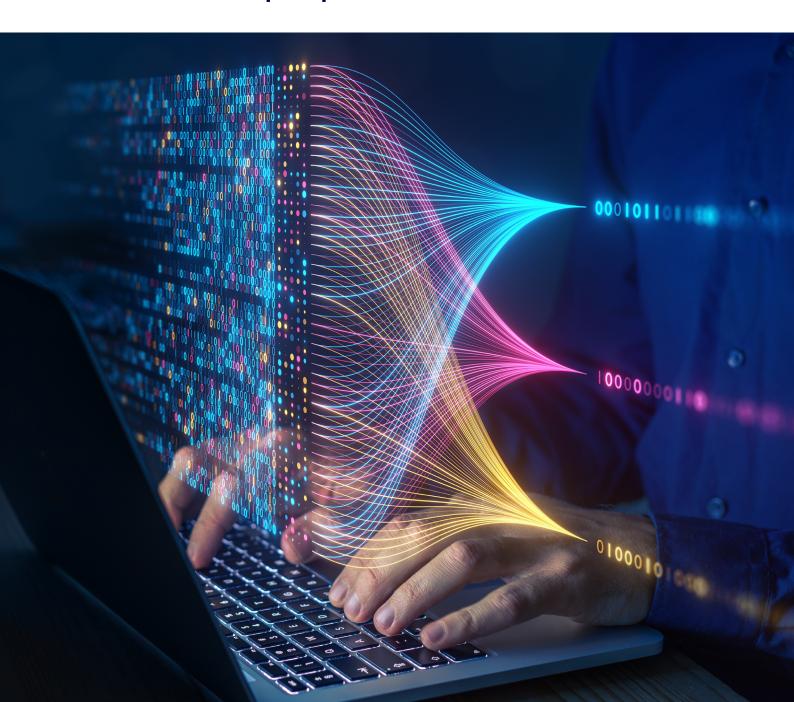July 2024

Governance
Institute
of Australia

Artificial Intelligence (AI) and board minutes
– Issues paper

Artificial Intelligence and board minutes – Issues Paper

How often has someone said to you recently: 'Oh, you won't need to do minutes anymore, Artificial Intelligence (AI) can do it for you'? or 'AI can generate a transcript, just use that for the minutes' or 'Why don't you use something like Microsoft Co Pilot to take the board minutes?'.

As more organisations use AI and it becomes embedded in many aspects of their operations, governance professionals need to consider how they might use AI to increase efficiency while ensuring there are appropriate governance controls in place. The use of AI should be considered in the context of organisations' policies and processes around responsible use of AI including accountability and ownership of content generation. AI use should also be considered against the backdrop of cyber security, data governance and risk management frameworks.

This Paper outlines some of the issues that may arise when considering using AI to take board minutes or for other aspects of company secretarial practice. It also draws on established principles relating to board minutes in the context of considering whether to use AI to undertake this critical activity.[1]

What is AI?

AI technologies have a broad range of applications and capability and are in a constant state of development. There are four primary domains of AI, including:

- Computer Vision (CV)
- Natural Language Processing (NLP)
- Machine Learning (ML), and
- Generative AI (GenAI)

The International Standards Organisation, defines AI as *'a technical and scientific field devoted to the engineered system that generates outputs such as content, forecasts, recommendations or decisions for a given set of human-defined objectives'.[2]* In simple terms, it is *'the ability of a computer system to perform tasks that would normally require human intelligence, such as learning, reasoning, and making decisions'.[3]*

What is GenAI?

The latest generation of AI is the development of advanced Machine Learning using Large Language Models (LLM)[4] and Multimodal Foundation Models (MfM).[5] MfMs can receive input and content in multiple modes and perform a range of general tasks such as text synthesis, image manipulation and audio generation.[6] GenAI is able to create *new content* such as text, images, audio, video, and code by learning from data patterns. It relies on existing data, processes it, and then generates data with similar characteristics.[7] GenAI has become popular and widely available following the launch of ChatGPT and DALL-E. ChatGPT created by OpenAI has received significant interest as recent breakthroughs in the field have the potential to drastically change content creation where the inventive step and creativity is shared between a human user and AI.[8]

Using AI and GenAI has the potential to increase efficiency and productivity in company secretariat and governance teams by taking over routine tasks that would take a human many hours. These tasks could include researching and synthesising large amounts of information, seeking answers to specific questions in multiple documents, producing first drafts of documents, producing transcripts of training sessions or taking notes of internal meetings. However, there are some risks for organisations to consider and manage. Some of these are set out below.

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1 See Joint Statement on Board Minutes, Governance Institute of Australia and Australian Institute of Company Directors August 2019 and *Good Governance Guide* Issues to consider when recording and circulating minutes of directors' meetings, Governance Institute of Australia.

