SOCIAL ISSUES & THE BOARD:

Voice to Parliament

June 2023

Organisations and their boards face increasing stakeholder and community expectations to have public positions on important social issues, including where political and public debate is underway. The upcoming national referendum on a First Nations Voice to Parliament is one current example of an issue many boards are discussing.

AICD members have sought guidance on frameworks and processes that boards can apply to facilitate effective governance discussions. To support members, the AICD has interviewed some of Australia's leading directors to gain insights on board processes that can support effective boardroom discussion and governance oversight of these issues.

Importantly, this article does not address the detail of the Voice to Parliament, nor advocate for organisations to take a position (whether supportive or in opposition) on the referendum proposal.

It focuses on how boards of companies and not-for-profits are considering the topic and shares examples and insights from experienced directors. We also suggest questions for directors to ask when considering an issue like the Voice.

KEY TAKEAWAYS:

1. Boards and organisations that competently navigate social issues – irrespective of whether they adopt a position – dedicate time and have a framework or process for considering how to approach these issues, including clarity on the board's role.

2. Decisions should be grounded in the nature and circumstances of the organisation including its purpose, values, and stakeholder perspectives. It is also important to consider long-term actions and commitments. A position should not be taken because of personal views of management or director(s). Refer to "key questions for directors" below.

3. The determinative factor or factors that boards will focus on when considering social issues varies significantly. There is no "cookie cutter" approach.

4. Social issues may require education of board and management and direct engagement by the board with stakeholders, including seeking alternative perspectives.

5. Just as with other issues, drawing on the collective experiences and perspectives of directors makes for better decisions. Directors will differentiate their personal views, understanding that the position that their board/organisation arrives at may be different.

A FRAMEWORK FOR CONSIDERING SOCIAL ISSUES

The position that an organisation takes on an important or contentious social issue can have substantial implications.

Boards and organisations that do well in navigating social issues, irrespective of whether they take a position, often have a decision-making framework or process for considering how to approach them.

Organisations that do not have a process to make these decisions, may struggle as, by their nature, national debates on social issues are complex. There is a risk that organisational positions can be driven by the views of influential individuals, such as CEOs or directors, without appropriate governance oversight. Given their complexity and potential reputational and stakeholder impacts, it is important that positions receive sufficient scrutiny and attention.

Some directors we spoke with are members of boards that have established formal governance structures for considering such issues. These include board committees with specific focus on ethics, sustainability or stakeholder issues, or equivalent management committees feeding in to board discussions. Other boards have developed a set of principles or questions to help consider organisational positions on social issues (see **"Questions to guide boardroom discussion"**, below).

A consistent theme was that boards should consider whether taking a position is necessary or desirable, as a first step, before then considering what that position should be.

Every organisation is unique, with its own purpose and values, business operations and stakeholders.

Notably, most directors will also bring to the boardroom their own personal perspective on the approach that the organisation should take. It is important to understand where individual directors are coming from when making decisions about these very challenging topics for the organisation.

Applying a framework can help the board assess each issue on its merit, prompt deliberation, and assist the board in determining what to do. However, it is not a case of applying a "cookie cutter" framework. By their nature, each issue requires consideration on its merits and the unique circumstances of each organisation. It is not a particular framework that is critical, but the conversation and deliberation that it facilitates.

REFLECTIONS FROM LEADING DIRECTORS ON THE VOICE

ADDRESSING THE "WHY" – PURPOSE, STAKEHOLDERS AND IMPACT

The first question the directors we spoke with asked regarding social issues was 'why': why should we have a position on the Voice, as opposed to the many other issues we do not?

Directors noted that organisations should not try to provide a running commentary on important social issues, but think carefully about those issues on which they should engage.

As Philip Chronican GAICD, Chair of NAB noted, "There are many issues our organisation does not engage on, or take a perspective on, because they aren't relevant to our business or the stakeholders that we serve."

For most boards, the starting points are purpose, mission and strategic alignment.

From our discussions with directors, there is also significant variation in the determinative factors that boards address when answering the 'why' question.

