



Mental illness in the boardroom — a major risk for companies

By Simon Franklin, Partner, Dequity Partners

- Responsibilities of those in charge of governing organisations make it vital for them to be able to think clearly and take part in decision-making effectively
- Other board members (including the chair) have a role in ensuring that one of their colleagues who is affected by a mental illness does not damage the organisation's interests, but should not offer a diagnosis
- Various options are available to deal with the problem before removal from the board, which is a last resort

In recent years, mental illness issues have become hot topics around Australia. And for good reason — mental illness is an issue that touches many of us and costs the nation billions of dollars annually.

In fact, according to the Australian Institute of Health and Welfare, around 20 per cent of the population has had a mental disorder within the last 12 months. The organisation also reports that mental illness is the leading cause of disability burden in the country, accounting for around 24 per cent of the total years lost due to disability.

When we think about mental illness we may have images of those who are unstable dealing with their families or that they are 'somewhere else'. It is an important issue for organisations that aspire to get the best out of their staff.¹

However, we don't tend to think of people in the boardroom as having a mental illness, but it stands to reason that it can, and does, happen from time to time. It's a serious issue because board members have significant responsibilities under the *Corporations Act 2001* or other legislation, and must be able to be in a position to make decisions in the best interests of the organisation. Knowing what to look for, how it can affect the business's success and what can be done about it can make a world of difference when and if the situation ever arises.

Being fit for the boardroom

For a business to be successful it is crucial that the board members be fit to be

in such a position. First off people will wonder what it means to be fit. The opinions on this may even vary, but the bottom line is that people are fit for the position if they can deal with their daily lives in a healthy manner. When someone is mentally fit and stable, they are able to cope with situations, hardship, and stress in a manner that is not harmful to themselves or to others.

The first step to ensuring that your boardroom is seated with those who are mentally fit for the position includes being able to identify when there is a problem. Signs of mental illness vary from person-to-person, and by the type of condition they have, but some of signs may include:

- *anger* — If the person has a short fuse, or gets angrier than they should over situations. Also, if people do not seem to be able to address their anger in a healthy way
- *anxiety* — This often goes hand in hand with stress. But if the person is feeling anxious, they may not be able to function in a healthy manner
- *depression* — Combined with dysthymia² and bipolar affective disorder, these mental illnesses affect six per cent of people. Over the course of a lifetime, seven per cent of women will experience it, and five per cent of men
- *impulsiveness* — In the boardroom it is necessary to have patience, think things through, and not make decisions on a whim. But those that have mental health issues may not be able to exercise patience; they may want to make quick,

Mental health in Australia by the numbers

- 7.3 million — the number of Australians that will experience a common mental disorder over their lifetimes. This equates to around 45 per cent of the population that is between the ages of 16 and 85. Mental disorders experienced range, including mood disorders, such as depression, anxiety, substance use disorder
- 20 per cent — the proportion of the population each year that experiences symptoms of a mental disorder
- 1.7 million — the number of people who received public or private mental health services during 2009–2010
- 13.9 million — the number of mental health-related general practitioner encounter visits during 2010–2011
- \$6.3 billion — the amount spent on mental health-related services in Australia during 2009–2010. This equals out to around \$287 per Australian
- 5.4 per cent — the amount of increase over a five-year period for state and territory expenditure for specialised mental health services

Sources

Australian Institute of Health and Welfare, *Mental Health*, www.aihw.gov.au/mentalhealth/

Australian Institute of Health and Welfare, 2012, *Mental Health Services in Brief: How many people are affected?*, <http://bit.ly/18E06EL>

Dibbs Barker Gosling, 2003, 'Corporate Governance and Directors' Duties', <http://bit.ly/1dWpTyA>, p 4

diminished or they can suddenly no longer do it, then it is time to take action. The inability to think logically can have severe consequences for both the company and the person's private life

- *loss of desire to participate* — Some people may have never been interested in participating much, but if the person was interested in it and then lost interest, it can be a sign of other problems.
- *uncharacteristic behaviour* — It may be difficult to know the typical characteristics of someone who is new to the board. But when there are people who are not new there should be characteristics that are typical for them. When those change drastically it should be taken into consideration, especially if it is along with other symptoms being present.

Of course experiencing one of these items doesn't mean that someone has a mental illness. At one time or another we all likely experience these, even if only briefly. But if someone is experiencing several of them and it is ongoing, there may be a mental health issue that needs to be addressed.