2 https://www.iso.org/artificial-intelligence/what-is-ai

3 https://www.digital.nsw.gov.au/policy/artificial-intelligence/a-common-understanding-simplified-ai-definitions-from-leading

4 Black box AI systems that use deep learning on very large datasets to understand and generate new text

5 See 19 of the best large language models in 2024, Tech Target, 21 June 2024.

6 See What is a foundational model, Ada Lovelace Institute,

7 See Generative AI What it is and why it matters, SAS institute.

8 Open AI announced in May 2024 that GPT-40 would become free for all users Open AI launched GPT-4o.

Understanding some of the risks of using AI

- Data Privacy – Confidential and/or personally sensitive information may be inadvertently disclosed outside the organisation.

- 'Shadow IT' cyber security risk – Unsanctioned systems and/or by-passing organisations' IT restrictions introduces the risk of cyber breaches.

- Commercial Intellectual Property (IP) Ownership of content generated by AI (images, text, creative content, code) – it is possible to inadvertently infringe IP rights if AI generates content without appropriate attribution.

- Accuracy of output from Generative AI requires a human to check and to 'own' the output – lack of accountability and ownership of content can lead to disinformation.

- 'Toxic content' – AI can be coaxed into creating toxic content and is prone to 'prompt injection attacks', when an attacker creates an input designed to make the model behave in an unintended way.

- Bias, Discrimination and Corruption – understanding that AI generates content based on the data it has been trained on. The content on which an AI has been trained may be biased or discriminatory. It can also be corrupted by manipulating the data used to train the model (a technique known as 'data poisoning').

- The 'Black Box' nature of some AI systems makes it difficult to understand how decisions are made, or outputs generated – requiring transparency and explainability of AI decision making.

- Regulatory Compliance – the use of AI may be an issue in some scenarios, it is critical to check.

- Reputational and financial damage – there is a risk of affecting customer, supplier and investor stakeholder confidence and trust if the use of AI is not properly managed or disclosed.

- Improper cost-benefit analysis – organisations that lack a clear organisational purpose for why they are deploying AI across the organisation or within discrete activities.

- AI literacy of business leaders – a common issue is that directors and managers responsible for the deployment of AI across the organisation may lack sufficient technology literacy.

Effective AI Governance

The development of an AI Governance Framework is an essential first step when considering where and how to deploy AI across an organisation. This may require setting clear goals and ethical guidelines to allow for the responsible deployment of AI across the organisation. Critically it involves internal and external stakeholder buy in to drive trust and confidence. Developing and applying governance frameworks that drive cultural change in AI adoption within teams and across the organisation can act as a critical enabler to AI deployment. This may include aligning AI adoption with strategic goals, integrating accessible training and education programs, creating a safe environment for experimentation, critically assessing organisational readiness, encouraging collaboration and knowledge sharing across the organisation and understanding regulatory and compliance requirements. With any governance framework, the appropriate management and assessment of risk and integration of monitoring, auditing and continuous learning and improvement processes is integral to an effective AI Governance framework.

AI and board minutes

Applications such as Microsoft Teams, Zoom or GoogleMeet can record meetings and can also generate written meeting transcripts or summaries. Microsoft Copilot can also extract actions from these types of summaries. Some organisations have also developed in-house AI tools.

When considering whether to use these types of tools to produce 'records' of meetings it is important to consider companies' legal obligations regarding minutes as well as how using AI may impact some of the key principles underlying good practice minute taking.

> **!** **Legal requirements for keeping minutes**
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> Under section 251A of the *Corporations Act 2001*, 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). A 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. Section 251A does not mandate that final minutes be prepared and signed within one month. In other words, while minutes must be prepared and recorded within one month, they can then be reviewed by directors, discussed, amended and then approved and signed by the chair, all within a reasonable time. Minutes recorded and signed in this way, are prima facie evidence of the proceedings and resolutions passed.[9]

Key principles and issues to consider

Governance Institute and Australian Institute of Company Directors issued a Joint Statement setting out the key principles in relation to board minutes which remain relevant despite technological advancement.[10]

> **!** *Minutes are a record of board decisions and the process, or proceedings, by which those decisions have been made. They are not only a legal record they also convey these decisions to the executives who implement them and serve as a reference for the board if it wishes to revisit them.*
>
> Joint Statement on Board Minutes page 2.

Minutes serve a range of purposes. The content of the minutes is generally known in advance of a meeting: agenda, papers for consideration, proposed resolutions and persons responsible for any actions. This is why many governance professionals prepare a minute 'shell' into which they incorporate the record of the summary of the key points of discussion and decisions following the meeting. It may save time to use an AI tool to generate a shell, particularly where resolutions relate to routine matters. If considering using AI for board related purposes it is important to consider where any AI produced content 'lives'. For instance, is the content produced and located on in-house system with organisationally approved cyber security and other controls or does it live outside the organisation?