Larger organisations may consider social issues and adopt a position because of their importance in the economy and desire to be seen as an active corporate citizen and leader in the community. These boards may place more emphasis on what is "right" having regard to the purpose and values of the organisation.

Other organisations will only consider a social issue where there is a direct connection between the businesses' operations or stakeholder relationships. For example, a mining company that operates on Traditional Owners' land or an organisation with a large proportion of First Nations employees may place great weight on those perspectives in relation to the Voice.

Conversely, organisations may form a view that the Voice, while an important national issue, is not directly relevant to their purpose, operations, stakeholders or impact (see also "Avoiding virtue signalling", below).

For all boards, a key touchstone is directors' duties: what is in the best interests of the company? That is, what actions in relation to the social issue will drive value over the longer term (see AICD practice statement on the Best Interests Duty **here**, and legal opinion from Bret Walker SC and Gerald Ng of Counsel **here**).

Michael Chaney AO FAICD, Chair of Wesfarmers, commented, "We can only achieve superior returns to shareholders by looking after the interests of all stakeholders (be it customers, community, environment, etc.). The critical question when faced with social issues: is taking a position in the company's best interests?"

Charities will have a focus on whether the social issue is consistent with their charitable purpose, as well as stakeholder expectations.

This was highlighted by Virginia Bourke FAICD, Chair of Mercy Health, "Determining if an issue is one for your NFP usually involves having regard to the NFP's charitable purpose and mission. It is the mission question that answers the relevance question.

Notably 'purpose' is not static – there is a history and there is a context in which you are operating. Both lenses must be applied".

EXPERIENCE AND CAPACITY OF THE BOARD

Just as with other issues, collective experience around the board makes for better decisions.

Many of the directors we spoke with sit on boards with members who have experience with First Nations issues and engagement, which enhanced the board's discussions. Directors also highlighted the cross-pollination between organisations as being critical – other director or executive experience across sectors can enrich the board's discussion.

Equally, as with any complex issue before boards, directors will seek to educate themselves on the issue, rather than just relying on a particular board member or management advice to carry the discussion.

Several directors spoke about structured education initiatives to support their boards in understanding the Voice proposal, as a precursor to deliberations on an organisational position (see also engagement with stakeholders, below).

ENGAGEMENT WITH STAKEHOLDERS

Sound stakeholder governance encourages organisations to identify, engage with and understand stakeholder perspectives on critical issues, and then reflect on how these perspectives should be considered in decision-making.

Directors emphasised the importance of stakeholder engagement on issues such as the Voice, highlighting that stakeholder sentiment may evolve over time and that such engagement must be authentic and more than just a 'tick box' exercise.

Although management lead day-to-day stakeholder engagement in most organisations and circumstances, directors we spoke with emphasised that on social issues, the board should not just rely on management briefings.

Many directors we spoke with had engaged directly with key stakeholders on the Voice, such as First Nations employees, legal experts, and Traditional Owners.

Often, boards actively seek opposing or alternative views to ensure they had a balance of perspectives. Virginia Bourke FAICD, reflected, "Listening and engaging with those who have a different perspective is uncomfortable but trying to understand positions is critical and makes for a much richer discussion. Whatever the decision, the process is what it is about".

On the Voice, a number of boards had First Nations leaders or politicians speak to the board about the Voice to understand different perspectives.

Refer to AICD's guide Elevating stakeholder voices to the board for further information about the board's role in effective stakeholder governance (snapshot at fig 1 below).

