



GOVERNANCE VS MANAGEMENT

Minutes: What Should and Shouldn't Be Recorded, and Why It Matters Legally

They are not confidential, and they are not automatically correct just because they're signed

Minutes are treated, by most boards, as the least interesting document produced at any meeting. Legally, they are closer to the opposite: a record with evidentiary weight, subject (for companies) to criminal offence provisions for falsification, and considerably less private than most directors assume. Getting minute-taking right is not administrative housekeeping. It is a governance discipline with real legal consequences attached.

Which rules apply to your association?

The law depends on how your association is set up. A **company limited by guarantee** follows the Corporations Act 2001 (Cth) and its constitution. An **incorporated association** follows its state or territory associations Act and its rules. A **registered charity** also follows the ACNC Act and the ACNC Governance Standards, and some Corporations Act rules are replaced for charities that are companies. Check your own governing documents, and get advice before decisions with legal consequences.

In this resource

1. [The Statutory Obligation, Precisely](#)
2. [What 'Prima Facie Evidence' Actually Means](#)
3. [The Confidentiality Myth](#)
4. [What Good Minutes Actually Contain](#)

The Statutory Obligation, Precisely

If your association is a company limited by guarantee, section 251A of the Corporations Act 2001 (Cth) requires it to keep minute books recording the proceedings and resolutions of both member and director meetings within one month, with the minutes signed by the chair, or the chair of the next meeting, within a reasonable time afterward. This is not a soft expectation. Failing to comply is a criminal offence, and separately, falsifying books or making a knowingly false or misleading entry carries its own criminal liability under sections 1307 and 1308. Incorporated associations must keep minutes under their state or territory Act and constitution, which set their own requirements, so the offences and evidentiary rule described here apply directly only to companies.

What 'Prima Facie Evidence' Actually Means

Section 251A(6) provides that a minute properly recorded and signed is evidence of the proceeding it relates to, unless the contrary is proved. This is commonly summarised as minutes being prima facie evidence, and boards often take that to mean the minutes are treated as automatically correct. That overstates it. The presumption is rebuttable. A properly recorded and signed minute is evidence of what it records unless the contrary is proved, so the burden falls on whoever disputes it, but credible contrary evidence can displace it. In practice, sloppy or inaccurate minutes are more open to challenge than boards often assume, and accurate minutes are your best protection, precisely because the legal protection they offer depends on the minutes actually being accurate, not merely on their formal status as minutes.

The Confidentiality Myth

A persistent assumption in governance circles is that board minutes are essentially confidential, private documents shielded from outside scrutiny. This does not reflect the actual legal position. Minutes are discoverable in litigation and regulatory investigations, including under provisions such as section 30 of the Australian Securities and Investments Commission Act 2001 (Cth). More significantly, discoverability extends well beyond the final, signed minute itself. Draft minutes circulated for comment, personal handwritten notes taken during a meeting, and directors' annotations on board papers have all been treated as discoverable and relied upon in litigation, including *Brady v NULIS Nominees* [2024] FCA 1374, where an executive's handwritten notes from board meetings and workshops were used extensively as evidence. There is no general duty to keep drafts and notes, and a retention policy can cover their disposal, but never destroy them once litigation or an investigation is underway or likely without legal advice. Every document connected to a board meeting, not just the official minute, should be treated as something that could surface in a dispute.

Treating minutes as private because they feel private is precisely the mistake that leaves boards exposed. The law treats every draft, note, and annotation connected to a meeting as potential evidence, whether or not anyone intended it that way.

What Good Minutes Actually Contain

The Act does not prescribe a required level of detail, and sector guidance is consistent that minutes should not attempt to be a verbatim transcript. A [legal opinion on minute-taking commissioned by the AICD and Governance Institute of Australia](#) (updated May 2025) recommends minutes capture the key points of discussion, the decisions actually made, the reasons for them where appropriate, and agreed actions. Comprehensive minutes should also record basic administrative matters, attendance, apologies, quorum, meeting times, resolutions passed, and specifically any votes cast against a resolution or formal abstentions, since this is important evidence of an individual director's position if a decision later turns out badly.

- Record decisions, reasons, and agreed actions, not a verbatim transcript of the discussion that led to them.
- Capture votes against and abstentions specifically, since a recorded dissent or abstention is important evidence of a director's position, although it does not by itself discharge their duties if serious concerns remain unresolved.
- Where the board received incomplete information or deliberately requested further analysis before deciding, record that fact plainly. This is not defensive drafting, it is an accurate account of how the board actually exercised judgement.
- Adopt a document retention policy covering drafts, personal notes and annotated papers, since any that exist may be discoverable regardless of how informal they felt at the time, and never destroy them once litigation or an investigation is underway or likely without legal advice.
- Record and sign minutes within the time required by your governing Act and constitution (for a company, recorded within one month and signed within a reasonable time), since for a company, minutes not properly recorded and signed may lose the evidentiary protection section 251A(6) provides.

- If you believe a draft minute is inaccurate, raise the correction before or at the meeting that confirms it and ask that the agreed change be recorded, so the chair signs only a record the board accepts as accurate.

Minutes are not paperwork produced after the real work of governing is done. They are, quite literally, the legal record of whether that governing happened properly, and they deserve the same discipline this series has argued for throughout, applied to the humble act of writing down what actually happened in the room. This is one of the practical governance topics built into our Board Director course, alongside the papers, tools and frameworks that turn the principle into your board's actual practice. [Explore the course](#)

Annie Gibbins

Founder and CEO, Nexus Leadership

BOARDROOM ACTION WORKSHEET

Minutes: What Should and Shouldn't Be Recorded, and Why It Matters Legally

Turn the resource into evidence, a decision and an accountable next step. Keep the completed record in your association's approved board records system.

1 What is the issue or decision?

State the governance question in one clear sentence.

2 What evidence do we already have?

Record the facts, source documents and stakeholder evidence available now.

3 What evidence is still needed?

Identify the legal, regulatory, financial, member or operational information still required.

4 What is the agreed next action?

Capture the owner, timeframe and how the matter will return to the board.

Action owner	Review date	Board decision or resolution

General education, not legal, financial, tax, clinical or governance advice. Confirm specifics at the relevant primary source or with your own qualified adviser. Nexus Leadership is operated by Lipstick Consulting Pty Ltd · ABN 15 619 120 482.

CONTINUE YOUR LEARNING

Turn governance principles into practical board action.

Self-paced courses, editable resources and practical support for association boards and CEOs at nexusleadership.com.au.