



SENATOR THE HON MITCH FIFIELD

ASSISTANT MINISTER FOR SOCIAL SERVICES

The Hon Mal Brough MP
Chair
Parliamentary Joint Standing Committee
on the National Disability Insurance Scheme
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr ~~Brough~~ ^{Mal}

I am writing to you with an update on National Disability Insurance Scheme governance. As you know, the terms for all members of the National Disability Insurance Agency (NDIA) Board expire on 30 June 2016.

I recently wrote to my counterparts on the COAG Disability Reform Council (DRC) with a proposal on an approach for upcoming NDIA Board appointment process.

The enclosed copy of my correspondence to the Council outlines the approach. I have also attached the KordaMentha report that my department commissioned as an input to the process.

I will continue to keep the Committee informed as we progress this work.

Yours sincerely

MITCH FIFIELD

Encl.

28/7/15



SENATOR THE HON MITCH FIFIELD

ASSISTANT MINISTER FOR SOCIAL SERVICES

<Recipient>

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Dear Minister/Treasurer

As the National Disability Insurance Scheme moves from the start phase to transition to full scheme, I write to seek your agreement to a proposed approach for upcoming NDIA Board appointments.

Following discussions relating to the Scheme and its governance arrangements at the COAG meeting in April 2015, the Prime Minister, the Hon Tony Abbott MP, wrote to First Ministers on this subject on 20 May 2015.

As you would be aware, the current terms of the NDIA Board members expire on 30 June 2016. I am appreciative of the hard work and dedication of the current Board to oversee the significant and challenging tasks of establishing the NDIA and the Scheme's trial sites.

As we move to the next stage of implementation – the transition to full scheme – the NDIA will require a Board with a different range of highly specialised skills to effectively manage the rapid increase in participants, from 30,000 to 460,000 over three years, and administer a \$22 billion insurance-based scheme.

The Prime Minister and First Ministers agreed at COAG that the Board would require skills suited to the specific challenges of the transition phase, including strategy, risk, insurance, corporate governance and implementation, as well as experience in large enterprises of an equivalent national scale and complexity.

I asked my department to commission KordaMentha to conduct an independent review and provide advice on the skills and experience requirements for the NDIA Board for the transition stage. KordaMentha advise that the next iteration of the Board should have strong ASX 50 or a large Government Business Enterprise-level experience in operational and financial systems and controls. The KordaMentha report is enclosed for your information.

To ensure that the Disability Reform Council (DRC) is in a position to select future Board members with the right mix of skills and experience, I propose to commence a transparent external process, based on the skills identified by First Ministers and KordaMentha, to attract people that have the professional skills and experience to govern an insurance scheme of this magnitude.

I propose that as Chair of the DRC I commission an expert executive recruitment firm to identify appropriately skilled potential candidates, keeping you informed of progress, and bring a shortlist of suitable candidates to DRC.

In light of the current situation where terms for all Board members expire on the same date I further propose to develop an appointments plan for the Board that includes staggered terms to ensure continuity.

I seek your response by 16 July 2015 so that the Prime Minister can advise his COAG colleagues that we are taking early action on this matter and well in advance of the expiry of the current Board.

Yours sincerely

MITCH FIFIELD

Encl. KordaMentha National Disability Insurance Agency Review of Board Requirements

Copy: First Ministers and Treasurers



KordaMentha
forensic

National Disability Insurance Agency

Review of Board Requirements

22 December 2014

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Appendix A Skills and Experience Matrix

A. Introduction and Background

1. KordaMentha has been engaged to conduct a review and provide detailed advice to the Assistant Minister for Social Services on the skills requirements for the NDIA Board for the transition stage, July 2016 for three years, of the NDIA.
2. The Commonwealth Minister, with authority for the National Disability Insurance Scheme (NDIS or the Scheme), has a set of responsibilities in relation to the Board of the National Disability Insurance Agency (NDIA).
3. The NDIS commenced on 1 July 2013 in trial sites in NSW, Victoria, South Australia and Tasmania.
4. On 1 July 2014 additional trials commenced in Western Australia and the Northern Territory, and the ACT commenced full rollout.
5. Queensland will not trial the Scheme but has a number of NDIA staff embedded in their disability department to prepare for rollout.
6. From July 2016 the Scheme will commence the transition to full rollout.
7. At that time, the Scheme is estimated to have around 30,000 participants.
8. Once the Scheme is fully rolled out three years later there will be approximately 460,000 participants.
9. The rate of implementation during the transition stage will necessarily be considerably steeper than implementation of the trials.
10. At full national coverage the Scheme is projected to have an operating budget of approximately \$22 billion per year.
11. The NDIA Board has nine members including the Chair.
12. All current members were appointed for three year terms commencing on 1 July 2013.

Scope of work

Skill requirements

13. The Minister's responsibilities under the National Disability Insurance Scheme Act 2013 include ensuring that the Board members collectively possess an appropriate balance of skills, experience or knowledge in the provision or use of disability services and the operation of schemes with long-term liabilities, in addition to the usual skill requirements of financial management and corporate governance.
14. In addition to the skills, experience and knowledge specified in the NDIA legislation, the advice should consider:
 - a. The scale and pace of the implementation of the Scheme;
 - b. The experience of other similar ventures; and
 - c. The nature of the NDIS as a joint Commonwealth-State funded Scheme.
15. The review may include consideration of the views of relevant experts and stakeholders, however we have been requested to not engage with any of the current Board members or staff of the NDIA at this stage.

