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**Professor Anona Armstrong AM
Editor**

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Victoria University's College of Law & Justice, which has sponsored the Journal for the past five years, has completed a memorandum of agreement with the Chinese Northwest University of Law and Political Science. The Law Schools of both Universities will jointly host the Journal under its new name of *Journal of Law and Governance*. The Journal will continue to be listed with EBSCO.

I wish to thank the founding Editors, Professor Ronald Francis, Associate Professor Arthur Tatnall and Dr Kumi Heenetigala and all the Members of the Review Board and those experts in their field who contributed so much to the Journal during its first ten years.

With the change in name, it is timely to refresh the Board. The Journal is seeking a new Editor and inviting new and old Members to join a new Editorial Board. People who are interested in applying for these positions are invited to send an application with a CV to the Editor: Professor Anona Armstrong (anona.armstrong@vu.edu.au) College of Law and Justice, Victoria University.

All articles published in this journal are subject to a process of blind review by at least two reviewers before selection for publication by the Editorial board.

Submissions are welcome for research articles of between about 5,000 and 10,000 words in any area relevant to the journal's wide coverage. Potential articles should, in the first instance, be sent to: Kumi Heenetigala, Victoria University: kumi.heenetigala@vu.edu.au

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Journal of Law and Governance

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Editorial

This year, 2015, the *Journal of Business Systems, Governance and Ethics* celebrates its tenth anniversary. During the past ten years it has provided an avenue for publication of the wide range of views and research that reflect an appreciation of what the term ‘governance’ entails.

Sir Adrian Cadbury left with us his influential definition of corporate governance:

Corporate Governance is concerned with holding the balance between economic and social goals and between individual and communal goals. The corporate governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim is to align as nearly as possible the interests of individuals, corporations and society”¹.

Moving from the philosophical values espoused by Cadbury, a more functional definition is that of the ASX Principles of Good Corporate Governance for listed companies:

Corporate governance is the system by which companies are directed and managed. It influences how the objectives of the company are set and achieved, how risk is monitored and assessed, and how performance is optimized. Good corporate governance structures encourage companies to create value (through entrepreneurship, innovation, development and exploration) and provide accountability and control systems commensurate with the risks involved.²

As the adoption of governance became more accepted, so too did aspirations for what it could achieve. At the same time that governance structures ensured good management and performance for shareholders (Stewardship and Agency theory), through transparency and accountability (Transparency International, OECD), good governance was also expected to build a corporation’s legitimacy through integrity, reputation, and public confidence (Stakeholder and Legitimacy theory). The very variety of these purposes for governance raised different views about what ‘governance’ means to different disciplines. The systems that drive the data for performance management belong to the IT profession, and accountants claim ownership of the reports that ensure accountability. Corporate integrity and ethical behaviour belong to everyone, but are assuredly the province of ethicists. The legal ramifications of governance are enshrined in Corporations Laws so lawyers are concerned about corporate boards and their legal duties and responsibilities.

It was this variety of views, combined with the interests of the founding Editors, that prompted the original name for the Journal: the Journal of Business Systems Governance and Ethics. As the study of governance has matured, the discipline of governance appears to have gathered together aspects from all the disciplines and to have advanced across borders that include the private, public and non-profit sectors, many languages and international boundaries. So too, has the regulation of governance grown as it has become subject to legal mandates. In this context, it is timely to review the name and focus of the Journal.

With this Edition, It gives me pleasure to announce a change of name to the Journal. The College of Law & Justice which has sponsored the Journal for the past five years, has completed a memorandum of agreement with the Chinese Northwest University of Law and Political Science. The Law Schools of both Universities will jointly host the Journal under its new name of **Journal of Law and Governance**. Contributions have previously been received from Europe, America, Africa, the United

¹ Sir Adrian Cadbury in ‘Global Corporate Governance Forum’, World Bank, 2000.

² ASX Principles of Corporate Governance 2003, 2007

Emirates and many Asian countries. We hope that the collaboration with Northwest Chinese University will encourage even more submissions from China.