Protecting the organisation

One of the last things that most board members in an organisation want to do is address the mental health issue of one of their colleagues. It's a situation that is without a doubt likely to cause some discomfort. It may even raise some controversy among other board members, considering such issues as whether or not it should be addressed and how it should be handled. Regardless, mental health issues in the boardroom must be addressed, for the sake of the company as a whole.

The success of any organisation with a board lies in part with those on the board. It is incumbent upon them to make sound decisions that will help further the entity's interests, and not do harm to it. Those who are unable to mentally make sound decisions could do harm to it in more ways

rash decisions, despite the urging of others to hold back

- *intoxication* — Substance use problems can impact decision making skills, as well as productivity. Whether or not the person is using the substance while in the boardroom or outside of it, the continued use could lead to a variety of problems
- *mood swings* — Having a board member that is affable one minute and then angry the next can be problematic. Mood swings tend to be to the extreme, from high to low, leaving people to feel they are riding a rollercoaster when they are around the person
- *stress* — This is something that most people suffer from at one time or another. Just having stress or exhibiting it doesn't mean there is a mental health problem. But the stress can lead to a variety of other problems, so it is something that needs to be considered and taken seriously
- *suicidal thoughts* — This is one that nobody in the office may know about. When people are experiencing suicidal thoughts they don't usually share them in the boardroom. But you may notice depression and a lack of interest in activities, duties or issues that was once there
- *a drop in normal functioning* — A board member joins the board with expectations and duties. If they begin to sway from those and are no longer functioning in the boardroom in the capacity in which they used to, it may be time to begin looking for additional signs of mental health issues
- *problems with logical thought* — Being able to think logically and critically are crucial components to any board position. If the person once had the ability to do this and it has

than one. When someone on the board has a mental health issue it may:

- prevent the organisation from reaching goals
- keep the individual from reaching their full potential
- result in missed work and productivity
- lead the person to make poor or illogical decisions
- result in legal action on behalf of stock holders or other board members.

Whether dealing with anxiety, stress, affective disorders, or substance use issues, the best way to protect the company is to address the boardroom mental illness condition. This goes for whether it is a director, senior manager, or anyone else. All positions on the board are important and contribute to the overall success, or failure, of the company as a whole.

Mental illness in the workplace is an issue that can also lead to problems beyond just the monetary ones, too. Around the world there have been plenty of high-profile cases where people have plotted to hurt other employees, including those where they have brought in weapons with the intent on using them in the office. This opens up another area where lawsuits could arise, if someone with a known mental health issue were allowed to continue on and the situation turned violent.

Determining whether action is needed

If people begin to wonder if there is a mental health issue with a board member, there is a good chance that there may be. It is at least worth exploring, because it will mean that the person is doing something to prompt people to begin thinking there is a problem. If this happens, it is probably time to discuss it with other members. Going about doing this can be a sensitive issue, but the important thing to do is keep it business. This isn't a personal issue; it is about protecting the organisation from someone that may bring harm to it through a mental condition.

Discussing it with other board members when the person in question is not around may be a good route. But some people may not be comfortable with this route. This could be because they don't care to discuss the person while they are not present, or they may have a close working relationship with them and feel loyalty toward the person. Another option is to have other board members provide information anonymously. They can answer a survey or fill out a comment card that shares whether or not they believe there is a problem and if they support action being taken.

It is important to always keep the information about the person, and any mental health information that may be learned, confidential. Out of respect for the person, as well as to avoid any potential lawsuits if it were to damage the person's reputation, all information and discussions should be kept confidential and respectful. This is certainly not the time to start issuing press releases and calling out the television stations. The best route to take is to keep the situation between board members, only involving key people if necessary, such as human resources and the in-house counsel.

Options for addressing the problem

Determining that there is a problem is the first step. The next step involves doing something about it. This can be the toughest area for many people. But again, the job of the board members is to protect and further the interests of the organisation. They cannot do that if they know someone is on the board with mental issues and it is not being addressed. This is one of those situations where it is important to remember that business is business.

The first option that comes to mind may be to just remove the board member. While that may be an option, and we will explore it, removal from the board is not the only option out there. It may not even be the best one, depending on the person, illness, and company. Here are some other

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options for handling an identified mental illness issue in the boardroom.