16. The review is **not** intended as an examination of the performance of the current Board in overseeing the establishment of the Scheme and we express no opinions on the performance of the current Board or any of the members of that Board.
17. Our approach includes the following:
 - a. Review of NDIA and other relevant legislation regarding the appropriate skills required for the NDIA Board.
 - b. Review of likely key strategic risks and issues relevant to the appropriate blend of board competencies, including consideration of the 2013–2016 Strategic Plan, the 2013-2016 Corporate Plan and the 2013-2014 Annual Report published by the NDIA and other relevant publically available NDIA and Department of Social Service documents.
 - c. Review of other relevant reference sources, including (but not limited to):
 - i. A review of the capabilities of the National Disability Insurance Agency, January 2014
 - ii. ASX Corporate Governance Principles and Recommendations (in particular Principle 2)
 - iii. Australian Institute of Company Directors (AICD) – Recommendations on Diversity

Limitations and reliance on this report

18. The report has been prepared by KordaMentha with care and diligence.
19. The issues considered during this review have been specifically limited to the matters set out in the Order for Services issued by the Department of Social Services on 14 November 2014.
20. We have no responsibility to update this report for events or circumstances occurring after the date of this report, apart from any responsibility which arises as a result of any subsequent arrangement.
21. In the preparation of this report, we have relied upon the accuracy and completeness of the information available to us, and in particular the 2013–2016 Strategic Plan, the 2013-2016 Corporate Plan and the 2013-2014 Annual Report published by the NDIA. KordaMentha does not warrant the accuracy or reliability of any of the information supplied to it.
22. This report has been prepared, and may be relied on, solely for the purpose/s specified in the Order for Services issued by the Department of Social Services on 14 November 2014 and used by the Department of Social Services. This report may only be published or distributed:
 - a. For the purposes specified in Order for Services issued by the Department of Social Services on 14 November 2014; or
 - b. In accordance with any law or by order of a court of competent jurisdiction.
23. The express written consent of KordaMentha must be obtained prior to relying upon, publishing or distributing this report, or part of it, for some other purpose. KordaMentha does not accept responsibility to anyone if they use this report for some other purpose.

B. NDIA Board Skills - Executive Summary

"The skills of a board need to map to the longer term strategic goals of the organisation."

Chair, Financial Services

Background and scope

24. KordaMentha has been engaged to conduct a review and provide detailed advice to the Assistant Minister for Social Services on the skills requirements for the NDIA Board for the transition stage, July 2016 for three years, of the NDIA.
25. The review is **not** intended as an examination of the performance of the current Board in overseeing the establishment of the Scheme and KordaMentha expresses no opinions on the performance of the current Board or any of the members of that Board.
26. The ultimate scale of the NDIS will not be unique in Australia. However the scale and pace of the implementation of the Scheme in the coming few years, coupled with the complex interactions required with the various stakeholders (including the various State and Territory governments and the Federal Government) present a unique set of requirements with few parallels in either corporates or GBEs in Australia.
27. Most large complex GBEs or corporate entities tend to have been at a particular scale for a period of time. They may require reorganisation and/or substantial changes, but typically have a relatively stable and established structure, policies and procedures. This is not the case for NDIA. The challenges are somewhat different for the NDIA, which is growing to a large scale from a zero base in a relatively short period of time.
28. The closest parallel can be found in NBN Co, which is developing a large infrastructure from a "standing start" over a relatively short period. This requires the employment of many thousands of staff and interactions with a range of stakeholders at a local, regional and national level, including the Federal Government and the ACCC. NBN Co doesn't have the level of interaction with the State and Territory Governments necessary for the NDIS. However it does have multiple stakeholders and is experiencing significant "growing pains". Such pains are perhaps inevitable for an organisation such as NBN Co or NDIA, which are going through periods of rapid growth and change. However the board needs to be able to make sure that management is doing its job in managing those issues.
29. It is not enough to have a collection of high calibre individuals. That they must be of the highest calibre is a given. However the exact focus of their skills, experience and attributes must be matched closely to NDIA's strategic goals and risks, and they should be blended carefully so the individuals complement each other and all positively contribute to the culture of a high performing board.

Key Required Skills

30. The skills, experience and attributes required from a board (and management), and the mix of those skills, experience and attributes, are different between "start-up", "growth" and "steady state" phases. The challenges to an organisation are particularly acute as it moves between these phases, as the NDIA will be as it moves to national implementation of the NDIS.
31. NDIA requires experience of scale, change and complexity which necessarily means NDIA's Board requires strong financial, operational and governance experience which should have been obtained in the very largest GBEs and/or larger corporations, preferably with significant government/regulated industry interaction.

