FULL DISCLOSURE
WHO'S IN CHARGE OF THE CORPORATION?

3

CATALYST

...corporate governance has been shown by the global financial crisis to be absolutely crucial to global social, economic and political stability....The devastating consequences of [that crisis] has bought the shareholder primacy model, the very orienting principle of corporate governance, into question. AARON MAGNER 2009 [1]

AUSTRALIA'S SHAREHOLDER DEMOCRACY

Today, 6.7 million people—around 41 percent of the adult Australian population—own shares in publicly listed corporations either through direct investments or via self-managed superannuation funds.[2] Adding to Australia's 'shareholder democracy' is the superannuation industry which has 32 million account holders, over $1 trillion in funds under management and owns 23 percent of the shares listed on the Australian Securities Exchange (ASX).[3]

The growth in shareholding in Australia has followed a number of transformations in company structures over the past century. This has included a shift from traditional 'owner-managed' or 'family capitalist' firms, the demutualisation of big insurance and mutual organisations like the NRMA, and the privatisation of government businesses and statutory corporations.[4] Each of these transformations has greatly increased the power and market capacity of private firms to provide goods and services across our economy, particularly the privatisation of former publicly owned organisations. It has also resulted in a growing suite of taxpayer-funded entities to monitor corporate activities.

The nature of share ownership has experienced a similar transformation: in 1952, individuals comprised the largest shareholder type holding 75.6 percent of all shares. By 1995 individual shareholdings had declined to a mere 22.8 percent of all shares, reflecting the growth in importance of institutional shareholders.[5]

As a result of these evolutions, ownership of the modern corporation rests with a diverse population of individual and institutional shareholders while control is held with the board and management.[6]

In response to these changes, systems to regulate corporate activities have evolved to minimise the risks to shareholders and communities. Attention to risk has been sharpened by several spectacular corporate collapses in Australia and overseas. These failures exposed the paucity of ethical business practices and in some cases, a lack of supervision of management control by boards of directors.

More dramatically, the economic and social impact of the global financial crisis (GFC) underscored the *importance of corporate responsibility and the impact of its absence* while exposing workers, communities, governments, taxpayers and economies to the absence of social responsibility among a few corporations.[7] As economies continue to grapple with the global repercussions of that crisis, it is timely to consider how our governance systems are faring, and whether there may be areas where regulation could be strengthened to minimise future risks to communities.

REGULATING THE FIRM

When surveyed in early 2010, 94 percent of people agreed that regulation is necessary to ensure big business behaves responsibly.[8]

The rules and relationships that empower, constrain or otherwise regulate the day-to-day operations of corporations fall within the corporate governance framework. How corporations look, how they behave and interact with their board of directors, shareholders, employees and communities depends on the integrity of governance structures.

Much of the focus on corporate governance looks at the direct relationship between shareholders and the corporation, but decisions of a firm can have a broader impact, potentially affecting employees, contractors, customers, society, the environment and even future generations.[9]

Australia's system of governance regulation is alternatively described as 'robust', 'too business-oriented' or 'overly interventionist' depending on one's view about the role of regulation of corporate activities.

Our governance framework is set through a mix of 'black letter law' established through the Commonwealth *Corporations Act 2001* and 'soft law' set through 'comply and explain' guidelines issued by the ASX Corporate Governance Council.[10] The Council's eight Principles and Recommendations, while not mandatory, *provide a reference point for companies about their corporate governance structures and practices*,[11] and operate in addition to mandatory listing rules for public companies.

The 'comply and explain' model of regulation requires companies to highlight areas of non-compliance with principles and provide reasons. Described as a form of market regulation, this approach is said to give the system more flexibility and legitimacy than alternative models based on self-regulation or legal sanctions. Ultimately the integrity of this approach rests on how much shareholders *are prepared to use their influence to support governance recommendations*. While big institutional investors have the resources to research and analyse corporate governance policies, smaller investors might not have the skill or time necessary to *understand corporate governance processes in a company*.[12]

Other resources that investors and communities can access include guidelines issued by the Australian Council of Superannuation Investors (ACSI).[13] The United Nations Global Reporting Index, a global benchmark, has an international governance framework comprising over 17 principles covering issues including board structure. Additionally, mandatory industry guidelines can apply, for example the Australian Prudential Regulation Authority (APRA) sets requirements for the financial services industry.

