



Improving board effectiveness.

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 to unexpected needs and challenges.

Key themes from Deloitte's research report *Courage in the boardroom: Winning in uncertain times*¹ suggests that factors necessary for effective board performance include:

Ecosystems are crucial – Building valuable, open relationships across multiple stakeholder groups is key to building brand trust and organisational resilience.

Match fit – The ability to seize an opportunity depends on how nimble the systems and processes of a business are. Boards have a role to play in challenging the tension of new models and scrutinising existing ones. To do this well, both the board and the organisation need to be agile and open.

Culture, culture, culture – An effective organisational culture is one where responsible risk is encouraged, all employees understand the purpose of the organisation and how their role contributes to meeting this purpose, and personal responsibility and openness are encouraged.

Bold, decisive leadership – It's important to have a strong strategic framework that facilitates better and faster decisions and outcomes. Boards should rely on the right information about strategy, culture, people and customers. This, along with clarity and strong alignment of the organisation's purpose and strategy can cut through the noise and enables decisions.

Opportunity mindset – Directors need to focus on supporting new opportunities, through meaningful risk appetite statements and clear communication of risk capital and risk pricing, is important. The board needs to be clear on its appetite for innovation and should have realistic expectations for failures that will occur along the way. Its role is to drive a culture that encourages and understands failure as part of the innovation process.

Cracking the diversity code – Boards must consider dynamic renewal, bringing fresh perspectives and diversity of thinking at a functional as well as cultural level. Directors can accelerate the process of enriching board thinking through gender, educational, cultural, global and experiential diversity.

Curiosity is key – Directors should get out of the 'same old boardroom' and develop new skills and innovation insights. They should task themselves with creating the questioning and challenging environment needed to imagine, inspire and deliver better outcomes.

Good governance requires that the board monitors the effectiveness of its own performance by regularly reviewing its composition², governance relations and internal processes. There are few governance issues more complex than this monitoring, and the symbiotic relationship between organisation, management and board performance makes the measurement of board outcomes more art than science.

1. R Deutsch, 2016, "Seven ways to improve board effectiveness in uncertain times", The Boardroom Report, 12 October, <https://aicd.companydirectors.com.au/membership/the-boardroom-report/volume-14-issue-9/7-ways-to-improve-board-effectiveness-in-uncertain-times>, (accessed 8 May 2019).
2. Recommendation 1.6 of the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations, 4th Edition, suggests that a listed entity have and disclose a process for periodic evaluation of the performance of its board, its committees, its individual directors, and, disclose for each reporting period whether a performance evaluation has been undertaken in accordance with that process for the relevant period.

Associate Professor Gavin Nicholson of QUT Business School says an annual board evaluation that has clear goals and is rigorous and challenging remains the best tool to understand, track and enhance board performance over time.³

To assist boards and senior executive teams that are looking to introduce evaluation processes to measure board effectiveness, the AICD's Board Advance™ offers a comprehensive assessment process that utilises proprietary diagnostic tools and meaningful dialogue to accurately chart a board's performance against modern benchmarks of best-practice governance. The output generated by this analysis helps inform the approach towards achieving structured, strategic improvements for the board.

Having been a trusted third-party to leading Australian boards for decades, the AICD is the perfect independent partner to assist boards in conducting a rigorous assessment that allows the board to track its performance over time as well as identify opportunities for improvement.

However, assessment is not simply a 'set and forget' process. To meet contemporary governance requirements - and stay ahead of the curve - board performance must be assessed meaningfully and at regular intervals.

A clear and systematic approach, combined with a focus on the right key performance drivers, is fundamental to keeping a board sharp on governance matters: understanding strengths and weaknesses, identifying blind spots and providing insight into performance improvement opportunities.

For example, the Board Advance Independent Evaluation draws on the confidential, anonymous insights of the board to explore measures that can improve performance.

Independent board evaluations offer an opportunity to dive deep into board performance, using a series of interviews with directors and providing documented analysis of any governance issues as well as recommended solutions.

The AICD's Board Diagnostic Suite™ provides a range of diagnostic tools that focus on the whole board and its operation in the context of contemporary, best-practice governance. For example, the Governance Analysis Tool™ (GAT) is designed to help directors objectively consider a broad range of governance topics relating to the board, individual directors, stakeholders and the organisation as a whole. Participants are invited to assess their board against the 'good governance' standards based on the Company Directors' Corporate Governance Framework™.

For boards with an existing appreciation of good governance, the Board Review Tool™ is a focused, compact review that will identify areas of strength as well as opportunities for improvement.

