicate simply that the relevant report was received and noted unless there is additional discussion that needs to be recorded? If not, how should this be minuted?
Answered question: 223 | Skipped question: 37

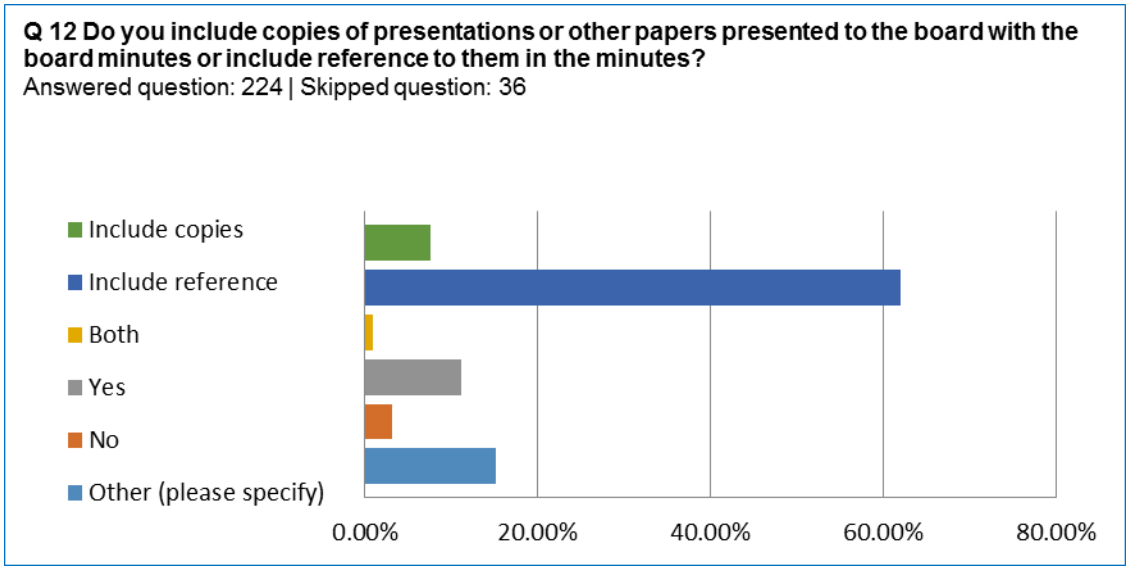


Question 12 — Do you include copies of presentations or other papers presented to the board with the board minutes or include reference to them in the minutes?

Response

Almost two thirds (62 per cent) of respondents include a reference to presentations or papers presented to the board in the minutes but very few include copies in the minutes. Those companies with electronic board portals or other systems maintain copies of all documents in those systems and those maintaining hard copies maintain copies in an archive of board papers.

Minutes should reflect the business and sector. Larger, more complex companies and those in regulated industries have additional issues to consider and tend to have longer meetings, so the minutes should reflect this. Minutes of board meetings in some sectors such as financial services have become more detailed and prescriptive in recent years due to increased regulatory oversight and the need to demonstrate appropriate challenge by individual directors.



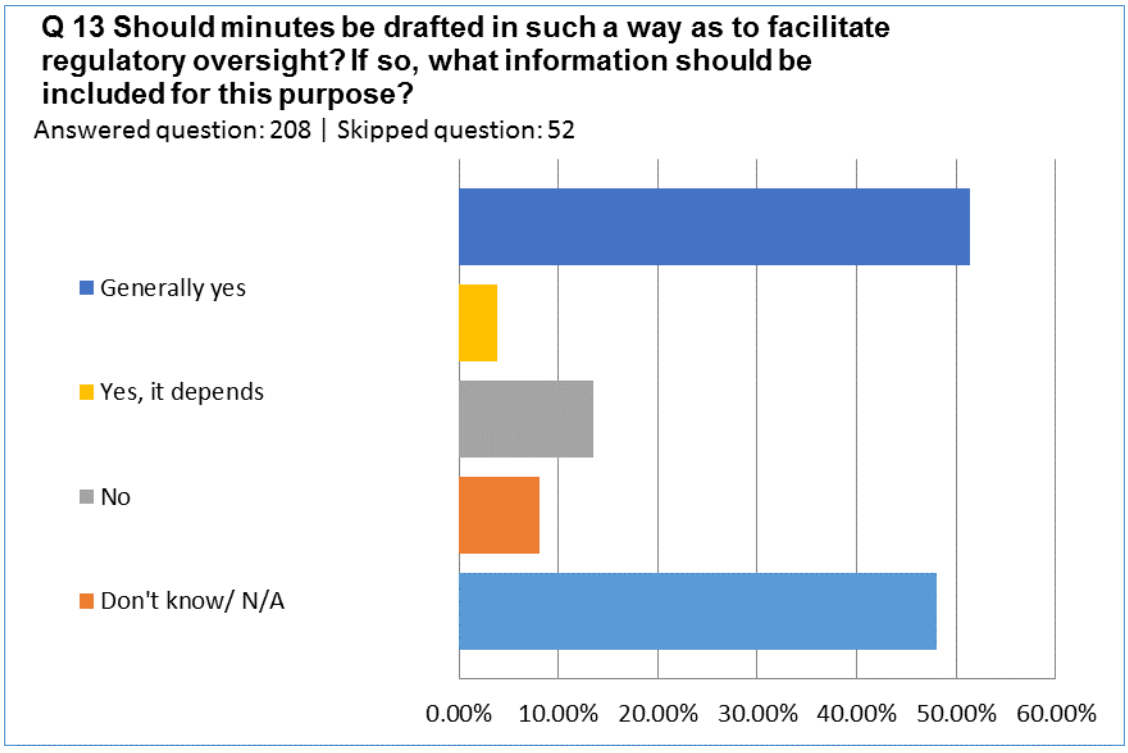
Question 13 — Should minutes be drafted in such a way as to facilitate regulatory oversight? If so, what information should be included for this purpose?

Response

About half (51 per cent) of survey respondents agreed that minutes should be drafted to facilitate regulatory oversight. Almost 50 per cent of respondents provided additional information or commentary on this question. A sample of responses follows:

- minutes are drafted in the expectation that ASIC will at some point wish to see them — it is not a matter of including or not including information, but rather being very diligent about drafting and the use of words and what unforeseen interpretations may be given to a certain choice of words
- if materials need to be produced separately to facilitate 'regulatory oversight' then this practice should be put in place. It is best not to twist the purpose of the meeting … if both outcomes can be achieved then great — if they cannot, I suggest the practice outlined above should be followed
- in future, class actions will force this scenario
- board minutes can be used for regulatory oversight but drafting to meet unique regulatory requirements is not the purpose of preparing board minutes. There are other options for regulators such as audit and risk committee minutes which may have more detail about the processes undertaken in meeting specific industry requirements
- an agenda item for financial services companies should be regulatory compliance
- yes but be aware of Right to Information/Freedom of Information
- minutes can be drafted with regulatory oversight in mind, but this is no different to being mindful that minutes may be required to be produced in court
- yes, particularly where a company is APRA regulated — the minutes should show that regulatory requirements have been met by the board, for example, *CPS 520 Fit and Proper*
- minutes should demonstrate compliance with work, health and safety legislation
- annual solvency declarations, director appointments and resignations, and annual general meeting notices and materials
- sometimes specific legislation or provisions or a company's constitution should be referenced

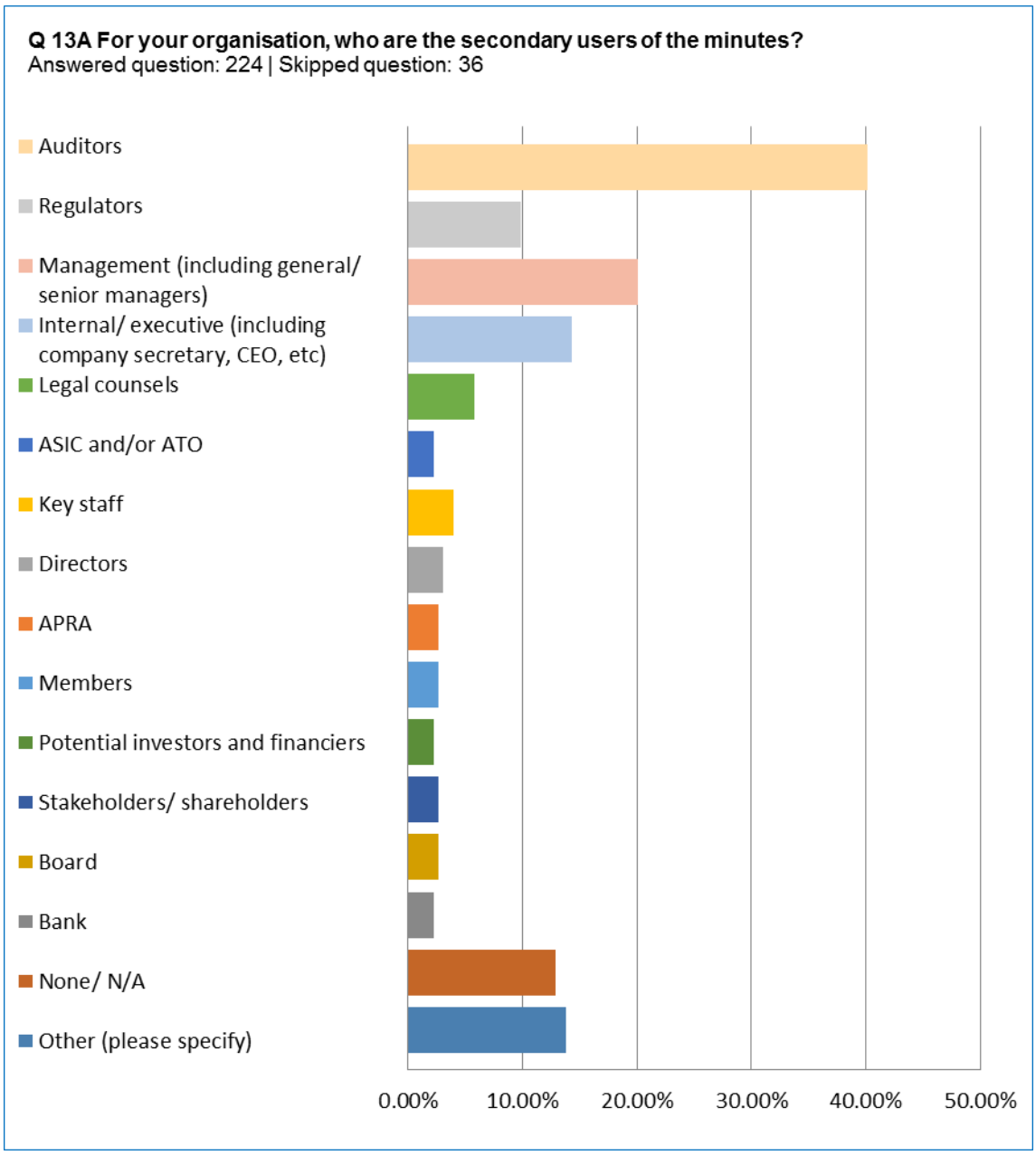
- if the regulator is likely to review minutes, the level of detail needs to reflect what will achieve a desired balanced outcome for the company, with push-back to the regulator if the regulator appears to be on an excursion outside its remit
- yes to demonstrate the board is not simply rubber stamping issues but acting in the best interests of the company
- in general minutes should not change just because a regulator may see them. Prudence is needed to understand the nuances of this which is why an experienced professional needs to do the minutes
- in the public sector there are Standing Directions and other regulatory requirements
- any appropriate challenge by a director should be included
- key factors relevant to regulatory and compliance requirements
- board papers should refer to the regulatory oversight and the board needs to consider the company's position in relation to the regulations. The consideration of the regulations and the meeting of the regulations should be easily identifiable and that it was considered and noted by the board
- approval of release of information to shareholders
- it should be a secondary consideration — the other processes of the company should be the main vehicle for satisfying regulatory oversight
- minutes should demonstrate the board is acting in good faith and with due diligence
- yes, particularly if the entity is operating in a highly regulated industry, like financial services. It is important to ensure that all compliance and risk management aspects are recorded correctly. When decisions are made, it is important to provide enough background information to show the process that the board has gone through to make the decision and any discussion directly related to regulatory aspects should be noted.