BOARD INDEPENDENCE WITHOUT DIVERSITY

'Corporations are critical actors in the public sphere, and as a result, directors on their boards can exert influence over society in general' SEIERSTAD AND OPSAHL 2010 [14]

Although there is no one-size-fits-all model of corporate governance, Australia's governance framework ranks highly. In 2008, the World Economic Forum placed Australian boards in the top three countries in terms of the extent they exerted supervision over management decisions. A survey of 38 countries ranked top Australian companies fourth against criteria such as financial disclosure, board accountability, shareholders' rights and executive remuneration.[15]

Contributing to this is director independence on company boards—that is, having a majority of directors who are not executives of the company or substantial shareholders, amongst other things. A larger number of non-executive directors on boards in Australia has been positively associated with the likelihood of CEO dismissal, and preventing excess CEO remuneration.[16]

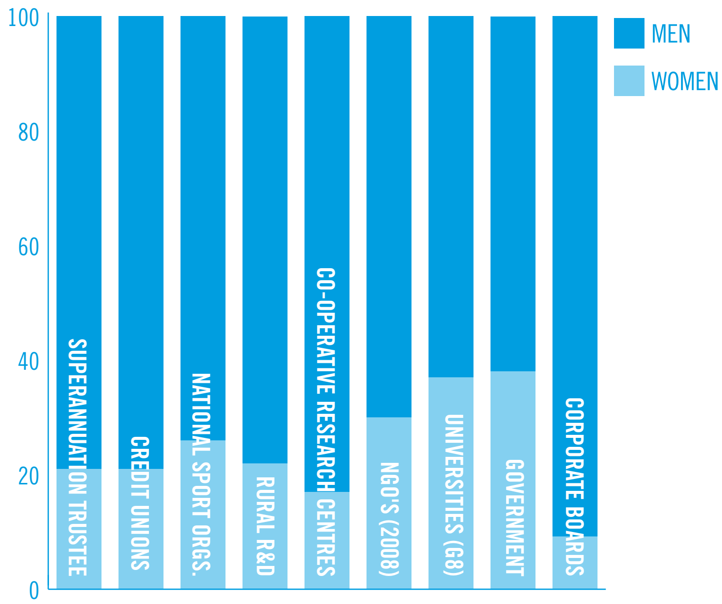
Reform in this area was motivated by a desire to improve overall board performance and to moderate excess.[17] Reform has been reinforced by investors' behaviour: companies have heeded *investor calls for independent non-executive directors to comprise a majority of the board*, and the number of independent directors is now at its highest level (69 percent).[18]

By contrast board diversity is one of the few corporate governance measures where Australia falls into the bottom end of world comparisons.[19] Although women comprise 50 percent of the Australian population, and 45 percent of the workforce,[20] recent surveys of our top 200 public companies put women's share of board directorships somewhere between 8.4 and 10.4 percent.[21] Only three of our top 200 companies have three or more women on their board, while three percent (equivalent to six out of 200 boards) have a female chair.[22] Meanwhile women's share of CEO and senior management positions, which some see as a vital pathway into the boardroom, sits at an underwhelming 8 percent.

In contrast to reform around director independence, measures to address gender diversity have been far less fruitful, possibly due to the lack of similar regulatory and investor force.

Corporate Australia's poor performance is especially stark when measured against other sectors of the economy.

FIGURE 1. WOMEN ON BOARDS [23]



*as regulated by the Australian Prudential Regulatory Authority
*Average of government Boards and Committees
Source: Women on Boards www.womenonboard.org.au. Figures for Universities and NGOs are from the Australian Institute of Company Directors www.companydirectors.com.au

To address this, a new reporting guideline issued by the ASX in January 2011 will require corporate boards to disclose their achievements in gender equity, including reporting on the number of women on company boards and in senior management. Companies will also need to set targets and—consistent with the 'comply and explain' approach of the ASX, companies will need to say in their annual reports if the targets are being met, and if not, why not (See Appendix 1).[24] This reform is already impacting positively on board appointments.[25]

LEADING THE WAY?

To explore these issues more fully, we looked at independence and diversity in 12 leading corporations. We found strong performance on independence: 83 percent of board positions in these 12 firms were held by independent directors.[26] But progress on gender diversity in the same companies was far less convincing with only 17 percent of board positions held by women.

We present individual company performance on diversity in the fold out section of this pamphlet.

