

Taking governance action!

(or are you really just jumping
on another bandwagon?)

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Board Matters Pty Ltd



takingaction Divisions of General Practice Network Forum 2004



BOARD MATTERS

Building Better Boards

Divisions of General Practice

Taking Governance Action ? (or just another bandwagon?)



Friday, 24 September 2004

Adelaide

**Elizabeth Jameson: Board
Matters Pty Ltd**

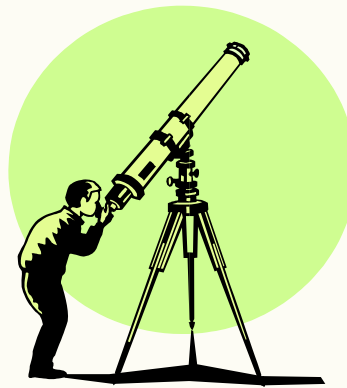
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This session at a glance



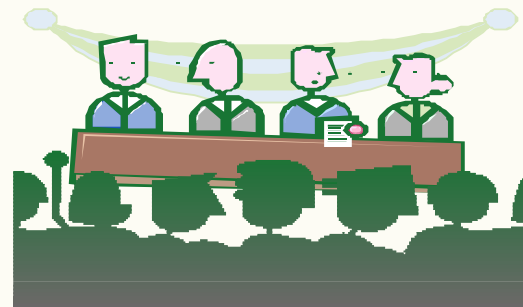
- ▶ Life Beyond Divisions of General Practice: Board Roles
- ▶ Up-close on Divisions: Various Governance Contexts
- ▶ Big Picture v Small
- ▶ How Better Boards Govern
- ▶ Governance 'hot buttons'

Life Beyond Divisions: The Role of the Board



Role of the board?

- Guardian of members/ shareholders' interests?
- But ethical, fiduciary, legal duties and responsibilities to many
- 'mediating hierarchy': mediating a range of competing interests?
- Ultimate responsibility
- Ultimate liability
- Governance!



What is governance?

“Well, isn't it about:

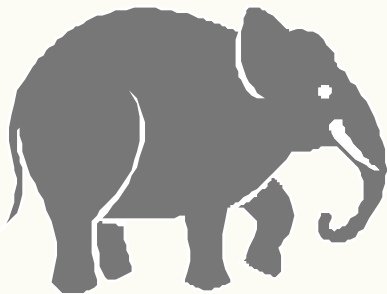
- ▶ Setting goals, strategy and direction?
- ▶ Financials of the organisation?
- ▶ Risk management and compliance?
- ▶ Board selection, performance etc?
- ▶ Monitoring Principal and staff?”

Governance as Board's job

The 'Blind Men and the Elephant' Principle

*"...Each in his own opinion
Exceeding stiff and strong,
Though each was partly in the right
And all were in the wrong"*

- John Godfrey Saxe



Up-close on Divisions: Various Governance Contexts



Division Board's various contexts

- ▶ ***Individual context:*** legal structure and Constitution determine precise relationship
- ▶ ***Divisions context:*** funding etc
- ▶ ***Legal context:*** fiduciary, legal, statutory context
- ▶ ***Governance context:*** ethical and other responsibilities

Legal context generally

- ▶ Fiduciary duties
 - duties of trust
- ▶ 'Constitution'
 - a legal contract
- ▶ statutory duties
 - *Corporations Act*: duties on directors and 'officers'
 - Other specific legislation



Legal context: specific duties

- ▶ Duty to act with ***care and diligence***
- ▶ Duty to exercise powers in ***good faith in the best interests of the company and for a proper purpose***
- ▶ Duty not to ***misuse position***
- ▶ Duty not to ***misuse information***

Legal context: specific duties

- ▶ Duty not to trade when company ***insolvent***
- ▶ Arises when directors:

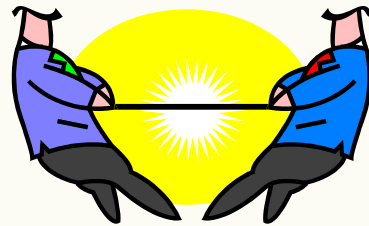
suspect or ought reasonably suspect that the company is unable to pay its debts as and when they fall due from available resources

Legal context: conflict of interest

It is wonderful how preposterously the affairs of the world are managed. We assemble parliaments and councils to have the benefit of collective wisdom, but we necessarily have, at the same time, the inconvenience of their collected passions, prejudices and private interests.

Benjamin Franklin
(1706 – 1790)

Legal context: conflict of interest



- ▶ Law ***permits*** conflicts of interest!
- ▶ But ***prohibits*** people not managing conflicts appropriately
- ▶ ***Rationale***: those affected must have confidence that you act in the 'company's' interests alone

Governance context: parts of the corporate body

The essence of *Bolton v Graham*,

Denning LJ:

'Company'

= Body

Board/Officers

= Mind

Management/Staff

= Hands (& eyes, ears, feet, shoulders...)