Many governance professionals report the need for a level of trust between a board and the minute taker. A board needs to be comfortable that the minute taker can distil the key points canvassed at a meeting without bias. This level of trust may be difficult to build when using AI and AI may not be suitable for capturing more extensive or complex board discussions. There is also a risk that digitally recording a meeting for the purpose of using AI might make the meeting attendees behave differently and impede authentic and fruitful discussion. All attendees must consent to a meeting being recorded.

> **!** *Minutes are not a report or transcript of the discussion or debate during the meeting, or a record of an individual director's contribution. This level of detail is not required by law, is inconsistent with the established practice of minute taking, and may stifle healthy boardroom debate. Too much information can be as unhelpful as too little, and can cause a lack of clarity. While minutes can facilitate regulatory oversight, this is not their primary purpose. Minutes are not a purely compliance exercise and a 'tick box' approach should be avoided.*
>
> Joint Statement on Board Minutes page 2.

Minutes are not a meeting 'transcript'. A transcript is a verbatim record of what was said at a meeting. Boardroom discussions are more complex. They are an important part of the process of debating an issue to arrive at the best outcome for a company. During these discussions directors may advocate a view with which they personally disagree in the interests of ensuring a thorough discussion and examination of all perspectives.

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9   See section 251A of the Corporations Act. See Joint Statement on Board Minutes, and *Good Governance Guide* Issues to consider when recording and circulating minutes of directors' meetings, Governance Institute of Australia.

10   See Minutes Statement.

These comments are not necessarily for inclusion in minutes and including these details may discourage the free-flowing discussion that should be part of a well-functioning board. The production of a transcript of a meeting using AI potentially interferes with boards considering matters from a range of perspectives and achieving a collective decision. A transcript's existence also potentially impacts the status of board minutes as the sole, permanent record of a meeting. AI generated transcripts, notes and summaries are also likely to be discoverable documents in litigation.

Retaining notes, such as an AI generated transcript, may undermine the integrity of the minutes as the final record of the meeting. Companies should adopt and consistently apply a document management and retention policy. The policy should address what documents and records are required to be retained and in what format, and when they may be destroyed and should cover material in any board portal. The policy should address the status of draft minutes and handwritten or other notes. Companies may wish to consider seeking legal advice to ensure that the policy is consistent with obligations to preserve evidence for actual or likely legal proceedings. It is generally not considered good practice to use a recording device for board minute taking.[11]

> ⚠ *It is advisable to include the key points of discussion and the broad reasons for decisions in the minutes. This may help to establish that directors have exercised their powers and discharged their duties to act with care and diligence and in good faith, for a proper purpose and in the best interests of the company. It is also advisable to consider the principles of the business judgment rule when preparing and approving minutes. If judgment is required and directors are balancing a number of competing risks and considerations in their decision-making, it is prudent to actively consider whether the minutes capture them adequately but succinctly.*
>
> Joint Statement on Board Minutes page 2.

There is a considerable level of 'human' judgement required to assess the key points of discussion including the principles of the business judgment rule. It is unclear whether AI has evolved to a point where it is able to make these judgments.

The Business Judgment rule

The *Corporations Act 2001* (ss 180 to 184) legislates the general duties of directors (and other officers) in relation to care and diligence, good faith, use of position, use of information and recklessness or intentional dishonesty. 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, and
- rationally believe that the judgment is in the best interests of the corporation.

> ⚠ *Directors, governance professionals and management each have an important role to play in the board reporting process. A well-written board paper will complement the minutes, and can often demonstrate the reason a decision has been taken with little, if any, further elaboration required in the minutes. It is appropriate for board minutes to refer to, without repeating, the contents of board papers and other supporting documents.*
>
> Joint Statement on Board Minutes page 2.

Governance professionals frequently insert the details of board papers into a shell in advance of the meeting. As noted above AI may be useful in this process particularly where papers relate to routine matters.

> An important issue is the way in which boards 'challenge' management and the extent to which this is reflected in minutes. While a matter for judgment in each case, it is appropriate that the minutes record significant issues raised with management by directors and the responses received or action promised. It is neither necessary nor desirable to record every question put and every response received. It will normally be sufficient to record the thrust of significant issues raised in non-emotive and impartial language.

The importance of recording the thrust of significant issues raised in non-emotive, impartial language cannot be understated. AI may not have evolved to a point where it is able to make these judgments.

