



CPA Not-for-profit conference 2013

Preparing for the ACNC Governance Review – Practical tips and solutions

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Effective Governance



- Effective Governance is an independent, privately-owned consulting firm that delivers advice on Corporate Governance to clients in Australia and New Zealand.
- The Australian firm formerly Competitive Dynamics was founded in 1998 by Professor Geoffrey Kiel an internationally recognised expert in Corporate Governance.
- We combine research with practical methods developed in the field with clients over a twenty year period.
- This covers the spectrum from family companies, not-forprofits, government-owned corporations, statutory authorities, publicly listed companies and large multinationals.
- We believe that in order for Governance to be effective it must be specifically tailored to the type of organisation and their industry dynamics.
- That said, each will be at a different phase of their lifecycle and will have their individual challenges at a governance level.





Chartered Secretaries Australia

- Chartered Secretaries Australia (CSA) is the peak body for over 7,000 governance and risk professionals. It is the leading independent authority on best practice in board and organisational governance and risk management.
- CSA has unrivalled depth and expertise as an independent influencer and commentator on governance and risk management thinking and behaviour in Australia and has been active in contributing to the NFP reform agenda and establishment of the ACNC
- Our mission is to promote and advance effective governance and administration of organisations in the private, public and not-for-profit sectors through education, support and advocacy
- The CSA Graduate Diploma of Applied Corporate Governance sets the standard for entry into the profession and is the only applied postgraduate course in governance with higher education accreditation.
- Our Certificates in Governance Practice, Governance and Risk Management and Governance for Not-for-Profits provide vocational governance and risk management training for a wide range of professionals who are responsible for corporate accountability functions and processes within an organisation.



Topics for discussion

How to approach the governance review, standards and reporting requirements

- Opportunity to review and improve
- Better meet community expectations

Board charters

 important tools in developing and maintaining leading practice governance as well as demonstrating the board's commitment to good governance

Board skills analysis

 vital for organisations needing to demonstrate their boards are 'fit and proper' for the job of governing

CEO performance assessment

• a key board responsibility

Board review findings

highlighting possible areas for attention



ACNC governance standards & reporting

- Under the new ACNC Act, registered charities will have an ongoing obligation to comply with core minimum governance standards in order to retain their tax concessions - commonly referred to as the governance review
- There are no explicit reporting requirement at this time on the governance standards
- However, registered charities will have to report annually through an Annual Information Statement
- The reporting requirements vary depending on the size of the charity. Small charities do not need to provide as much information as medium or large charities.







ACNC governance standards

- At the current time 5 basic governance standards apply:
 - Purposes and NFP nature of a registered entity
 - Accountability to members (where applicable)
 - Compliance with Australian laws
 - Suitability of responsible entities
 - Duties of responsible entities







ACNC governance standards

- The governance standards and internal review are a good opportunity to reflect on your organisation's governance rules and framework
- The ACNC's intention is for the standards to be:
 - focused on outcomes and will specify principles as to how those outcomes must be achieved
 - reflect a minimum set of outcomes for registered charities, rather than mandate 'best practice governance' or detailed procedures and requirements necessary for effective not-for-profit (NFP) governance.



Governance standards

- The standards became law on 1 march 2013.
- CSA is also of the view that the standards are:
 - not onerous for the NFP sector
 - not prescriptive as they provide sufficient flexibility for each registered charity to comply according to their particular size and circumstances
 - an appropriate benchmark for the sector, and
 - appropriate in their expectations of individuals and registered charities.



ACNC reporting requirements

- The only reporting obligation that all registered charities have for the 2012–2013 reporting period is to submit an annual information statement.
- for medium and large charities annual financial reports from the 2013–2014 reporting period onwards.
- The ACNC Act defines charity size according to annual revenue:

small charity – annual revenue is less than \$250 000 medium charity – annual revenue is \$250 000 or more but less than \$1 million

large charity – annual revenue is \$1 million or more.





ACNC reporting requirements

- The ACNC has consulted on the details of the Annual Information Statement and is currently finalising it.
- The AIS will cover what charities easily know:
 - How your charity works towards it charitable purpose
 - The number of volunteers and paid staff
 - The type of beneficiaries who benefit from the charity's activities
- In addition to the annual information statement, medium and large charities will need to submit for the 2013–2014 reporting period onwards:
 - for medium charities a reviewed or audited annual financial report
 - for large charities an audited annual financial report.