For not-for-profit boards, Board Advance offers a tool to analyse an NFP boards performance against the AICD's NFP Governance Principles. The AICD also has specific diagnostics for use in Committee Reviews (such as Risk, Audit and Nomination Committees) as well as the Local Government Council Review Tool which highlights sector-specific governance attributes.

3. T Featherstone, 2018, Evolving role of board reviews in driving director performance, Governance Leadership Centre, 20 December, <https://aicd.companydirectors.com.au/advocacy/governance-leadership-centre/governance-driving-performance/evolving-role-of-board-reviews-in-driving-director-performance>, (Accessed 8 May 2019).



HOW DOES BOARD COMPOSITION IMPROVE EFFECTIVENESS?

Size

The size of the board is usually related to the size of the company. A public company will often have between 8-12 directors. Too many directors can be detrimental to boards because discussions become lengthy and it may be difficult to get agreement. Large boards can also factionalise, leading to a fracturing of effective and timely decision making by the board.

Balance

Balance means the ratio of executive to non-executive directors and takes into account the independent directors. There is an increasing requirement for independent directors in certain roles including, for example, the audit committee. Generally, it is viewed as best practice to embrace independence based on the view that it leads to increased openness and transparency in decision-making processes and therefore produces the desired outcome of enhanced accountability.

Juliet Bourke in *Which Two Heads Are Better Than One?*⁴ 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 with Recommendation 1.5 of the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations (ASX Principles) suggesting that the listed entity ought to have in place a diversity policy with measurable objectives and disclosure of same. It is important for an entity to determine whether it is a "relevant employer" under the Workplace Gender Equality Act and comply with the legislation.

In the past, board reviews were mostly about directors commenting on each other, the chair and the overall board. High-functioning boards now seek the view of management on director performance and talk to auditors, key investors or other stakeholders. They are getting input from a wider source of stakeholders to understand board performance.

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 may take three to five years for a director to comprehensively learn and observe a reasonably-sized business.

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?

The role of the chair

There is a growing emphasis on the responsibilities of the chair. The Corporations Act 2001 does not specify provisions additional to those for directors regarding the chair, (including any additional responsibilities of other directors). Nonetheless, it has been suggested that the chair occupies a particular role and that in certain circumstances, the carrying out of that role may require the chair to have special responsibilities. Since the One.Tel litigation, the idea that the office of chair is procedural and to an extent ceremonial, is somewhat outdated. Therefore, officers assuming the role of chair are advised that there may be circumstances that require them to take on greater responsibilities than their fellow directors.

4. J Bourke, 2016, *Which Two Heads Are Better Than One?* How diverse teams create breakthrough ideas and make smarter decisions, AICD.

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 may take three to five years for a director to comprehensively learn and observe a reasonably size business.

The 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 and company secretary relations

The company secretary's role⁵ has expanded from compliance based to contributing to the board's performance. The secretary is often called upon to advise on governance matters; remuneration; press interests; and other matters affecting the board in addition to their usual role.

Board and management relations

A survey by Nicholas Barnett, CEO of Insync Surveys⁶, involved 345 directors who served on 47 boards and delivered the following improvement insights on board and management relationships:

- Increase the exposure to line management responsible for specific projects or initiatives without group executive supervision. This provides clearer line of sight to accountability and depth of talent;

- Increase access at board meetings to senior management rather than the CEO only; Provide a mid-year opportunity for the board to meet socially with management and staff to give directors a further opportunity to understand cultural effectiveness;
- Support relationships with senior managers so that they understand each other's responsibilities, priorities and needs;
- Foster a trusted adviser relationship between the chair and the CEO to support increased alignment of management and board objectives, including increased and regular time together as required.

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.

It is important for the board to ensure the volume, content and organisation of board papers sent to directors in advance of a meeting is appropriate; that key matters are highlighted; and that the information is presented in the most efficient manner for maximum comprehension. It is equally important that directors review and provide feed back about the process of board meetings and papers to ensure that the information sharing key to management decision making is best practice.

5. J Robertson, 2018, The Role of the Company Secretary: Influence, impact and integrity, AICD.

6. N Barnett, 2012, Taking your board from good to great: The best 101 ways to improve, Insync Surveys and Board Benchmarking.

Minutes

Minutes are the official records of decisions and decision-making processes. There is a tension between the extent that board deliberations are included in minutes and how to maintain a balance between the competing needs for disclosure and for confidentiality when measuring the appropriate amount of content to include in minutes.

