National Governance & Management Congress

Brisbane – 26 March 2019

Presentation by Graham Bradley AM

How Do High Performing Board Behave?

Good morning Ladies & Gentlemen.

The topic of board effectiveness has been much in the news over the past year as a result of the Royal Commission into Misconduct in the Banking and Finance Sector, and even more influential report commissioned by the Australia Prudential Regulatory Authority (APRA) into the conduct, culture and governance of the Commonwealth Bank released last April. This report was precipitated in part by the unprecedented court action by Austrac, our anti-money laundering authority, against the CBA in 2017 for failure to report over 50,000 cash transactions at its new, "smart" Automatic Teller Machines over a three-year period. That shortcoming resulted in an unprecedented (for Australia) agreed penalty of $700 million.

The APRA/CBA report identified a number of "cultural factors" underlying the CBA's governance failings which extended to the board, board committees, the CEO and to management generally. Those cultural factors were as follows: a widespread sense of complacency which bred overconfidence on the part of the board in its management, a reactive rather than proactive approach to dealing with compliance which resulted in a legalistic and, at times, "dismissive" approach to regulators, and a culture that was insular indicating that the company did not learn from its experiences and mistakes and, in particular, had "tin ear" towards community expectations about fair treatment of customers. And, lastly, an overly collegiate culture that lessened self-criticism, slowed decision-making and impeded individual accountability.

It is clear that community expectations have been elevated about the standard of governance on the part of boards of large financial institutions, listed companies generally, and, I would suggest, all companies, including not-for-profit companies, across our community. The bar has been lifted.

What then are the characteristics of a high-performing board? What features of the way the board conducts itself promote effectiveness and high performance?

I would like to suggest 10 features that I think characterise the high-performing board. Every one of these is necessary, but the list may not be exhaustive. So here are my top 10 conditions for board effectiveness.

1. ***The Style of the Chair***

   The Chair is, of course, pivotal to the effective operations of a board and to the effective governance of an organisation. Effective boards are characterised by chairs with a style that is open, respectful, inclusive, and encourages contribution to board discussions from all directors. The art of a good chair is to draw from the wisdom of all individuals around the board table to make the board operate as an effective, collective, decision-making team. To promote a fully open and frank discussion amongst directors, a high-performing board will routinely schedule non-executive director-only sessions where directors, without any management present, can discuss frankly their views and concerns regarding the company, its operations, its executives and any issues that they might feel inhibited in raising in the presence of management.

2. ***Efficient Agendas and High Quality Board Papers***

   Agendas should be designed to ensure that the most important topics receive adequate time and attention by the board. Agendas should not be overloaded so that the time available is for important items is truncated. Agendas should clearly distinguish between matters for decision and matters merely for noting so that the board can allocate its time efficiently. Papers should be clear, concise and circulated to the directors in a timely manner–my rule is a minimum of five business days including a weekend. Papers should not be over-lengthy or burdened with excessively long annexures or reports but instead should summarise the key issues, focus the board's attention on key matters for decision, clearly state the proposals recommended to the board by management and should, on major matters, include a short discussion of the key risks to which the board should turn its mind.

3. ***Diligent & Constructive Directors***

   A high-performing board's directors will be diligent, courteous in their interaction at the board table, able to challenge management and ask hard questions but in a constructive and non-confrontational manner. The directors should have a diversity of personal backgrounds and experience, and be able to bring cognitive diversity to the board decisions. It's the role of the chair to draw on this diversity in order to improve the board's decision-making.

4. ***Effective Minutes***

   Minutes of meetings should as a general rule be spare, clear and delivered expeditiously to directors for review. I always insist that the company secretary send me the draft minutes within one week of the board meeting, while the events at the boardroom can be readily

recalled. I am a great believer in removing extraneous material from board minutes. Minutes are not intended to be a transcript of the 'to and fro' of board discussion. They should succinctly state the decisions of the board–the resolutions that were passed–with only the necessary preamble to help a director who may not have been at the meeting understand the context of the resolution. Recording who said what during the board meeting is to be avoided, except where management makes important statements to the board which should be recorded. The minutes should also include an action list of follow up items arising from the board meeting, and the action list should also be circulated to the directors while the meeting is fresh in their minds. The action list should state who is responsible for each action, and the time at which a response is expected. The action list should be circulated at the next board meeting with a report on the status of each action item. This makes for efficient follow-up, and reassures the board that matters are not falling between the cracks between meetings.

5. ***Concern for Culture and the Voice of the Customer***

A high-performing board will allocate time to the discussing and assessing the culture of the organisation, and reviewing feedback from customers or members, including both the substance and the number of customer complaints that have been received. One of the failings of the CBA was that the "voice of the customer" was rarely heard at the board table. Increasingly, boards are looking for ways to understand the culture of the organisations by reviewing customer complaints, and understanding the lessons learned from operational errors which have impacted customers. Many boards are now asking management to prepare a list of key measures that will help the board assess culture over time, including the answers to key questions in staff surveys, regulatory notices and breach reports, customer complaints and feedback from suppliers and other stakeholders.