The name change will not affect its ISDN number or its registration with EBSCO. The Journal will continue as a peer reviewed journal covering the wide context that is governance and being distributed from Victoria University. However, in future, editions of the Journal can also include translations and Chinese language papers. This requires further support from our Chinese partners.

The Journal is seeking a new Editor and inviting new Members to join the Editorial Board. People who are interested in applying for these positions are invited to send an application with a CV to the Editor: Professor Anona Armstrong (anona.armstrong@vu.edu.au) College of Law and Justice, Victoria University.

Volume 10, (1) presents papers which address some of the current governance issues that have emerged in regard to governance within boards, and how it affects their performance. Professor Guo, in his paper on judicial intervention, points out that corporations laws, parts of which are adopted in articles of association, places shareholders' rights at the core of the duties and responsibilities of directors. However, good governance demands a response to the correction of unjust, unfair, or discriminatory corporate decisions approved by a board and which might be shielded by this statutory law. His paper argues that judicial intervention is required to address such governance issues and questions how, and how far, should courts intervene in such cases.

Among current issues of concern to researchers is the role of diversity on boards. Diversity among directors can include their age, gender, education, disability and cultural heritage. Professor Michael Adams and Grace Borsellino review the debates around the world on the value of the various measures being taken to promote gender diversity via quotas, targets, mandatory law and other means. They conclude from their analysis that the glacial pace of change in gender diversity on boards means diversity will probably need specific regulatory intervention. Complementing this paper is an analysis by Song which provides an excellent analysis of the changes in female participation on Australian company boards from 2001 to 2010. Song found that while there has been an increase in the representation of female directors, their membership differs across industries and their roles are likely to be as members of the finance and remuneration committees. The findings of these two articles examining the effectiveness of existing gender diversity initiatives support the need for new corporate governance proposals if gender diversity is to become a reality on company boards.

Research into board effectiveness often examines its relationship with firm performance. Professor Michael Wildenauer's article is a review of the literature in which the effectiveness of a board is measured by behavioural characteristics such as cohesiveness, culture, relationships and task performance.

Research governance in the paper by Davies refers to the effectiveness of decisions made at board level when a health organisation engages in clinical trials. The concept of research governance is a relatively new area for research. Usually a board will be responsible for approving the conduct of the research and allocation of the funds and other resources required. However, where the research involves humans, ethical clearance will be required and boards, project managers and experts in the relevant field will have different roles in the decision process. The governance issues involve not only the process for approval or not, but also who makes which decisions and when. Bernice Davies takes the Australian Mutual Acceptance (NMA) program as a case study. The aim of NMA is to control the time taken to approve clinical trials across multi-sites. Bernice has developed a conceptual framework based on institutional isomorphism theory to describe relationships between hospital boards and NMA performance outcomes of timeliness, value and quality.

The final paper in this journal also addresses board effectiveness, Dr. Keith Thomas and Dr. AJ Purcell develop an "interpretative lens" by which to assess the effectiveness of an audit committee. While there are numerous publications on board structures and the skills needed for membership of a

committee of audit, there is a gap in knowledge relating to the effectiveness of public sector audit committees. This paper examines the behaviours exhibited by an audit committee and the interrelationships between formal processes and power structures. The authors add that the attributes and responsibilities of audit committees are influenced by the principles of integrity, accountability and impartiality, as well as leadership from the audit committee and trust relationships.

In conclusion, Vol. 1 of the journal, published under our new name of Law and Governance, takes us on the next stage of development. As the ASX points out, governance is about how the objectives of the company are set and achieved, how risk is monitored and assessed, and how performance is optimized. But it also has the higher aim as Cadbury said “to align as nearly as possible the interests of individuals, corporations and society”. This issue of the journal shows that governance research has moved beyond its initial contributions to systems and performance management and is delving deeper into the behavioural characteristics and human elements essential for achieving good governance.

The Editorial Board hopes that the inclusion of the first of our papers in Chinese and English will extend the range of the Journal and the contributions from our readers.