Q 13A: For your organisation, who are the secondary users of the minutes?

Response

For just over half of survey respondents (51 per cent) the auditors are the main secondary users of minutes. A small group (13 per cent) of respondents, have no secondary users. Other groups of secondary users included: senior and general managers (20 per cent), internal users and the executive including the company secretary and CEO (14 per cent), regulators (ten per cent) and legal counsel (six per cent). There were also references to: government, a parent company, oversight bodies, future office bearers, Department of Foreign Affairs and various internal departments such as risk, compliance and administration.



A concern has been expressed that there is a risk of minutes being included in a discovery process and so excessive detail could leave the organisation vulnerable to legal challenge in the future.

Concern has also been expressed about the recording of privileged legal advice and how this may be done to ensure that it remains privileged.

Question 14 — In your opinion, how significant are these risks? What can be done to mitigate them?

Response

Survey respondents rated these risks as follows:

- significant — 29 per cent
- not significant — six per cent
- moderate/minimal/depends — nine per cent
- don't know or not applicable.

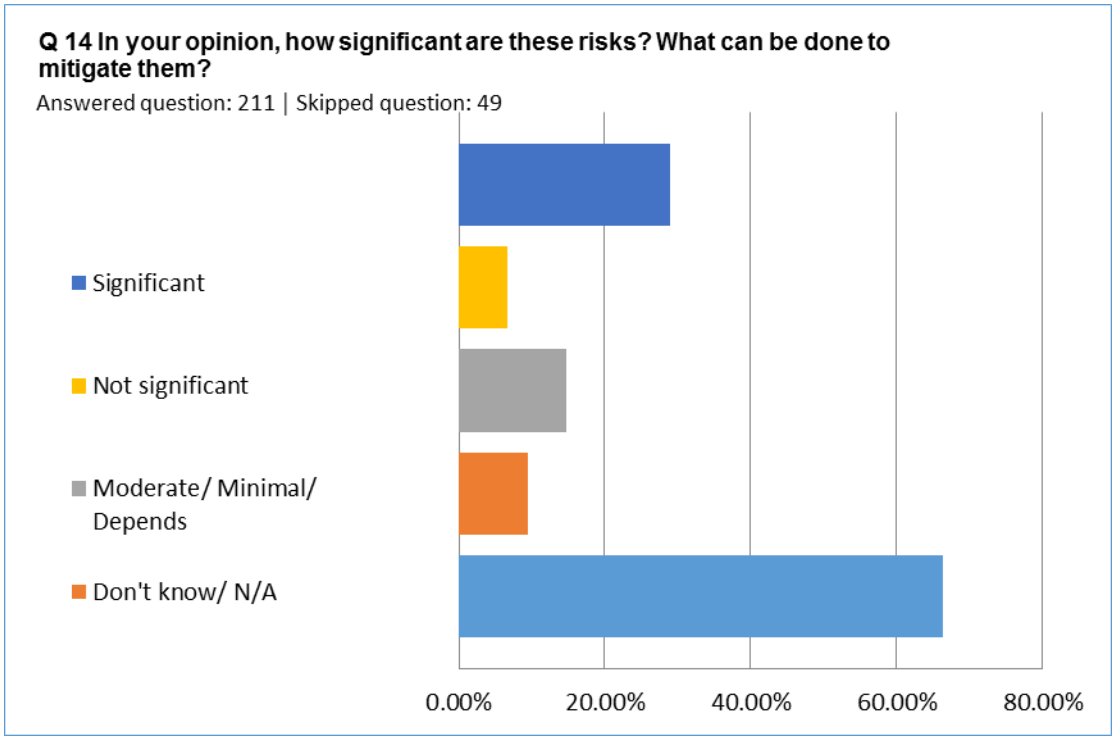
More than half of the respondents (140 out of 211 responses) who answered this question, made additional observations such as:

'… the risk of discovery will always exist — but appropriately and sufficiently documented minutes can also serve as protection for directors. One way of dealing with legal advice is to refer to the advice being received or discussed in general terms. Anything specifically mentioned could be noted as representing privileged information or include a footer indicating the document contains privileged information.'

Overall the flavour of the additional comments was that these risks are real and it is important to avoid 'excessive detail'. One respondent observed:

'..yes, these are significant risks in the present litigious environment of class actions. This is why getting the "Goldilocks" balance right regarding length and level of detail is so critical.'

A number of the free text responses referred to the importance of obtaining legal advice in relation to maintaining privilege, if unsure. Many respondents recommended referring to privileged advice in very general terms in the minutes and ensuring that the advice is kept strictly separate from the minutes and other board papers and clearly marked as privileged and confidential to avoid loss of privilege. Several respondents referred to FOI requests as a potential risk. Quite a few responses referred to the important role the company secretary has to play in this area and the fact that drafting minutes is a specialist task.



Question 15 — Do you agree that the minutes of subsidiary companies are generally minimal? Is it appropriate that minutes prepared to address legal formalities are prepared in brief form unless there is material discussion which it is necessary to record?

Response

There were a range of responses to this question:

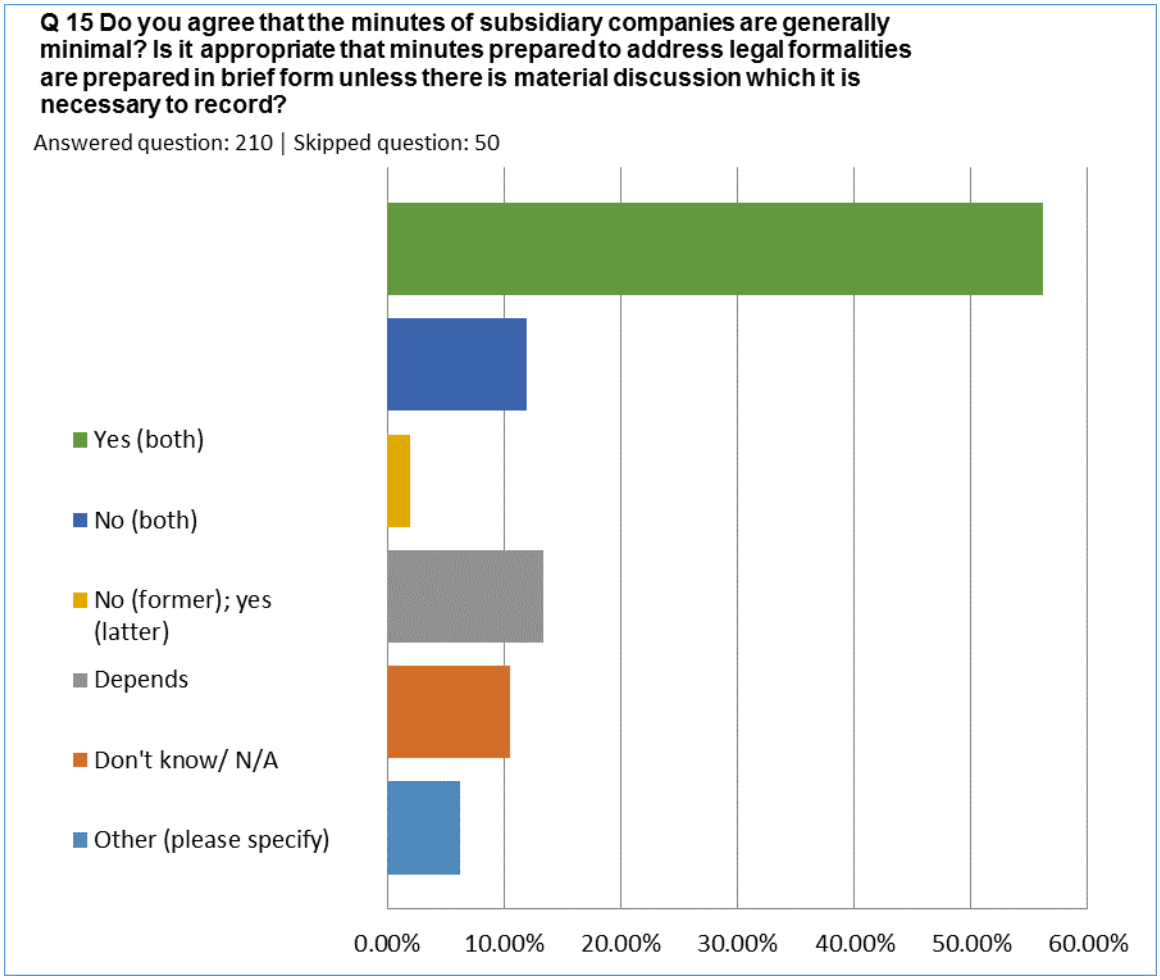
- yes to both questions — 56 per cent
- no to both questions — 12 per cent
- depends — 13 per cent
- no to the first question and yes to the second question — two per cent.

Despite the range of responses, the consensus appears to be that subsidiary company minutes should generally be minimal and that their minutes should be prepared to address legal formalities in a brief format, unless there is material discussion to record.

Additional comments of note included:

- in the higher education sector, the subsidiary company may be the regulated entity and in this case good minutes of the subsidiary are important
- subsidiaries with operational matters need to have an appropriate level of minutes — ensuring that parent companies have 'no objection' to actions, and that the boards of subsidiaries are still making decisions where appropriate. This is also required for tax reasons

- a bit more detail is necessary to ensure the directors can demonstrate that they have acted with an appropriate level of care and diligence, independent of the parent company.



The board has collective responsibility for its decisions and so care should be taken to ensure that views expressed during discussion are not attributed to individual directors. However, in exceptional circumstances, where agreement by the whole board cannot be reached, individual directors may request that their dissenting view be recorded in the minutes. Any such request should be complied with.

Question 16 — How and in what circumstances do you believe dissenting views should be recorded?

Response

Most respondents (60 per cent) considered dissent should only be recorded at the request of the director (dissenter). A small group (11 per cent) considered that dissenting views should always be recorded.