32. Whilst the scale of the growth of the NDIA is almost unmatched in Australia's recent past, it is essential that these board members have had the experience of being able to hone their skills in organisations which have undertaken major "transformation" programs.
33. We consider that the majority of the NDIA Board members should have experience as a senior manager or CEO, as they have responsibilities as a communicator, decision maker, leader, manager and executor. This is particularly the case given the enormous scale and rapid pace of growth and change which will be required from NDIA
34. Based on the significant challenges that the NDIA is facing, and will continue to face, the key skills we consider require to be covered by the next iteration of the Board of NDIA are:
 - a. Strategy
 - b. Risk
 - c. Insurance
 - d. Corporate Governance
35. The NDIA Act includes the provision or use of disability services as one of the areas of skill, experience or knowledge which could qualify a board member for NDIA. This is a useful aspect to consider in the matrix of skills, experience or attributes required for board members. It is obviously something which is essential for a number of the key management positions within NDIA. However we do not consider it is a key aspect required for the NDIA Board as it moves into this significant phase of growth and change.

Experience

36. The next Board needs to balance empathy and understanding with strong financial, operational and governance experience gained in large corporates and GBEs.

Key Attributes

37. Beyond these specific and generic skills and experience requirements, board members should also possess certain attributes including the following.
 - a. Communication and Contribution
 - b. Collegiality
 - c. Continual Development

Chair

38. The importance of a Chair that is able to harness the skills to serve the strategy cannot be overstated. The quality of the Chair and their experience is often the critical determinant of success in the operation of the board, including the management of the CEO.
39. Having the right mix of high quality "ingredients" does not mean that the board will perform at the highest level – it still requires an expert "chef" to blend those ingredients to their maximum effectiveness. The choice of Chair is vital in ensuring that the culture, tone and operation of the Board of any organisation is effective.
40. Given the speed and scale of change and complexities that NDIA will face in the coming years, especially given the multifaceted stakeholder management issues the NDIA has to deal with, this role requires a very experienced Chair.

Diversity

41. Diversity of thought, balanced and considered decision making and a broad range of skills to draw upon enrich not only the decision making process but also increase shareholder value. Boards with diverse compositions are found to enhance shareholder value for listed firms in the UK, USA and Australia. The diversity of skill, background and experiences, as well as, gender, ethnicity, education and working experiences are critical to driving diversity of thought in the board room resulting in better outcomes.
42. It is therefore essential that as well as aligning the skills required with the strategic risks for NDIA, a broad range of experiences is obtained to provide diversity of thinking and minimise the risk of “group think” – one of the most insidious factors reducing the effectiveness of boards.

Other factors

43. In addition to the above consideration of the skills, experience and attributes necessary to develop and maintain a high performing board, we have identified a number of other factors which are relevant to the effectiveness of the NDIA Board.

The role of the Board

44. There is, and should be, a clear distinction between the role of a board and the role of management. This is no different for the NDIA.

Stakeholder advocacy not the role of a Board

45. In line with the distinction between management and governance it is important that the NDIA Board agrees that, whilst stakeholder management may be an appropriate role for its members, stakeholder advocacy is not the role of a board.

Size of Board

46. Given the significant range of skills and experience required we consider the current size of nine board members is appropriate.

Empathy

47. Empathy with the ultimate users of the NDIS – disabled people and their carers – as well as an understanding of the provision of services to these users is clearly important to all those who work within NDIA, including the Board.
48. The need for empathy is important to an effective and strong board for NDIA, All other things being equal, if two suitable candidates are identified and one has direct and ongoing experience with a disability, then this would make them more suitable for the role.
49. However, the need for specific disability related experience should not, in our opinion, be allowed to overshadow the need for the right blend of skills, experience and attributes operating in the appropriate culture.

Transition Issues

50. Currently all of the terms of the NDIA Board members finish on the same date. This is clearly not desirable. We would suggest that these terms be flexed so that there is a rolling program of board appointments. This would ensure that fresh perspectives, skills and experience can be brought onto the NDIA Board, whilst maintaining a degree of corporate knowledge and history of the organisation.
51. Choosing new NDIA Board members could be undertaken by working party which could contain the current Chair, key stakeholders and two experienced Chairs from large GBEs and one or two experienced Chairs from large corporates.
52. A key input into that process is the clear articulation of the key strategic risks the organisation is facing. The NDIA Strategic Plan 2013-2016 provides a clear articulation of the overall goals and outcomes which the organisation is working towards. However it does not, to our mind, clearly articulate the key strategic risks which have the potential to stop those goals and outcomes being met. It is essential that such a clear articulation of the strategic risks is used as a key resource for the process for refining the blend of skills, experience and attributes required from the next iteration of the NDIA Board.