The papers for Volume Ten of the Journal were sourced from papers presented to the Governance and Law Conference held at Victoria University in 2015. Papers were both invited and peer reviewed. The four 2015 issues of the journal address board effectiveness, governance issues within the private sector, public sector governance and corporate social responsibility and ethics.

Comments from our contributors are welcome as are applications to join the Editorial Board.

My sincere thanks are extended to the Board Members, reviewers and especially to Dr. Kumi Heenetigala and Victoria University for managing the journal and its publication.

Professor Anona Armstrong AM
Editor

Is There a Positive Link Between Corporate Governance and Board Diversity?

Lessons from Asia

Michael Adams and Grace Borsellino

Western Sydney University, Australia

Abstract

One of the long term research questions for the multi-disciplinary study of corporate governance, has been the link between good governance and share price or other measures of value. This has been quite difficult to establish in either the legal or finance or management disciplines, but there appears to be clear evidence of corporate sustainability where quality governance practices are applied consistently. Isolating out individual factors, such as board structures, specific cultures and corporate policies, has been particularly difficult as there are so many permutations. There currently exists a significant volume of global research on the role of gender, as a part of the board composition and there are positive returns, with some caveats. This paper begins to examine and question as to whether there are positive links to a broader concept of board diversity, including gender, age and ethnicity. There have been a number of developments across Asia, including Japan, China, Singapore and Hong Kong, which provide a different paradigm from the traditional Australian comparisons with United Kingdom, America and even Europe. The hardest question is whether we should have targets or mandatory quotas.

Introduction

The last twenty years have seen various theories on corporate governance, from a wide variety of disciplines. Corporate governance has been measured by financial returns, sustainability (longevity), corporate social responsibility (CSR), board structures and their composition. Thus, mandating a particular board composition with specific types of directors is controversial. Pressure from overseas countries initiatives, stakeholders, governments, stock exchanges and human rights advocates, are demanding change. Globally the gender debate has been central to research and composition focus, but the actual diversity of board membership goes far beyond just the issue of a director's gender.

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This paper will look at whether there is a positive link between corporate governance and board diversity and lessons to be learned from Asia. Gender is a key aspect of diversity, but other attributes, such as race with cultural heritage (expressed as “ethnicity”), education, professional backgrounds and age are critical factors in boards' composition. It is the right time for boards to start to look at diversity as a

holistic issue and prioritise the inclusion of members from different national origins, socioeconomic groups, educational backgrounds, variety of ages and gender. Successful companies demonstrating the many benefits of having a diverse board of directors will be the best proof of success.

Currently diversity with reference to gender is being promoted in Europe through mandatory measures. Germany recently passed a law that requires some of Europe's biggest companies to give 30 percent of supervisory seats to women commencing 2016¹. In passing the law, Germany joined a trend in Europe to accomplish what has not happened organically, but to legislate a greater role for women in boardrooms.

However, other countries such as Australia and the UK have taken an anti-quota approach. The "30% Club" is becoming an international, business-led approach focused on developing a pipeline of senior female talent. It is complementary to individual company efforts and existing networking groups – adding to these through collaboration and the visible commitment of senior business leaders.²

The lack of gender diversity on boards has received the most attention because of the discrepancy of women who are graduates, employees and customers and their limited representation in key decision-making roles within companies. The Stock Exchange of Hong Kong, made it clear that diversity includes gender, age, cultural/educational background, and professional experience.³

The 2015 Korn Ferry study of boardrooms at the top 100 companies based on market value in 10 major Asian economies, including Australia, China, Hong Kong, India, Indonesia, Japan, Malaysia, New Zealand, Singapore and South Korea, found a need for boards to make strategic talent decisions in ensuring parity in gender, age and educational attainment as boards continue to be dominated by senior male executives.⁴

Corporate governance

Commentators often speak of corporate governance as an indefinable term, something akin to love, joy or even happiness, which we essentially know the nature of, but for which words do not provide an accurate picture. The Australian Securities Exchange (ASX) Corporate Governance Council Principles (2014) attempt to define,⁵ as did Justice Neville Owen as the Royal Commissioner in HIH Insurance collapse investigation. In the Final Report of the Royal Commission set up to investigate the collapse of HIH Insurance Ltd, stated:

¹ Alison Smale and Claire Cain Miller, 'Germany Sets Gender Quota in Boardrooms', *New York Times* (online), 6 March 2015 <http://www.nytimes.com/2015/03/07/world/europe/german-law-requires-more-women-on-corporate-boards.html?_r=0>

² 30 Percent Club, (31 March 2015) <http://30percentclub.org/wp-content/uploads/2015/03/About30pcClub2.pdf>.