Additional comments included:

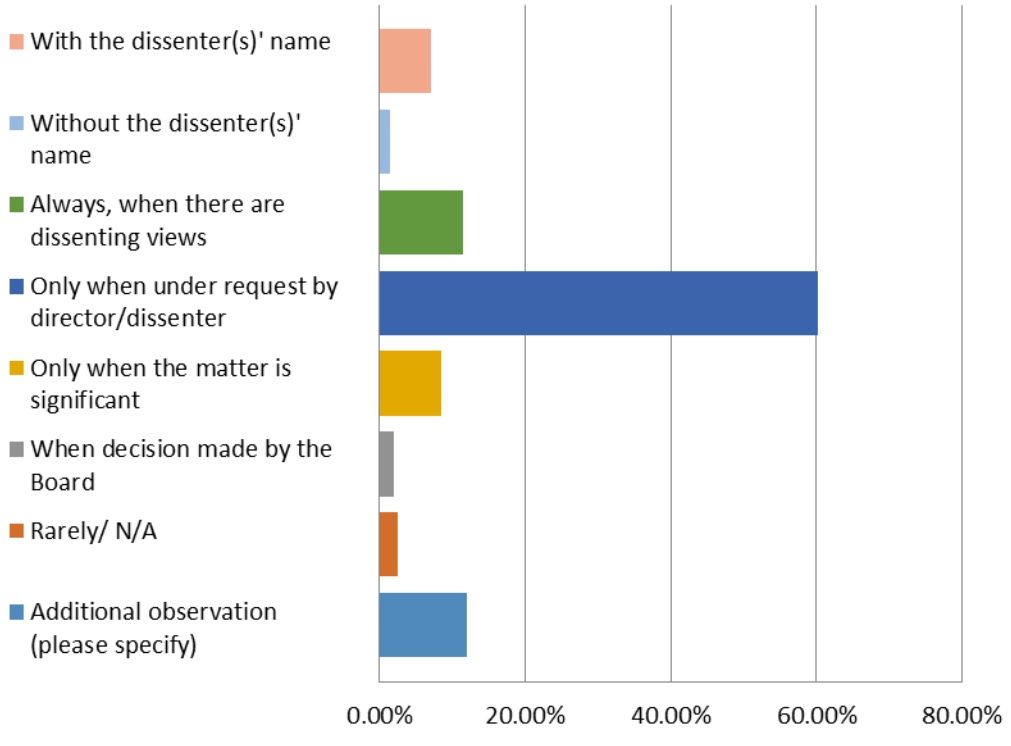
- there should be enough time given to ensure full discussions are held and any additional information provided if required. That detail should be recorded in the minutes

- attempts should be made to get consensus but conflict of interest declarations may preclude this. Dissenting views should be noted in minutes and any actions should be noted (if appropriate) to avoid these situations in the future, for example, insufficient information for a director to decide, format of information poor so a reasoned decision cannot be made
- dissent should be recorded in neutral language and as briefly as the issue permits.
- dissent should be recorded where there is clear dissent and not including detail would result in the minutes not being able to stand by themselves as a proper record of the meeting
- where a decision has been made not to do a thing, or to take a particular step, such as rejecting a takeover offer, this should be recorded
- voting may require, and directors can elect for specific minuting
- the chair should discuss with dissenters as to how minutes are to be recorded. The chair's judgment and discretion is critical in this process
- fine, but the chair should also point out, and this noted, that a dissenting view will not protect a director if the board resolves to do something and it turns out to be in breach of their responsibilities to act in good faith etc. Directors need to know that their only way to avoid prosecution is to resign.

A number of the free text responses referred to the important role the chair has to play in these circumstances.

Q 16 How and in what circumstances do you believe dissenting views should be recorded?

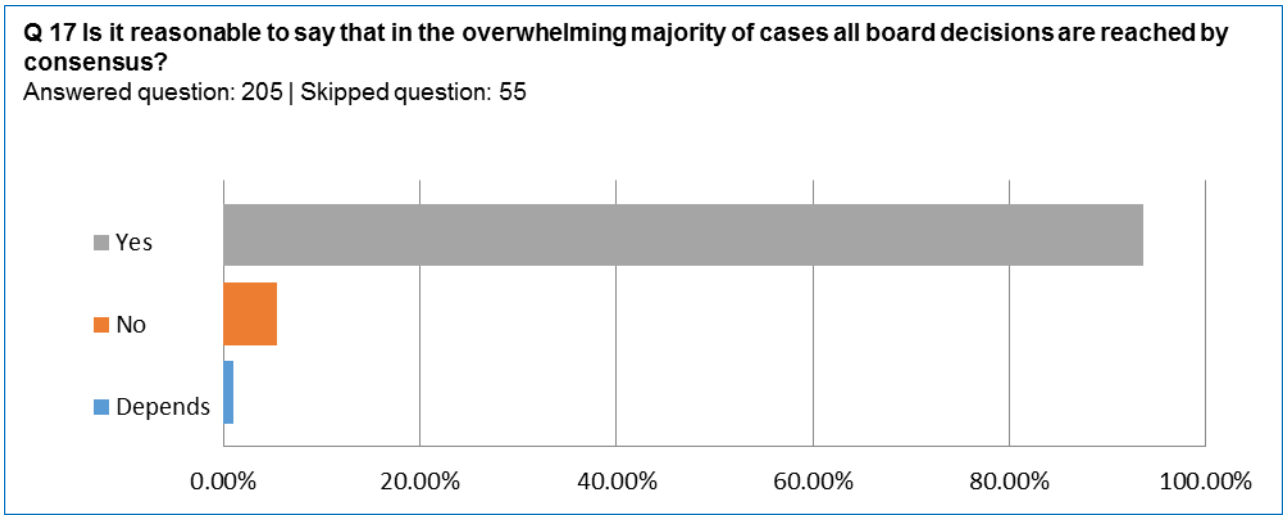
Answered question: 201 | Skipped question: 59



Question 17 — Is it reasonable to say that in the overwhelming majority of cases all board decisions are reached by consensus?

Response

There was almost overwhelming (94 per cent) agreement with this statement. This was the only question to which there were no free text responses.



Question 18 — When the minutes are reviewed at the succeeding meeting of the board, is there always an opportunity for any director to suggest correction to the minutes before their approval at the next board meeting?

Response

Almost all respondents (92 per cent) consider that there should be an opportunity for directors to suggest corrections to the minutes before their approval at the next meeting.

A number of respondents provided comments on their practice:

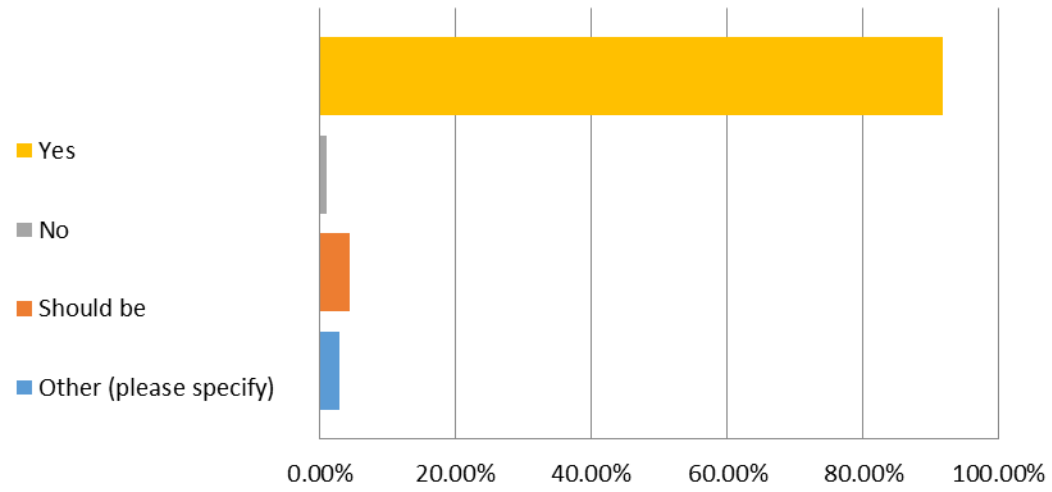
- draft minutes can be issued and comments or corrections received prior to the following meeting to reduce discussion about the accuracy of the minutes
- my practice is to circulate the minutes to the board within about two weeks of the meeting and to invite comments well in advance of the meeting at which the minutes are approved.
- draft minutes are distributed to the chair for review in advance of the next meeting papers being dispatched a week before the meeting. Directors are encouraged to raise questions about the minutes prior to the board meeting where they are to be confirmed
- minutes should be reviewed prior to the next meeting and accepted at the meeting without amendment, unless amendments have not been included or there is something that has been missed in the review. Good governance practices should be enforced such as: draft minutes out within 48 hours to chair, chair

to review and sent to all other directors within 7 days. Comments from other directors and draft minutes approved within 30 days (ideally to be included in the board pack). The succeeding meeting then approves the minutes and they are formally signed. Any late corrections should be during the meeting so that they can be signed by the chair before the meeting is concluded

- minutes are circulated to the meeting chair prior to submission to the next meeting. In essence, the minutes taken by the secretary are the minutes of the meeting. If a point of clarification, or error is made, this is written into the next meeting minutes as matters arising from the previous meeting minutes
- in my experience, any changes to the minutes after their review by the chair are very rare. When they do happen, they tend to be raised by directors when they receive the draft minutes with their board reporting. If a change is requested in the meeting, so, at the next meeting after the one to which the minutes relate, the minutes are usually approved as amended to reflect the requested change. This will then be closed out with the chair when they sign the minutes, either by hand amending, or by providing an updated copy of the minutes.

Q 18 When the minutes are reviewed at the succeeding meeting of the board, is there always an opportunity for any director to suggest correction to the minutes before their approval at the next board meeting?

Answered question: 204 | Skipped question: 56



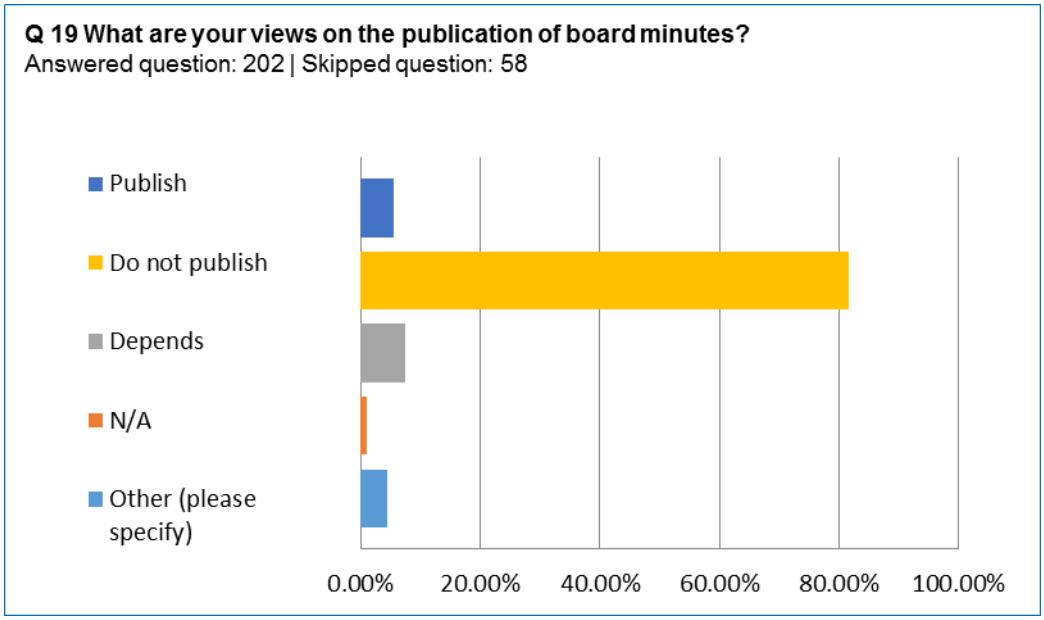
Some organisations such as public bodies and regulators choose to provide complete transparency over their board meetings by publishing board papers and minutes on their websites. However, it has been suggested that this level of transparency might result in the board meetings ceasing to be the decision-making body for the organisation, with confidential or 'water cooler' meetings held separately from board meetings to discuss matters and agree a position, before the matter is 'discussed' by the board and made public.

In a similar vein, a number of organisations, particularly in the public sector have an obligation to respond to FOI requests, which may require the publication of minutes.

Question 19 — What are your views on the publication of board minutes?