Board charters

Origin and purpose of charters

- The word entered the English language from the Old French *charte*, which evolved from the Latin word for "paper" (*charta*)
- In medieval Europe, royal charters were used to create cities (i.e., localities with recognised legal rights and privileges)
- Thus, the *Macquarie Dictionary* defines a charter as:

"a written instrument or contract; a written document... giving privileges (and) rights..."

For us, a board charter is:

A written policy document that clearly defines the respective roles, responsibilities and authorities of the board of directors (both individually and collectively) and management in setting the direction, the management and the control of the organisation.







Board charters are an accepted part of the governance landscape...

Boards should adopt a formal statement of matters reserved to them or a formal board charter that details their functions and responsibilities.

> ASX Corporate Governance Council, 2010, *Corporate Governance Principles and Recommendations*, p.13

Entities should develop and implement a Governance Policy... [A]n entity might like to consider...as part of their Governance Policy a board charter.

Standards Australia, 2003, *Good Governance Principles*, §2.2.2



Tick-the-box compliance or value creating tool?

- A board charter serves a number of important functions as the top level policy document
 - Serves as a reminder for the board of the legal framework within which it operates
 - Documents the policies that the board has decided upon to meet its legal and other responsibilities
 - Assists the corporation's leadership in delivering good governance
 - Is a point of reference for disputes
 - Serves as an induction tool for new directors and senior managers
- Charters leave a legacy from today's board to future boards
 - BUT charters will only be value creating if they carefully crafted, used and regularly updated



Problems with charters / ACNC expectations

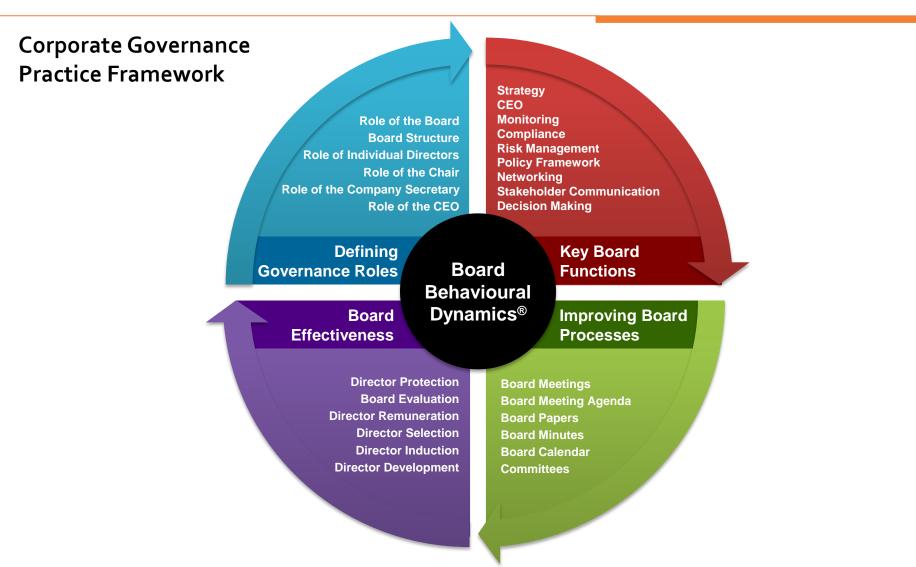
- Potential issues arise with charters if
 - They are not updated to reflect
 - Changes in the law or regulatory environment
 - Good practice



- They mistakenly delegate powers as contemplated by s 198D of the Corporations Act or constitution
 - The question of whether a director has discharged their duty is related to whether their conduct as director has satisfied the minimum standards of diligence and whether their powers have been delegated appropriately (Is the person appropriately skilled to be delegated to?)
- They conflict with the organisation's constitution
 - Roles and responsibilities lack clarity
- They are at odds with the way the board actually operates (Do as I say, not as I do)
- They are ignored by board members and there are no consequences for doing so
 Code of Conduct 3 Strikes.



