Improving board effectiveness

Board performance

Board performance is vital to the success of an organisation. To ensure the board is a strategic asset, it must have the right mix of skills and knowledge as well as the ability to work effectively as a team. Today's rapidly changing business environment also requires boards to be flexible and responsive in order to meet unexpected needs and challenges.

The summary to the research report *Board Effectiveness and Performance: The State of Play on Board Evaluation in Corporate Australia and Abroad* (The Centre for Corporate Governance, UTS, 2010) suggests that factors necessary for effective board performance include:

- *"A boardroom culture of mutual respect, honesty and openness that encourages constructive debate*
- *Diversity of experience, styles, thought and, as far as possible, age, gender and nationality*
- *A good relationship with the CEO and senior management*
- *A common purpose and strategic clarity*
- *An experienced chairperson who can manage the board agenda, encourage debate and work in harmony with the CEO*
- *Efficient board structure and processes including committees, board papers, information flow and a good company secretary"*

The same summary suggests that the factors which can hinder board effectiveness include the opposites:

- *"An adversarial atmosphere in the boardroom or an unmotivated board with a tendency to group-think*
- *Skill deficits or lack of genuine independence on the board*
- *A poor relationship with the CEO and senior management which can impede information flow*
- *Conflicts of interest or factional interests on the board, perhaps due to a dominant shareholder*
- *Poor chairmanship – a chair who is too week, too autocratic or too close to the CEO*
- *Poor processes leading to inefficient use of time"*

A board should monitor the effectiveness of its performance by regularly reviewing its composition, governance relations and internal processes. Additionally, it should ensure that directors have access to relevant training and development.

How does board composition improve effectiveness?

Size

Size of the board is usually related to the size of the company. A public company would often have between 8-12 directors, depending on its size. Too many directors can be detrimental to boards because discussions become quite lengthy and it is difficult to get agreement. Large boards can also factionalise.

Balance

This largely refers to the ratio of executive to non-executive directors as well as independent directors. There is an increasing requirement for independent directors in certain roles – for example, on the audit committee. Many believe that independence equates to greater openness and transparency in decision making processes and leads to greater accountability.

A recent body of work by Juliet Bourke in *Which Two Heads Are Better Than One?* (Australian Institute of Company Directors, 2016) proposes that balance is framed around disciplined diversity of thinking and the mitigation of inherent biases.

Diversity (including but not limited to age, gender, ethnicity and cultural background) is becoming a more formalised requirement (see ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations 3e,* Recommendation 1.5).

Terms of office

Many company constitutions specify a maximum number of terms per director. While this encourages board renewal, it is important to keep in mind that it often takes three to five years for a director to learn the business well.

Board committees

Committees can assist in sharing the board's workload and making more effective use of directors' time. Regular evaluation of a committee's charter will ensure that it is fulfilling its objectives and that the board as a whole is maintaining its overall responsibility for decision making.

How do governance relations improve effectiveness?

Role of the chair

There is a growing emphasis on the responsibilities of the chair. The *Corporations Act 2001* does not have any specific provisions as to the role of the chair or any additional responsibilities beyond those of other directors. However, some court cases suggest that attitudes to this may be changing (the *One.Tel* litigation).

Chair's relationship with the CEO

This relationship is critical to the organisation's success and is based on having clearly defined roles and mutual respect. They should complement each other. The chair has a role in the CEO's development, evaluation and in succession planning.

Board/company secretary relations

The company secretary's role has expanded from just compliance to contributing to the board's performance. They can advise on governance matters and other trends affecting the board.

A survey by Nicholas Barnett, CEO of Insync Surveys, entitled *'Taking your board from good to great: the best 101 ways to improve'* involved 345 directors who served on 47 boards . The tips provided by survey participants as to board and management relationships included:

- Having more exposure to line management responsible for specific projects or initiatives without group executive supervision. This would provide clearer line of sight to accountability and depth of talent;
- Having greater access at board meetings to senior management rather than the CEO only;
- Providing a mid-year opportunity for the board to meet socially with management and staff to give directors a further opportunity to measure cultural effectiveness;
- Improved relationships with senior managers so that they understand each other's responsibilities, priorities and needs;
- Chairman should continue to foster trusted adviser relationship with the chief executive officer to support increased alignment of management and board objectives – this may require spending increased time together on a regular basis.

How do internal processes improve effectiveness?

Internal administrative processes are crucial to the smooth running of the board. Inadequate processes can lead to a poor flow of information and ineffective decision making.

Board meetings and papers

Attending meetings and reading board papers are a director's chief source of information and decision making. Receiving well organised papers in a timely manner allows directors to more effectively contribute to board discussions.

Successful meetings are well planned and conducted in an orderly manner. The Centro case (*ASIC v Healey* (2011) FCA 717) showed that managing the flow of information for directors is critical – you need to ensure the volume of board papers is appropriate, that key matters are highlighted and the information is comprehensible to all directors.

Minutes

Minutes are the official records of decision making processes. There is some debate about how much information to include in minutes and how to maintain a balance between the competing needs for disclosure and for confidentiality.

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A minute that is properly signed and recorded will be evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proven. For this presumption to apply, there must be strict compliance with the one month limit. However, the High Court in the James Hardie case (*ASIC v Hellicar* (2012) HCA 17) emphasised that, even where this formal presumption does not apply, the minutes can still be important evidence because they will be a near contemporaneous record of events. Heydon J in that case concluded that the minutes were ' immensely powerful evidential support for ASIC's case'.

What are some other considerations?

Training and development for directors

The skills needed for 21st century boards are not necessarily those that sufficed in the past. Directors today are increasingly appointed because they possess particular skills and knowledge needed by the organisation. However, the legal and governance environment is constantly changing.

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The board can assist directors in keeping up to date with trends and changes by providing opportunities for training and development, thus enhancing its intellectual capital. Directors can suggest areas in which they would like to develop but training and development should happen within the context of the board's needs. The Centro case suggests that financial literacy is a necessity and there is a trend to place more importance on an understanding of information technology.

Board culture

Cultural issues are as important as structural and procedural issues. A lack of trust, respect and engagement amongst directors can impact on the board's effectiveness. The chair's role is to harness the skills, qualities and resources of the board and to guarantee that issues of personality and style do not interfere with the board's work.

What is the role of performance assessment?

In an environment of continuous improvement, the board should monitor and assess progress, identify performance gaps and devise strategies for improving performance. Long term benefits include developing team work, better decision making, improving the effectiveness of meetings and gaining greater clarity of roles. Evaluation can be qualitative and quantitative.

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The Australian Institute of Company Directors is committed to excellence in governance. We make a positive impact on society and the economy through governance education, director development and advocacy. Our membership includes directors and senior leaders from business, government and the not-for-profit sectors.

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