Response

Eighty-two per cent of respondents consider board minutes are not for publication. Five per cent believe they should be published and a further seven per cent said that it depends. One respondent observed that it would depend on the sector or industry but they would not expect this to be a good practice as it would shape the content of the minutes to be very minimalist. One respondent commented that while their organisation is subject to RTI legislation, they have only received one application for the content of minutes which was limited to a particular decision.



Question 20(1) — Do you believe that there are risks associated with publication and, if so, what might these be?

Response

At least two thirds (69 per cent) of respondents believe there are risks associated with publication of minutes and identified the following risks:

- exposure of private or competitive information — 18 per cent
- misinterpretation which leads to unnecessary (reputational) criticism — ten per cent
- members/directors being unwilling to speak openly — seven per cent
- the legal risks involved — five per cent.

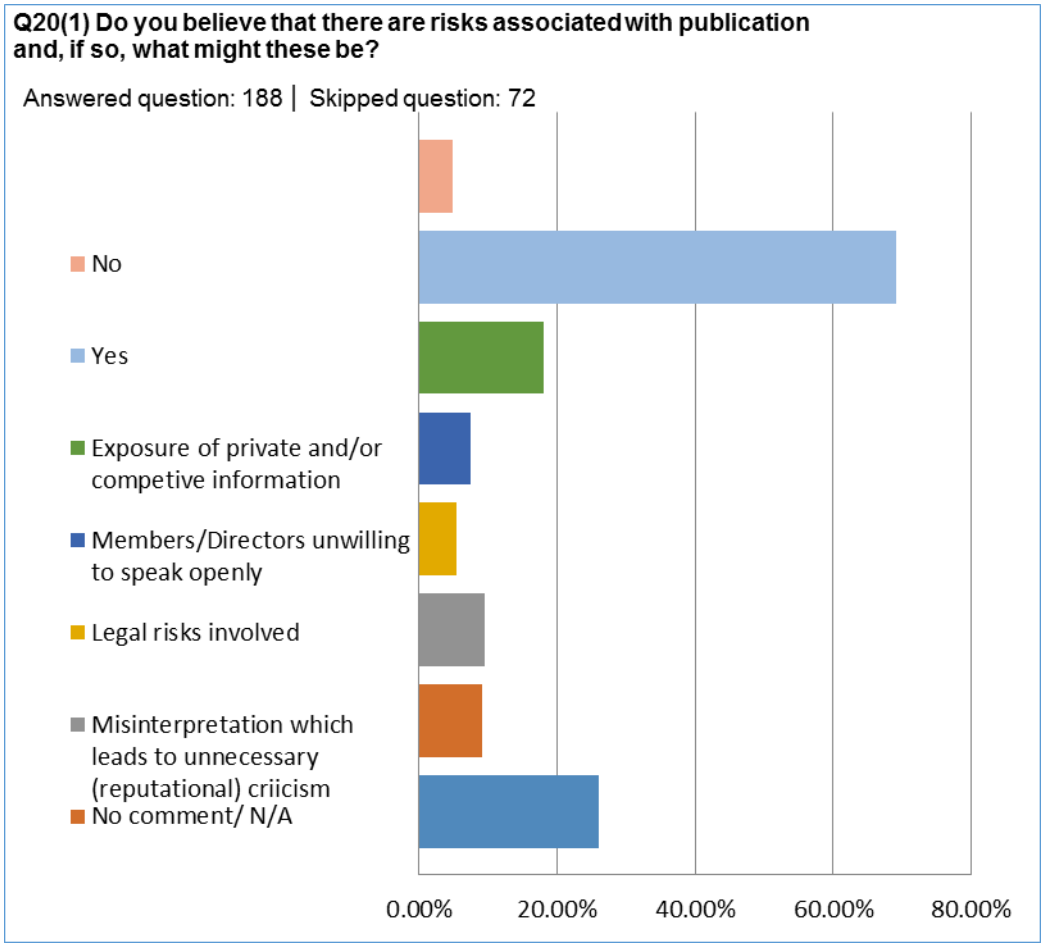
A sample of the free text comments included:

- without the benefit of the board papers, which include a great deal of detail and rationale for recommendations for the board, conclusions could be drawn and inferences made which could be uninformed
- there are clear risks associated with publication in that external parties whose motives are neither transparent nor accountable can try to make unjustified criticism of a board. Provided directors have met

their obligations in the Corporations Act and board charter to act honestly and reasonably etc, that should be the end of it. The company secretary is usually well placed to advise directors on such matters

- all it would do is create the need to have 'off the record', in camera meetings, publication would just makes things even more contrived and covered up and would shape the content of the minutes to be very minimalistic
- publication of minutes may inhibit measured risk-taking by boards in the normal course of business
- publication is probably less risky than responding to FOI requests, as the discussions that are held and the minutes drafted are done with the foresight that there will be public scrutiny
- might be justified by a special need on a one-off basis
- judge each case on its own merits, FOI does not mean ‘giving a competitive advantage’ away. Risk is determined in terms what is and what is not appropriate at the time The difference is quite simply, always ask if it is reasonable to give the information so that the company will not be prejudiced in any way, and the responsibility of full disclosure of the board that nothing is hidden from members when they have the ‘right’ to know
- only under litigation when compelled by the courts to make them available for review
- if there are such problems in the organisation that the minutes can be used as a weapon against the sitting board or some faction thereof, then there are more fundamental issues than the publication of minutes. The organisation or the board is already significantly dysfunctional
- there are risks but if matters before a board have been diligently discussed then those risks should be mitigated
- the risk as expressed above in that ‘difficult’ conversations in the meeting may be muted, occurring outside the board meeting and positions agreed so that a united, non-controversial position can be reflected in the minutes. Succinct minutes reflecting decisions, the reasons for the decisions and any dissenting views and a meeting held under Chatham House rules should suffice with an appropriate opportunity to review the minutes
- there is risk associated with sensitive (price sensitive) information and internal organisational issues — perhaps minutes classified as confidential could be withheld from publication.

The message from responses is that publication of minutes is not considered to be a good idea and the minute-taker needs to be aware of a wide range of potential risks and issues.



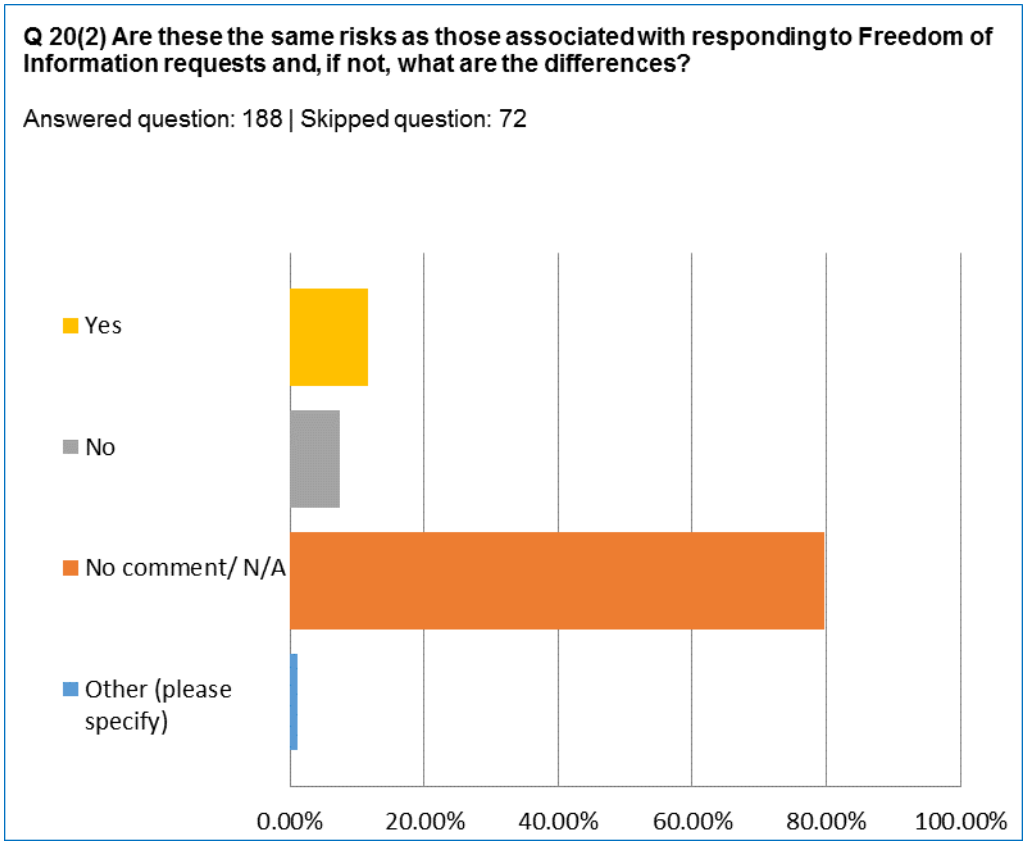
Questions 20(2) — Are these the same risks as those associated with responding to FOI requests and, if not, what are the differences?

Response

Responses to this question were:

- yes — 12 per cent
- no — seven per cent,
- no comment — 80 per cent
- other (please specify)

The two free text comments referred to the legislative exemptions from production for sensitive, confidential or privileged information under FOI or RTI requests.



Question 21 — Should the holding of unminuted or 'informal' board meetings where decisions are actually made be discouraged? If so, please provide an explanation of how best to deal with this.

Response

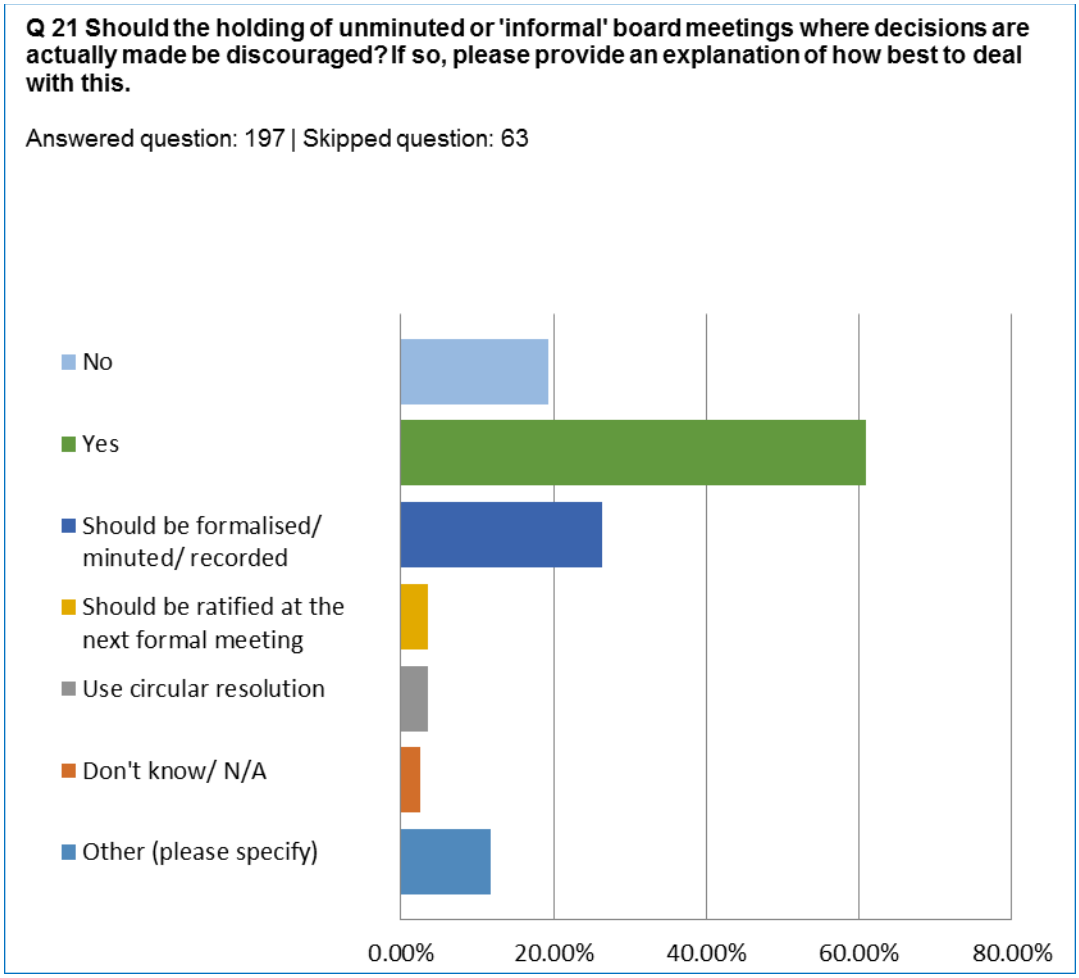
Approximately 61 per cent of respondents answered yes to this question while 19 per cent of respondents considered the practice should not be discouraged. Another group, 26 per cent considered that these meetings should be formalised and minuted or recorded and approximately 6 per cent considered that decisions at these meetings should either be ratified at the next formal meeting or should be approved by a circular resolution.[5] A number of respondents commented that the practice of holding informal meetings potentially undermines the governance framework and may lead to a board operating as a 'rubber stamp'.

