Skills based superannuation Boards

Stephen Howell

The Boards of superannuation funds need to be 'gap-free' in the skills and competencies required of directors in the continually demanding area of supervision of our superannuation funds. With the Australian Government (government) having announced its position on the governance of superannuation Boards, I suggest these Boards move quickly to establish skills-based, majority independent Boards.

Of course, with enhanced regulation comes greater scrutiny from the prudential regulator, Australian Prudential Regulation Authority (APRA), leading to Boards facing ever increasing challenges, particularly in respect to the standards of competence currently required of directors under the 'fitness and propriety' test. Ensuring Boards have skilled and dedicated directors in place to meet these challenges is the key to driving leading practice governance and providing quality management of funds for members. The question of independence is a natural consequence of this enhanced regulation.

In fact, section 10 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) contains a definition of independent director and APRA provides guidance on the benefits of independent directors for superannuation fund Boards. In *Prudential Practice Guide SPG 510 Governance* which supports *Prudential Standard SPS 510 Governance*, APRA suggests superannuation Boards might consider independent directors, or 'non-affiliated directors' for the Board, for the chair and for relevant committees.

So, with the regulator providing guidance on independence; with APRA-regulated institutions—other than superannuation funds—always having a requirement of an independent chair and a majority of independent directors; and with the Australian Government providing its position on independent directors for your Board; it is prudent in my view to review policy and consider how to ensure 'gap-free' Boards in terms of both skills and independence.

However, why am I not surprised by the negative responses from the industry funds to enhanced governance and an attempt to harmonise prudential regulation across the financial services sector?

With the reform of the industry still fresh in our minds, I am reminded of APRA's belief at the time as pointed out by the then deputy chairman, Ross Jones who said, "historically, there has been a resistance in this industry…to regulation". I must say, the government's approach is also difficult to reject, other than on an emotional and self-interest basis, and how do you argue with then assistant treasurer, Josh Frydenberg who pointed out, "If independent directors are good enough for listed companies, for general insurers, for life insurers, for banks, then they should be good enough for super funds".

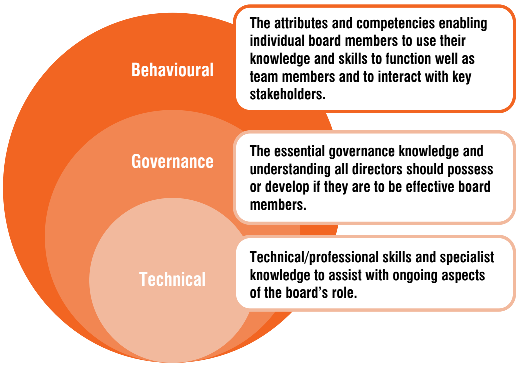
Superannuation Boards, like all boards in the financial services sector, are required to have a Board charter setting out the roles and responsibilities of the Board, ensure that directors have the requisite skills, conduct Board performance reviews annually and have a formal policy on Board renewal. Assessing the independence of directors will now be added to this list of responsibilities.

How then do Boards achieve this level of competence, skill and independence and deliver 'gap-free' Boards? The answer is simple; undertaking a Board skills analysis, which can be specifically tailored to ensure it is constructive and meaningful for the requirements of the Board to identify any gaps in skills and independence and to develop strategies to deliver a diversity of skills and the requisite level of independence.

It is recognised—as regulators, industry bodies and academics continually point it out to us— that a diversity of skills, knowledge and experience (collectively referred to as competencies) around the Boardroom table has a positive impact on the governance of an organisation—this is true of any governing body. A Board comprises individuals who can contribute much needed skills, experience, perspective, time and other resources to the organisation. As no one person can provide all of the qualities required for a successful Board, and because the needs of the organisation will continually change, a Board should have a well-conceived method to identify the competencies it requires to serve on the Board.[1]

Typically, a Board skills analysis is designed and managed by an independent governance expert using several techniques, including surveys specifically designed for the needs of individual Boards. Leading practice survey tools will ask directors to assess their own competencies and those of their peers, across areas of technical, industry, governance, director behaviour and independence as depicted in Figure 1. The survey also collects data on the maximum number of directors with particular skills and competencies and the number of directors required to possess level of skills into the future. All responses and data are analysed and ultimately reported to the Board for discussion, review and action by the Board.

