

CORPORATE GOVERNANCE, BOARDS OF DIRECTORS AND CORPORATE SOCIAL RESPONSIBILITY: THE AUSTRALIAN CONTEXT

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Abstract

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The challenge of corporate governance in Australian corporations is similar to those faced by the majority of corporations operating globally albeit the manner in which corporate governance is structured in Australia represents a strong reflection of the island continent's people, egalitarian culture, and legislative framework. This article considers the legal framework in which Australian corporations operate within, which includes a discussion of corporate governance principles, the role of directors and ownership structures of companies in Australia. Australian board of director practices are discussed in detailed and this article outlines how these practices are heavily influenced by the Australian Commonwealth Corporations Law (which sets out mandatory legal requirements that all Australian companies must adhere to). The article continues to explore briefly directors' remuneration practices, recent shareholder's rights protection and activism, the importance of corporate governance and the link to firm performance, and finally the importance of corporate social responsibility in the Australian context.

Keywords: Corporate Governance, Board of Directors, Culture and Corporate Social Responsibility

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1. INTRODUCTION

Corporate governance in Australia acts as an important control mechanism that links the direction of an organisation with its economic, social and environmental (i.e. Triple Bottom Line) performance. This article will provide a summary of what the corporate governance concept means in the Australian context, before describing the legal and regulatory framework that underpins the concept in that country. Next, this article will provide an overview of the external market for corporate

control, and the implications this has for the typical ownership structures and remuneration practices (for boards of directors). Lastly, this article will focus on specific shareholder rights and shareholder activism in Australia, and how these together influence the way Australian corporations link corporate governance practices to organisational performance and standards of corporate social responsibility.

To date, corporate governance in Australia has been studied from a variety of theoretical perspectives, in particular, agency theory, stewardship theory, resource dependency theory,

shareholder theory, and stakeholder theory. Most notably, scholars from organisational theory, strategic management (Boyd, 1995), sociology (Useem, 1984), finance (Fama, 1980), economics (Jensen & Meckling, 1976) and law (Richards & Stearn, 1999) have provided the basis for the majority of Australia's corporate governance research over the past three decades¹. The myriad of approaches to the topic has resulted in many normative definitions in the Australian context (that might best be described as a set of descriptive statements about what corporate governance "may include", or "might do", etc. rather than a sound theoretical basis for promoting corporate transparency). Often the quasi-definitions appear in authoritative academic literature, where authors consider corporate governance as merely the set of methods to ensure that investors, suppliers of finance, shareholders, or creditors get a return on their investment. Sir Adrian Cadbury's (1992) definition of corporate governance is widely accepted as the most fitting for the egalitarian Australian context: "... [corporate governance represents] the system by which companies are directed and controlled. Board of directors is responsible for the governance of their companies, ensuring that they are well run" (p. 2). The significance of corporate governance was captured in a broader definition authored by Cadbury (1992) who noted that the governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources.

The structure of this paper is as follows. Section 1 provides a definition of corporate governance. Section 2 reviews the relevant literature with a focus on the Australian legal and regulatory framework. Section 3 will discuss the topic of market for corporate control and examine Tricker's model of corporate governance. Section 4 will outline the role of Australian directors with emphasis on structure, process and directors behavioural dynamics. Section 5 will discuss board of directors practices including current remuneration practices. Section 6 outlines ownership structures of Australian companies. Sections 7 and 8 focus on shareholder's rights protection and activism. Section 9 will examine the relationship between a corporate governance framework and financial performance and section 10 will discuss briefly corporate social responsibility. The final section sets out future research and provides a conclusion.

2. OVERVIEW OF THE LEGAL FRAMEWORK OF CORPORATE GOVERNANCE IN AUSTRALIA

In Australia, a board of directors is a legal requirement set out in the Corporations Act 2001 (Commonwealth). Boards of directors are fundamental to corporate governance, with legislation outlining certain powers and responsibilities to be carried out for the best

interests of the relevant shareholders (and indirectly to the entire market). In terms of its prime directive, the legal framework in Australia is not primarily concerned with adding value to the organisation (although it does attempt to protect shareholder rights); instead is based on the traditional conventions of Anglo-Saxon trust law. The Corporations Act 2001 (Commonwealth) provides a mandatory legal requirement that all Australian companies must have directors. There are different requirements for a proprietary company which have at least one director (section 201A(1)) compared to a public company that must have a minimum of three directors (section 201A(2)). The board of directors according to ASX CGC Principle 2:

An effective board is one that facilitates the effective discharge of the duties imposed by law on the directors and adds value in a way that is appropriate to the particular company's circumstance.

The importance of corporate governance in Australia was initially recognised in 1995, with the Australian Securities Exchange (ASX) introducing Listing Rule 3C(3)(i) requiring listed companies to include in their annual report a statement of the main corporate governance practices they had adopted (Henry, 2010). Subsequently, and in response to criticism following the aftermath of corporate collapses, the ASX Corporate Governance Council (ASX CGC) released in March 2003, the first version of the ASX Corporate Governance Principles and Guidelines (ASX Guidelines). These guidelines have been further revised are designed to provide best practice corporate governance measures for ASX listed entities. They are based around eight central principles and 29 specific recommendations published by the Australian Stock Exchange Corporate Governance Council (2014), which is an important document outlining key elements of corporate governance released in May 2014.