'Tricker Model' of Governance

	Compliance roles	Performance roles
External roles	Provide accountability	Strategy formulation
	Approve and work with and through the CEO	
Internal roles	Monitoring and supervising	Policy Making
	Past and present orientated	Future orientated

Tricker, Robert I., International Corporate Governance: Text Readings and Cases, Prentice Hall, 1994

The Board as 'Thinker'

Appoint
/monitor **CEO**

Strategy

Decide **policy**

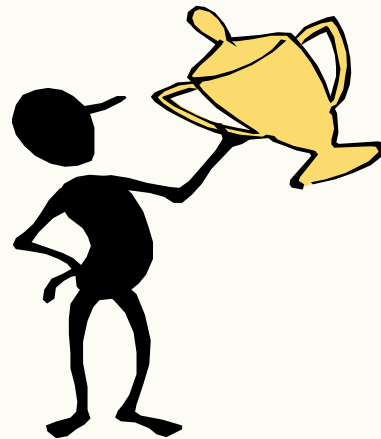
Accountability
to stakeholders

monitor
implementation



Adapted from R. Tricker model

The BIG Picture
(Performance)
VS
The small Picture
(Conformance)



The **Big Picture** and the Small

- ▶ Board's role largely falls into two groups:
 - strategy and policy (**BIG** picture)
 - Monitoring, accountability (e.g. risk management procedures) (**small** picture)
- ▶ PERFORMANCE V conformance

‘Conformance’: some tools

- ▶ *Corporations Act* and other legislation
- ▶ Fiduciary Duties
- ▶ Australian Standards
(e.g. Governance, Risk Mgt)
- ▶ Corporate Governance Guidelines
(e.g. ASX Guidelines)
- ▶ Quality Assurance
- ▶ ‘Best Practice’
- ▶ Audit role and function



Well, what went wrong then?

"In the wake of the meltdowns of once great companies ... were the directors asleep at the wheel? ... Close examination reveals no broad pattern of incompetence or corruption. In fact most boards followed most of the accepted standards for board operation."

Jeffrey A Sonnenfeld

What makes Great Boards Great
Harvard Business Review,
Sept 2002

Unlocking the Mystery:

How better boards govern



What company directors say...

the focus on governance and conformance is obscuring the real drivers of board performance

- Stan Wallis,
Corporate Public
Affairs Oration, 2000

What corporate 'adjudicators' say...

From time to time as I listened to the evidence...I found myself asking rhetorically: did anyone stand back and ask themselves the simple question – is this right?

- Hon. Justice Owen

*HIH Royal Commission
Vol 1 pxii
April 2003*

What corporate commentators say...

...recent failures of corporate governance weren't due to a lack of government regulation, board structure or the experience of directors...The problem is the people. Boards fail because of the social system, the culture and the way people talk to each other.

- Boards failing the talk test

Australian Financial Review,
21 November 2003

What's missing? The 'intangible values'?

*The key isn't structural, it's social.
What distinguishes exemplary
boards is that they are **robust,
effective social systems.***

- Jeffrey A Sonnenfeld



Is your board a robust, effective social system?

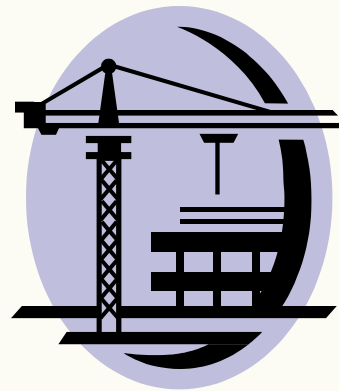
The 'robust social system' comprises:

- ▶ Climate of **trust and candour**
- ▶ Culture of **open dissent**
- ▶ **Fluid portfolio** of roles
- ▶ Individual **accountability**
- ▶ **Evaluated** board performance

Is your board a robust, effective social system?

The take-home message:

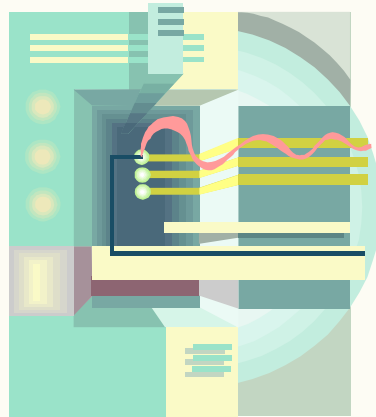
Only build governance structures that help you become a 'robust effective social system', not just so you can 'tick the box'



Is your board a robust, effective social system?

- ▶ 'Climate of **trust and candour**' and 'culture of **open dissent** needs:
 - well informed, skilled board and chair
 - Agreed Board code of conduct
- ▶ '**Fluid portfolio** of roles' and 'individual **accountability**' needs:
 - clear Board roles, selection and succession policies

Good Governance Hot Buttons: Helpful 'Systems & Processes'



Start with the Tricker Model

	Compliance roles	Performance roles
External roles	Provide accountability	Strategy formulation
	Approve and work with and through the CEO	
Internal roles	Monitoring and supervising	Policy Making
	Past and present orientated	Future orientated

Good governance hot buttons

Role in relation to **CEO:**

- ▶ ***Selection*** process planned
- ▶ ***Appointment*** well documented
- ▶ ***Delegations***
- ▶ Regular ***review*** process
- ▶ ***Succession*** planning
- ▶ Mutually trusting ***relationship***

Good governance hot buttons

Role in relation to **monitoring**:

▶ in relation to ***Risk Management***:

- ensure Board and Mgt know major risks plan for them (AS 4360)
- Compliance Systems for monitoring compliance with law, standards and policies (AS 3806)
- Ongoing reporting requirements and formats



Good governance hot buttons

Role in relation to ***Policy***:

e.g. Carver, Policy Governance:

- ▶ Ends policies (budgets, strategic goals etc)
- ▶ Governance policies (conflicts, risk mgt, board evaluation etc)
- ▶ CEO Linkage (see earlier)
- ▶ CEO Limitations (delegations)



Good governance hot buttons

- ▶ *Build a robust effective social system*
- ▶ Start with **board evaluation**; review (**not** measure) changes over time
- ▶ Chair crucial to this role: give express right to chair to demand more of us
- ▶ Develop 'Charter' and 'Values Statement'

The board as a 'robust social system'

Let us consider how a board can do in the boardroom what it came to do in the first place: project a vision, infuse an organisation with a mission, bid a staff to be all that it can be, and grow a little in the process.

John Carver,
*Boards That Make a
Difference, 1990*

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