The consensus seems to be that all board decisions must be recorded in some form. There were some useful practical suggestions in the free text commentary:

- if a board holds in-camera sessions the notes of these can be kept by the chairman
- in confidence meetings where directors meet to discuss items that require greater thought processes or consideration are important, such as, strategy days. Decision-making should be deferred or channelled back to the correct board meeting forum to enable correct board processes to be undertaken

[5] There was some overlap in responses to this question.

- I treat this as I would a closed session of the board where the detail of the discussion is not recorded but a decision is
- ways to discourage this may include: providing an opportunity for a private meeting of directors at the start and/or end of the board meeting, in the absence of management, the details of which are generally not minuted unless advised by the chair to the company secretary and ensuring that attendance at meetings by management and others, and the extent of their contributions, does not detract from directors having open and robust discussions
- including 'directors' quiet time' before the formal part of the meeting starts, without management but with the company secretary, giving the directors sufficient time to discuss any matters that they need to have any discussion prior to the meeting works well.



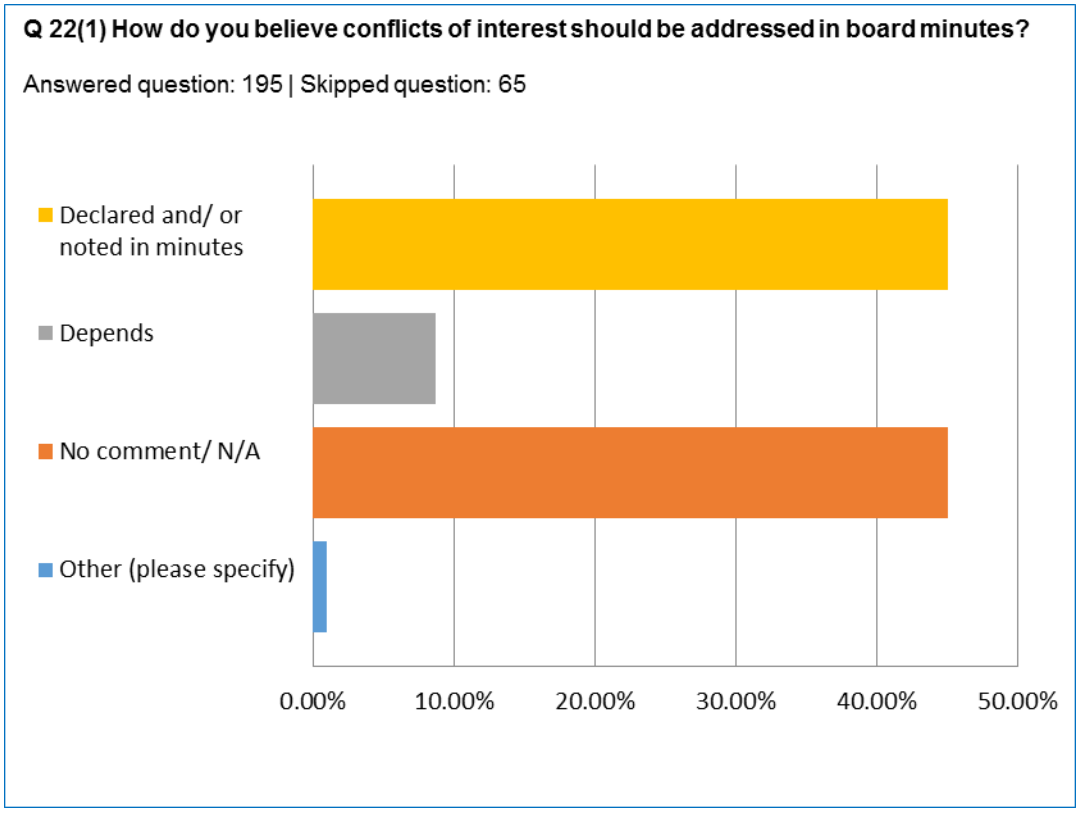
4.4 Conflicts of interest

Some transactions involving the company and a director might give rise to a conflict between the interests of the company and the personal interests of the director. An example is where the company is agreeing a director's service contract. The director has a duty to the company to get the best contractual terms for the company but this conflicts with his or her personal interest in obtaining favourable terms. Conflict of interest rules apply to protect the company but, generally, the director should declare any personal interest before the matter is discussed. In certain circumstances a director will need to recuse themselves from discussion and decisions on such matters. In any conflicts of interest situation it is important that the minutes note that the director in question was not present for the relevant discussion.

Question 22(1) — How do you believe conflicts of interest should be addressed in board minutes?

Response

Approximately 45 per cent of respondents believe conflicts of interest should be declared and/or noted in the board minutes and the same number did not comment. Approximately nine per cent observed that it depends. It is unclear why such a large number did not comment, possibly because they believe the position is accurately stated, but this was difficult to discern given there were only two free text comments: one that the director should abstain and the other provided a sample of the wording they use to address this issue.



Question 22(2) — Should minutes be redacted when circulated to a conflicted director or, as a director, are they entitled to receive full minutes?

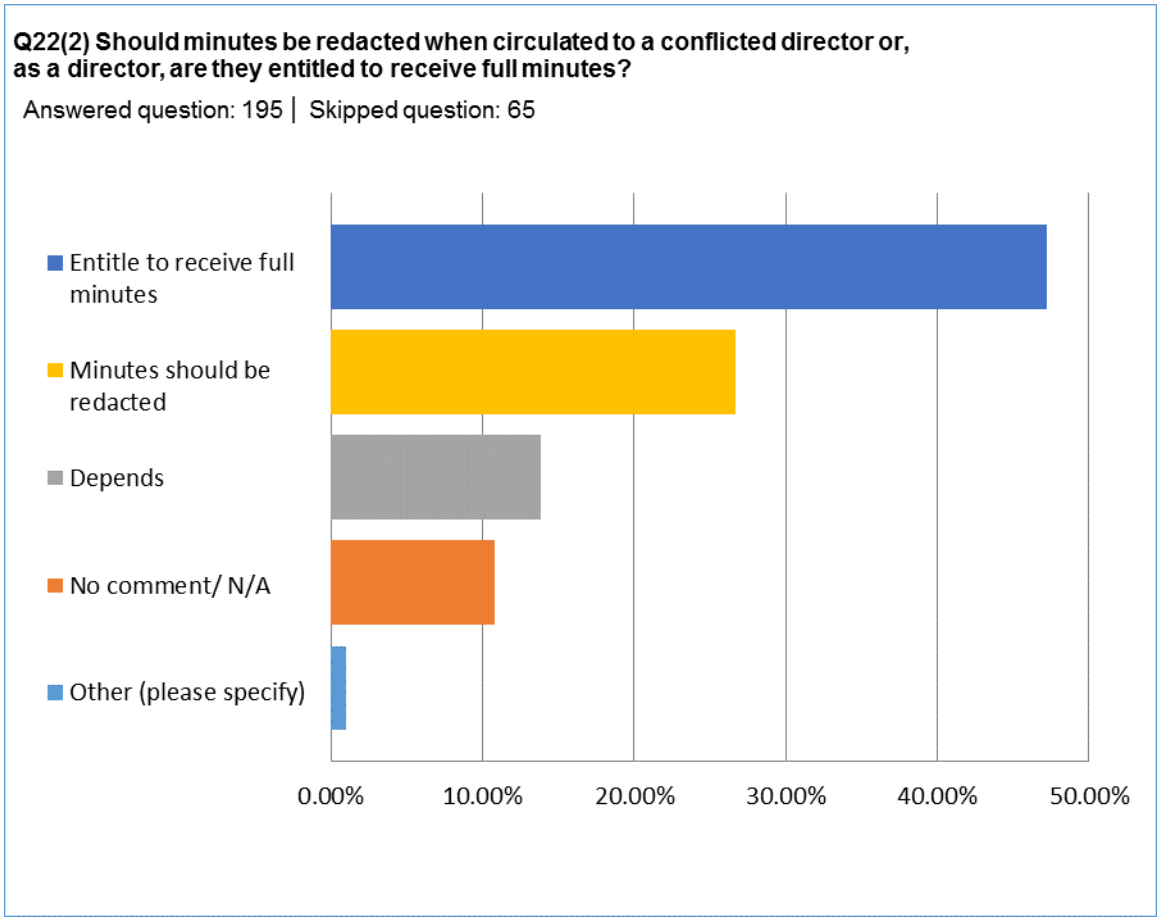
Response

Responses to this question were:

- entitled to receive full minutes — 47 per cent
- minutes should be redacted — 27 per cent
- depends — 14 per cent
- no comment or not applicable — 11 per cent.

Only two respondents provided comments and expressed strong views:

- if a director has a conflict substantial enough to consider them not receiving the full minutes, they should not be a director in the first place. They should resign or be removed
- the only way a director can remain 'not conflicted' is if they do not see or know what the outcomes are that may or may not affect their position. They should not see the minutes reflecting the issues that may cause conflict and the board must do everything in its power to confirm that they acted in a manner that no person could or would have a claim against them for disclosure that would or could benefit or prejudice the conflicted director. The board's integrity must be beyond any doubt that they acted in accordance with the Corporations Act and have a clear conscience that they behaved in a manner fitting a person who holds the responsibility of being a director.



4.5 Editing minutes

If minutes are well written there should be little need for editing by the directors. Apart from the company secretary, the biggest influence on the style and content of minutes is the chair; it is important, however, that the content of minutes are acceptable to all directors. Amendments to draft minutes around matters of style and content are acceptable, provided all the key points of discussion and the decisions or recommendations are recorded. It is also acceptable to allow an executive who has made a technical presentation to the board to comment on the minute relating to that section, provided that their suggestions do not conflict with the company secretary's contemporaneous notes, which should always take precedence. Under no circumstances should a director or anyone else be permitted to insert points not made at the meeting, or to delete those that were.