In 2017, the ASX CGC agreed that it was necessary to commence work on a fourth edition of the Principles and Recommendations to address emerging issues around culture, values and trust, fuelled by recent examples of conduct by some listed entities falling short of community standards and expectations. The fourth edition of the Principles and Recommendations takes effect for an entity's first full financial year commencing on or after 1 January 2020. Entities with a 31 December balance date will be expected to measure their governance practices against the recommendations in the fourth edition commencing with the financial year ended 31 December 2020. Entities with a 30 June balance date will be expected to measure their governance practices against the recommendations in the fourth edition commencing with the financial year ended 30 June 2021 (ASX CGC, 2019).

Table 1. The principles and recommendations of the ASX CGC (2014)

No.	Principles and recommendations
1.	Lay solid foundations for management and oversight
2.	Structure the board of directors to add value
3.	Act ethically and responsibly
4.	Safeguard integrity in corporate reporting
5.	Make timely and balanced disclosure
6.	Respect the rights of security holders
7.	Recognise and manage risk
8.	Remunerate fairly and responsibly

¹From an international perspective on corporate governance there have been significant legislative reforms, in particular in countries such as the United Kingdom (UK) and United States of America (USA). In the UK, corporate governance standards are clearly set out in the Cadbury Committee (1992), Greenbury Committee (1995), Hampel Committee (1998), LSE (1998) to protect shareholder's interests. In the USA, the Round Table (1997) and The Sarbanes-Oxley Act of 2002 set new or enhanced standards for all U.S. public company boards to observe.

Table 2 below highlights the recent changes by the ASX CGC in 2019 to take into consideration a number of important factors such as culture, values and trust within Australian corporations as a result of the investigations by the Royal Commission into the Banking, Superannuation and Financial Services Industry. Namely, a listed entity should instil and continually reinforce a culture across the organisation of acting lawfully, ethically and responsibly. Commissioner Kenneth M. Hayne (2019) in the Final Report: Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, stated that: "Boards cannot operate properly without having the right information. And boards do not operate effectively if they do not challenge management" (p. 396). In relation to Principle 3, the ASX CGC in 2019 have made it clear that the broader community and investors expect a listed entity to act lawfully, ethically and responsibly and that expectation should be reflected in its statement of values. In formulating its values, entities need to consider what behaviours are needed from its officers and employees to build long term sustainable value for its security holders.

Hayne (2018) from the Interim Report: Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry noted that:

As [a commercial enterprise], [a listed] entity ... rightly pursues profit. Directors and other officers of the entities owe duties to shareholders to do that. But the duty to pursue profit is one that has a significant temporal dimension. The duty is to pursue the long-term advantage of the enterprise. The pursuit of long-term advantage ... entails preserving and enhancing the reputation of the enterprise ... But to preserve and enhance a reputation ... the enterprise must do more than not break the law. It must seek to do 'the right thing' (pp. 54-55).

Table 2. The principles and recommendations of the ASX CGC (2019)

No.	Principles and recommendations
1.	Lay solid foundations for management and oversight.
2.	Structure the board of directors to be effective and add value.
3.	Instil a culture of acting lawfully, ethically and responsibly.
4.	Safeguard the integrity in corporate reporting.
5.	Make timely and balanced disclosure.
6.	Respect the rights of security holders.
7.	Recognise and manage risk.
8.	Remunerate fairly and responsibly.

In relation to Principle 1 - Recommendation 1.1A listed entity should have and disclose a board charter setting out: 1) the respective roles and responsibilities of its board and management; 2) those matters expressly reserved to the board and those delegated to management.

As a general rule, the board of a listed entity should be responsible under its charter for:

- demonstrating leadership;
- defining the entity's purpose and setting its strategic objectives;
- approving the entity's statement of values and code of conduct to underpin the desired culture within the entity;

- appointing the chair and, if the entity has one, the deputy chair and/or the "senior independent director";

- appointing and replacing the CEO;
- approving the appointment and replacement of other senior executives and the company secretary;

- overseeing management in its implementation of the entity's strategic objectives, instilling of the entity's values and performance generally;

- approving operating budgets and major capital expenditure;

- overseeing the integrity of the entity's accounting and corporate reporting systems, including the external audit;

- overseeing the entity's process for making timely and balanced disclosure of all material information concerning the entity that a reasonable person would expect to have a material effect on the price or value of the entity's securities;

- satisfying itself that the entity has in place an appropriate risk management framework (for both financial and nonfinancial risks) and setting the risk appetite within which the board expects management to operate;

- satisfying itself that an appropriate framework exists for relevant information to be reported by management to the board;

- whenever required, challenging management and holding it to account;

- satisfying itself that the entity's remuneration policies are aligned with the entity's purpose, values, strategic objectives and risk appetite;

- monitoring the effectiveness of the entity's governance practices (ASX CGC, 2019, p. 6).

Despite the fact that the principles and recommendations listed above were only intended to apply to ASX listed entities (albeit not mandatorily), many other Australian entities have adopted them (as appropriate) to form part of their own governance framework.