Despite public and community interest in the progress of women in corporate leadership, we found the level of publicly accessible information varied considerably across firms and in many cases information was extremely difficult to locate. Public disclosures were lowest in the resources and manufacturing sector.

WOMEN BOOST PERFORMANCE

Women run schools, hospitals, small businesses and community organisations. They lead governments around the globe. Girls are high achievers in education, including higher education. But because women largely work in areas of economic activity that build social and human capital rather than financial wealth, their merits are easily overlooked by corporate boards.[27]

A 2007 study of Fortune 500 companies[28] found that boards with more women outperformed those with the least. This translated into billions of dollars of added value in the world's most competitive businesses.[29] A McKinsey study released around the same time found a big gap in performance between boards, and better performance by those with three or more women compared to those with no women at all.[30]

FIX WOMEN OR FIX THE FIRM?

Solutions to increasing women's participation tend to individualise the problem as one of *fixing women… so that they can fit into existing structures.*[31] Seen in this light, solutions rely on bringing women up to speed by developing 'female talent' within a firm through programs in mentoring and leadership training. Another is to provide greater workplace flexibility and reform to accommodate women's participation in senior roles in organisations. More radical solutions have settled on the need to de-gender social roles, by creating more opportunities for men to share responsibilities at home. Male industries have been largely immune to the need for flexibility to accommodate work and family. As a consequence the economic and social cost of care is largely borne by women and the sectors in which they work.

Fixing the pay gap between men and women has also been emphasised. There is not a single industry in Australia where women are paid more than men.[32] Occupational under-valuation of women's skills and the 'sticky floor' of women's employment are factors that contribute to low pay and little or no career path for many women.[33]

Companies that embrace policies for women have their achievements publicly celebrated and rewarded but at the other end of the spectrum, there is little surprisingly little attention to how corporate culture can limit inclusion. There are also some employers *who resist their workplaces being used to engineer social attitudes or to experiment with policy that is ahead of community attitudes.*[34] Meanwhile corporate leaders in diversity have supported the establishment of industry-specific gender targets for women on boards and in management and executive positions.[35]

FORCEFUL AND FAST REFORM

Business generally hates regulation but it is the major driver for achieving any change that is not perceived as necessary for business success. For example, in food safety the only reason anything has changed is because of regulation and compliance. CATHERINE HARRIS AO 2009 [36]

International experience shows that policies to support women's participation in corporate leadership work best when they are part of a forceful and cohesive regulatory framework.

Decisive action in countries like Norway resulted in mandatory quotas to ensure women held 40 percent of directorships on boards of publicly listed companies. Initially opposed by business, this measure lifted the share of women directors from 7.1 percent in 2002 to 40 percent today. The challenge was *huge*—out of the 611 affected companies, 470 had not a single female board member.[37] The French parliament recently approved a bill to ensure that women fill 50 percent of board positions by 2015.[38] The bill will apply to around 2,000 companies in an effort to lift women's participation from its current 15 percent.[39] In the UK, which lacks a strong policy framework, it's been estimated to take 70 years to achieve gender equal boardrooms based on the current rate of change.[40]

Closer to home, the Victorian, South Australian, Queensland and ACT governments have set targets for 50 percent female representation on their boards. South Australia leads the sector with 47.5 percent of women on government boards, followed by Victoria with 40 percent female boards and 30 percent on Australian government boards.[41]

Mandatory measures like quotas can be swift and effective. And it's against their backdrop that Australia's new ASX guideline will be assessed. Should it not achieve a 40 percent target of both genders on the boards of publicly listed corporations, it's been proposed that mandatory quotas be considered.[42]

Adding to the landscape is new re-vamped federal gender equality legislation announced by the federal Minister for Women in March 2011. The Workplace Gender Equality Agency will be given strengthened compliance powers and will require companies to report against gender equality indicators and include reporting on pay equity and caring responsibilities.

Taken together these reforms are substantial. All that is missing is a benchmark outlining what companies should strive for, and an indication of how long reform should take. Whether this is necessary will depend on how genuinely corporate Australia embraces the challenge of getting more women on board.

As the power and influence of corporations grows, the lack of diversity corporate decision making poses more than an organisational challenge for firms. It presents a democratic problem for society.[43]

APPENDIX 1—NEW ASX REPORTING REQUIREMENTS

Recommendation 3.2: Companies should establish a policy concerning diversity and disclose the policy or a summary of that policy. The policy should include requirements for the board to establish measurable objectives for achieving gender diversity, to be assessed annually along with the company's progress in achieving them.