A minute that is properly signed and recorded will be evidence of the proceeding, resolution or declaration 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 are nonetheless important evidence because they will be a near contemporaneous record of events. Heydon J in that case concluded that the minutes were 'immensely powerful evidentiary support for ASIC's case'.

While the minutes of most companies are not produced as evidence in court cases, it is important for the board to remain aware of their importance and content because, absent legal proceedings, they are an important and useful guide on the governance of the company.

WHAT ARE SOME OTHER CONSIDERATIONS?

Training and development for directors

The skills needed for boards today 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. 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 will 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 that there is a trend to place more importance on an understanding of information technology.

The skills needed for boards today 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.

Board culture

Cultural issues are as important as structural and procedural issues. A lack of trust, respect and engagement amongst directors can impact 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.

The AICD has published a director tool to help support the board's approach to governing organisational culture.⁷

In Setting the Tone from the Top⁸, Melinda Muth and Bob Selden examine how director conversations shape organisational culture. The language used in the boardroom can tap the collective knowledge of the board to improve working relationships and collective decision making, and ultimately positively impact the behaviour of management.

7. J Mac Cormick, 2019, Governing Organisational Culture, Australian Institute of Company Directors Director Tools, <https://aicd.companydirectors.com.au/-/media/cd2/resources/director-resources/director-tools/2019/pdf/governing-culture/07236-3-mem-3-organisation-governing-organisational-culture-july-19-a4-web-v3.ashx>, (accessed 8 August 2019).



WHAT IS THE ROLE OF PERFORMANCE ASSESSMENT?

In an environment of continuous improvement, the board will monitor and assess progress, identify performance gaps and devise strategies for improving performance. Long-term benefits include developing teamwork, better decision making, improving the effectiveness of meetings and gaining greater clarity of roles. Sound evaluation will include qualitative and quantitative factors.⁹

BOARD ADVANCE™: FURTHER EDUCATION AND RESOURCES FOR BOARDS AND SENIOR EXECUTIVE TEAMS

To support boards in assessing and improving their effectiveness, the AICD's *Board Advance* brings together the AICD's skills, knowledge and expertise to boost an organisation's performance at a board level.

Board Advance covers a comprehensive performance assessment process that utilises AICD's proprietary diagnostic tools. This provides structured, strategic improvement to deliver better outcomes, using proprietary frameworks and diagnostic tools to evaluate board performance, identify emerging governance issues and measure success.

The AICD's *Board Advance* specialises in equipping organisations with the understanding, insight and guidance required for boards to unlock their performance. When boards invest in their performance with a program of structured, strategic improvement through *Board Advance*, they gain an independent perspective and targeted insights into unlocking their board's performance potential.

An experienced member of the *Board Advance* Team will guide the board through a fully consultative process, working with specialist AICD facilitators and subject matter experts.

Improving board performance begins with a strictly confidential conversation between you and an experienced member of the Board Advance Team.

Call: 1300 739 119

Email: boardadvance@aicd.com.au

Visit: aicd.com.au/boardadvance



**BOARD
ADVANCE**
Association Institute of
Company Directors

8. M Muth and B Selden, 2018, Setting the Tone from the Top: How director conversations shape culture, AICD.

9. AICD, Governance Analysis Tool, [website], <http://aicd.companydirectors.com.au/advisory/governance-analysis-tool>, (accessed 18 February 2019).

About us

The Australian Institute of Company Directors (AICD) is committed to strengthening society through world-class governance. We aim to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society. Our membership includes directors and senior leaders from business, government and the not-for-profit (NFP) sectors.

For more information T: 1300 739 119 **E:** boardadvance@aicd.com.au **W:** aicd.com.au/boardadvance

Disclaimer

This document is part of a Director Tools series prepared by the Australian Institute of Company Directors. This series has been designed to provide general background information and as a starting point for undertaking a board-related activity. It is not designed to replace legal advice or a detailed review of the subject matter. The material in this document does not constitute legal, accounting or other professional advice. While reasonable care has been taken in its preparation, the Australian Institute of Company Directors does not make any express or implied representations or warranties as to the completeness, currency, reliability or accuracy of the material in this document. This document should not be used or relied upon as a substitute for professional advice or as a basis for formulating business decisions. To the extent permitted by law, the Australian Institute of Company Directors excludes all liability for any loss or damage arising out of the use of the material in this document. Any links to third-party websites are provided for convenience only and do not represent endorsement, sponsorship or approval of those third parties, or any products and/or services offered by third parties, or any comment on the accuracy or currency of the information included in third party websites. The opinions of those quoted do not necessarily represent the view of the Australian Institute of Company Directors. © 2020 Australian Institute of Company Directors