C. Findings

53. The ultimate scale of the NDIS will not be unique in Australia. However the scale and pace of the implementation of the Scheme in the coming few years, coupled with the complex interactions required with the various stakeholders (including the various State and Territory governments and the Federal Government) present a unique set of requirements with few parallels in either corporates or GBEs in Australia.
54. The selection and calibre of board members will be critical given the nature and importance of the NDIA and the NDIS delivery repositioning towards choice and outcomes (away from provider centred programs). This is particularly so as the organisation heads towards approximately 460,000 clients, 2,000–3,000 staff and \$22 billion in annual funding by 2020. This will position the NDIA as a leading agency/government business akin to NBN Co, Australia Post and the Future Fund in terms of its impact on Australian society.
55. Most large complex GBEs or corporate entities tend to have been at a particular scale for a period of time. They may require reorganisation and/or substantial changes, but typically have a relatively stable and established structure, policies and procedures. This is not the case for NDIA. The challenges are somewhat different for the NDIA, which is growing to a large scale from a zero base in a relatively short period of time.
56. The closest parallel can be found in NBN Co, which is developing a large infrastructure from a “standing start” over a relatively short period. This requires the employment of many thousands of staff and interactions with a range of stakeholders at a local, regional and national level, including the Federal Government and the ACCC. NBN Co doesn’t have the level of interaction with the State Governments necessary for the NDIS. However it does have multiple stakeholders and is experiencing significant “growing pains”. Such pains are perhaps inevitable for an organisation such as NBN Co or NDIA, which are going through periods of rapid growth and change. However the board needs to be able to make sure that management is doing its job in managing those issues.
57. The current Board of NBN Co has a very different range of skills, experience and abilities from the initial board of NBN Co. In part, as discussed below, that is a function of the appropriate mix of skills, experience and attributes of the respective boards, but is also a function of the changing needs of the organisation as it goes through different phases of growth and change.
58. Other exact parallels are difficult to find. However there are also a number of similarities, in terms of the breadth, depth and speed of change, to the merger of BHP and Billiton in June 2001. The board of that entity had a broad range of skills, and its experiences were forged through managing and being involved with large complex organisations.
59. We are not aware of any other jointly funded Commonwealth-State funded organisation of the scale of the NDIS.
60. What is required for NDIA is a board with the right blend of skills, experience and attributes operating through a positive culture. This will allow the NDIA Board to effectively set strategic direction, provide the governance framework and mechanisms to allow management to build the business without undue interference from the board, whilst at the same time challenging management to get the best results for the NDIA as a whole.
61. It is not enough to have a collection of high calibre individuals. That they must be of the highest calibre is a given. However the exact focus of their skills, experience and attributes must be matched closely to NDIA’s strategic goals and risks, and they should be blended carefully so the individuals complement each other and all positively contribute to the culture of a high performing board.

Key Required Skills

“The skills of a board need to map to the longer term strategic goals of the organisation. If a director can’t identify and articulate their individual contribution to the strategy of the firm they don’t deserve to be there.”

Chair, Financial Services

62. The skills, experience and attributes required from a board (and management), and the mix of those skills, experience and attributes, are different between “start-up”, “growth” and “steady state” phases. The challenges to an organisation are particularly acute as it moves between these phases, as the NDIA will be as it moves to national implementation of the NDIS.
63. Passion, drive and enthusiasm are always required – and are particularly important in the “start-up” phase. However these alone are not sufficient for the rapid “growth” (or “transition”) phase which NDIA will be experiencing in the coming years.
64. The changed breadth, depth and mix of skills, experience and attributes required for the next phase of roll out of the NDIS needs to be reflected in the NDIA Board.
65. This requirement has parallels with the changing blend of skills, experience and attributes on the NBN Co Board as this has evolved during the different phases of NBN Co’s existence since its inception.
66. It also has parallels in the evolving board composition for Australia Post, another organisation undergoing major transformation on an unprecedented scale, whilst trying to manage multiple stakeholders including government stakeholders.
67. Based on the significant challenges that the NDIA is facing, and will continue to face, the key skills we consider require to be covered by the next iteration of the Board of NDIA are:

Strategy

68. Board members must have the ability to see the macro perspective of NDIA based on patterns, trends and cause/effect relations, so as to determine the *raison d’être* of the NDIA. This requires sensitivity to, awareness for, and an understanding of the business and its environment, in addition to a practical grasp of the organisation’s core competencies.
69. It requires an ability to articulate and manage the key strategic risks which have the potential to stop the NDIA achieving its stated strategic goals and objectives.

Risk

70. Board members must have the ability to assess risk when making key decisions. This goes beyond risk mitigation and includes the ability to take considered risks for the long term benefit of the NDIA, which align with its long term strategic goals.

Insurance

71. Large scale and long term insurance skills will continue to be key for the NDIA Board. This necessarily requires skills in respect of financial management.

Corporate Governance

72. Board members must have strong skills in corporate governance, including the respective roles of the board and management. Governance and control structures are particularly important in an organisation which is experiencing rapid growth and change.
73. In Appendix D we have set out the matrix of these and other skills we consider are required for this next phase.

74. The NDIA Act includes the provision or use of disability services as one of the areas of skill, experience or knowledge which could qualify a board member for NDIA. This is a useful aspect to consider in the matrix of skills, experience or attributes required for board members. It is obviously something which is essential for a number of the key management positions within NDIA. However we do not consider it is a key aspect required for the NDIA Board as it moves into this significant phase of growth and change.
75. NBN Co has some telecommunication skills and experience on the NBN Co Board, however many other skills and experiences are more predominant on that board.

Key Experience Required

“There is a strong bias to stack boards with technical skills like finance, audit or even worse lawyers; which is often achieved at the expense of commercial acumen, considered risk taking, or in modern terms creating shareholder value.”