³ Korn Ferry Institute, *The Diversity Scorecard 2013: Measuring Board Composition in Asia Pacific* (2013) 17 <<http://www.kornferryinstitute.com/reports-insights/diversity-scorecard-2013-measuring-board-composition-asia-pacific>>.

⁴ Korn Ferry, *Diversity Matters: Adding Colour to Boards in APAC* (2015) 3

⁵ Australian Securities Exchange Corporate Governance Council, *Corporate Governance Principles and Recommendations*, (3rd edition, 2014) Australian Stock Exchange, .

“Corporate governance – as properly understood – describes the framework of rules, relationships, systems and processes within and by which authority is exercised and controlled in corporations.”⁶

We may not all agree with the precise construction of the definition of corporate governance, but just like the world of “art”, we all recognise it when we see it. A much more significant and deeper question is **what are the benefits of good corporate governance practices?**

Benefits of good governance

The bigger issue is demonstrating that there are actual benefits to good corporate governance.⁷ There is overwhelming corroborative and empirical evidence as to the impact of sustainability in governance, such as Klettner, Clarke & Adams (2010)⁸ in the report on the implementation of the ASX Corporate Governance Principles between 2003 and 2007. Professor Adams (2012) stated “There are numerous studies as to the benefits of corporate governance for global entities, whether they are transnational corporations or the more traditional multinational companies. Around the globe, by far the majority of business entities are privately owned (and/or family businesses) with a small percentage being quoted on a local stock exchange, in a single legal jurisdiction.”⁹

Impressive data was produced by Professors Claessens and Yurtoglu (2012)¹⁰ which examined the corporate governance literature over the last decade from economics, finance, management and legal scholarship in many countries and jurisdictions. Their amazingly detailed survey of literature provides evidence of the importance of corporate governance at a number of economic points. Clear evidence is provided for a link between economic development and corporate governance based on the extensive studies.

The extensive cross-country research demonstrates financial development. Examples of sophisticated and quality banking systems, is a powerful determiner of sound economic growth. Weak corporate governance can be seen to prevail in financial markets that tend to function poorly by global standards. Poor governance increases market volatility and lack of transparency creating the effect of unfair markets. Countries and companies adopting best practices in corporate governance are not guaranteed success, but provide evidence of a clear move towards sustainability and establishing long-term success.

⁶ The HIH Royal Commission Report, ‘Reasons for the failure: A broad perspective, National Capital Printing, Canberra, 2003, 101.

⁷ Michael Head, Scott Mann, Simon Kozlina, ‘Transnational Governance: Emerging Models of Global Legal Regulation, (2012) *Ashgate* and Anona Armstrong, ‘Corporate Governance Standards: Intangibles and Their Intangible Value’ (2004) 17 (1) *Australian Journal of Corporate Law* 97 cited in Michael Adams, ‘Global Trends in Corporate Governance’ (2012) 64 (9) *Keeping Good Companies* 516.

⁸ Alice Klettner, Thomas Clarke and Michael Adams, ‘Corporate governance reform: an empirical study of the changing roles and responsibilities of Australian boards and directors’ (2010) 24(2) *Australian Journal of Corporate Law* 148.

⁹ Michael Adams, ‘Global trends in corporate governance’ (2012) *Keeping Good Companies* 516, 516.