3. MARKET FOR CORPORATE CONTROL

Tricker's (1995) model of corporate governance in Figure 1 (below) provides a starting point to examine the role of corporate governance as an external control for Australian corporations (in both national and international markets). The typical external market control measures apparent in open market contexts (i.e. hostile take-over bids, buying controlling interests, removal of board of directors by shareholders, etc.) operate in Australia and manifest in the following ways: increased regulatory compliance; internal monitoring; self-regulation of individual trustees and directors, monitoring of board of directors' collective performance (which includes scrutiny of strategy formulation and policymaking); change in organisational strategy, etc. The board of trustees or company directors is an important internal governance mechanism that exists to monitor external market expectations and change/adapt a strategy to meet them (see the relationship described in Figure 2).

Figure 1. Tricker's model of corporate governance

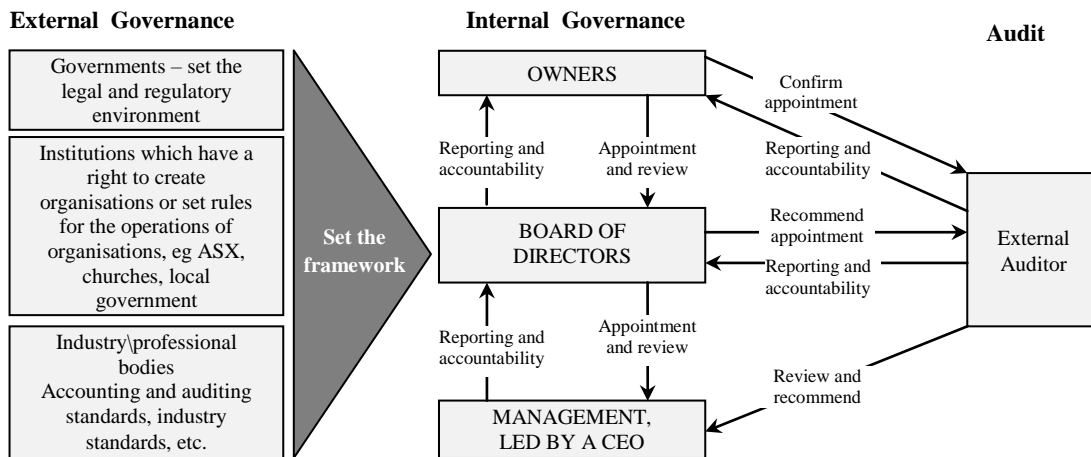
	Compliance roles	Performance roles
External role	Provide accountability	Strategy formulation
	<i>Approve and work with and through the CEO</i>	
Internal role	Monitoring and supervising	Policy making
	Past and present orientated	Future orientated

Source: Tricker (1995).

Monks and Minow (2004) refer to a tri-partite of participants in the corporate governance framework that must work together for mutual benefit (see Figure 2): shareholders, management (led by the Chief Executive Officer) and the board of directors.

Australia is thought to be characteristic of the 'outsider system' of corporate governance, where key elements of corporate governance include: board of directors structure, board of directors process, and board of directors behavioural dynamics.

Figure 2. Corporate governance framework in the 21st century



Source: Kiel, Nicholson, Tunny, and Beck (2012).

4. THE ROLE OF THE BOARD OF DIRECTORS

4.1. Board of directors structure

Board of directors structure concerns its size, board of directors composition, skill sets and is important in the effectiveness of a board determining the ability of the board members to work together (Kiel et al., 2012). Each of these will be discussed in turn:

1. *Size:* Clark (2004) argues that size is a hindrance to governance capacity and performance. Research by Jenkins (1993) recommends a limit of eight directors as any larger number will interfere with group dynamics and inhibit board of directors performance and a larger board brings a greater level of bureaucracy. Dalton, Daily, Ellstrand, and Johnson (1998) viewpoint was less definitive noting that it is not the size of the board of directors that is critical, in relation to governance, but rather the number of outside members of the board. Notwithstanding this viewpoint, Kiel et al. (2012) notes that the key consideration should be around whether there are enough directors to provide the skills that the board of directors needs at the boardroom table. All the above researchers raise valid points and it is recommended in the Australian

context that like that regardless of whether it is a commercial board of directors, superannuation board of directors of not-for-profit board of directors, that the board of directors size should be not exceeded eight or nine board members with the pre-requisite skills and experience that should be expected around a boardroom table.

2. *Board composition:* Research suggests that board of directors composition does matter. Dalton, Daily, Ellstrand and Johnson (1998) note that the board's composition and leadership structure can influence a variety of organisational outcomes (Beatty & Zajac, 1994; Daily & Dalton, 1992, 1993). Factors such as culture and ownership structure impact on board of directors composition (Kiel et al., 2012). Related studies on the issue of the diversity of board of directors, and other have identified that the large majority of directors are white males from a managerial or professional background in their fifties or sixties and that a number of observations could be made about their personalities, including a personality profile to be much less risk-averse a diverse board (CAMAC, 2009).

3. *Trustee or director skillset:* Trustee competence is gained from experience, skills, attitudes and knowledge (Kiel et al., 2012).

Behavioural competencies also influence the relationships around the boardroom table, in particular, between the board of directors and management and between trustees or directors (Kiel et al., 2012). The area of board of directors' skills and capabilities is an extremely important one in Australia and the author believes that it has not been given the attention that it currently deserves.