- Meet with the person. Arrange for a meeting with the person so that their mental health can be discussed. Let the person know there are concerns and that the company believes the issue should be evaluated and addressed.
- Continue with treatment. Depending on the type of mental health issue the person has, they may be able to continue in the position while receiving treatment. This is an issue that can be explored, but it may be a good idea to get a mental health professional to sign off on it, stating that they believe the board member in question is stable enough to continue on with their duties.
- Offer them leave of absence, rather than removing them from the board immediately. This gives the person the opportunity to address the situation, whatever it may be, and then go back to the position on the board.
- Removal from the board. This should be a last resort option. The person should first be given the opportunity to seek treatment and resume the position first. If those options are not successful, or the person opposes them, then board removal may need to be considered in order to protect the best interest of the company.

No matter which route is taken, it is important to remember that the person may feel ashamed, embarrassed, and even angry. Again, confidentiality and respect are going to be the best routes to addressing the situation in order to try and minimise this. Also, if possible it

can be helpful to provide the person with information on where to get help, who to call, and medical insurance information if it is provided through the business. That way, the person will know exactly where and how to start addressing the problem, rather than not knowing where to go from there.

Preparing for the meeting

Whichever route to addressing the mental health issue is going to be taken, it will require a meeting. The best way to attend that meeting is to be well prepared for it in advance.

- Determine what resources can be offered to the person. This includes those resources that the organisation can provide, as well as those that are available in the area. This information should be taken to the meeting and offered to the person.
- Take the time to become familiar with the organisation's policies regarding handling any mental health issues that may arise. It is important to know this information, rather than try to find it out after the issue arises. Know going into the meeting about the policies regarding a leave of absence, as well as board removal.
- Consider the things that you think are good about this board member. Make a list of the positive contributions so that the person can be reminded of that. This is going to help soften the blow that the mental health issue being brought up to them, as well as remind the person that they are a valued board member.

- Keep in mind that when meeting with the person, the point is not to diagnose them or probe the personal life for information on what may be going on. The purpose of the meeting is to let the person know there are concerns about their mental health and that they should seek the advice of a professional, if they are not already doing so.
- Get to know the basics of mental health issues. People often have more fear over mental health disorders than need be. The more you know about mental health issues and understand them, the more compassionate and understanding that is likely to come through.
- Approach the person with understanding, care, and reassure them that everything is confidential. Let the person know that the company is willing to work with them to get help, accommodations can be made, and offer a follow-up meeting to review the progress of the situation.

Meeting with the person who may have a mental health issue is going to likely happen regardless of the action taken to address it being in the workplace. The more prepared for the meeting, the more likely a successful outcome. Also, be sure to document everything regarding the situation. If there are problems that have resulted from decisions, controversies with others, or strange and unexplained behaviours, bring all of that information to the meeting. All communication, meetings, and actions taken should be well documented in the event that the information is needed at a later point.

Board removal

If there comes a time that board removal is the outcome that is decided upon, there are some procedures that will need to be followed. It's not something that can just be done haphazardly, unless you are ready to take on the negative press and possibly see some legal action. It is important to take every precaution in ensuring that the person's removal from the board is handled correctly and is well documented.

Here are some details to keep in mind regarding the process for removing someone from the board.

- The organisation should have a constitution in place that provides the provisions for removing someone from the board. Start by reviewing that information to ensure that all provisions and guidelines are followed.

- If the organisation is a proprietary company, usually a majority rules resolution will be acceptable for removing the person from the board.
- For companies that are public, board removal is more involved. Other board members cannot remove someone from the board. The process works differently for those companies that are public. While the best route is to obtain legal advice to ensure the process is legally followed, a two-month notice of intention will need to be given. The board member is also usually allowed to address the board members, either in person in a meeting or through a written statement.

Speaking with legal counsel will help to ensure that everything is legal in the removal process. While this may seem like a step that can be skipped, it is one that could save the company a lot of time and money later on.

Looking ahead

Nobody wants to have to deal with a mental health issue with someone in the boardroom. But the reality is that it is an issue that many people will face. Addressing the issue can be difficult and uncomfortable, but it must be done. Addressing a mental health issue in the boardroom will help to ensure that problems do not result that impact the company, or the person who needs some help.

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Notes

- 1 See also Clements R, 2013, 'Managing mental health is key to organisational risk management', *Keeping good companies*, Vol 65 No 3, pp 139–145
- 2 A moderate, but long-term chronic form of depression ■

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