Fig 1: Effective stakeholder governance
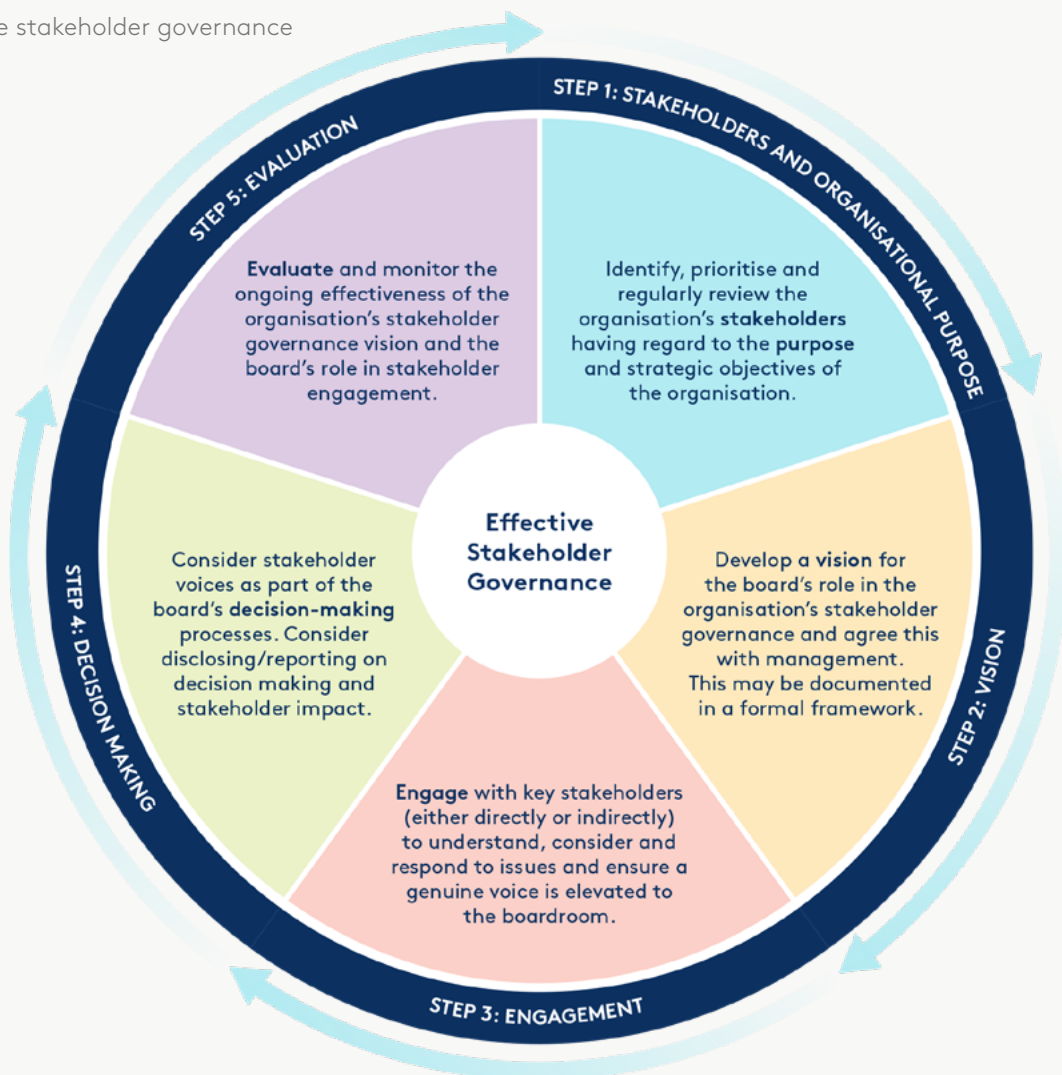
Source: Elevating stakeholder voices to the board: a guide to effective governance, Australian Institute of Company Directors, April 2021.

EMPLOYEES ARE AN IMPORTANT STAKEHOLDER ON SOCIAL ISSUES

Employees were often cited as an important stakeholder group when it came to companies' decision-making on social issues.

An organisation's position on a social issue may affect whether employees want to be associated with the company and are proud to work there.

Michael Ullmer AO FAICD, Chair of Lendlease, commented, "In a war for talent, it is very important to understand what sort of value proposition you are putting forward for your people. Employees are increasingly discerning about their values and the organisation's values."

Equally, organisations will be mindful that employees hold different views. Directors were conscious of differentiating organisational positions from an organisation speaking for all employees, and promoting respect for individual views.

Regarding the Voice, consulting with First Nations' employees is critical – making sure they are included in the conversation. Directors noted that creating culturally safe environments for this engagement is an important focus. In consulting with employees, organisation's will also seek to provide for all employee views to be shared respectfully.