A potential framework



Source: G. Kiel, G. Nicholson, J.A. Tunny & J. Beck, 2012, *Directors at Work: A Practical Guide for Boards,* Thomson Reuters, Sydney.



Corporate governance charter contents

Introduction DEFINING GOVERNANCE ROLES The Role of the Board

- Board Structure
- Number of Directors
- Appointment of Directors
- Skills Required on the Board
- Duration of Appointment
- Vacation of Office

The Role of Individual Directors

- Directors' Code of Conduct
- Expectations of Directors in Board Process
- Conflict of Interest and Related Party Transactions
- Emergency Contact Procedures

The Role of the Chair

- Inside the Boardroom
- Outside the Boardroom

The Role of the Company Secretary The Role of the CEO IMPROVING BOARD PROCESSES Board Meetings

- Meeting Frequency
- Meeting Time and Location
- Meeting Cycle

ffective

Board Meetings (cont'd)

- Conduct of Meeting
- Quorum and Voting at Meetings
- Emergency Decision Making Written Resolutions

Board Meeting Agenda

- Agenda Content
- Agenda Preparation

Board Papers

- Preparation and Circulation of Board Papers
- Retention of Board Papers
- **Board Minutes**
- **Board Calendar**
- Committees

KEY BOARD FUNCTIONS

The Board and Strategy

Contacts and Advisory Role

- CEO Advisory Role
- Protocol for Interaction with Internal and External Parties
- Hospitality and Gifts
- Monitoring

Compliance

Risk Management

Delegation of Authority

- General Delegations
- Decisions Requiring Board Approval

EFFECTIVE GOVERNANCE

Director Protection

- Information Seeking Protocol
- Access to Professional Advice
- Access to Board Papers
- Insurance

Board and Senior Executive Evaluation

- Evaluation Process
- Board and Director Evaluations
- Board Committee Evaluations
- Senior Executive Evaluations

Non-Executive Director Remuneration

- Fees
- Remuneration
- Other Benefits

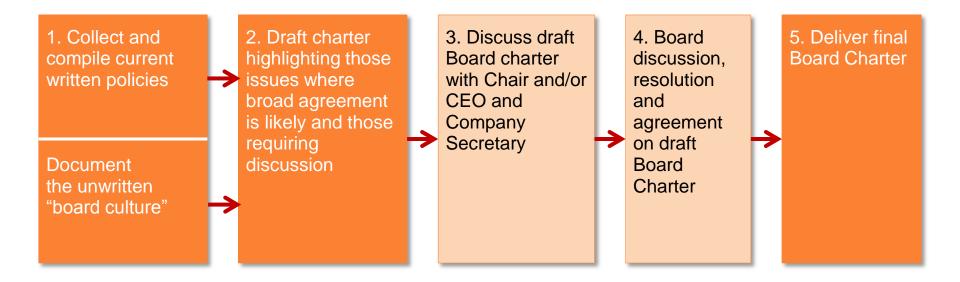
Director Development

Director Induction

Attachments

Committee Charters

Charter implementation process









Board skills analysis

Acquiring skills in the boardroom

ACNC expectations – 'fit and proper' person test

- Know what skills you have
- Select/nominate directors based on skills gaps
- Develop director skills





In my view, the objective duty of competence requires that the directors have the ability to read and understand the financial statements, including the understanding that financial statements classify assets and liabilities as current and non-current, and what those concepts mean.

> Source: ASIC v Healey [2011] FCA 717 at 124 (Centro case)