Recommendation 3.3: Companies should disclose in each annual report the measurable objectives for achieving gender diversity set by the board in accordance with the diversity policy; and their progress towards achieving them.

Recommendation 3.4: Companies should disclose in each annual report the proportion of women employees in the whole organisation, women in senior executive positions and women on the board.

Recommendation 3.5: Companies should provide the information indicated in the Guide to reporting on Principle 3.

ENDNOTES

1 Aaron Magner, 2009 *Corporate Social Responsibility: the Global Financial Crisis means it's time to revisit CSR* 9 June 2009 www.scribid.com

2 Australian Securities Exchange, Australian Share Ownership Survey 2008, www.asx.com.au

3 Australian Superannuation Funds Association, Annual Report 2009, This amount refers to all types of funds, ie corporate, public sector, retail, industry and self-managed. www.superannuation.asn.au. Note the number of accounts is triple the number of people in the workforce, due to multiple or old accounts. It's estimated 13 million super accounts are unnecessary. See Dr David Inglis and Josh Fear *The Case for a Universal Default Superannuation Fund*, September 2009, www.tai.org.au

4 Duffy, Michael J (2002) *Shareholder Democracy or Shareholder Plutocracy? Corporate Governance and the Plight of Small Shareholders* University of New South Wales Law Journal, 25(2) 434. Duffy states that 84% of those who received NRMA shares via demutualisation kept them. See also Fleming, Grant (2003) *Corporate Governance in Australia* Agenda, Volume 10, Number 3 pp 195-212.

5 Fleming, Grant (2003) op cit.

6 Organization for Economic Co-Operation and Development (OECD) *Principles of Corporate Governance* cited in Australian Standard *Good Governance Principles* AS 8000—2003.

7 Aaron Magner, *op cit.*

8 Online survey of 1360 people conducted by the Australia Institute in March 2010. Results have been published by Catalyst Australia Inc. in a pamphlet *Attitudes to Corporate Australia* www.catalyst.org.au

9 Magner,op cit. G3 Sustainability Reporting Guidelines, Glossary of Terms, pa 39 www.globalreporting.org.

10 For a fuller discussion see Productivity Commission (2010) *Executive Remuneration in Australia*, Chapter 5 *Overview of the regulatory and corporate governance framework* www.pc.gov.au

11 ASX Corporate Governance Council (2007), *Corporate Governance Principles and Recommendations* www.asx.com.au

12 UTS Centre for Corporate Governance (2007) *The Changing Roles of Company Board and Directors, Final Report.*, September 2007, www.business.uts.edu.au, *pp 9–11*

13 Australian Council of Superannuation Investors (ACSI) (2009) *Corporate Governance Guidelines* www.acsi.org.au

14 Cathrine Seierstad and Tore Opsahl (2010) *For the few not the many? The effects of affirmative action on presence, prominence and social capital of women directors in Norway,* forthcoming publication.

15 Productivity Comission (2010) op cit, pp 125-126

16 See Fleming, Grant *Corporate governance in Australia* Agenda, Volume 10, Number 3, 2003, pages 195-212. In a review of corporate board structure over 40 years, Fleming points out there is little evidence that non-executive or independent directors improve a board's average financial performance. But there is evidence that the operation of boards improves around important events (such as poor performance, CEO dismissal) and on certain key decision-making issues (such as CEO remuneration, auditor appointment).

17 Ibid.

18 Australian Council of Super Investors, October 2010 *Board composition and non-executive directors pay in the top 100 companies*: 2009, www.acsi.org.au.

19 Elizabeth Knight *Big End of town shrinks from the gender task*, Sydney Morning Herald, 9th March 2011.

20 Rachel Ball, *Equality in the workforce would be good for us all. So let's make it happen*, Sydney Morning Herald, 29 January 2010.

21 See www.eowa.gov.au. The 2010 Census by EOWA put women's share of board positions at 8.4 percent, Women on Board have calculated that women hold 9.2 percent of positions, while AICD estimate women's share at 10.4 percent. The Australian Council of Super Funds review of the top 100 ASX companies, found women held 11 percent of directorships. See also example Rae Cooper and Marian Baird (2009), 'Australian Women: Getting to Equality?' in *Equality Speaks: Challenges for a fair society*, published by Catalyst Australia www.catalyst.org.au

22 Australian Institute of Company Directors, *Gender Diversity—Statistics* www.companydirectors.com.au. Boards with three or more women are: Pacific Brands Ltd, Westpac Banking Corporation, QBE Insurance Group Ltd. Boards with female Chairs are CSL Ltd, Caltex Australia Ltd, Hills Industries, QBE Insurance Group Ltd, Telstra Corporation Ltd, Healthscope Ltd.