NED, ASX 100

76. The next Board needs to balance empathy and understanding with strong financial, operational and governance experience gained in large corporates and GBEs.
77. Scale is not always correlated with complexity. But NDIA requires a combination of experience of scale, change and complexity which necessarily means NDIA's Board's experience should have been obtained in the very largest GBEs and/or larger corporations, preferably with significant government/regulated industry interaction.
78. Whilst the scale of the growth of the NDIA is almost unmatched in Australia's recent past, it is essential that these board members have had the experience of being able to hone their skills in organisations which have undertaken major “transformation” programs.
79. The NDIA documentation we have reviewed does not specifically emphasise the need for strong operational and financial experience. It may have effectively been “taken as read”. However during the “roll out” phase of the NDIS, with NDIA's budget growing as fast as it will, it is imperative that the next iteration of the Board should have strong, ASX 50 or large GBE level experience in operational and financial systems and controls.
80. We consider that the majority of the NDIA Board members should have experience as a senior manager or CEO, as they have responsibilities as a communicator, decision maker, leader, manager and executor. This is particularly the case given the enormous scale and rapid pace of growth and change which will be required from NDIA.
81. Moreover, the relationship between the CEO and the board is vital. Consequently, previous experience on the part of board members in a major decision-making role regarding policy and strategy will provide efficacy within the boardroom. The additional benefit usually ascribed to board members with senior management experience is the ability to manage and navigate through organisational complexity, with greater ease than those who have not managed complex structures.

Key Attributes Required

“Directors are often hired for skills, but good directors are only ever remembered for their judgment.”

Chair, Bank

82. Beyond these specific and generic skills and experience requirements, board members should also possess certain attributes including the following.

Communication and Contribution

83. Board members must be able to effectively communicate their ideas within the board. Directors are required to contribute their skills, knowledge and expertise to the board in order to be an effective member of that board. Good directors have a voice and are prepared to use it constructively, but also know when not to speak for the sake of it.

Collegiality

84. Cooperative interaction amongst board members is critical. Working with a team of fellow board members requires tact, sensitivity, the ability to engender trust and respect, and an awareness of different perspectives, interests and the values of others. The extent to which board members are able to work together collegiately has a profound effect on the culture of the board. Strong, effective boards know that acting collegiately, but not being afraid to raise contrary perspectives brings out the best in the board.

Continual Development

85. All board members needs to understand the business they are overseeing, either through previous experience or building on that knowledge. This is particularly the case in complex or specialists sectors such as the NDIS. The ability to learn and continually develop is beneficial to a board member's longevity and contribution.

Chair

"The chairman should exemplify the culture and guide and not control the board. Where that doesn't occur problems soon follow."

NED ASX 50

86. The Chair should be an independent, non-executive board member, responsible for leadership of the board and for the efficient organisation and conduct of the board's functioning. The Chair should also facilitate the effective contribution of all board members and promote constructive and respectful relations within the board and between the board and management.
87. The importance of a Chair who is able to harness the skills to serve the strategy cannot be overstated. The quality of the Chair and their experience is often the critical determinant of success in the operation of the board, including the management of the CEO.
88. Even if the right mix of skills, experience and style are available on the board, if the Chair doesn't guide and lead the board to develop the right "culture" then the board will be less effective. Having the right mix of high quality "ingredients" does not mean that the board will perform at the highest level – it still requires an expert "chef" to blend those ingredients to their maximum effectiveness.
89. The choice of Chair is vital in ensuring that the culture, tone and operation of the Board of any organisation is effective.
90. A strong, experienced Chair is even more essential for an organisation facing the speed and scale of change that NDIA will face in the coming years, especially given the multifaceted stakeholder management issues the NDIA has to deal with.
91. For NDIA a particularly key skill set for the Chair is the ability to proactively manage – and, at times, push back against - numerous State, Territory and Federal Government stakeholders at the highest levels. This will include the need to clearly articulate the strategic risks of the organisation and how the Board is ensuring these risks are being effectively managed. This is a role of an experienced Chair.

92. We consider that the current chair of NBN Co is better placed than the initial executive Chair and the first non-executive NBN Co Chair to meet the current, exacting requirements of NBN Co. However this does not necessarily mean he would have been the right Chair when the organisation was in its embryonic and start up phases.
93. Equally the CEO will continue to have a pivotal role in the ability of the NDIA to face the many daunting challenges that this next phase will bring. The management of the CEO is a key board function, and it should be the Chair who takes the lead in this role.
94. We have not undertaken any assessment of the current Chair or CEO of NDIA, nor do we make any comment on their suitability to lead the organisation into the next phase of its existence. We do, however, stress that it is vital that such assessments be undertaken in developing the blend of skills and experience required for the next iteration of the NDIA Board (and on a regular basis thereafter).

Diversity

“The diversity debate ... should include a range of people with technical, ethnic, gender, age, education, management and life experience. In fact appointing any chair who is a clone of what already exists is a wasted opportunity”

NED Industrial

95. Diversity of thought, balanced and considered decision making, and a broad range of skills to draw upon, enrich not only the decision making process but also increase shareholder value. Boards with diverse compositions are found to enhance shareholder value for listed firms in the UK, USA and Australia. The diversity of skill, background and experiences, as well as, gender, ethnicity, education and working experiences are critical to driving diversity of thought in the board room resulting in better outcomes.
96. It is therefore essential that as well as aligning the skills required with the strategic risks for NDIA, a broad range of experiences is obtained to provide diversity of thinking and minimise the risk of “group think” – one of the most insidious factors reducing the effectiveness of boards.
97. A critical flaw many boards make is to either hire directors based purely on technical skills or seek the same skill set from each director.
98. The skills required should be viewed as a matrix. Provided the necessary skills are covered in the matrix, the board is then able to broaden the hiring requirements and build genuine diversity, which in turn leads to richer thinking and better decision making.
99. Another major issue in hiring solely based upon technical skills is that skills erode over time. For example, a retired audit partner may be hired for financial reporting skills that may have become outdated.