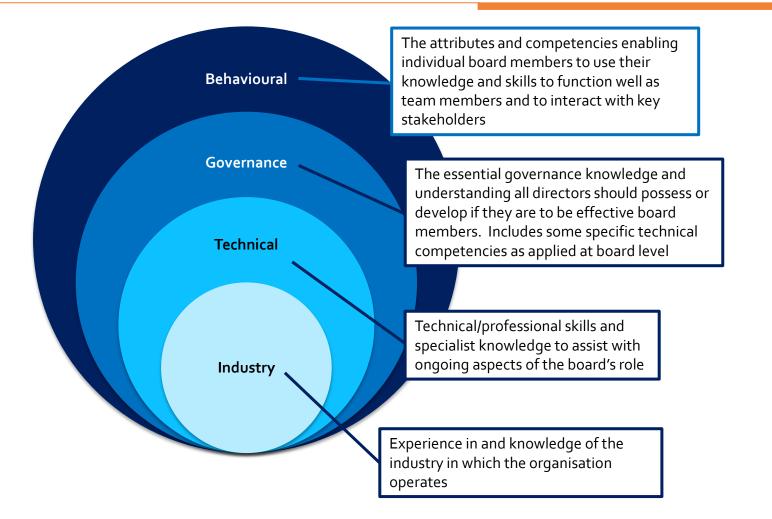
Board skills and competence

Can you justify that your board has the skills and competence to deal with the issues before the company?





Board competencies



Source: GC Kiel et al., 2012, *Directors at work: a practical guide for boards*, Sydney: Thomson Reuters.



1.1 Technical Skills and Experience: Accounting

None (1)	 No und No pra No und No und Holds r 	No understanding of basic accounting concepts including cash flows, assets, inventory, short and long term debt, balance she No practical accounting exposure at an organisational level No understanding of methodology and terminology used in accounting or financial analysis									
Basic (2)	 Can ide Demor Some u Exhibit May hat May hat 	Exhibits an appreciation for the relationship between account keeping and tax liability									
Operational (3)	 Demonstrated understanding and application of standard accounting principles and concepts including cash flows, assets, inventory, short and long term debt, balance sheets, income types, payroll or similar Is able to identify the tax implications applicable to operations Has worked with the accounts of an organisation for a period of 5 years or more Can identify and provide analysis of the key elements of accounts statements and reports Demonstrated ability to dissect many elements of the company's balance sheet, income statement and statement of cash flows May hold a Diploma or similar in accounting practice and may be a member of the National Institute of Accountants Has a working understanding of accounting methodologies and calculating standards 										
Extensive (4)	 Is a member of CPA Australia or the Institute of Chartered Accountants in Australia Holds at least a Bachelors Degree in Accounting or directly aligned discipline Has worked extensively in accounting across medium to large organisations for a period of 10 years or more Has experience with developing and reporting key accounts data in periodic reports Has lead a team with accounting responsibility for more than 7 years Has advanced knowledge of accounting processes and standards Proven ability to provide oversight and acknowledged high level advice on accounting processes Is able to identify the tax implications applicable to operations and ensure compliance across an organisation Has demonstrated an ability to think strategically about accounting across an organisation, enhancing performance as a result 										
Expert (5)	 Has been a career financial executive in large organisations (could include universities) Appreciates and has demonstrated an ability to apply superior knowledge of accounting principles strategically Has superior understanding of/capability in accounting Has lead a team with significant accounting responsibility for more than 10 years Is a Fellow of CPA Australia or the Institute of Chartered Accountants in Australia Holds a Masters Degree or higher in accounting or directly aligned discipline Has worked for 15 or more years in accounting and has provided expert technical advice on complex accounting issues Appreciates and has demonstrated an ability to apply superior knowledge of accounting principles strategically Regularly provides advice on tax implicable to operations, ensures compliance across an organisation and locates areas of strategic opportunity for the entity Sought after ability to provide oversight and acknowledged high level advice on accounting processes 										
Person	Director A	Director B	Director C	Director D	Director E	Director F	Director G	Maximum Rating Required on the Board for this Competency	Number of Directors Required with Maximum Rating		
Response											

What a skills assessment looks like - internal

	Competency		Self-Assessment						Current Competency		Future Requirement	
Section			Director B	Director C	Director D	Director E	Director F	Maximum Current Skill Level	Current Number at Future Needs Skill Level	Rounded Mean: Skill Level Required	Rounded Mean: Directors Required	Met / Not Met
	1.1 Accounting	3	2	3	3	2	2	3	0	4	2	Not Met
e	1.2 Finance	2	2	2	3	2	2	3	0	4	2	Not Met
erier 🖌	1.3 Industry experience	1	4	3	3	4	2	4	4	5	2	Not Met
xpe	1.4 Law	5	1	2	2	2	2	5	1	4	1	Met
Ш	1.5 Strategic marketing	2	2	2	2	4	3	4	2	3	2	Met
Technical Skills and Experience	1.6 Strategy development and implementation	2	3	2	2	4	3	4	1	4	2	Not Met
N N	1.7 Risk management	2	3	2	2	3	2	3	2	3	2	Met
nica	1.8 HRM	2	2	2	3	2	2	3	1	3	2	Not Met
schr	1.9 Information technology	1	1	1	2	2	2	2	3	3	1	Not Met
Ĕ	1.10Contemporary corporate governance	4	3	2	3	4	3	4	2	4	3	Not Met
									еу			
				Nha	t	E	duca	te	Individ	dual meets o	or exceeds re	equirements
			V	alue	?				Requi	irement not	met	
									Requi	irement met		
ernance					2	25						

