

Board independence doesn't mean better governance: academic

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Quality decisions by board members are born by having appropriate skills, expertise and ethical values sitting around the table. **Photo: Peter Braig**

Sally Patten

With the federal election less than a week away and a Coalition victory virtually in the bag, superannuation industry executives will need to start engaging with their new best friends in Canberra.

By all accounts the industry funds will have the most engaging to do, given the opposition's stance on the composition of boards and the role of industrial awards in the distribution of retirement savings products.

The Coalition is minded to adopt a recommendation made by the 2010 Cooper review of super, that industry fund boards ensure one-third of trustees are independent. In other words, a third of directors should have no connection to the employer and employee groups that own the fund's shares. Under the current typical structure, unions and employer groups are represented equally on boards, although some funds may have an independent chair.

Given the prospect for changes to the make-up of boards, last week's visit to Australia by Sally Wheeler, Professor of Law at Queen's University in Belfast, was timely.

Wheeler's message to Mathias Cormann, superannuation minister-in-waiting was simple: "Think carefully what you wish for. If you want effective governance and management for the benefit of members, do not think that structural independence will do this for you. It might but it might not."

Wheeler argued that independence is valuable for procedural roles, or roles that involve adjudication or ensuring that due process is being followed. For that reason, it may make sense for the chair of a super fund to be independent. The role of a chairperson is not so much to add to the expertise or experience of the board, but to ensure that processes are adhered to and that people with the right skills and ethical values are sitting around the table.

But at the director level, independence is not sufficient.

"Structural independence has become the holy grail. But independence in and of itself does not necessarily lead to better governance. You can't necessarily get rid of cronyism through a test of independence," Wheeler told an Association of Superannuation Funds of Australia lunch in Sydney.

Too much difference is not a good thing

Indeed, a broad spread of people on a board might be disruptive, the academic argued. If directors come from

different backgrounds, with different belief systems, this can lead to a lack of trust, potentially with directors becoming less willing to engage and commit themselves fully to the task at hand. They may be less prepared to share their views.

On the other hand, if directors share a common belief system, but have different skills and work and life experience, this can enhance debate.

“In a high-trust environment, where there are shared norms and values, people are more likely to discuss topics more vigorously, because they will feel safe to do so,” Wheeler said.

Arguably one reason to appoint independent directors is to avoid group-think. But Wheeler argued it was almost impossible to find a group of people that meet more than a few times to avoid the trap.

“You cannot design out group-think. It is almost impossible to exclude. You get social identification in the first three meetings.”

Corporate boards, which are required to appoint independent directors, have been grappling with the notion of group-think for years, in many cases appointing women directors to attempt to break it down.

This is not to say that independent directors are a bad idea. It is just that independence should perhaps be a start, rather than an end point.

Quality decisions by board members are born by having appropriate skills, expertise and ethical values sitting around the table. High-quality debate, access to sufficient information and sufficient time also play an important role, Wheeler said.

The visiting academic argued that sitting on multiple super boards “was probably a breach of fiduciary duty because of a conflict of interest”, while tenure of trustees needed to be carefully considered.

“Nine years is probably too long [to sit on a board]. But you have to look at the way institutional memory is managed and handed down,” she said.

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