Table 1 below provides insight into the sorts of expertise available by different types of directors or trustees. Notwithstanding, research by Thomas, Kidd, and Fernandez-Araoz (2007) found that after investigating over 100 boards of directors over a five-year period, many boards lack competent members.

Table 3. Expertise of different type of directors or trustees

<i>Director category</i>	<i>Areas of resources provided</i>	<i>Type of director</i>
Insiders	<ul style="list-style-type: none"> • Expertise on the firm, its strategy and direction; • Specific knowledge in areas such as finance and law. 	<ul style="list-style-type: none"> • Current and former officers of the firm.
Business experts	<ul style="list-style-type: none"> • Expertise in competition decision-making and problem-solving in large firms; • Serve as 'sounding boards' for ideas; • Alternative viewpoints on problems; • Channels of communication between firms; • Legitimacy. 	<ul style="list-style-type: none"> • Current and former senior officers of other large for-profit firms; • Directors of other large for-profit firms.
Support specialists	<ul style="list-style-type: none"> • Specialised expertise on law, banking, insurance and public relations; • Channels of communication to large and powerful suppliers or government agencies; • Ease of access to vital resources, such as financial capital and legal support; • Legitimacy. 	<ul style="list-style-type: none"> • Lawyers; • Bankers (commercial and investment); • Insurance company representatives; • Public relations experts.
Community influentials	<ul style="list-style-type: none"> • Non-business perspectives on issues, problems and ideas; • Influence with powerful stakeholders; • Representation of interests outside competitive products or supply markets; • Legitimacy. 	<ul style="list-style-type: none"> • Political leaders; • University faculty; • Members of clergy; • Leaders of social or community organisations.

Source: Hillman, Cannella, and Paetzold (2000).

Demb and Neubauer (1990) acknowledge that "...there is no 'perfect' structure for a board; each organisation must put a board of directors in place with composition and shape - tailored to fit its legal environment, the company's size and development stage, and the personality of its Chairman and CEO" (p. 156). Similarly, Kiel, et al. (2012) acknowledge that, "... no one particular board of directors structure will impact corporate performance more favourably than another structure" (p. 201). The structure of each board of directors needs to be determined by the characteristics of each entity in isolation. Regardless of the country of origin, board of directors roles such as monitoring and ratifying role (Bosch, 2005), supervisory and management function (Demb & Neubauer, 1992) and strategic and control roles of directors identified by leading international academics remain relevant to the Australian context.

4.2. Board of directors process

Board of directors processes is another element that should be recognised in any corporate governance framework. Process variables include frequency and length of meetings, formality of board of directors proceedings, board of directors evaluations, professional development, board of directors meeting agendas, board of directors minutes and committees. These processes are important in the overall context of corporate governance in Australia.

4.3. Board of directors behavioural dynamics

Kiel et al. (2012) defines board of directors behavioural dynamics as resulting from:

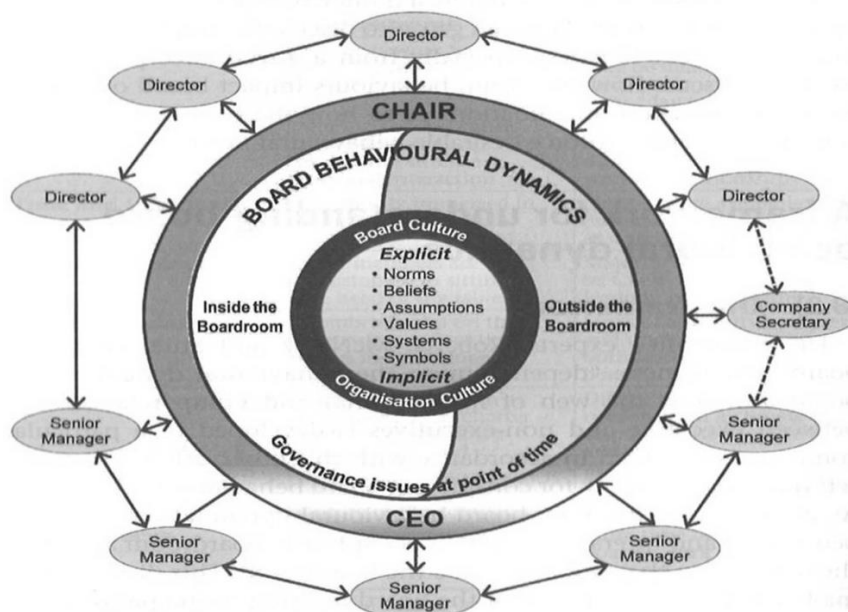
... social and psychological processes occur between directors and between the board of

directors and other groups, especially management. The individual and collective behaviours of the board and its members are dynamic as they continually change over time resulting from the changing issues facing the board at a particular point of time and the coming and going of individuals on both the board and in other groups (p. 608).

The effectiveness of the board of directors in making decisions is clearly influenced by the behavioural characteristics of the directors that make up the board of directors (Leblanc & Gillies, 2005).