What a skills assessment looks like – external

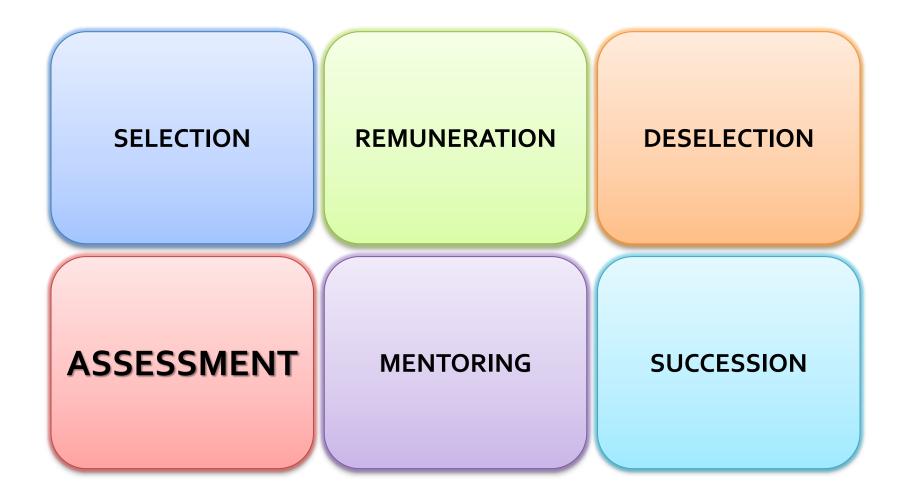
		Self-Assessment							
Section	Competency	Director A	Director B	Director C	Director D	Director E	Director F		
	Accounting								
JCe	Finance								
Technical Skills and Experience	Industry experience								
	Law	\checkmark							
	Strategic marketing					\checkmark	\checkmark		
	Strategy development and implementation					✓			
	Risk management		✓			✓			
	HRM				✓				
	Information technology								
	Contemporary corporate governance								





