

Hospital Foundations Act 2018

Fact Sheet 1: Board Governance

This document is intended for guidance purposes only and does not constitute legal advice. Hospital Foundations are strongly encouraged to seek independent advice to ensure compliance with the Hospital Foundations Act 2018.

Purpose

The *Hospital Foundations Act 2018* (**the Act**) provides a modern and streamlined approach to the establishment and regulation of hospital foundations. This fact sheet provides general information to assist hospital foundations in understanding the board governance arrangements set out in the Act.

Board function and membership

Establishment of a board

A board is established as the governing body of a hospital foundation.¹

The board's functions are to:

- manage the foundation generally;
- ensure the foundation pursues its registered objects effectively and efficiently (refer to Fact Sheet 2: Administrative Arrangements, for information about the objects of a foundation); and
- set strategies and policies for the management of property held by the foundation; and²
- perform any other function given to the board under the Act or any other Act.³

Membership

A foundation board must have at least seven members, comprising of:

- at least six people who have been recommended for appointment to the board by the Minister;⁴ and

¹ *Hospital Foundations Act 2018* s 27.

² *Hospital Foundations Act 2018* s 28(1).

³ *Hospital Foundations Act 2018* s 28(2).

⁴ *Hospital Foundations Act 2018* ss 30(1)(a), 30(3).

- one person (referred to in this document as a ‘HHS member’) who is either:
 - the chairperson of the Hospital and Health Board (**HHS**) for the foundation’s associated Hospital and Health Service (**HHS**); or
 - a Hospital and Health Board member nominated by the chairperson of the HHS for the foundation’s associated HHS.⁵

If a hospital foundation performs its functions in association with Health and Wellbeing Queensland, the relevant board for the foundation is the Board of Health and Wellbeing Queensland.⁶

All board members, except the HHS member, must be appointed to the foundation board by the Governor in Council on the Minister’s recommendation.⁷

Prior to recommending a person for appointment to the board, the Minister is required to consult with the chairperson of the HHS of the foundation’s associated HHS.⁸ The Act enables the Minister, in recommending a person for appointment to a foundation board, to have regard to whether the person has:

- understanding, or ability to rapidly acquire a sufficient understanding of the legislation applying to the foundation; and
- the skills, experience, or expertise in business or financial management, marketing, communications, health, law or another area the Minister considers relevant or necessary to support the board in performing its functions.⁹

Chairperson and deputy chairperson

The chairperson of a foundation board is a member appointed by the Governor in Council. A person may be appointed as chairperson at the same time they are appointed as a member.

A deputy chairperson is appointed by the members of the board and cannot be the same person that is appointed as chairperson.¹⁰ The deputy chairperson is required to act as chairperson if there is a vacancy in the office of chairperson or the chairperson is absent from duty.¹¹

Appointment term

A member, other than the HHS member, holds office for no more than five years as stated in the member’s instrument of appointment¹².

However, a member can continue to hold office after their term ends until a successor is appointed. This ensures business continuity for foundations where delays arise in

⁵ *Hospital Foundations Act 2018* s 30(1).

⁶ *Hospital Foundations Act 2018* s 30(5).

⁷ *Hospital Foundations Act 2018* s 30(4).

⁸ *Hospital Foundations Act 2018* s 30(3).

⁹ *Hospital Foundations Act 2018* s 30(2).

¹⁰ *Hospital Foundations Act 2018* s 31(1)–(3).

¹¹ *Hospital Foundations Act 2018* s 31(6).

¹² *Hospital Foundations Act 2018* s 32(1).

appointment or re-appointment processes. Members can be re-appointed, including those who are holding office until a successor is appointed.¹³

A chairperson and deputy chairperson hold office for their term of appointment as a board member.

A chairperson and deputy chairperson can only hold office for longer than their term of appointment as a board member if their term ends but they are awaiting appointment of a successor.¹⁴

Remuneration

There is no entitlement for board members to be remunerated under the Act. However, in accordance with whole-of-government policy, members are eligible to be reimbursed for reasonable out-of-pocket expenses.

Members' protections

The Act provides a general protection from civil liability to foundation board members for an act or omission made honestly or without negligence.¹⁵

Resignation from the board and vacancy in office

A member or chairperson may resign by giving notice of resignation to the Minister.¹⁶ A deputy chairperson may resign from office by giving notice of the resignation to the foundation board.

After resigning from the office of chairperson or deputy chairperson, a person can continue to be a member of the board for the term of their appointment as a member.¹⁷

A person cannot continue to be a chairperson or deputy chairperson if they are no longer a member.

A vacancy in the office of a member arises if the member has resigned or has been removed from office (see 'Removal from office and appointment of administrator' below).

Disqualification from becoming a member

The Act sets out the following circumstances in which a person can be disqualified from becoming a foundation board member:

- if the person has a conviction, other than a spent conviction, for an indictable offence; or
- if the person does not consent to the chief executive of Queensland Health requesting a report about the person's criminal history; or

¹³ *Hospital Foundations Act 2018* s 32(2)-(3).

¹⁴ *Hospital Foundations Act 2018* s 31(4)-(5).

¹⁵ *Hospital Foundations Act 2018* s 81.

¹⁶ *Hospital Foundations Act 2018* s 35(a).

¹⁷ ¹⁸ *Hospital Foundations Act 2018* s 33.