Board of directors behavioural dynamics is central to effective outcomes (Kiel et al., 2012) and appropriate boardroom behaviours are an essential component of best practice corporate governance as outlined by the UK Institute of Chartered Secretaries and Administrators. Board of directors behavioural dynamics can be an extremely difficult area for board members to address when they are dealing with individual trustees whose "... personality characteristics detract from the overall performance of the board of directors" (Kiel et al., 2012). Another level of complexity is added in the context of the ASI, where the trustee of an ASF is a representative appointed by a class of members and retains the support of that particular class of members. Kiel et al.'s (2012) research positioned the board of directors behavioural dynamics at the centre of the corporate governance practice framework. Roberts, McNulty, and Stiles (2005) acknowledge that board of directors effectiveness "... depends upon the behavioural dynamics of a board and how the web of interpersonal and group relationships between executive and non-executives is developed in a particular company context" (p. 11).

Figure 3. A framework for considering board of directors behavioural dynamics



Source: Kiel et al. (2012).

These researchers noted that there are four important drivers of board of directors behavioural dynamics that are set out in Figure 3. The first driver is in relation to the governance at a particular point in time. The second is the impact of both organisational and board cultures. The third driver relates to the Chair and CEO's personalities and how they interact with each other. The fourth driver involves the personalities of the trustee/directors. These researchers acknowledge that the behaviours of trustees reflect the board culture and the wider organisational culture (Kiel et al., 2012). Tricker, B. & Tricker, R. I. (2003) acknowledges that it is often more complicated: "Board behaviour does not consist of sets of contractual relationships, but is influenced by interpersonal behaviour, group dynamics and political intrigue" (p. 26). Judge (1989) further notes that board behaviour is often treated as a black "box" in these studies and researchers can only "... speculate on actual board behaviour".

5. BOARD OF DIRECTORS PRACTICES

In governance theory, one of the main challenges for leaders today is to maintain the board of director's key role in the governance system (Demb & Neubauer, 1990) and it is recognised by this researcher as a major challenge moving forward for boards in Australia. The clear ramifications for governance for Australian boards of directors from an agency perspective is that adequate monitoring or control mechanisms need to be established to protect the members of the fund from management's conflict of interest - the so-called 'agency costs' of modern capitalism (Fama & Jensen, 1983). This research supports the notion that in most instances, the board of directors in Australia is an important mechanism to alleviate agency problems in principal-agent relationships. Legally, the board of directors' monitors the board's functions and represents the shareholders' interests.

The board of directors is elected by shareholders and has the ultimate decision-making and voting rights over the organisation's assets. In general, the chief executive officer reports directly to the board of directors.

The two most important responsibilities for the board of directors in this regard are the strategic vision, setting the strategy and direction of the organisation; and the recruitment, performance management and termination (if necessary) of the CEO. In summary, the board of an Australian entity would deal with both the strategic direction and trying to maintain a sustainable competitive advantage of the organisation in an ever-changing economic landscape. Whereas, the CEO and other senior managers would deal on a daily basis with the operational matters of the business. There is considerable debate on whether the board develops or ratifies the strategy of the organisation. Fama and Jensen's (1983) research, for example, outlines the different arguments pertaining to this notion. For the sake of completeness, it is noteworthy that the board of directors in Australia can comprise of both independent and non-executive directors; the Australian Stock Exchange (2003) definition states that:

An independent director is a non-executive director who is not a member of management and who is free of any business or other relationship that could materially interfere with - or could reasonably be perceived to materially interfere with - the independent exercise of their judgment.

Boards of directors in Australia need to consider a suitable mix of independent directors for the board composition. The ASX CGC recommends that a majority of the board of directors should be independent directors and that the roles of the chair and the chief executive officers should not be exercised by the same individual. Company Law in Australia sets out directors' general duties imposed by the Corporations Act on directors include:

1. The duty to exercise their powers and duties with the care and diligence that a reasonable person would have which includes taking steps to ensure you are properly informed about the financial position of the company and ensuring the company does not trade if it is insolvent.

2. The duty to exercise your powers and duties in good faith in the best interests of the company.

3. The duty not to improperly use your position to gain an advantage for yourself or someone else, or to cause detriment to the company.

4. The duty not to improperly use information obtained through your position to gain an advantage for yourself or to cause detriment to the company. Directors have a positive duty to prevent your company from trading if it is insolvent. The Australian Investments and Security Commission (AISC) issued a Regulatory Guide (RG-217) on the duty to prevent insolvent trading for directors.

In Australia, a director's legal duty is to the company itself and they are not to act for any personal gain. As pointed out by Dellaportas, Thomsen, and Conyon (2012) "... this differs slightly from the US, which relies on a shareholder-centric common law system, and the UK, in which a legal duty is owed to stakeholders as well as shareholders" (p. 276).

5.1. Board of directors' remuneration practices

The board of directors is responsible for determining a remuneration policy and the level of compensation for both directors and senior executives in Australia. Remuneration is varied among board of directors in Australia. Under section 300A of the Corporations Act 2001 (Cth), listed companies must present a remuneration report to shareholders at every annual general meeting showing the board's policies for determining the nature and amount of remuneration paid to key management personnel (which includes any director). In 2012, the ASIC announced that companies should improve their practices with respect to the disclosure of their remuneration arrangements for directors and executives of publicly listed companies. This followed on from a review of 50 remuneration reports - drawn from 300 of Australia's biggest companies - for the year ended 30 June 2011: "It is important for the integrity of the market and investor confidence that there is a high level of compliance with the executive remuneration laws" (ASIC Deputy Chairman Belinda Gibson). Gibson (2012) also noted that those companies need to also provide shareholders with a better understanding of why directors have adopted the remuneration arrangements they have and provide sufficient detail on the remuneration arrangements to enable shareholders to assess the appropriateness of them in the company's circumstances.

