PANORAMIC RESOURCES LIMITED

ACN 095 792 288

A GUIDE ON THE ROLE OF THE BOARD AND COMMITTEES

1 The role of the board

Almost all published definitions of the board's role are statements of activities or methods such as approving budgets, making policy and overseeing the financial affairs of a company. It is possible for boards to perform all the activities prescribed by the conventional wisdom ad still fail ti fulfil a useful organisational role. Policy governance requires the board's role to be described by its "value adds" or job products rather than by its types of activities.

The function of directors in adding value was first encapsulated by Justice Rogers in the 1992 AWA case and expanded on in the appeal case. Justice Rogers laid down the board's functions which were to:

- set goals for the company;
- appoint the company's Managing Director;
- oversee the plans of managers for the acquisition and organisation of financial and human resources towards attainment of the company's goals; and
- review, at reasonable intervals, the company's progress towards attaining its goals.

As discussed by Justice Rogers and in the report "Strictly Boardroom", the complexities of modern commerce no longer permit the board of a company to manage its day to day business. His Honour stated that:

"The directors rely on management to manage the corporation. The board does not expect to be informed of the details of how the corporation is managed. They would expect to be informed of anything untoward or anything appropriate for consideration by the board."

The board can make any number of contributions to its organization however these should not be dictated by accepting the usual list of board activities handed down by traditional practice. The board has accountability for the entire organisational behaviour of the company. The aim is to construe the board's job description so that if the board performs satisfactorily, the board's accountability is fulfilled. The job description of the board for modern day companies has been described as follows:

- the company's link to the shareholders: the board acts as the connection between the company and its shareholders;
- establishing governing policies: the board has the obligation to fulfil fiduciary responsibility, guard against undue risk, determine company priorities and generally direct company activities. The values and perspectives of the company can be encompassed by the board's explicit enunciation of broad policies;
- assurance of executive performance: the board is obliged to ensure that the staff faithfully implement and adhere to the board's policies. If the managing director, for example, fails to fulfil the explicit expectations of the board, the board is itself culpable. The board has no choice but to take the steps necessary to remedy the situation.

These three functions are considered to be the unique responsibilities of the board which cannot be delegated. The board will undertake other activities but it cannot avoid the above functions and still responsibly govern. As a general statement it can be said that while it is the staff's role to create the outputs of a company, it is the board's role to define them.
The majority in the Court of Appeal in the AWA Case enunciated the following further functions as being what is expected of directors under the law:

- a director should acquire at least a rudimentary understanding of the business of the corporation. Accordingly, a director should become familiar with the fundamentals of the business in which the corporation is engaged;
- because directors are bound to exercise ordinary care, they cannot set out as a defence lack of knowledge needed to exercise the requisite degree of care. If one feels that he has not had sufficient business experience to qualify him to perform the duties of a director, he should either acquire the knowledge by inquiry or refuse to act;
- directors are under a continuing obligation to keep informed about the activities of the corporation. Otherwise they may not be able to participate in the overall management of corporate affairs;
- directors may not shut their eyes to corporate misconduct and then claim that because they did not see the misconduct they did not have a duty to look;
- directorial management does not require a detailed inspection of day to day activities, but rather a general monitoring of corporate affairs and policies;
- while directors are not required to audit corporate books, they should maintain familiarity with the financial status of the corporation by a regular review of financial statements;
- the review of financial statements, however, may give rise to a duty to inquire further into matters revealed by the statements; and
- upon discovery of an illegal course of action, a director has a duty to object and, if the corporation does not correct the conduct, to resign.

2 The role of committees

The board's use of committees necessarily depends on the role of the board itself. The level of direction required by directors to add value to the company will depend on the size and maturity of the Company as well as the level of management expertise. In small companies where the management skill base is not sophisticated, directors will inevitably play a more hands-on role. The board will be utilised to complement the management skill base in adding value and performance.

There is a vast range of opinions on the necessity and effectiveness of board committees. Some commentators argue that committees generate many benefits such as independence, director specialisation, strengthening the role of non-executive directors, a concentrated focus on the issue at hand, and economy of time for busy directors.

Detractors argue that the board itself is a committee, and therefore, specialist committees create duplication of effort. Others argue that delegation of the board's power reduces the accountability of individual directors, or that committees create a board of directors out of touch with key corporate issues.

However, one of the most remarkable features of corporate governance over the past 15 years has been the growing use of board committees. In March 1997, a report commissioned by the Australian Investment Managers' Association found that only one of Australia's Top 100 Listed Companies had a board operating without a committee structure.

2.1 Existing PAN Committees

The Panoramic board currently has three committees:

(1) Audit Committee – consisting of all non-executive directors

(2) Remuneration Committee – consisting of all Board members

(3) Environment, Safety and Risk Committee – consisting of all Board members