- if the person is an insolvent under administration under the *Corporations Act 2001*; or
- if the person is disqualified from managing corporations under the *Corporations Act 2001*; or
- if the person is employed by the foundation.¹⁸

Removal from office and appointment of administrator

A foundation board member can be removed from office by the Governor in Council if:

- the member has consented to the borrowing of an amount that is not lawfully authorised;
- the member would be disqualified from becoming a member (see ‘disqualifications’ above); or the Minister recommends the removal because the Minister is satisfied the member:
 - has not acted impartially and in the interest of the foundation in performing the member’s functions; or
 - is incapable of performing the member’s functions; or
 - has neglected the member’s functions or performed the member’s functions incompetently; or
 - has displayed inappropriate or improper conduct in a private capacity that reflects adversely on the board or foundation; or
 - has been absent from three consecutive board meetings without the board’s permission and without reasonable excuse.¹⁹

The Governor in Council may remove all members of a foundation board on the recommendation of the Minister if the Minister considers it is in the public interest to do so.²⁰ In the event all board members are removed, an administrator may be appointed.²¹ The appointment of the administrator is made by the Governor in Council on the recommendation of the Minister.

Board business

Presiding at meetings

The Act sets out certain requirements for board meetings. These include:

- the chairperson must preside at all board meetings at which the chairperson is present;
- the deputy chairperson is to preside over the board meetings in the absence of the chairperson;

¹⁸ *Hospital Foundations Act 2018* s 33.

²⁰ *Hospital Foundations Act 2018* s 49.

¹⁹ *Hospital Foundations Act 2018* s 34.

²¹ *Hospital Foundations Act 2018* ss 49–50.

- if neither the chairperson or the deputy chairperson is present at a board meeting, the board must choose a member to preside over the meeting.²²

Quorum

A quorum for a board meeting is a majority of its members at the time the meeting is held.

If a member has an interest in a matter that could conflict with their performance of duties and is subsequently required not to be present in the deliberations or take part in a decision about that matter, the remaining members at the meeting constitute a quorum for the meeting²³ (see 'Disclosure of interests' below for further information about disclosures).

A decision of a board is valid even if there is a vacancy in the membership of the board.²⁴

Conduct of meetings

The Act gives board members direction as to the conduct of board meetings. Questions raised at board meetings are to be decided by a majority of the votes of the members who are present and able to vote.²⁵ If the votes are equal, the member presiding at the meeting also has a casting vote. If a member abstains from voting, they are taken to have voted in the negative.²⁶

The board may allow members to take part in meetings or hold meetings using technology that allows reasonable contemporaneous and continuous communication between members. Members who use technology to take part in meetings are taken to be present at the meeting.²⁷

If a resolution is not passed at a meeting, it is still validly made by the board, provided the following apply:²⁸

- a notice of the resolution is given under procedures approved by the board; and
- a majority of members agree in writing to the resolution.

A foundation board is responsible for keeping minutes of its board meetings.²⁹

Obligations of members

Disclosure of interests

Board members are required to disclose any direct or indirect interest in a matter that the board is considering. They are required to disclose the matter if the interest could conflict with the member's proper performance of duties. The member must disclose the nature of

²² *Hospital Foundations Act 2018 s 40.*

²³ *Hospital Foundations Act 2018 ss 41, 45.*

²⁴ *Hospital Foundations Act 2018 s 44.*

²⁵ *Hospital Foundations Act 2018 s 42(1).*

²⁶ *Hospital Foundations Act 2018 s 42(2)-(3).*

²⁷ *Hospital Foundations Act 2018 s 42(4)-(5).*

²⁸ *Hospital Foundations Act 2018 s 42(6).*

²⁹ *Hospital Foundations Act 2018 s 43.*

the interest to the other board members at a board meeting as soon as practicable. This disclosure needs to be recorded in the meeting minutes.³⁰

A member who has made a disclosure may only participate in the board meeting if the majority of the other members vote in favour of the member's participation. The member who has made a disclosure about a matter is unable to participate in any vote related to that matter.³¹

Note: a conflict of interest does not arise merely because a member is a HHS member (that is, if they have been nominated by the chairperson of the relevant HHS to be a member of the foundation board).³²

Disclosure of criminal convictions

The Act requires a foundation board member to give immediate notice to the chief executive of the foundation's associated hospital and health service if they have been convicted of an indictable offence. It is an offence not to do so unless the board member has reasonable excuse. The notice must include:

- the existence of a conviction; and
- details adequate to identify the offence; and
- when the offence was committed; and
- the sentence imposed.³³

Ministerial oversight

Notice by board of matters affecting foundation

A foundation board is required to give the Minister notice of any matter that raises a significant concern about the:

- financial viability of the foundation, or
- administration or management of the foundation.³⁴

Notice must be given immediately after the board becomes aware of the matter.

Request by Minister for relevant information or documents

The Minister can request information or documents from a foundation if the Minister has a concern about the foundation's:

³⁰ *Hospital Foundations Act 2018 s 45.*

³¹ *Hospital Foundations Act 2018 s 45.*

³² *Hospital Foundations Act 2018 s 45(6).*

³³ *Hospital Foundations Act 2018 s 37.*

³⁴ *Hospital Foundations Act 2018 s 47.*

- financial viability;
- administration or management.

The Minister will:

- consult with the foundation's board prior to requesting the information or documents unless there are exceptional circumstances;
- provide reasonable notice for the requested information or documents.

The foundation board must comply with the request.³⁵

More information

For more information contact the Office of Health Statutory Agencies, Queensland Health, via email at statutory.agencies@health.qld.gov.au.

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³⁵ *Hospital Foundations Act 2018 s 48.*