Other factors

100. In addition to the above consideration of the skills, experience and attributes necessary to develop and maintain a high performing board, we have set out a number of other factors which are relevant to the effectiveness of the NDIA Board.

The role of the Board

101. There is, and should be, a clear distinction between the role of a board and the role of management. This is no different for the NDIA.

102. It was a challenge for the NBN Co Board, particularly as the growth of the organisation was accelerating, to avoid being drawn into management decisions, such that they became another layer of management rather than fulfilling their primary governance role. For NBN Co it appears that this balance was not always maintained, and they were at times drawn into decisions which, arguably, should have been made by management. It is important that the NDIA Board learns from this, and similar experiences, to avoid being drawn into becoming part of management.
103. A strong board (and in particular an experienced and strong Chair) recognises when it is being drawn into such “micro-management” of the organisation and is not afraid to raise this with each other and with management.

Stakeholder advocacy not the role of a Board

"I will not join a large or representative boards as they are a waste of my time."

ASX 100 Chair

104. In line with the distinction between management and governance it is important that the NDIA Board agrees that, whilst stakeholder management may be an appropriate role for its members, stakeholder advocacy is not the role of a board.
105. The board should ensure that appropriate processes and governance have been put in place to balance the interests of different stakeholders. However it should not be their role to advocate for specific stakeholders in respect of the allocation of resources or priorities.
106. A strong board (under the direction of the Chair) may, from time to time, make use of the specific relationships of particular board members to facilitate management's interactions with various stakeholders. However managing stakeholders is a very different role from advocacy for those stakeholders.

Size of Board

"I serve on several boards. One board has 14 directors and one that has seven directors. Despite being double the size the larger board is significantly less effective despite having some good people on it."

ASX 50 Chair

107. Current better practices in board size indicate a range of seven to nine board members is optimal. This is consistent with the present composition of the NDIA Board. In our experience, should the requisite skills be adequately covered by fewer board members (perhaps seven), then this size would be deemed to aid board decision making and effectiveness.
108. However, should the NDIA Board require more committees than the present Audit and Risk Committee and Sustainability Committee (for example, a Nomination and Remuneration Committee, Actuarial Committee or a Clinical Governance Committee), then a larger population of board members (perhaps nine) is arguably more desirable.
109. Given the significant range of skills and experience required we consider it more likely that the current size of nine board members is appropriate.

Empathy

110. Empathy with the ultimate users of the NDIS – people with disability and their carers – as well as an understanding of the provision of services to these users is clearly important to all those who work within NDIA, including the Board.

111. The need for empathy is important to an effective and strong board for NDIA. All other things being equal, if two suitable candidates are identified and one has direct and ongoing experience with a disability, then this would make them more suitable for the role.
112. However, the need for specific disability related experience should not, in our opinion, be allowed to overshadow the need for the right blend of skills, experience and attributes operating in the appropriate culture.
113. Such empathy can be obtained directly through having a disability, or having a family member with a disability. However, we do not consider that empathy obtained through such means should be seen as necessary prerequisite for a board member of NDIA.
114. We consider that if the board members have a humanistic outlook then more direct experience of the issues associated with disabilities can be augmented from a number of others sources. Given the range of disabilities which the NDIA will encounter, having some experience of one aspect of disability does not necessarily make that individual better placed to be an effective member of the NDIA Board.
115. The Independent Advisory Council is one source of counsel, advice and insights on client service (i.e. supply of equipment or provision of services to people with disability), service provider development, workforce availability, housing, mental health, market regulation and design, carers and service provision to disabled in rural and remote areas.
116. To the extent this insight and counsel can be obtained from the Independent Advisory Council, or other formal and informal processes, these perspectives do not need to be significantly duplicated on the NDIA Board.

Transition Issues

117. Currently all of the terms of the NDIA Board members finish on the same date. This is clearly not desirable. We would suggest that these terms be flexed so that there is a rolling program of board appointments. This would ensure that fresh perspectives, skills and experience can be brought onto the NDIA Board, whilst maintaining a degree of corporate knowledge and history of the organisation.
118. When seeking new board members, it may be appropriate to use Executive Search firms to find individuals with a specific set of experience or skills. However, our experience is that such firms normally do not have enough knowledge of the strategic directions and associated risks, as well as the board culture, to be able to identify the right blend of skills, experience and attributes to meet the needs of the organisation and its stakeholders.
119. Therefore such firms should only be used to identify individuals who have the specific sets of skills, experience and attributes which have been identified by the appropriate working party. Such a working party would, we suggest, contain the current Chair, key stakeholders and two experienced Chairs from large GBEs and one or two experienced Chairs from large corporates.
120. A key input into that process is the clear articulation of the key strategic risks the organisation is facing. The NDIA Strategic Plan 2013-2016 provides a clear articulation of the overall goals and outcomes which the organisation is working towards. However it does not, to our mind, clearly articulate the key strategic risks which have the potential to stop those goals and outcomes being met. This is not necessarily the purpose of a public Strategic Plan of this nature, however it is essential that such a clear articulation of the strategic risks is used as a key resource for the working party refining the blend of skills, experience and attributes required from the next iteration of the NDIA Board.

