

Governance in context

By Julie Garland McLellan FAICD

Members of the Australian Institute of Company Directors often tell their councillors that “the Corporations Act was not written for companies like mine”. It was written for bigger companies, smaller companies, for-profit companies, listed companies, family companies, private companies etc. It was never written for precisely the business that they direct.

Directorship is a strange skill; part science, part discipline and part passion. Although there is only one Corporations Act that covers all the boards in Australia, governance is slightly different in each and every company. Much depends on the mix of skills and characters in the boardroom.

Different people will behave in different ways when they are in different groups. Add to that the unique competitive situation of the company and its strategy for meeting its stakeholders’ needs and you have a complex matrix of priorities and values that underpin decisions and subtly influence decision-making.

In the not-for-profit sector, board members are often motivated by the need to deliver the mission to serve the intended beneficiaries of the organisation’s activities. Operations can become the major focus of the board’s discussions and strategic or financial issues can be hard to get onto the agenda or to have seriously evaluated by all board members. The mix of professional directors and well-intentioned amateurs can produce the best possible outcome or it can result in disaster. Much depends on the founders (if they are still around), the constitution (if the board keeps it current and use it to guide activities) and the executives. Still more depends on the ability of the directors to set the right priorities for the organisation; to establish operational excellence, a caring culture and financial foundations for strategic success.

In the government sector, boards are often asked to deal with issues where central government control will be inefficient but where free market outcomes will be unacceptable to part or all of the population. The legal regime may be very similar to the Corporations Act or completely different from it. Boards have the comfort of a single shareholder with whom they can converse to ascertain preferences for different courses of action but find the relationship is complicated.

There are policy imperatives, value for money considerations and stakeholders who are engaged and often vociferous. Add to that an environment where programs may outlive the life of the government that sponsored them, funding may be annually reviewed for projects that have multiple year life spans, and confidentiality must be balanced with transparency and you have a recipe for exciting board meetings. Spice it up with the need for commercially efficient operations, environmentally sustainable outcomes and socially acceptable impacts and it is the most complex board environment available. (I really love working with government sector boards.)

In family businesses there are often tensions between the need for the company to attract and retain quality employees, produce quality products and provide quality of life for the family that owns the company. Sometimes these are small businesses where the family meal becomes an impromptu board meeting; sometimes they are multinational enterprises with some of the equity listed on an exchange. At all times there are paradoxes that must be solved, performance that must be pursued and relationships that must be nurtured.

In large listed corporations there are decisions about allocation of scarce resources, supporting long-term sustainability or pursuing current performance. The scrutiny is intense (even more so if you happen to be APRA-regulated as well as listed) and the ability to lose touch with the individual customers increases with every successful year of operation. In the small listed

company the rules and regulations still apply but the board is often small and relatively unsupported by a professional secretariat. Independence must be traded with expertise to provide an optimal governance outcome on a shoestring budget.

So, is the appropriate reaction a move to more specific types of legislation to cover each individual circumstance? I would suggest that, instead of adding to the morass of legislation what we really need is better directors with the behavioural flexibility to address each situation in a manner that is culturally, as well as legally, appropriate. We also need diverse boards that can bring a wide range of experiences and perspectives to bear on the issues that arise and on the strategies that are developed and implemented. In increasing diversity, boards must ensure that they do not sacrifice the ability to create a workable consensus; that the diverse viewpoints are held by individuals with the ability to empathise with other points of view and synthesise a shared and supported strategy from the combination of perspectives. The Australian Institute of Company Directors is committed to helping all directors succeed. Our networking and education programs are built around the core ideal of directors talking to develop and advance their understanding of the complex environment in which we operate. Please take the time to share your perspective. Together we can, and will, advance the practice of directorship.

Julie Garland McLellan has been an AICD NSW Councillor since 2004 and member since 1996. Her latest book “Dilemmas, Dilemmas: Practical Case Studies for Company Directors” will be published in March.

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