23 Based on information provided at www.womenonboards.org.au.

24 Australian Security Exchange, 2010 *Corporate Governance Principles and Recommendations with 2010 Amendments* www.asx.org.au, Australian Security Exchange Corporate Governance Council, *Exposure Draft, 22 April 2010.* See also Jennifer Hewitt *Talk of quotas revived as companies drag their heels on putting women at the top*, The Australian, 9th October 2010.

25 Rick Lee, Chairman, Australian Institute of Company Directors, *Surge of women appointed to company boards.* Interview ABC Radio National Breakfast, 7th October 2010. According to the AICD website, 52 women were appointed to boards in 2010, compared with 10 in 2009. www.aicd.org.au

26 This section reviews gender equity reporting and practice in 12 of our largest companies. The selection of companies—outlined in the first paper in this series *Full Disclosure: How corporations tell their story*—sought to capture the experience of different industry sectors spanning blue and white collar workers.

27 Rick Lee, the Chair of the Australian Institute of Company Directors recently reminded his peers that there was no shortage of women candidates but, he said, women were rarely found in the traditional places where recruiters look. Instead corporate Australia needs to look *further afield* .Radio National Breakfast show, 6 October 2010.

28 This is an annual list of the biggest 500 companies published by Fortune Magazine in the US.

29 Catalyst US, *The bottom line: corporate performance and women's representation on boards* 2007. Note that the similarity in name between Catalyst who undertook this survey in the US with that of Catalyst Australia Inc. is coincidental.

30 McKinsey and Company, *Women Matter: Gender diversity, a corporate performance drive*, 2007. See also *Women on Boards*, a useful pamphlet summarising both studies released by the New Zealand Ministry for Women, www.mwa.govt.nz

31 Dr Liney Lord, Director of the Maureen Bickley Centre for Women in Leadership, *Moving beyond token women: The need for radical reform in corporate Australia*, The Annual Clare Burton Memorial Lecture, 2010.

32 Goldman Sacs JB Were *Australia's Hidden Resource: The economic case for increasing female participation*, November 2009 www.gs.com.au

33 Rae Cooper and Marian Baird, Getting to Equality in Equality Speaks: challenges for a fair society, Catalyst Australia Inc. 2009 www.catalyst.org.au

34 KMPG 2010, op cit, page 91.

35 See for example the submission of The Diversity Council of Australia, whose members span large and small businesses and who supported industry-specific gender targets for women on boards to the EOWA review. Diversity Council of Australia (2009) *Review of the Equal Opportunity for Women in the Workplace Act 1999 and Agency.* Overall, around 13 percent of industry submissions to this review felt government should have a regulatory role in requiring targets for women.

36 Quoted in KPMG 2010, Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Review of the Equal Opportunity for Women in the Workplace Act 1999 Consultation Report.* www.facsia.gov.au

37 Yvonne Roberts *You're fired*, Guardian, 6 March 2008: www.guardian.org.uk. See also Cathrine Seierstad and Tore Opsahl (2010) op cit.

38 Rachel Ball, *Equality in the workforce would be good for us all. So let's make it happen*, Sydney Morning Herald, 29 January 2010.

39 *France sets quota for women*, www.businessspectator.com.au, 14 January 2011.

40 *Lord Davies Review, Women on FTSE Boards*, February 2011, Available at www.womenonboards.org.au

41 Women on Board *Diversity Index 2011.* Australian Institute of Company Directors, *Gender Diversity—Boards* www.companydirectors.com.au

42 Australian Human Rights Commission, Submission to the Review of the *Equal Opportunity for Women in the Workplace Act 1999*—Submission 2009.

43 Concerns about corporate influence, and the democratic problem of lack of representation was one of the factors that motivated the Norwegian government to introduce mandatory quotas. See Seierstad and Opsahl op cit.

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ABOUT CATALYST

Catalyst is here to organise policy renewal across the progressive community in Australia. Join Catalyst and support our campaign for a fair and sustainable society.

DESIGN

Boccalatte