The role of the remuneration committee was considered by the Governance Institute of Australia (The Institute) in 2014. The Institute published a Good Governance Guide noting that the role of the remuneration committee should take account of disclosure of remuneration policies, level and mix of remuneration; and the process for setting remuneration and assessing performance. Further, the ASX CGC noted that a Remuneration Committee may be a more efficient vehicle to focus on a

remuneration policy rather than the full board of directors.

In 2019, the ASX CGC have been very considered in their approach to the role of the remuneration committee. In the Principle 8 - Remunerate fairly and responsibly from the recent Principles and Recommendations (ASX CGC, 2019) it was noted that a listed entity should pay director remuneration sufficient to attract and retain high-quality directors and design its executive remuneration to attract, retain and motivate high-quality senior executives and to align their interests with the creation of value for security holders and with the entity's values and risk appetite.

Recommendation 8.1

The board of a listed entity should: 1) have a remuneration committee which:

- has at least three members, a majority of whom are independent directors;
- is chaired by an independent director, and disclose;
 - the charter of the committee;
 - the members of the committee;
 - 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 2) if it does not have a remuneration committee, disclose that fact and the processes it employs for setting the level and composition of remuneration for directors and senior executives and ensuring that such remuneration is appropriate and not excessive.

The ASX CGC (2019) noted that remuneration is a key driver of culture and a major focus for investors. It also noted that when entities set the level and composition of remuneration, a listed entity needs to balance:

- its desire to attract and retain high-quality directors and to attract, retain and motivate senior executives;
- the need to ensure that the incentives for executive directors and other senior executives encourage them to pursue the growth and success of the entity without rewarding conduct that is contrary to the entity's values or risk appetite;
- the need to ensure that the incentives for non-executive directors do not conflict with their obligation to bring an independent judgement to matters before the board;
- the implications for its reputation and standing in the community if it is seen to pay excessive remuneration to directors and senior executives;
- its commercial interest in controlling expenses.

A listed entity should have a formal, rigorous and transparent process for developing its remuneration policy and for fixing the remuneration packages of directors and senior executives. Having a separate remuneration committee can be an efficient and effective mechanism to bring the focus and independent judgement needed on remuneration decisions.

The role of the remuneration committee is to review and make recommendations to the board in relation to:

- the entity's remuneration framework for directors, including the process by which any pool of directors' fees approved by security holders is allocated to directors;

- the remuneration packages to be awarded to senior executives;

- equity-based remuneration plans for senior executives and other employees;

- superannuation arrangements for directors, senior executives and other employees;

- whether there is any gender or other inappropriate bias in remuneration for directors, senior executives, or other employees.

It is important that the remuneration committee have a charter that sets out its role and confers on it all necessary powers to perform that role. This will include the right to obtain information, interview management, and seek advice from external consultants or specialists where the committee considers that necessary or appropriate (ASX CGC, 2019, p. 30).

The remuneration committee should be of sufficient size (no definitive number given) and independence to discharge its mandate effectively. Regardless of whether there is a remuneration

committee, no individual director or senior executive should be involved in deciding his or her own remuneration.

Hayne (2018) in the Interim Report: Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry noted that:

... staff and others engaged by an entity will treat as important what they believe that the entity values. Rewarding volume and amount of sales is the clearest signal that selling is what the entity values. What staff and others believe that the entity values inform what they do. It is a critical element in forming the culture of the entity (p. 55).

The individual remuneration packages to be awarded to employees other than senior executives are generally matters left to management. Listed companies established in Australia need to consider the provisions in sections 206K-206M of the Corporations Act in relation to the engagement of remuneration consultants to advise on the remuneration packages to be awarded to key management personnel.

Table 4. Australian executive remuneration suggested guidelines

	<i>Executive remuneration</i>	<i>Non-executive director remuneration</i>
Composition	Appropriate balance of fixed remuneration and performance-based remuneration.	By way of cash fees, superannuation contributions and non-cash benefits in lieu of fees (such as salary sacrifice into superannuation or equity).
Fixed remuneration	Reasonable and fair, taking into account the entity's obligations at law and labour market conditions, and relative to the scale of the entity's business. It should reflect core performance requirements and expectations.	Should reflect the time commitment and responsibilities of the role.
Performance-based remuneration	Linked to clearly specified performance targets. These targets should be aligned to the entity's short, medium and longer-term performance objectives and should be consistent with its circumstances and purpose, strategic goals, values and risk appetite.	Should not receive performance-based remuneration as it may lead to bias in their decision-making and compromise their objectivity.
Equity-based remuneration	Well-designed equity-based remuneration, including options or performance rights, may be an effective form of remuneration, especially when linked to hurdles that are aligned to the entity's short, medium and longer-term performance objectives. Care needs to be taken in the design of equity-based remuneration schemes, however, to ensure that they do not lead to "short-termism" on the part of senior executives or the taking of undue risks.	Acceptable to receive securities as part of their remuneration to align their interests with the interests of other security holders. They should not receive options with performance hurdles attached or performance rights as part of their remuneration as it may lead to bias in their decision-making and compromise their objectivity.
Termination payments	For senior executives should be agreed in advance and the agreement should clearly address what will happen in the case of early termination. No payment for a removal for misconduct.	Should not be provided with retirement benefits other than superannuation.