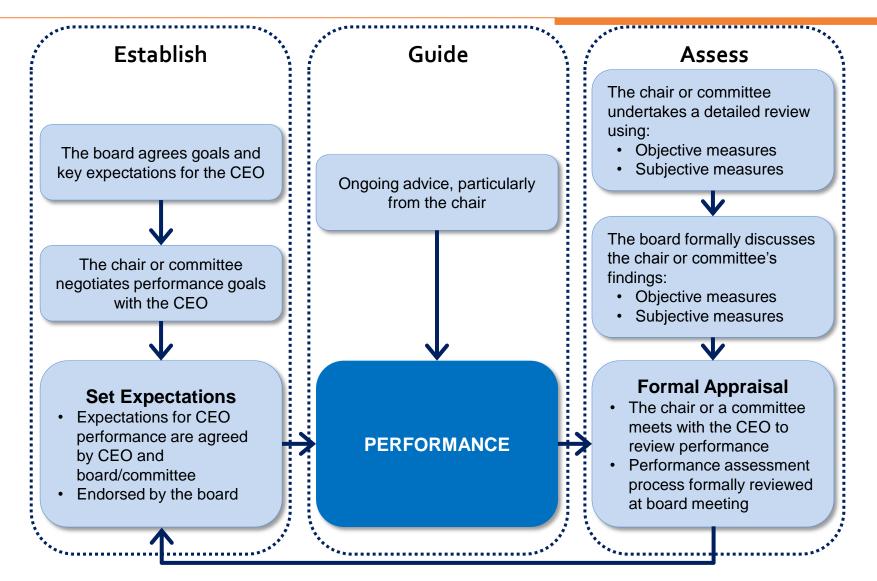
CEO performance assessment

CEO role of the board





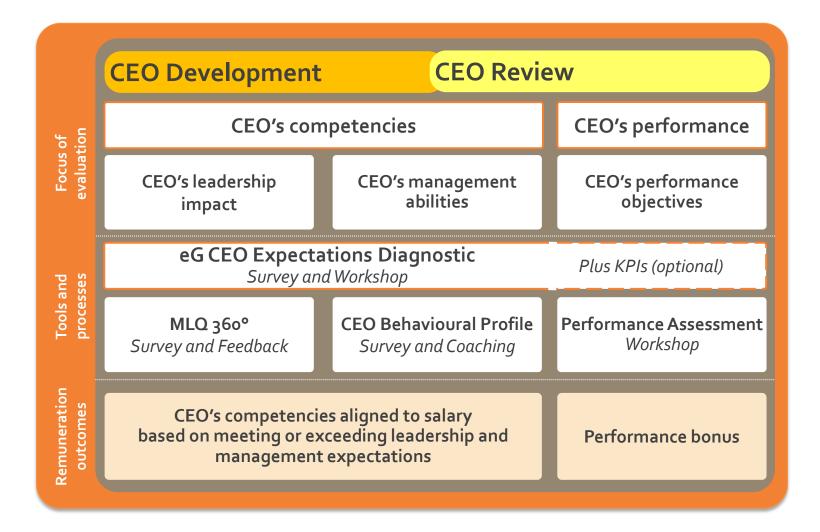
Generic CEO assessment cycle





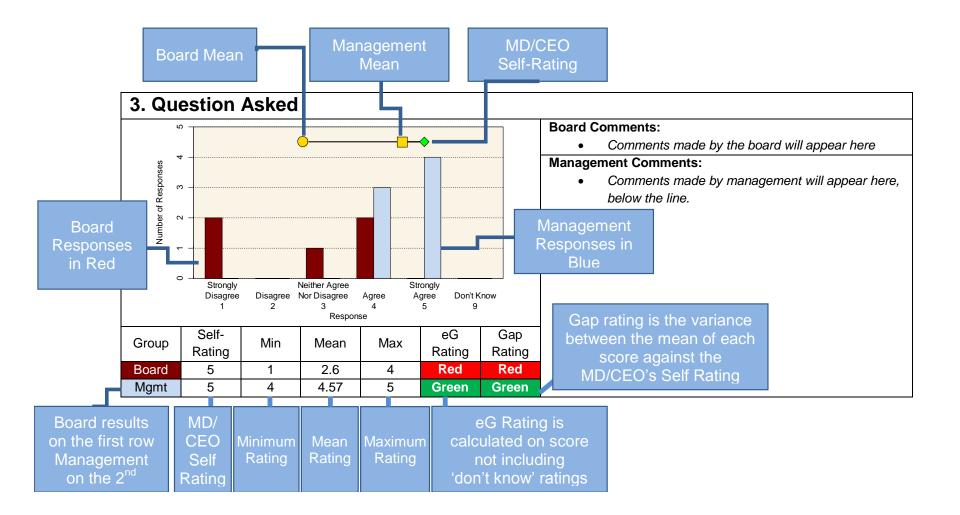
Source: GC Kiel et al., 2012, *Directors at work: a practical guide for boards*, Sydney: Thomson Reuters.

There is no 'one-size-fits-all' approach





Example of CEO expectations









Board review findings

Some recurring themes

- Board's role in
 - Strategy
 - Risk–

The board simply isn't involved in strategic planning. We have one so-called strategic planning session in a year, but it isn't really a strategic planning session

There are no formal systems in place that I am aware of for bringing risks to the attention of the board

- CEO assessment *Idiscussed*
- CEO succession
- Board skills *✓discussed*
- Board papers –