¹⁰ Stijn Claessens & Burcin Yurtoglu ‘Focus 10: Corporate Governance and Development – an update’, Global Corporate Governance Forum, 2012 <<http://www.ifc.org/?>>

Diversity within board structures and composition

The actual board structure (number of directors vary from three to a maximum on the board, plus the role of board committees, such as audit, nominations, risk etc) and the board composition (the skill and competency set expected to be an effective board) are quite distinct concepts. Most Anglo-American based companies will have a unitary board – that is a single board of directors who oversees the management of the company. The European traditions like Germany and France have adopted a bilateral board structure, with a distinct advisory board and representative board with employees elected to specific roles. The focus on unitary boards and their size (average is 8.4 with a normal distribution between 8 to 12 members is the most common)¹¹ has been examined in depth.

Board composition is who actually makes up the board of directors and will vary depending upon factors. These include accepted research by McIntyre (2011) published in *Tomorrow's boards* by the Australian Institute of Company Directors a list of competencies a board member should have, including strategic expertise; accounting/finance; legal; managing risk; managing people; familiarity with financial markets and industry knowledge. The following personal qualities are listed for a successful person to have integrity; business acumen; curiosity; courage; interpersonal skills; genuine interest and be an active contributor. Board effectiveness can be improved by a boardroom culture of mutual respect, honesty and openness that encourages constructive debate and a diversity of experience, styles, age, gender and cultural backgrounds.¹²

Galacho suggests that boards are being urged to look beyond gender diversity and seek specific skills needed for future markets survival. “There is a strong call for directors with experience in capital markets, risk management and information technology and cyber security. Any broadening of the search criteria and greater scrutiny by nominations committees and shareholders is usually good news for women seeking board roles.”¹³

The need for diversity in specific skills is emerging when board appointments are considered to enable companies to keep up with future markets and the change required to survive. Birmingham suggests that for company directors, change is the new main game and digital skills in particular are being sought during board appointments. “For board appointments, it is now the norm for clients to want to see at least some element of digital on their CV. In the beginning, ‘digital experience’ was a rather wide-reaching term, and involved anything from successfully setting up online commerce through to rolling out the technical underpinnings of online. Nowadays the digital experience required at board level is very much focused on business transformation.”¹⁴

¹¹ Korn Ferry Institute, *The Diversity Scorecard 2013: Measuring Board Composition in Asia Pacific* (2013)12 <<http://www.kornferryinstitute.com/reports-insights/diversity-scorecard-2013-measuring-board-composition-asia-pacific>>.

¹² Anthea McIntyre, *Tomorrow's boards* (AICD, 2011) 17.

¹³ Olga Galacho, ‘Boards urged to look beyond diversity’, *The Australian Financial Review* (online), 6 February 2015. <<http://www.afr.com/news/special-reports/corporate-reporting/boards-urged-to-look-beyond-diversity-20150205-141pdq>>.

¹⁴ Andrew Birmingham, ‘For company directors, change is the new main game’ *The Australian Financial Review* (online), 6 February 2015. <<http://www.afr.com/news/special-reports/corporate-reporting/for-company-directors-change-is-the-new-main-game-20150205-141pcj>>.

The make-up of the board is absolutely critical to the success of the company and the composition is impacted in terms of both gender and the broader meaning of diversity. There are a variety of definitions of what is meant by diversity of board membership.

In both studies by Kang, Cheng and Gray (2007)¹⁵ and Wang and Clift (2009),¹⁶ it was stated that “among the most significant governance issues currently faced by the modern corporation is board diversity and independence.” Similarly it was observed that “some progress but the corporate boards in United Kingdom, United States of America and Australia remain dominated by white males and the homogeneity of corporate boards may raise significant ethical, political and economic issues, while women and minorities are continuing to become a larger proportion of the workforce.” The empirical evidence provided in these studies supports an equity argument for increased diversity.

The commentary on Recommendation 1.5 of the ASX Corporate Governance Principles and Recommendations states that “It should be noted that while the focus of this Recommendation is on gender diversity, diversity has a much broader dimension and includes matters of age, disability, ethnicity, marital or family status, religious or cultural background, sexual orientation and gender identity.”¹⁷ The 2009 CAMAC Report on diversity, has a focus on gender, age and ethnicity as the major components. More explicitly in the conclusions, it stated “In relation to board diversity in Australian public listed companies, gender is just one, if one of the most obvious, of the measures of board diversity. Similar issues may arise with age, ethnicity or other measureable or less tangible aspects of differentiation.”¹⁸

Alicia Tia and Alice Tan provide a useful definition of diversity, by stating: “Diversity will be an important factor in determining future winners in Asia Pacific, one of the world’s most exciting and dynamic markets. The real question is whether boards and senior leadership are fully prepared to guide companies in this environment and to take Asia Pacific enterprises to the next level.”¹⁹ Du Plessis²⁰ suggests that ‘diversity’ at board level encompasses a number of human attributes, of which gender is but one’.