Figure 1. Board competencies



Source: Effective Governance 2012.

We know that no two Boards are the same and it is difficult to assess Board performance against individual Boards, unless of course Boards have common directors. We also know that specific skills and competencies required by Boards will differ across industry, but the fundamental skills required by directors remain the same. For example, technical competencies may include legal, accounting, engineering experience and/or knowledge.

Clearly, directors will not be strong in all the areas. Although the courts have made it clear that financial literacy is a given, specific technical skills, such as accounting or legal qualifications, are generally not a requirement for a majority of Board members. However, industry-specific competencies including experience and/or knowledge of the specific industry sector will always be relevant to the organisation.[2]

Governance competencies are different from technical competencies in that the specific competency refers to developing it in a governance setting. For example, a director may have no formal experiences or training as an accountant, but having served on some other Boards, attending director training and then joining the audit and risk committee of the Board, the person may feel that they have developed a 'strong' governance competency in accounting. In other words, they feel through governance experience and training that they have developed a competency in the area of financial literacy as required of members of the Board.

Similar to technical competencies, directors could assess their self and peer governance competencies using a scale that comprises five levels:

1. very weak or has limited or no experience in this area of competency
2. weak or some knowledge and understanding in this governance area of competency and may have received some informal training or guidance in the area of competence
3. acceptable or has demonstrated knowledge and understanding of the Board's role in the area of competence and may have received some formal training or guidance in the area of competence at Board level
4. strong or has demonstrated advanced knowledge and understanding of the Board's role in the area of competence and may have proven experience in the area
5. very strong or consistently demonstrates highly advanced knowledge and understanding of the Board's role in the area of competence and has proven leadership experience in the area of competence.

Governance competencies can also be developed by sitting on other Boards, through exposure to a Board as a senior executive or through a professional capacity as a company secretary, legal adviser or similar. Almost inevitably, a person who has a high level of technical competency in an area will have at least a strong level of governance competency in that same area. However, it is possible to have no competency in an area from a technical perspective, but still have some or even significant competency from a governance perspective.

Stephen Howell, Effective Governance

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On the other hand, behavioural competencies are those personal and interpersonal attributes of individual directors that enable them to use their knowledge and skills to function well as team members and to interact with key stakeholders. Personal and interpersonal competencies provide the platform for most skills and governance roles. These competencies include having common sense, sound judgment, being a team player, having the ability and willingness to challenge and probe and, importantly, having integrity and high ethical standards.

An annual review of skills and competencies, together with analysis of the number of directors required with a particular skill—now and in the future—as well as an assessment of the independence of directors, will assist Boards to perform their roles and provide assurance to members, regulators and other key stakeholders of the competence and level of appropriate oversight provided by the Board in ensuring a high performing superannuation fund.

The use of a robust board skills analysis is one of the tools available to Boards in continually improving and enhancing leading practice governance. It also has an added advantage for APRA-regulated entities required to comply with the prudential standard of ensuring fit and proper requirements, in that this process will not only assist with compliance but will also enhance it.

Ultimately, we are all striving to achieve good governance. With the challenges of enhanced regulation, closer public and regulatory scrutiny, increasing compliance costs and a mandate to ensure a high-level return for members, investors and stakeholders—ensuring directors have the requisite skills and competencies to deliver is imperative. A structured and professional Board skills analysis will provide assurance to Boards, regulators and key stakeholders when you achieve a 'gap free' Board. **FS**

Notes

1. Kiel, G., Nicholson, G. Tunny, J.A. & Beck, J., 'Directors at Work: A Practical Guide for Boards', Thomson Reuters, Sydney, 2012.
2. Beck, J., 2013, *How competent are your directors?* https://www.effectivegovernance.com.au/page/knowledge-centre/news-articles/how-competent-are-your-directors [accessed 16 June 2025].