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Board behavioural dynamics

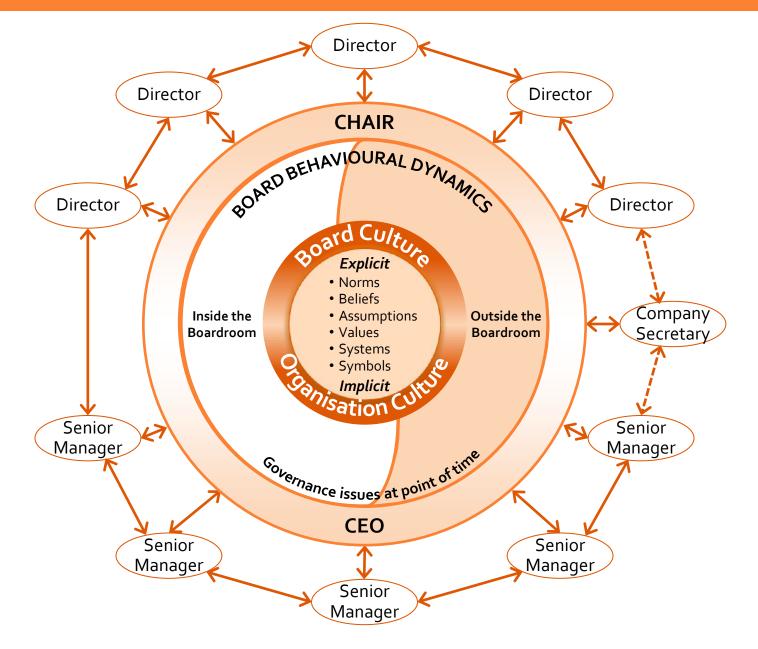
To the best of my knowledge, no CEO succession plan exists

The board papers are disorganised, inconsistent, lacking in clarity and lacking accountability.

Board relationship with senior management could be improved



FRAMEWORK FOR CONSIDERING BOARD BEHAVIOURAL DYNAMICS





Source: Kiel, et al., 2012, *Directors at Work*



The dysfunctional director personality types

Dimension	Deficient	Excessive			
Power	The subservient director	The dominant director			
Dogmatism	The vacillating director	The dogmatic director			
Emotion	The disengaged director	The over-emotional director			
Decisiveness	The indecisive director	The rash director			
Verbal contribution	The silent director	The non-stop talker director			
Civility	The rude director	The obsequious director			
Preparedness	The unprepared director	The trivial director			
Knowledge	The ignorant director	The know-it all director			
Trust	The untrusting director	The gullible director			
Director tenure	The too-new director	The stale director			

Source: Kiel, et al., 2012, *Directors at Work*



Your Governance Checklist – Board Review Diagnostic

If you answer NO to any of the following questions, it maybe time to undertake a formal Board Review Diagnostic:

- Do you think the board and management have a clear and agreed strategic direction?
- Does the board have a succession plan in place for directors?
- Does the board have a succession plan in place for the CEO?
- Does the CEO have a formal evaluation process in place?
- Do you feel the board challenges management enough?
- □ Is there clarity between your board and management as to who does what?
- Do you know the level of risk upon which decisions are based?
- Do you feel comfortable that the board has an appropriate level of financial oversight?
- Do your board papers contain the right amount of information?
- □ Are your board meetings effective?
- Do you feel as though the board is adding value to the organisation?

Please try our Governance Healthcheck:

http://www.effectivegovernance.com.au/useful-resources/governance-health-check/





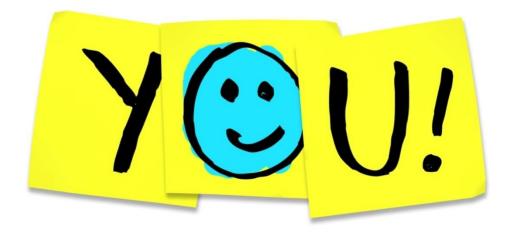
Top ten steps to improving corporate governance

- Recognise that good governance is not just about compliance
- Clarify the board's role in strategy
- Monitor organisational performance
- Understand that the board employs the CEO
- Recognise that the governance of risk is a board responsibility
- Ensure the directors have the information they need
- Build and maintain an effective governance infrastructure
- Appoint a competent chairperson
- Build a skills-based board
- Evaluate board and director performance and pursue opportunities for improvement

http://www.effectivegovernance.com.au/top-ten-steps-to-improving-corporate-governance/







For our templates, visit <u>www.effectivegovernance.com.au</u>