D. Approach

Review of NDIS and relevant legislation

121. We have reviewed the relevant legislation regarding the appropriate skills required for the NDIS Board.
122. Part 2 Divisions 2 and 3 of the NDIS Act 2013 covers the establishment, functions and membership of the NDIA Board. Part 2 Division 2 Section 127 Appointment of Board members states “(2) A person is eligible for appointment as a Board member only if the Minister is satisfied that the person has the skills, experience or knowledge in at least one of the following fields:
 - a. the provision or use of disability services;
 - b. the operation of insurance schemes, compensation schemes or schemes with long-term liabilities;
 - c. financial management; or
 - d. corporate governance.
123. However the legislation does not specify the balance that is required of these skills, nor does it address the extent to which other skills may be required.

Review of key strategic risks and issues

124. We have reviewed the likely key strategic risks and issues relevant to the appropriate blend of board competencies, including consideration of the 2013–2016 NDIS Strategic Plan and Corporate Plan and other relevant NDIS and Department of Social Service documents.

Annual Report 2013-2014 and Strategic Plan 2013-2016

125. The purpose of the NDIA is to change Australia’s current disability system into one which is equitable, efficient, sustainable and based on choice and control.
126. During 2013-14, the NDIA delivered the Scheme in four trial sites and provided \$130.9 million of support.
127. At the end of the 2014 financial year there were 1,350 NDIS registered service providers, and the NDIA employed 516 staff across the four sites.
128. During the 2014 financial year the Agency received income of \$276.5 million.
129. The Productivity Commission expects that the NDIS will add close to 1 percent to the Nation’s GDP, with the long-term benefits exceeding the costs and saving \$20 billion per year by 2035.
130. The NDIA has the following goals:
 - a. Goal 1 - People with disability are in control and have choices, based on the UN Convention on the Rights of Persons with Disabilities.
 - b. Goal 2 - The NDIA is financially sustainable and is governed using insurance principles.
 - c. Goal 3 - The community has ownership, confidence and pride in the NDIS and NDIA.
131. The NDIA’s key values are Assurance, Empowerment, Responsibility, Learning and Integrity.
132. The NDIA sees the following as indicators of success for Goal 1:
 - a. People with disability plan and exercise choice.
 - b. People with disability achieve their goals for independence, social and economic participation.

- c. Core arrangements are sustainable and forward looking.
 - d. A healthy, innovative and efficient market for disability services which supports a culture of choice and control.
133. The NDIA sees the following as indicators of success for Goal 2:
- a. The NDIS is collecting and reporting appropriate data for actuarial analysis.
 - b. Quarterly monitoring reports and annual financial condition reports are on track and appropriate.
 - c. Benefits are realised from targeted investment strategies in enhanced disability support.
 - d. Short-term and long-term costs are effectively estimated and managed.
 - e. The NDIS research and evaluation strategy is integrated into the insurance and actuarial reporting process.
 - f. A healthy market is developing that increases the mix of support options and innovative approaches.
134. The NDIA sees the following as indicators of success for Goal 3:
- a. Access, reasonable and necessary supports and administration costs meet community expectations.
 - b. People with disability are welcomed in community and easily able to access support from mainstream services.
 - c. The NDIS reports publicly on its performance.
135. The NDIS will be underpinned by a modern technological approach with efficient use of innovative technologies to connect people, and to collect, analyse and share data about disability and supports.

Review of other relevant references

136. We have reviewed other relevant reference sources, including (but not limited to):
- a. The capabilities of the National Disability Insurance Agency, January 2014
 - b. ASX Corporate Governance Principles and Recommendations (in particular Principle 2)
 - c. AICD – Recommendations on Diversity

ASX Corporate Governance Principles and Recommendations

137. Principle 2 of the ASX Corporate Governance Principles and Recommendations sets out the recommendations regarding the structure of the board for listed entities.
138. The board of a listed entity should:
- a. have a nomination committee which:
 - i. has at least three members, a majority of whom are independent directors; and
 - ii. is chaired by an independent director,
and disclose:
 - iii. the charter of the committee;
 - iv. the members of the committee; and
 - v. as at the end of each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meetings; or