Diversity Council Australia 2014 research, has revealed ‘the bamboo ceiling’ and why so few Asian leaders are reaching boards. It has been recognised that a lack of cultural diversity is present and needs to be addressed. While 9.3% of the Australian labour force is Asian born, only 4.9% make it to senior executive level. In ASX 200 companies, only 1.9% of executives have Asian cultural origins, compared to 9.6% of the Australian community.²¹

¹⁵ Helen Kang, Mandy Cheng and Sidney Gray ‘Corporate governance and board composition: diversity and independence of Australian boards’ (2007) 15(2) *Corporate Governance* 194.

¹⁶ Yi Wang and Bob Clift ‘Is there a business case for board diversity?’ (2009) 21(2) *Pacific Accounting Review* 88.

¹⁷ Australian Securities Exchange Corporate Governance Council, *Corporate Governance Principles and Recommendations*, (3rd edition, 2014) 12.

¹⁸ Corporations and Markets Advisory Committee, *Diversity on boards of directors report*, (March 2009) 51.

<<http://www.camac.gov.au/camac/camac>>.

¹⁹ Korn Ferry Institute, *The Diversity Scorecard 2013: Measuring Board Composition in Asia Pacific* (2013) 4

<<http://www.kornferryinstitute.com/reports-insights/diversity-scorecard-2013-measuring-board-composition-asia-pacific>>

²⁰ Jean Du Plessis, James O’Sullivan and Ruth Rentschler, ‘Multiple Layers of Gender Diversity on Corporate Boards: To force or not to force?’ (2014) 19 (5) *Deakin Law Review* 1, 3.

²¹ Diversity Council Australia, *Cracking the Cultural Ceiling: Future Proofing Your Business in the Asian Century* <http://www.dca.org.au/dca-research/cracking-the-cultural-ceiling.html#sthash.PAsnIR5t.dpuf>.

Patrick Rooney reports in relation to the Diversity Council Report that “61% of Asians in Australian firms felt they needed to conform to Western leadership models. In a practical sense this means they felt they needed to be more assertive and engage in self-promotion. At the same time, they felt Asian cultural attributes related to reserve and respect for seniority were misinterpreted. Businesses need to change the measures of success and do more to actively promote diverse leadership teams.”²²

Credit Suisse 2014 report demonstrates the financial benefit of women to the company’s financial performance.²³ The Australian Council of Superannuation Investors²⁴ announced that it has launched an initiative aiming to have women comprise 30% of all boards in ASX 200 companies within the next three years. Anecdotal evidence, clearly stems from reports such as those produced by The KornFerry Institute, which quotes the Chair of Telstra Ltd, Catherine Livingstone as saying “While diversity of gender is desirable on boards, diversity of skills, experience and ideas are of equal importance”.²⁵ KPMG in 2014 provided analysis on disclosures in financial years ending between 31 December 2012 and 30 December 2013. Primary finding is that there is a need to “recognise the benefits of diversity”.²⁶

A snapshot study of board composition was conducted in January 2015 in relation to a sample of the top 100 ASX listed companies. Table 1 illustrates the average age on boards can vary from, 57 years, (Woodside Petroleum) and to 61 years (CSL Ltd). The average age does not appear to be diverse at all. In contemporary society the essential talent and skill sets, should not be limited to an over 50s club. There are many fresh, fast and progressive ideas that could be influencing ASX boards in a positive way. There are very few board members in their 40s. In relation to ethnic background the data shows there is little diversity at all. The predominant backgrounds of Australian directors on the ASX are very homogenous.