In summary, whatever tools are used to generate minutes they do not diminish a company's and a chair's obligations and responsibility under section 251A of the *Corporations Act* for the content of the minutes. AI, in its current form, may not yet be suitable for taking board minutes.

AI deployment in other areas

Many organisations are now actively considering or have already deployed AI in their operations. While AI may not yet be suitable for taking board minutes there are other areas where using AI may increase efficiency and save time for a company secretariat team. Some members report good results using Microsoft Copilot for notes of internal meetings and extracting management team actions from these notes. See the Case Study below. It is also likely that AI will play an important role in climate-related financial disclosure which in most cases will require production and analysis of large amounts of complex data.[12]

Piloting Copilot in secretariat specific use cases

Copilot

Microsoft Copilot uses the CPT-4 language model to find and analyse information from chats, emails, documents, web pages and other sources with the O365 environment to draft content, analyse information and improve productivity.

In early 2024 a Governance Institute member conducted an experiment under three use cases:

- Capturing minutes from internal meetings and extracting actions.
- Insights from historical round of Board/Committee papers.
- Board and Committee paper production feedback.

Overall, the experiment found that it was useful for simple tasks but that it may not be sufficiently advanced to perform more complicated activities requiring human supervision and review.

Company Secretary Top 20 listed company

Risk management

Managing the risks associated with the use of AI in organisations is an essential element of governance. 'Cyber risks' can relate to data security, on premises systems, the cloud, third party supply chain, human risks, and technical risks. They cover both insider threats and external attacks. Security, that is protecting the organisation against the unauthorised use of information, especially electronic data and against the unauthorised, particularly criminal, use of electronic data, is an essential part of managing this risk. The cyber governance process should be encompassed within the overall corporate governance framework of the organisation, and should be appropriate to its type, ownership structure, size, industry, and risk profile.

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12   See AI and ESG: Critical crossroads for Australian boards and executives, Minter Ellison, 4 June 2024.

Security

Security should be integrated into all AI projects and workflows in organisations from their inception. While a 'secure by design' approach requires strong leadership, it will ensure that security is a business priority and not just a technical consideration.

Before trialling any AI system, it is important to understand your organisation's approach to security. The table below sets out some questions to ask when considering the use of AI in your organisation.

Questions to ask about using AI in your organisation

Managers, board members and senior executives can use the following questions in discussions with technical and security staff, to help understand how the organisation is dealing with the AI/ML threat.

- Is your organisation clear about when and how it is using AI? Does your organisation have a Responsible AI policy?[13]

- Have you tested the appetite of the board and other stakeholders for using AI? Have they been adequately informed of the current benefits and limitations of AI?

- Have your organisation's policies been updated to take into account the use of AI?

- Do you understand where accountability and responsibility for AI/ML security sit in your organisation?

- Does everyone involved in AI/ML deployment, including board members and/or senior executives, know enough about AI systems to consider the risks and benefits of using them?

- Does security factor into decisions about whether to use AI/ML products?

- How do the risks of using AI/ML products integrate into your existing governance processes?

- What are your organisation's critical assets in terms of AI/ML and how are they protected?

- What is the worst case, operationally or reputationally, if an AI/ML tool your organisation uses fails?

- How would you respond to a serious security incident involving an AI/ML tool?

- Do you understand your data, model and AI/ML software supply chains and can you ask suppliers the right questions on their own security?

- Do you understand where your organisation may have skills or knowledge gaps related to AI/ML security? Is a plan in place to address this?[14]

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13   See Responsible AI Pattern Catalogue, CSIRO Data61.

14   See Guidance AI and cyber security: what you need to know, Understanding the risks – and benefits – of using AI tools, UK National Cyber Security Centre, 13 February 2024.

Culture

Security is critical in relation to keeping AI systems secure and is as much about organisational culture, process, and communication as it is about technical measures. Where organisations are considering trialling AI it is important to ensure that employees:

1. Only use tools approved by the organisation.

2. Understand and adhere to organisational policies, particularly those relating to data and cyber security.

3. Have access to training about AI and its deployment.

4. 'Own' any AI generated content that they publish internally or externally. They should review AI outputs to ensure their accuracy.

5. 'Walk before they run' and start with low-risk exercises in areas where they are comfortable reviewing the output.

For more information see:

- National Artificial Intelligence Centre.
- Joint Statement on Board Minutes, Governance Institute of Australia and Australian Institute of Company Directors August 2019.
- *Good Governance Guide* Issues to consider when recording and circulating minutes of directors' meetings
- *Good Governance Guide*: Board minutes what to record the business judgement rule
- Australian Cyber Security Centre
- The State of AI Governance in Australia, Human Technology Institute, University of Technology, 31 May 2023.
- UK National Cyber Security Centre.