6. ***An Appropriate Relationship between Chair and CEO***

This is a key relationship that makes for board effectiveness. The chair and CEO should have an open, frank and mutually respectful dialogue on a reasonably frequent basis. The relationship should be one of objectivity, and while it is important for the chair to understand the CEO well, it can inhibit objectivity if the chair and the CEO are close social associates. It is important for the board to feel the chair can provide honest, frank and objective feedback to the CEO when necessary. The appropriate relationship between the chair and the CEO is often described as one of "public support but private candour".

7. ***Time Outside the Boardroom***

Increasingly, it is important for directors not to spend all their time around the board table. Site visits, informal interactions with team employees and executives at different levels of the company are all important ways for the board to assess the culture of the organisation and the way in which it is being managed by the CEO. Time should also be devoted to orientation for new directors, but also continual education and development for all the directors around the table. A high-performing board will often invite experts to attend board meetings to help the directors stay up-to-date with developments such as rapidly changing technologies, regulations and customer preferences.

8. ***Equality of Information***

A really important principle for highly effective boards is the principle of equality of information around the board table. Every director is entitled to ask for any or all information they genuinely believe is necessary for them to do their job as a director competently. But, if individual directors come into possession of information or ask management for special reports on particular areas of the business, it is important that that information is shared equally amongst all directors to avoid a situation where some directors are in possession of much greater knowledge about aspects of the business than others.

9. ***Respect for Board Confidentiality***

Another hallmark of high-performing boards is their complete respect for the important principle of the confidentiality of the boardroom. Directors should not ever feel free to divulge what was discussed or debated in the board meetings. If directors (or for that matter, management) breach the confidentiality of the boardroom by reporting externally on the discussions or resolutions of the board, the ability for the board to operate in an open and frank environment will be seriously diminished. So, every director, including the chair, should avoid any discussion of what has transpired in the boardroom discussions.

10. ***A United Front***

Once a board decision is made, all directors should be bound to respect the decision and not to undermine it. The place for debate is in the boardroom, not outside it. And the chair should be the sole spokesperson for the board on governance matters. The CEO will normally be the spokesperson on operational and day-to-day management matters. All directors should refrain from making statements that differ from those of the agreed narrative, and chairs should consult with the board about that narrative before making public statements on behalf of the board. Even if

a director wishes to abstain from a particular resolution or has voiced issues about it, once a decision is made, all directors should feel bound by that decision since, in general, all will be equally liable for the consequences.

I believe these 10 features will characterise a high-performing board and will lead to more effective governance and organisations.

We will now move onto discuss three mini case studies that can cause dysfunction at the board table. The three cases which we will discuss in sequence are as follows:

- The case of the dominating director,
- The case of the dominating CEO, and
- The case of the dominating chair.

Case # 1–John, the dominating director

John was encouraged to nominate for election to the board because of his long career as a marketing executive. It was felt by the board that his expertise would be highly useful to the Club. At every meeting, however, John is the first director to speak, usually before management has finished their presentation. His questions are forthright, often incisive and delivered with in a slightly aggressive but not discourteous manner. Other directors are comforted that he knows what he is talking about. By the time John has asked his fifth or sixth question, however, most other directors feel that there isn't much left to discuss or question. The chairman usually declares that the matter has been fully discussed and agreed, and the board moves onto the next item where often the same pattern of behaviour occurs.

What should be done about John, the dominating director?

Case # 2–Bruce, the dominating CEO

Bruce has been the CEO of the Club for a good many years, and longer than most of the Club's directors. The Club has been performing well over recent years, and the board has no real reason to be concerned about Bruce's leadership of the executive team and the employees. At board meetings, however, Bruce often displays not too subtle impatience with the board discussions, and is particularly prickly at any suggestion that the board papers haven't fully analysed all aspects of every proposal. Bruce has made it clear that he does not favour inviting other executives to attend board meetings, and that he is quite capable of fully informing the board of all they need to know. When questioned by directors on matters arising from the board reports, he often diverts the question by saying "that's an operational matter for management; it's not a board matter". Bruce's presentations to the board are always forceful and very definite, and the chair rarely puts any restriction on how long he speaks on any issue. Many directors feel intimidated by the way he behaves at the board table.

What should the board do about Bruce, the dominating CEO?

Case # 3–Ian, the dominating chairman

Ian has been the chair of the Club for many years. He has made it clear that he likes to run a tight meeting. Meetings rarely go for more than one hour. It is clear to all directors that Ian has gone through all of the agenda items with the CEO prior to the meeting, and he often introduces each item by saying that he and the CEO have reviewed the matter thoroughly, and he is fully in support management's recommendations. It often appears to some directors that all of the key decisions have been made by the chair and the CEO well before the board discussion. On occasions, Ian invites the CEO to begin his presentation by saying that he thinks it is a good proposal and seems to cover all of the major issues which should not concern the board and so the board will probably not need to spend too much time on this item because there is a lot to get through in the meeting time scheduled. On occasions, Ian cuts short the management presentations by saying that the paper is very clear and it would save time if the CEO just answered questions from directors. When he asks are the any questions, many directors feel inhibited in speaking up. When questions are asked, the chair often responds before the CEO has a chance to do so. And the discussion is often cut short after only two or three comments or questions in the interest of moving the agenda along so that the meeting will not overrun the scheduled hour.

What should be done about Ian, the dominating chairman?

***