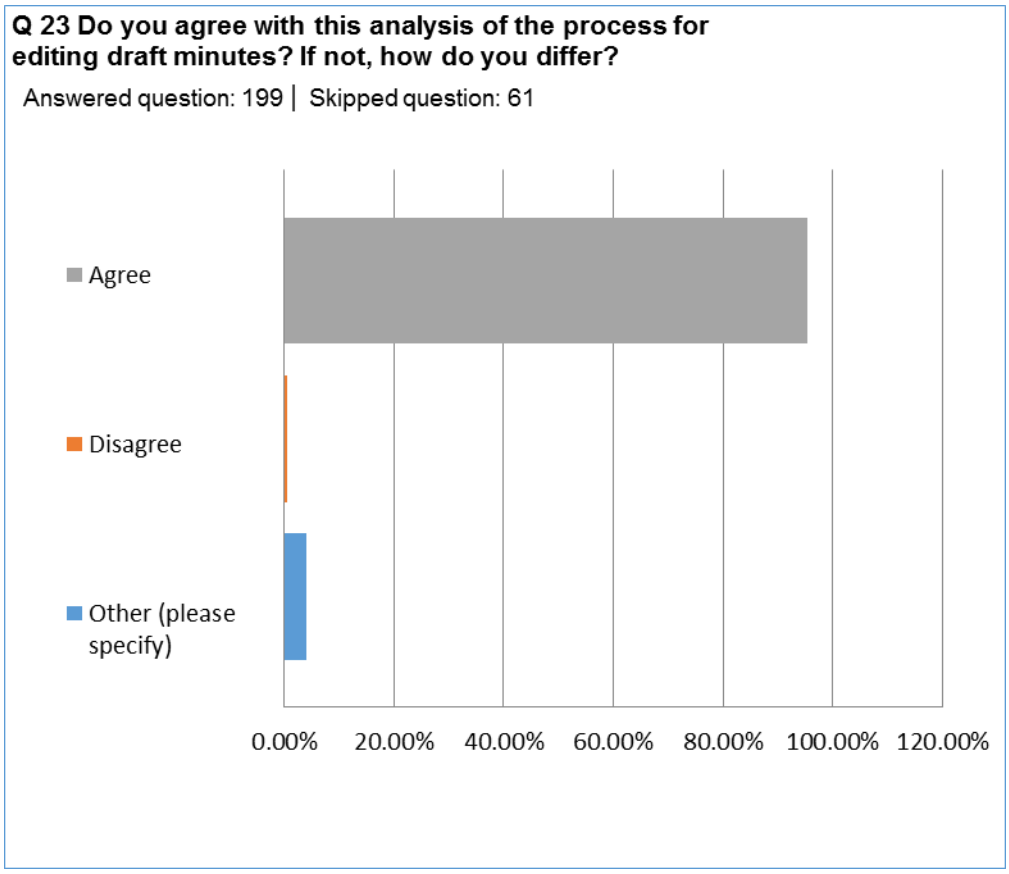
Once the minutes have been approved by the whole board, they should not be amended. If, exceptionally, an error is discovered at a later date, the error should be agreed and minuted at a subsequent meeting and reference to this amendment should be noted on the original minutes.

Question 23 — Do you agree with this analysis of the process for editing draft minutes? If not, how do you differ?

Response

Only one respondent disagreed with the analysis. Comments under 'Other' included:

- only key matters are recorded — directors may comment but the approval is for the whole board. Once signed, minutes should not be amended.
- the minutes are the minutes, once signed. Supplementary matters can be raised at subsequent board meetings
- in my experience the chair is not just an 'influence' on the minutes, but would endorse the draft for circulation.
- minutes should be able to be amended up until the time that all directors indicate their approval. After approval, subsequent amendments should be documented in subsequent minutes and this change annotated on the original minutes, leaving the original minutes unaltered
- style is always a contentious issue, but I believe good practice is to have the draft minutes circulated promptly after a meeting and any director can comment
- despite their being 'well written', directors often have their own take on what should be recorded. There may also be feedback from the CEO on what is a key issue to record.



Question 24 — How do you deal with material events that arise between the board meeting and the review of minutes? Might these be noted in parentheses, for example?

Response

Responses indicate a range of practices:

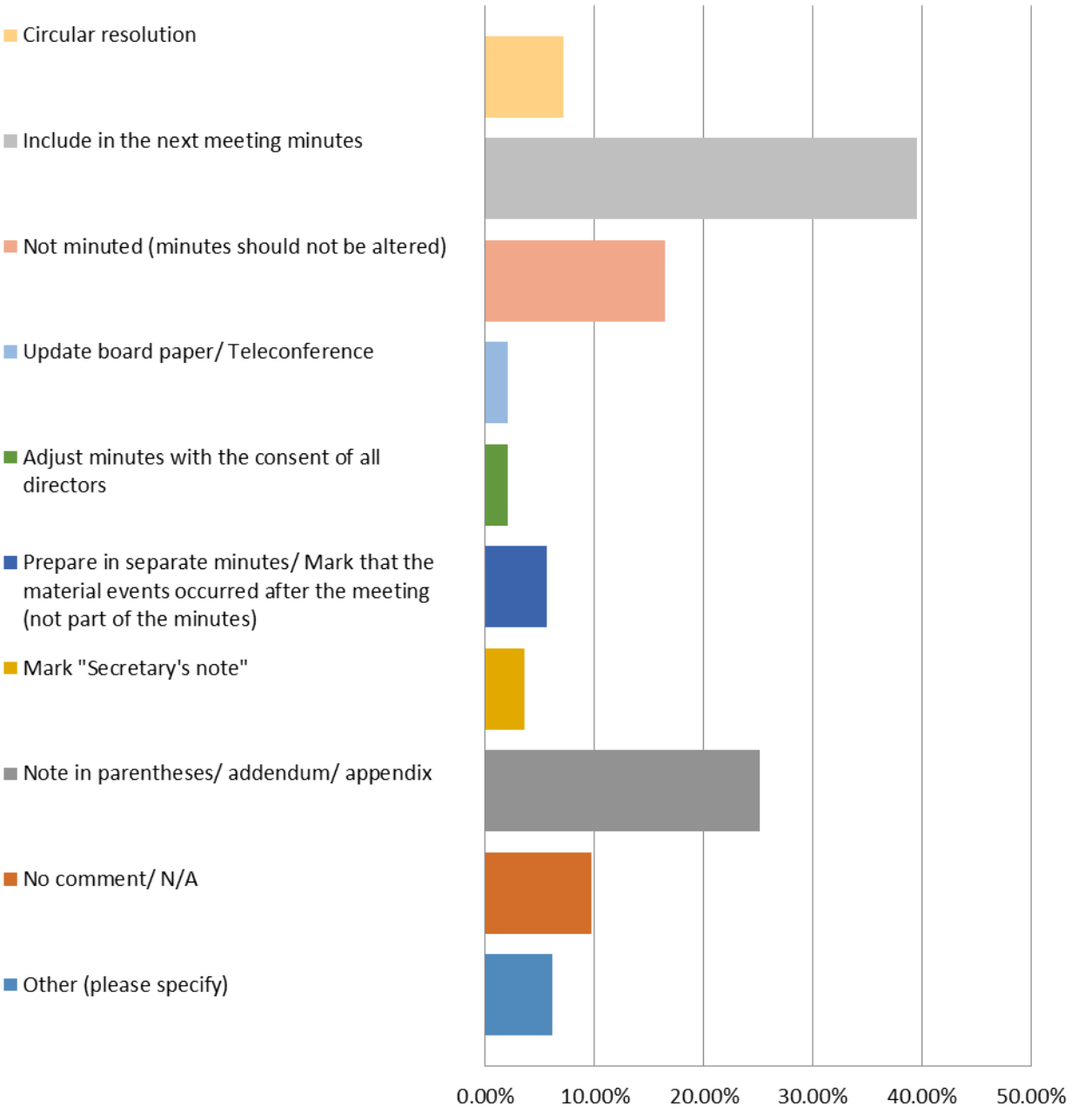
- include in the next board meeting minutes — 40 per cent
- note in parenthesis, addendum or appendix — 25 per cent
- not minuted and the minutes should not be altered — 16 per cent
- circular resolution — seven per cent
- prepare separate minutes and note that the material events occurred after the meeting (this does not form part of the meeting) — six per cent
- mark as ‘Secretary’s note’ — four per cent
- update board paper / teleconference — two per cent
- adjust minutes with the consent of all directors — two per cent.

Free text comments included:

- it depends on the event. The executive group — chair and key board executives should be across the event and provided with an opportunity to mitigate and communicate with directors outside a board meeting and then relevant communications and outcomes are included in the resolutions at the next board meeting
- it should not be included in the minutes. The material event can be noted at the next meeting or if a decision is required it can be made through a round robin resolution
- we note them in parentheses if they are facts that should be known and explained in clear terms, not as an add on
- these can be annotated as 'Post Meeting Developments'.
- Discussion is the only way to resolve such matters to obtain agreement as to what was actually discussed.
- Matters subsequent to the meeting are reported as ‘Subsequent to the meeting...’ if uncontentious. If they relate to contentious matters or matters requiring further discussion, they are not included in the minutes and are carried over to a subsequent meeting
- my practice is not to include this in the minutes but there may be a separate note to directors if a material event has happened
- include a supplementary statement by the chair.

Q24 How do you deal with material events that arise between the board meeting and the review of minutes? Might these be noted in parentheses, for example?

Answered question: 195 | Skipped question: 65



5 Access to minutes

Minutes of board meetings are internal records of the company and, as such, shareholders have no legal right to see board minutes. However, as noted above, some organisations such as regulatory bodies now publish minutes of board meetings and associated papers on their websites. Careful consideration should be given to a decision to publish details of internal matters in this way and consideration should be given to the potential impact on this important decision-making function within the organisation.

Auditors often request to see board minutes as part of their audit inspection. Some companies will allow this, others only allow the audit partner to read the minutes, and others will only allow them to see specific minutes.

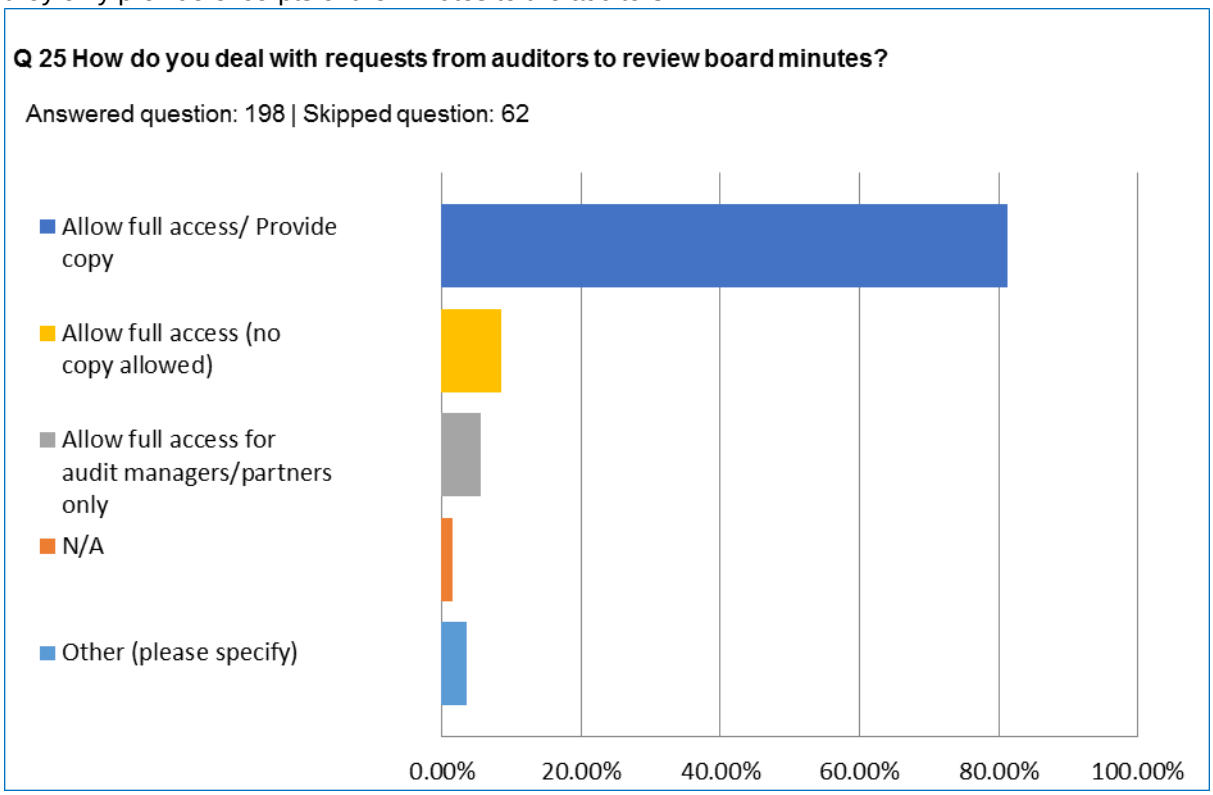
In some regulated sectors, the regulator will request copies of board minutes.

