



Great minds don't always think alike; the very best boards bring together a wealth of independent thinking, wisdom, experience and a diversity of opinions and perspectives. In such a highly-charged environment, disagreement is both inevitable and essential to the health of the company.

In her role as a leadership trainer and board consultant, former KPMG Partner Mandy Holloway has had to deal with the consequences of suppressed debate.

"In one case, the directors kept on talking about how important it was to have respect for each other," she says. "Unfortunately, respect had come to mean 'we don't challenge or question each other in front of our peers'. As a result, the board members had developed a passive-defensive way of interacting with each other. Different thoughts and different ideas were lost from the conversations and disagreements were driven underground. The company was under-performing, projects were over-running on investment and time requirements and the CEO was working under the perceived pressure of needing to find solutions on his own."

A solid, well-functioning board will generally have a chairman who is competent at facilitating discussion in order to maximise each director's contribution.

"It's important to remember that not all conflict is destructive," says Ann-Maree Moodie, Managing Director and Founder of the Boardroom Consulting Group. "Conflict is simply defined as two parties having opposing views – it doesn't mean these views can't be resolved, or even that one party is right and the other is wrong. If conflict is properly managed it can enrich the group dynamics of a board and, ultimately, have a positive effect on the organisation as a whole."

The process of managing conflict should begin before each new board member is appointed.

"I strongly believe that appointing a director is a two-way process," says Laura Anderson, who is chairman of both the L'Oreal Melbourne Fashion Festival and Victoria's Starlight Children's Foundation and a director of the Australian Grand Prix Corporation. "A board that functions well should clearly understand the strategy and risk profile of the company and what roles need to be fulfilled at board level. They need to identify the qualities they need in a director then be diligent in making a choice based on how he or she fills the role culturally as well as functionally."

A director looking to join a board has an equal responsibility to ask the right questions.

“They need to understand the culture, how the chairman manages the culture around the boardroom table and the working relationship between the chairman and the CEO,” continues Anderson. “They should ask questions like ‘what role do you see me fulfilling on the board?’ ‘Who are the other directors and what role do they play?’ ‘How do you see me complementing that?’ ‘Are there any other gaps?’ They should also ask the chairman how he or she manages conflict and gets the most out of each director. There should never be any surprises around issues like these.”

Directors then have a responsibility to communicate as effectively as they can within that culture. Anderson calls this ‘the art of influence’.

“I think that’s a fundamental quality of any good director,” she says. “You have to be able to communicate effectively to the audience knowing that sometimes people may not be interested in listening. As a chairman, if someone vehemently opposes a direction once we’ve had a debate, I really want to understand why.”

### **When it’s time to resign**

Sometimes there simply is no resolution. In most cases, directors will minute their disagreement, agree to differ and move on to the next item on the agenda. However, if they should genuinely believe that a decision will be detrimental to the interest of shareholders, or that their personal integrity is likely to be compromised, resignation may be the only option.

The rules around continuous disclosure impel directors to evaluate materiality on a continuous basis. Specific acquisitions, overseas expansion, a new product line, even the appointment of a new CEO...all have potential to threaten the wellbeing of an organisation and, as such, could drive a dissenting director off the board.

For Grace Gawler, a former member of the Victorian Government’s advisory committee for women’s health, it was a question of integrity.

“I was co-founder and director of an organisation working with people who had a life-threatening illness,” she says. “We had a strong therapeutic basis and I discovered that one of our associated practitioners was having inappropriate relationships with people he was treating.”

Her fellow directors, including her husband, were in favour of overlooking the incidents.

“In the end, I felt I had no choice but to resign – which had huge consequences in my life, health and marriage.”

In retrospect, Gawler believes that the situation could have been better managed if an agreed code of ethics and a conflict management plan had been in place. These would have given the chairman and, eventually, an outside mediator something concrete to work with.

“We did bring in a group to troubleshoot but they were already known to people in the organisation and weren’t as impartial as they might have been,” she says. “Now I’m strongly in favour of bringing in a truly impartial large group mediator – someone who will talk to people one on one then bring those views to a mediation conference. Then I think you really need to go back to one on one to make sure that all of the ghosts are laid to rest and that no-one feels intimidated.”