Directors noted that management should be tasked with providing context so that employees understand why the organisation is considering a certain issue, including how it relates to organisational purpose, values and operations.

Regardless of whether their organisations have taken a position on the Voice, a number of boards have taken the view that organisations have a role to educate and support staff and provide them with access to resources. All directors interviewed noted that their organisations are not advocating for employees to vote in a particular way.

Rebecca McGrath FAICD, Chair of Investa Property Group, noted, "While an organisation may decide to publicly commit to a position on the Voice, it's critical that Boards make it clear employees will make up their own mind on the issue."

AVOIDING "VIRTUE SIGNALING"

When an organisation takes a position on a social issue, the position should be reflected in tangible actions that align with a clearly articulated purpose.

Being able to articulate a rationale for taking a position is critical for an organisation's position to be authentic. In a listed context, this is something that investors will look closely at, particularly through an environmental, social and governance (ESG) lens.

For the directors we spoke with, decisions regarding the Voice and the Uluru Statement from the Heart were often grounded in their history of long-term engagement and commitment to reconciliation, typically enshrined in their organisation's Reconciliation Action Plan (**RAP**).

The role of an organisation's RAP can be instructive when considering business relevance. For example, one director noted that their RAP requires the promotion of reconciliation through ongoing active engagement with stakeholders – with their view being that supporting the Voice was in keeping with this commitment.

Others formed the view that publicly supporting the Voice was not right for their organisation, but their open support for reconciliation was demonstrated via their RAP.

Some organisations may stop short of taking a position on a particular social issue for a variety of reasons – such as divergent stakeholder views or remoteness to core business – but demonstrate a leaning or principled position on the issue by way of the organisation's endorsement for a particular United Nations Convention (e.g. the Universal Declaration of Human Rights or the UN Declaration on the Rights of Indigenous Peoples).

COMMUNICATION

If a decision is made to take a position on a social issue, the board and management must agree on proper implementation. Critically, it's important that boards engage and communicate with all stakeholders once a decision is made. Louise McElvogue FAICD, Director of Cluey Learning commented, "Once you form a view on a social issue, there will be a number of people who do not agree with you, and how you treat them is as important as how you treat the people who do agree with your view."

Additional advice provided by directors in our interviews included:

Any public statements should be short and clear, meaningful and without any unnecessary commentary.

- To demonstrate the history of your organisation's engagement on this issue, it would be sensible to include links to previously published comments or documents where appropriate (e.g. RAP).

- Consider who will communicate the position both internally and externally (the CEO, for example).

- Consider whether there are any stakeholders that the board should communicate with directly, in advance of announcing a position, particularly those groups which may disagree with the organisation's position.

- Consider how to make clear to employees that the view of the organisation is separate to individual views within the organisation.

- Where a decision is taken not to take a position, consider how to communicate with relevant stakeholders. A clear articulation of rationale will support dialogue.

QUESTIONS TO GUIDE BOARDROOM DISCUSSIONS

To help guide directors considering significant social issues like the Voice, the following questions may assist in boardroom discussions:

Unique circumstances of the organisation

1. Should our organisation take a position on the issue?
2. Is the issue relevant to our values or purpose (or charitable purpose)?
3. Is the issue relevant to our operations/consistent with our strategic plan?

Apply a risk lens

4. What potential impact will taking a position, or not taking a position, have on our reputation, our business operations and/or our people?
5. How does the decision fit within our risk appetite statement?
6. What risk mitigation measures can we put in place?

Stakeholders, existing positions and peers

7. What are the views of our shareholders/members, employees and other stakeholders on this issue, and their expectations of us as an organisation?
8. How does the issue intersect with existing positions (e.g. our Reconciliation Action Plan)?
9. What are our peer organisations doing?

Authenticity and Implementation

10. What actions flow from taking a position for our organisation's operations and priorities?
11. How will our organisation respond if/when the issue is publicly debated or resolved?
12. What is our implementation and communication plan?

DISCLAIMER

For more information   t: 1300 739 119   w: aicd.com.au