Source: ASX CGC (2019).

6. OWNERSHIP STRUCTURES OF COMPANIES IN AUSTRALIA

Australian corporations must be registered by the Australian Securities and Investment Commission (ASIC) and they legally operate under the Corporations Act 2001 (Cth). In relation to the limitation of liability of a company in Australia, there are two different types: 'Limited by guarantee' (i.e. the liability of members is restricted to an amount set out in the company constitution) and 'Limited by shares'. Contemporary literature refers

primarily to two model types for corporate governance, namely, the outsider and insider models (Keasey, Thompson, & Wright, 1997; Solomon, 2007). Solomon (2007) points out that:

Every country exhibits a unique system of corporate governance: there are as many corporate governance systems as there are countries. The system of corporate governance presiding in any one country is determined by a wide array of internal factors including ownership structure, the state of the economy, the legal system, and government policies (p. 181).

7. SHAREHOLDER'S RIGHTS PROTECTION

There are various types of shareholders in Australia ranging from small 'mum and dad investors', to wealthy private individuals, to large institutional investors (such as superannuation (i.e. pension funds)). The Corporations Act 2001 (Cth) sets out the rights pertaining to all shareholders in Australia. The Corporations Law deals with becoming a shareholder and ceasing to be a shareholder in sections 117, 120, 601AA-601AD of the Corporations Act 2001 (Cth). Australian companies may have different classes of shares. The rights and restrictions attached to the shares in a class distinguish it from other classes of shares are sections 254A-254B of the Corporations Law. Section 252D which deals with the Calling of Meetings under the Corporations Law allows for members to call meetings of all shareholders or meetings of only those shareholders who hold a particular class of shares. Shareholders who hold at least 5 per cent of the votes which may be cast at a general meeting of a company have the power to call and hold a meeting themselves or to require the directors to call and hold a meeting. Meetings may be held regularly or to resolve specific questions about the management or business of the company. The Corporations Law sets out rules dealing with shareholders' meetings. A shareholder of a company may ask the company for a copy of the record of a meeting or a decision of shareholders taken without a meeting. Different rights to vote at meetings of shareholders may attach to different classes of shares. This is dealt with under sections 250E, 254A-254B of the Corporations Act 2001 (Cth). The buying and selling of shares in Australia are dealt with under sections 1091D-1091E of the Corporations Law. A shareholder may sell their shares but only if the sale does not breach the corporation's constitution.

8. SHAREHOLDER ACTIVISM

Compared to other developed financial markets, Australia's conditions favour shareholders when it comes to engaging with the companies they invest in. This is not only because of the rules in Australia's Corporations Act 2001 but also because of the large and growing pool of superannuation (i.e. pension) savings. Recent cases in Australia (such as Brickworks and Antares Energy) have attracted public attention to the rights of shareholders in Australia. The 'two strikes rule' allows for 25 per cent of shareholders in a publicly listed company to vote down a company's remuneration report, requiring the board of directors to revisit its remuneration strategy. Further, there have been recent amendments to the regulatory guidelines in Australia confirming that shareholders may communicate with each other about the company's performance and act as 'voting blocs'. High profile examples of recent activism in Australia include Mark Carnegie (from Funds Manager, Perpetual Company) in relation to the Brickworks Company demanding board of directors representation. The activist Janchor Partners Company had demands specific to remuneration in respect of Medibank Private Company Industry. Activist and high-profile businessman Solomon Lew opposed the takeover terms by David Jones Company Industry, and finally,

activist Lone Star Value Management demanded board of directors representation on Antares Energy Company Industry Board. Approximately 50 Australian publicly listed companies have received some type of public demand from investors (Activist Insight Data, 2017) and activists have been elected to more than 100 board seats in corporate Australia through shareholder activism.

Due to its legislative backing (and the increasing success that activism is enjoying) shareholder activism is not something that should not be ignored in the Australian context. It is important for representative boards of directors have a sound understanding of activism, and that they are well-advised on dealing with activists' concerns in the context of the Australian culture and its legal framework.

9. CORPORATE GOVERNANCE AND FIRM PERFORMANCE

The topic of corporate governance and firm performance represents a comprehensive and growing area of research internationally. In an Australian context, as elsewhere, there is a major difficulty in determining a causal relationship between corporate governance and firm performance (especially when it comes to the more subjective indicators of social, environmental and innovative performance). The results of empirical research in Australia remain firmly divided between 'some support', 'inconclusive support', and 'no relationship' between corporate governance and organisational performance (largely depending on the independent and proxy dependent variables chosen to represent the relationship). Psaros (2009) provided a comprehensive meta-analysis on the link between corporate governance and economic performance and outlined the positive indirect relationship that corporate governance provides as a facilitator of economic performance. It was noted by Psaros (2009) that the "... editorial from the journal *Corporate Governance: An International Review* provides an endorsement for the economic merits of corporate governance:

There has been much discussion recently about whether corporate governance makes a difference to the bottom line, that is, does corporate governance improve shareholder value? Whilst, in my view, the evidence, both academic and practitioner, points on balance towards the view that good corporate governance helps realise the value and create competitive advantage, this is more an intuitive feeling as the studies are trying to single out corporate governance variables that may affect performance and that is very difficult to do" (p. 32).