Question 25 — How do you deal with requests from auditors to review board minutes?

Response

Eighty per cent of respondents allow auditors full access to board minutes and provide a copy to the auditors. Approximately nine per cent allow full access to board minutes to the auditors, but do not provide copies. Another group — five per cent — allow access to board minutes only to the audit partner or manager.

There were two comments to the effect that internal audit only has access to the relevant sections of the board minutes, but that the external auditor has access to the full minutes. Two respondents answered that they only provide excerpts of the minutes to the auditors.



Question 26 — How do you deal with requests from regulators to review board minutes?

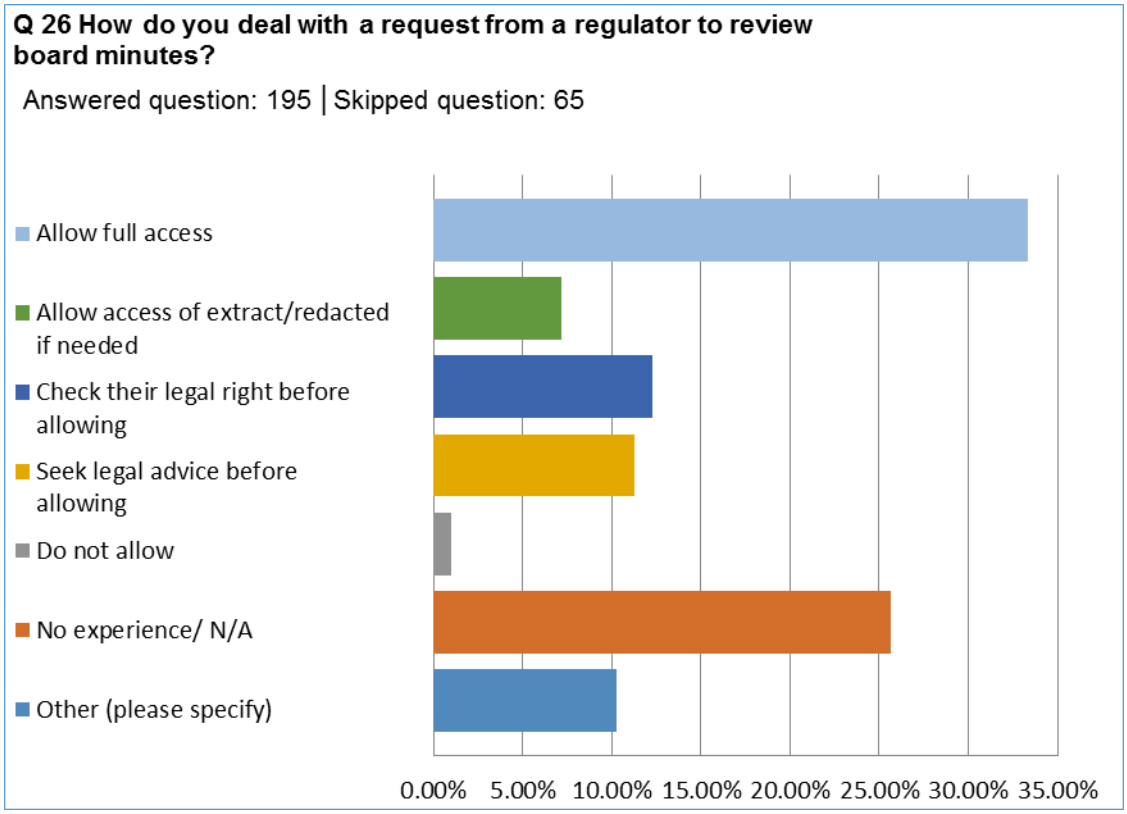
Response

There was a range of responses to this question:

- allow full access — 33 per cent
- no experience — 27 per cent
- check the legal right to access before allowing access — 12 per cent
- seek legal advice before allowing access — 11 per cent
- other — ten per cent
- do not grant access — one per cent.

Comments included:

- this would require a formal notice to produce documents in relation to a specific matter
- we provide minutes to APRA for inspection at our offices and have also sent electronic copies of minutes directly to APRA via a dedicated secure line
- it depends on the circumstances but if the issue is sufficiently important the minutes can be reviewed with a director present
- the issue is considered by the company secretary and the chair
- depends on the regulator and their statutory power but otherwise we would not grant access
- a straightforward administrative or operational matter such as a board approval of a policy or a matter under the regulations would be allowed, but if a matter is more contentious or out of the ordinary I would consult the chair and possibly obtain legal advice
- we normally grant access provided confidentiality is assured
- have provided an extract to Austrac to demonstrate consideration of anti-money laundering or counter-terrorism financing matters
- we deal with these requests carefully and it should be within the regulator's powers of investigation
- we deal with each request on a case-by-case basis.

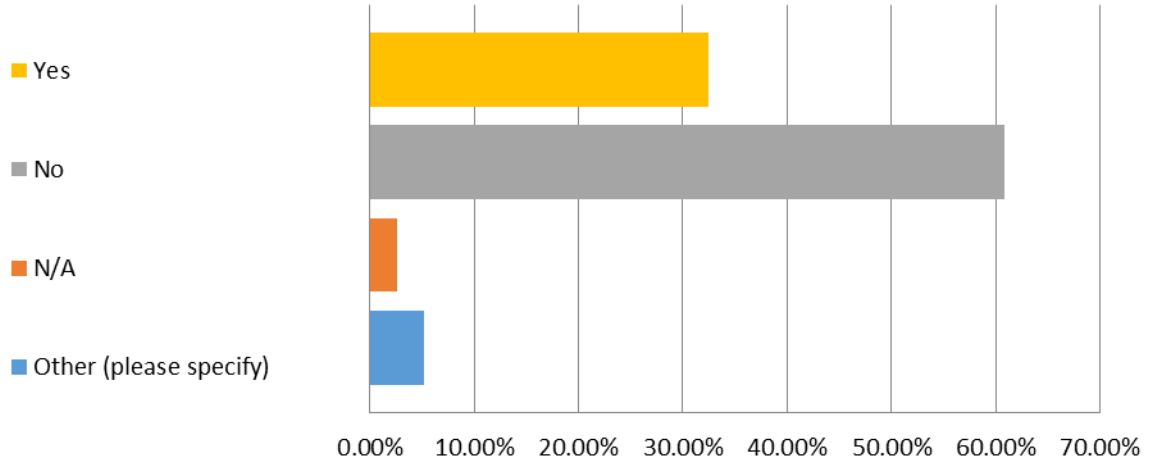


Question 27 — Is there anyone else to whom you would grant access to board minutes, other than pursuant to a court order?

Response

Just over 60 per cent of respondents answered no to this question and just over 30 answered yes. Twenty nine respondents provided examples of other parties to whom they would grant access to board minutes including: directors (former, present and future), lawyers instructed on behalf of the organisation, members (when required), central agencies, ministers, financiers, an appointed actuary, external consultants, funding bodies, shareholders, senior employees and bidders for a company. Several respondents observed that they would provide board minutes as part of a due diligence review.

Q 27 Is there anyone to whom you would grant access to board minutes, other than pursuant to a Court Order?
Answered question: 194 | Skipped question: 66



6 Retention of company secretary's notes of meetings

It is usual practice for company secretaries to keep their written notes of board meetings until the final version of the minutes are formally approved at a subsequent board meeting and then to destroy those notes. Some company secretaries keep their written notes indefinitely but it should be understood that any such notes would be 'discoverable' or discloseable in the context of any future litigation.

Some company secretaries record board meetings in order to clarify the nuances of a debate over controversial discussions.

It can be challenging for a company secretary to participate in discussions at a board meeting and/or leave the room during the course of the meeting when they are also taking the minutes. A solution might be to have a deputy or other minute-taker attend the meetings to allow the company secretary to participate freely.

Question 28 — How long does your company secretary (or relevant minute-taker) retain the notes of your board meetings, and why?

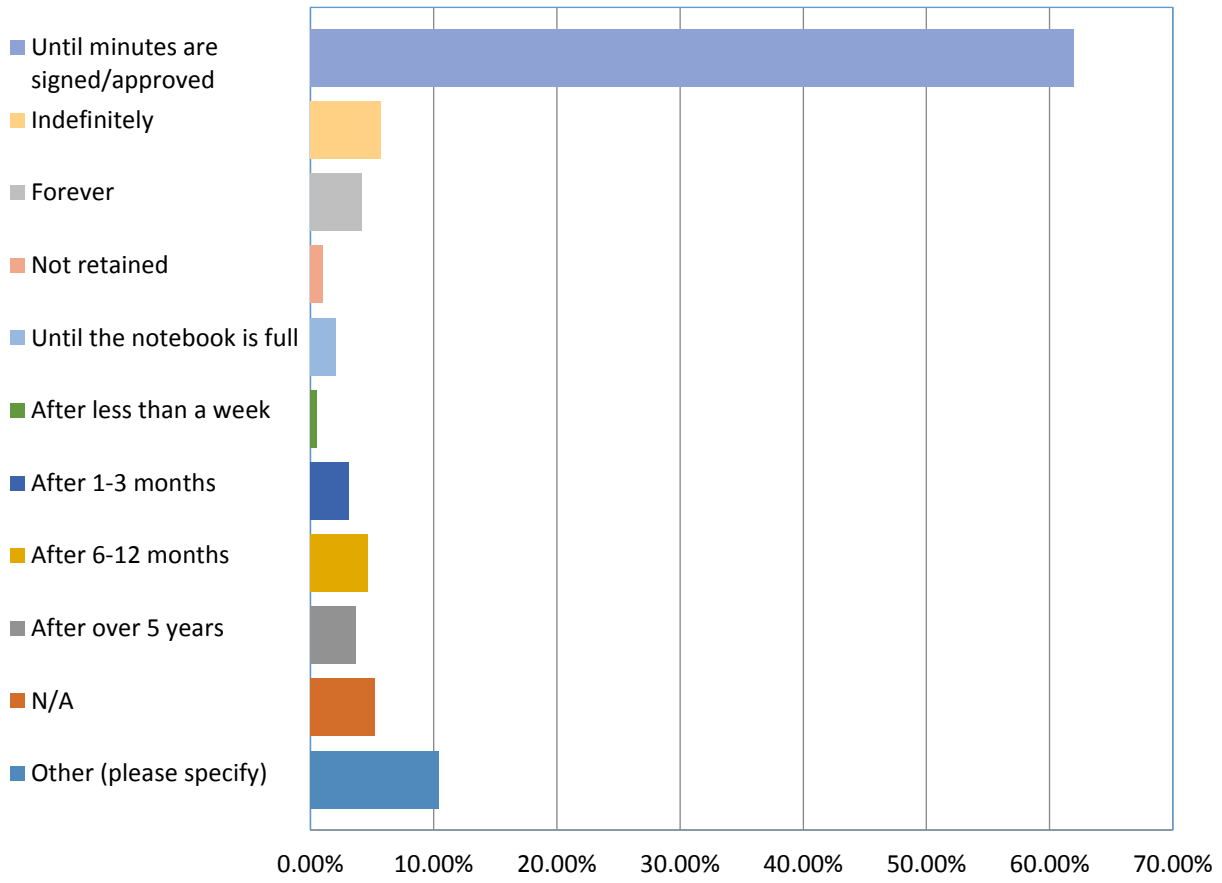
Response

According to survey respondents the predominant practice (62 per cent) is to retain the company secretary's notes until the board minutes are signed or approved. A small number of other practices were referred to including: indefinitely or forever (10 per cent), up to 3 months (3 per cent), 6–12 months (5 per cent) and for 5 years (4 per cent).