- b. if it does not have a nomination committee, disclose that fact and the processes it employs to address board succession issues and to ensure that the board has the appropriate balance of skills, knowledge, experience, independence and diversity to enable it to discharge its duties and responsibilities effectively.
139. The role of the nomination committee involves reviewing and making recommendations regarding board succession planning, performance evaluation, and director recruitment and re-election.
140. A listed entity should also have and disclose a board skills matrix setting out the mix of skills and diversity that the board currently has or is looking to achieve in its membership.
141. A skills matrix helps to identify any gaps in the in the collective skills of the board, and provides useful information for investors.
142. Published skills matrices are often shown in a binary form i.e. the person either does or does not have the relevant skill. In reality directors often have different levels of a particular skill. It is important in assessing individual candidates and the overall skill level of the board that the extent to which a director has deep skills and experience in a particular area, compared with a reasonable level of skills and experience of another candidate, is tracked internally.
143. The Principles recommend that the majority of the board should be composed of independent directors.
144. Investors expect, and the law requires, the board of a listed entity to act in the best interests of the entity and its security holders generally.
145. Having a majority of independent directors makes it harder for any individual or small group of individuals to dominate the board's decision-making. Such a majority also maximises the likelihood that the decisions of the board will reflect the best interests of the entity and its security holders generally. Moreover, it protects the organisation from bias towards the interests of management or any other person or group with whom a non-independent director may be associated.
146. The chair of the board should be an independent director and, in particular, should not be the same person as the CEO of the entity.
147. If the chair is not an independent director, a listed entity should consider the appointment of an independent director as the deputy chair or as the "senior independent director", who can fulfil the role whenever the chair is conflicted.
148. The chair's other positions should not be such that they are likely to hinder effective performance in the role, which is demanding and requires significant time commitment.
149. To fulfil their role on the board and on board committees effectively, the board or the nomination committee of a listed entity should regularly review whether the directors as a group have the skills, experience, attributes and familiarity with the entity and its operating environment. Where any gaps are identified, the board should consider what training or development could be undertaken to fill those gaps.
150. Where necessary, the entity should provide resources to help develop and maintain its directors' skills and knowledge.
151. This includes, in the case of a director who does not have specialist accounting skills or knowledge, ensuring that he or she has a sufficient understanding of accounting matters to fulfil his or her responsibilities in relation to the entity's financial statements.
152. It also includes, for all directors, ensuring that they receive ongoing briefings on developments in accounting standards.

153. Based on above analysis, and our experience of how boards operate, we have compiled a summary Skills and Experience Matrix (Appendix A). This identifies the skills and experiences which are required on the collective NDIA Board. Not all the individuals on the Board will have all of these skills or experiences; some members will have a lot of some factors, but little of other factors. It is important that the blend of skills and experience on the Board reflects the strategic needs of NDIA, which are reflected in those factors described as “critical” in this matrix. In addition it is as important that the Board members have the right attributes to operate as an effective team to help NDIA through the challenges of the transition.

Owain Stone
Partner

22 December 2014

Appendix A Skills and Experience Matrix

	Skills required by Part 2 Div 2 Section 127 of the NDIS Act 2013	Skills and experience critical to the NDIA strategy	Skills required by the PGPA Act	Other necessary skills and experience given the transition	Could be provided by Advisory Board or other sources of ad-hoc advice
Board and Governance	Mandatory				
Chair experience		Critical			
Director experience				Desired	
Committee member experience				Desired	
Company secretary experience					
Knowledge of industry governance issues			Required		
Knowledge of regulatory framework & laws			Required		
Directors fiduciary duties				Desired	
Executive (including CEO) performance management and remuneration		Critical			
Legal & compliance			Required		
Strategic Risk management		Critical			
Investment governance				Desired	
Technology governance		Critical			
Project governance		Critical			
Community sector / not-for-profit sector governance				Desired	
Stakeholder and community engagement				Desired	
Public policy & advocacy			Required		
Minister / Government relationships		Critical			
Networking				Desired	
Ethical and responsible decision making		Critical			
Diversity				Desired	
General Management					
CEO experience		Critical			
CFO experience				Desired	
Line / commercial management experience				Desired	
Transformation change or reform		Critical			
Strategic planning and execution		Critical			
Business planning and budgeting / forecasting				Desired	
Digital & social media / communications				Desired	
Cultural alignment and change management		Critical			
People management (including succession planning)				Desired	
Contracting and negotiations / outsourcing				Desired	
Operational experience			Required		
Government relations and stakeholder management		Critical	Required		
Crisis response (BCP / DRP)				Desired	
Financial Management	Mandatory		Required		
Overview of economic conditions				Desired	
Overview of accounting concepts /basic financial literacy				Desired	



	Skills required by Part 2 Div 2 Section 127 of the NDIS Act 2013	Skills and experience critical to the NDIA strategy	Skills required by the PGPA Act	Other necessary skills and experience given the transition	Could be provided by Advisory Board or other sources of ad-hoc advice
Detailed statutory / annual reporting				Desired	
Expert accounting / financial control		Critical			
Fraud prevention, detection and control				Desired	
Internal / External audit				Desired	
Actuarial		Critical			
Treasury and debt management				Desired	
Working capital management				Desired	
Investment, treasury and asset / liability management				Desired	
Financial systems				Desired	
Data analytics		Critical			
Management of service providers				Desired	
Transaction advisory & due diligence					
Taxation					
Industry or sector experience					
Primary industry sector experience - the provision or use of disability services	Mandatory		Required		
Sector delivery principles - the operation of insurance schemes, compensation schemes or schemes with long-term liabilities sectors	Mandatory	Critical	Required		
Downstream sectors – e.g., Aged Care				Desired	
Actuarial / long tail liability and cost management		Critical			
Supply of equipment or provision of services to people with disability				Desired	
NGO / not for profit experience				Desired	
Carers				Desired	
Remote and rural issues for management of disabilities					
Disability and aged care related education & employment, including policy and advocacy				Desired	
Resources					
IT systems & processes / network support					
Research, innovation and advocacy		Critical			
Search and recruitment					
Human resources management / industrial relations – people & corporate culture				Desired	
Training & education					
PR & communications					
Safety & environmental				Desired	