In an Australian context, Linden and Matolcsy (2004) examined whether corporate governance was directly related to firm performance and measured this by the Howarth Corporate Governance Score. Linden and Matolcsy (2004) found that there was no significant relationship between corporate governance and traditional measures of firm performance. Despite these findings, scholars, legislators, managers and investors alike remain convinced that corporate governance practices are nonetheless important measures for sustainable societal outcomes. Further research is obviously

needed to form statistical or thematic relationships in this regard, as the majority of research is now somewhat dated (especially now that Australian corporations are becoming increasingly proactive with their use of corporate governance practices as bases for positive market differentiation).

10. CORPORATE SOCIAL RESPONSIBILITY

Corporate social responsibility (CSR) has become a major factor in corporate governance in Australia over the past 20 years. In the practitioner sphere, the examination of CSR performance measures (specifically as corporate governance criteria) has been researched by a range of commercial firms (Baker & McKenzie, 2007; KPMG, 2005, 2006), as well as peak and professional bodies (Business Council of Australia, Centre for Corporate Public Affairs, CPA Australia and Volunteering Australia). As a result, a variety of indices have been developed by to evaluate the CSR performance of Australian companies, most notably: the St James Ethics Centre's Corporate Responsibility Index (2003), the Reputex SR Index (2005), and the Australian CSR Standards (AS 8003). In support of all these indices, the Australian Institute of Social and Ethical Accountability and Models of Success and Sustainability (MOSS) have emerged to provide guidance for corporations to implement, measure and report their CSR performance measures more effectively.

11. CONCLUSION

This article has provided an overview of the current legal and regulatory framework that underpins corporate governance in Australia and presents a review of the typical Australian entity ownership structures, board of director roles and responsibilities, along with concomitant remuneration strategies recommended by the Australian Stock Exchange Corporate Governance Council (ASX CGC) in 2019.

Future research in Australia should be focussed on what can be done to achieve effective governance and appropriate culture within corporate Australia. As highlighted in the Australian Prudential Regulation Authority (APRA) Report in 2018 which found a number of prominent cultural themes such as a widespread sense of complacency, a reactive stance in dealing with risks, being insular and not learning from experiences and mistakes, and an overly collegial and collaborative working environment which lessened the opportunity for constructive criticism, timely decision-making and a focus on outcomes which impacts on the over corporate governance of an entity. This was further emphasised by Hayne (2019) in his Final Report: Royal Commission into the Misconduct in the Banking, Superannuation and Financial Services Industry where he noted that "... boards and senior

executives who bear primary responsibility for what has happened, close attention must be given to their culture, their governance and their remuneration practices" (p. 4).

Hayne further stated that the responsibility for corporate conduct lies with the board, and this has consequences for the board's role, priorities and accountability measures into the future. He has very clear expectations that Australian boards will need to probe senior management and ensure accountability. To ensure that occurs, boards will need to ensure that they are provided with timely information of sufficient quality (and the Commissioner has emphasised quality over quantity) to ensure they are able to do so. In the post-Royal Commission landscape, boards will need to ensure that they are across significant matters arising in the business more than ever.

Finally, corporate social responsibility (CSR) has become a major interest and issue for many global organisations and certainly a major factor in corporate governance in Australia. The growing interest towards a sustainable society requires a new type of leadership that promotes CSR's ideals. Interestingly, Australia currently does not have mandatory reporting albeit many companies report voluntarily on social and environmental performance to meet annual disclosure obligations and demonstrate a commitment to corporate social responsibility (CSR) and future research can examine the affects of mandatory reporting requirements and the impact on the overall governance framework. Over a decade ago, both the Parliamentary Joint Committee on Corporations and Financial Services and the Corporations and Markets Advisory Committee released reports examining the extent to which Australian companies should adopt corporate social responsibility. The reports concluded that corporate social responsibility can be an important means for companies to manage non-financial risks and maximise their long-term financial value.

The complexities of the relationship of CEOs and board with respect to CSR deserve further large-scale investigation since current governance theory does not explain this well. The topic of board member skills warrants further research, as the findings by Backhouse (2014); Backhouse and Wickham (2017) highlight major gaps within ASF's board's skill set and experience, which was similar to findings by Ambachtsheer, Capelle, and Lum (2007). Ambachtsheer et al. (2007) quite rightly point out that board expertise and knowledge affect board practices including strategic thinking. Drucker (1976) was also concerned that the US lacked well-governed boards and advocated for professional rather than amateur boards with relevant and composite skill and experience sets.

One limitation of this research relates to the country-specific location of the research effort. It could usefully be expanded to include the United Kingdom.

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