Free text comments included:

- I record the discussion directly into the draft minutes which are then edited so do not have notes
- I type my notes — anyone taking longhand notes in this day and age is a dinosaur
- while they are currently retained, I agree they should be deleted after a couple of months
- they are retained for the same period as other business records under the Corporations Act
- I destroy my personal notes once the minutes are in draft
- we have an annual review of the resolution register by the company secretary, chair and CEO and then destroy the notes
- we use a retention schedule prepared by our lawyers
- I prepare a skeleton prior to the board meeting and type directly into the document so do not have notes
- we have a minute-taker and meetings are recorded so notes are not required.

Q 28 How long does your company secretary (or relevant minute-taker) retain the notes of your board meetings, and why?
Answered question: 192 Skipped question: 68

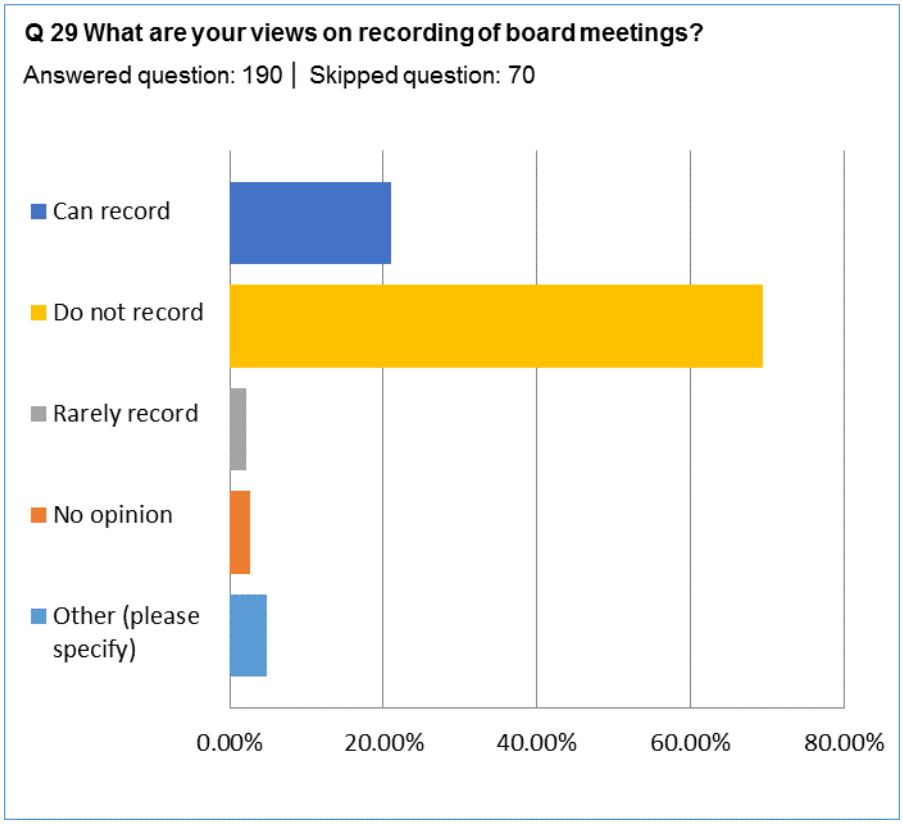


Question 29 — What are your views on the recording of board meetings?

Response

Almost 70 per cent of respondents believe board minutes should not be recorded and just over 20 per cent believe that board meetings can be recorded.

Comments included that: recording should only take place in limited circumstances if contentious matters will be discussed and that recordings should be erased once the board approves the minutes.



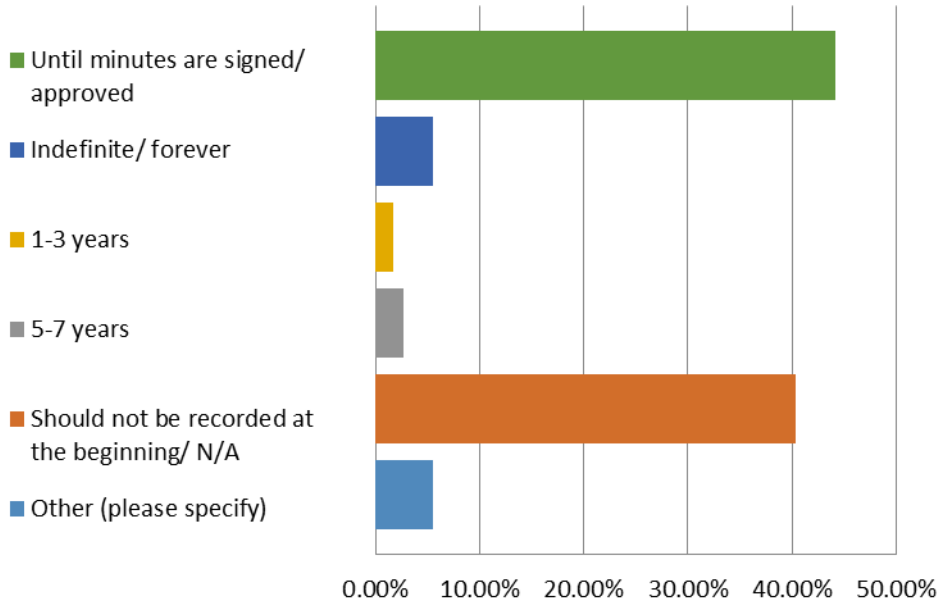
Question 30 — How long should such recordings be retained?

Response

If recordings are made, 44 per cent of respondents consider they should only be retained until the minutes are approved and signed. Forty per cent indicated meetings should not be recorded. Some commented in the free text that in their view the recordings should be treated like other company records and should be retained for similar periods.

Q 30 How long should such recordings be retained?

Answered question: 181 | Skipped question: 79



7 Do you have any other suggestions?

Question 31 — Do you have any other observations on the minuting of meetings which might be helpful?

Response

While this question had the highest non-response rate (103/260), a large number of respondents (85/260) took the time to provide a range of useful observations and suggestions:

- only to say that people frequently pay little it no regard to the very difficult and exacting task that minute taking and drafting is. It requires an understanding of the business, of the law and regulation, a superior command of the English language and a nuance of language. Regard has to be had to potential regulatory scrutiny of the minutes. The minutes are relied upon to substantiate what it is the board decided to do, and will be relied upon when directors are seeking to defend a position in court. As such, it is more than mere note taking — it is a skill honed by years of experience, and needs to be acknowledged as that.
- even though there is little regulatory guidance or Corporations Act requirements for the minuting of meetings, I would not be in favour of any additional formal regulation. Minutes must be appropriate for the individual company, its size, board size, operations, etc. Company secretaries and chairs all have different styles and recording methods so in my view it would be counterproductive to be prescriptive in forcing regulation on minutes. They would simply end up being another tick the box exercise. I sensibly consider my minutes for each meeting and I work closely with the chair and the committee chairs to ensure they are accurate and appropriate.
- I invest time and effort in ensuring the board submission and recommendation to the board is well drafted, with a view to ensuring this ultimately represents the decision of the board.
- traditionally, I had been keeping minutes in a ‘guard book’, but these days, electronic filing in the Cloud seems just as good. Permanency is vital and inability to alter or amend protected
- differing opinions amongst directors as to the extent of minutes is on-going. It is impossible to please all of the different requests
- write minutes as if they will be closely scrutinised by a court of law
- It is always difficult to find a balance between minutes of record and minutes of narration and can often be a matter of judgment.
- I find it useful to prepare a template of the board minutes prior to the meeting, including draft resolutions that were included in the briefing papers. During the meeting I can concentrate on adding the major items discussed
- it is an art
- remember what Henry Bosch AO said ‘Minutes are a letter to an unknown judge’
- the question of what is reasonable should also apply — common sense — could an absent director follow discussions and decisions?
- if ten people minuted the same meeting, there would probably be ten completely different minutes. In the end, the style is not important; the careful wording of important matters is
- minutes are seldom looked at unless there is a problem. Be cognisant of the nature of the issue that is being minuted and pay most careful attention to more complex issues with higher levels of risk. Seek expert legal advice for the most sensitive and critical matters
- there is no one-size approach, best to be flexible and allow the company secretary apply discretion to which is the most appropriate approach
- company secretaries should use concise and accurate language. Some older style secretaries are still using ‘aforementioned’ ‘hereby’ and other old fashioned language
- there are people still sticking minutes into bound books! Secretaries need to change as technology and business practice changes — electronic signing of minutes, soft copy/electronic minutes books, modern language

- a good chair is always helpful — one who summarises a discussion and then clearly states a decision. This is very useful in ensuring that relevant information is captured. A tactful company secretary can do this if the chair does not — either by speaking up accordingly by saying 'I just want to check that I have captured the key points which are ..' or, in particular cases, I have resorted to displaying the minutes on a screen to ensure attendees can live with what has been captured. It is also a case of having to be adaptable — I have a board and five committees — and so deal with six individuals as chairs. Only one has demonstrated a particular propensity to need to edit minutes taken, the remainder generally make no or minor changes
- I find the use of a template helpful and a well-run board meeting where the chair has control is much easier to document
- with any new chair or company secretary there should be consensus at the outset as to the form and content level of the minutes, and should be applied consistently to each meeting
- I am pedantic about recording the start and end time of meetings, together with the times relating to any recess of a meeting, or times when a person came and left the meeting for a specific presentation. Also, it is important that the minutes record any changes to the order of agenda items that was different to the agenda circulated with the board papers
- we try to include proposed resolutions as part of meeting papers and generally resolve as proposed or adjust as needed. Otherwise it is often hard to know what the resolution was if the board is not specific, unless you pull them up and say what exact words are you resolving?
- minute taking and formulation is an art form. It takes practise and it is a fine balance between too much and too little. One of the toughest jobs
- minutes need to be clear, concise and in plain English. The board does not need to make every decision by resolution (it may agree, acknowledge, support, confirm etc) which unfortunately is a revelation some company secretaries come to way too late in life.
- good board paper discipline permits good minute practice
- personally I believe it should be the company secretary/deputy company secretary who should minute the meeting, so that they could hold their own if someone tries to influence the minutes, and
- a strong relationship with the chair. The preparation of 'run sheets' for the chair helps the flow of the meeting which then helps minuting. A good understanding of the papers to anticipate what management of the board may need or ask for. The devil is truly in the details.

Q 31 Do you have any other observations on the minuting of meetings which might be helpful?

Answered question: 157 | Skipped question: 103