### **How much should shareholders know?**

In a recent article in The Australian newspaper, Andrew Main suggested that every resigning director should be compelled to send a simple formula statement to ASIC. He argues that most exiting directors fudge the reason for their resignation to avoid rocking the company boat and that this could be to the detriment of shareholders. A compulsory statement would preclude this option and the markets would benefit by being better informed.

At the moment, the ASX Listings Rule that requires a director to disclose their resignation but not the reasons unless these are considered material. In this case it becomes a continuous disclosure obligation.

ASIC also expects that, if the resignation of a company director is material and there is no applicable 'carve out', then it would be disclosed to the relevant market operator.

"Any changes to the existing disclosure regime regarding director resignations and its application to other disclosing entities – for example, public companies – is a policy issue and therefore a matter for the Federal Government," an ASIC spokesperson says.

A director who has himself been driven to resign from a major Australian board points out that departing directors may not have anything specific to say.

"The problem with making a short statement to ASIC is that, often, you couldn't say any more than 'I'm not comfortable with the direction the company is taking'," he says, speaking on condition of anonymity. "If you really think the company is likely to implode and you have no choice but to resign but, essentially, you're drawing on your experience to predict the future. If you're right, nothing will actually happen until after you've left – and, if your disagreement was minuted, your opinion is already public information."

*Breakout box*

### **Bowing out – what directors had to say**

When Jim Leng resigned from Rio Tinto earlier this year the Australian Shareholders' Association (ASA) had already come to the view that the board, under the leadership of Paul Skinner, had not done well for shareholders.

"The real break point was when they appointed Jim Leng as chairman and he left after one meeting," says the ASA's Duncan Seddon.

In an email to the *Sydney Morning Herald* Leng said that he decided to resign as a director and chairman designate with regret and after a great deal of deliberation.

"As the company previously stated, it has a financial issue to resolve in terms of its debt and repayment and there has been a difference of opinion over which option the company should pursue," he said. "I am hopeful that my resignation will enable the board to reach a consensual decision."

Cathy Walter's 2004 resignation from NAB followed her decision to fight the board over the appointment of PricewaterhouseCoopers to investigate the bank's \$360 million worth of forex losses. At a subsequent business luncheon she warned company directors not to hide behind professional experts or spin doctors but to be open and honest with shareholders.

Also in 2004, Sir Ross Buckland resigned from the board of Mayne shortly after they announced the acquisition of a multivitamin injectable (MVI) product line for \$US100 million. He stated in his letter of resignation that the board's decision to back management and proceed with the acquisition was something he strongly believed was not in shareholders' interests.

When Carolyn Hewson left the AMP board in 2001 investors speculated that she wasn't happy with CEO Paul Batchelor's plans for expansion – but it was several years before she confirmed that.

In 1998, Geoffrey Cousins resigned from the board of the then controlling shareholder in Crown Casino, Hudson Conway, citing "significant differences with the company on corporate governance and related matters" and his inability to achieve "the fundamental changes I believe are necessary".

## *Breakout box 2*

### **Should the board be able to remove a director?**

Well-publicised disagreements such as that between Cathy Walter and the rest of the NAB raised the question of whether board members should have the right to remove a fellow director without a shareholder vote.

In the UK, while there is a statutory procedure for removal of a director, this is rarely used by listed companies. Nicholas Squire, who heads the London practice of Freshfields Bruckhaus Deringer in Employment, Pension and Benefits, says that he has only once experienced a resolution to remove a director and that this was resolved shortly ahead of the meeting when the individual resigned.

“The articles of association of listed companies typically contain provisions entitling all other directors, or a substantial majority of them, to remove a director by written resolution,” he says. “These types of provision are commonly relied on, largely because, quite apart from the undesirability of having dirty laundry washed in public, the statutory procedure is uncertain, cumbersome, time-consuming and expensive for companies who are required to circularise a large shareholder base.

“It is also common to include provisions in employment contracts requiring directors to resign from office on termination of their employment, and creating a power of attorney in favour of other directors, to cover a default by the individual in question. The effectiveness of such a provision has to my knowledge never been tested.”

The AICD believes that the formal power to remove a director should remain with the shareholders. On the rare occasion when a disagreement cannot be reconciled by normal boardroom procedures a general meeting of shareholders is an appropriate way to decide the issue.