The data in Table 1 for ethnicity is based upon public information. The overall picture shows that there is remarkable uniformity on Australian boards and this can be contrasted with the jurisdictions examined in the Korn Ferry Asia-Pacific board diversity report in 2013.²⁷

International perspectives and lessons from Asia

The international experience with diversity of board membership is not as clear as one might expect. Clearly many countries have a continuing focus on gender on board membership and some countries are encouraging diversity. The evidence is mixed as to the success of any one country having a larger

²² Patrick Rooney, ‘Breaking the Bamboo Ceiling’ *Blue Steps* (online), 9 February 2015
<<https://www.bluesteps.com/blog/breaking-bamboo-ceiling>>.

²³ Credit Suisse Research Institute, ‘*The CS Gender 3000: Women in Senior Management*’ (September, 2014)
<https://publications.credit-suisse.com/tasks/render/file/index.cfm?fileid=8128F3C0-99BC-22E6-838E2A5B1E4366DF>

²⁴ Gordon Hagart, *ACSI sets 2017 goal for 30% women on boards* (5 February 2015) The Australian Council of Superannuation Investors
<http://www.acsi.org.au/images/stories/ACSIDocuments/MediaReleases/05.02.15.Media_Release.WoB_Policy.pdf>

²⁵ Korn Ferry Institute (2014) “*Beyond if not, why not: The pathway to directorship for women in leadership*”
<http://www.kornferryinstitute.com/reports-insights/beyond-if-not-why-not-pathway-directorship-women-leadership>>.

²⁶ KPMG, ASX Corporate Governance Council Principles and Recommendations on Diversity: Analysis of disclosures for financial years ended between 31 December 2012 and 30 December 2013 6.

²⁷ Korn/Ferry Institute, *The Diversity Scorecard 2013: Measuring Board Composition in Asia Pacific* (2013)
<<http://www.kornferryinstitute.com/reports-insights/diversity-scorecard-2013-measuring-board-composition-asia-pacific>>.

diversity on boards or even increasing the female directorship, except where there are mandatory quotas with consequences, if companies fail to reach those requirements. Norway, with its 40% requirement is leading the way, but other European and some Asian countries are following such a drastic approach to accelerate what should be occurring either naturally or voluntarily.

Table 1: Top 100 ASX listed companies by market capitalisation and diversity²⁸

CBA	11	3	27%	61.2	1	No 1 \$145billion
Westpac	9	4	44%	58.8	0	No 2 \$108b
BHP	14	3	21%	62.1	0	No 3 \$94b
ANZ	8	2	25%	59	1	No 4 \$91b
NAB	13	2	15%	60.3	2	No 5 \$86b
Telstra	10	3	30%	60.3	1	No 6 \$79b
Westfarmers	12	3	25%	58.8	0	No 7 \$49b
CSL Ltd	8	2	25%	61.6	0	No 8 \$42b
Woolworths	12	3	25%	61.5	1	No 9 \$40b
Woodside Pet	9	2	22%	57.6	0	No 10 \$28b
IAG	9	3	33%	57.8	1	No 20 \$15b
Computershare	7	2	28%	59.2	0	No 50 \$6.5b
Flight Centre Travel	5	1	20%	51.8	0	No 75 \$3.8b
Adelaide Brighton	6	1	17%	60.3	0	No 100 \$2.3b

Source: *SMH Top 100 Companies (30 Jan 2015) and annual reports*

The 2015 The Korn Ferry Diversity Scorecard Report²⁹ provides some valuable independent data across ten Asian countries on board membership. This was the third comprehensive study of corporate boards at the 100 largest listed companies by market capitalisation for each country. The report findings highlight that in a few countries, most notably Australia, has the highest proportion of women directors in the region and the 2013 reports concluded that Australian companies are beginning to fundamentally reshape their boards to embody a diverse set of professional experience, personal background, expertise and gender. Conversely, companies in countries such as Japan and Korea have made little progress in this area, undergoing issues that could limit their prospects when squeezed between more progressive companies in the U.S and massive players from China.

The research demonstrates that the age diversity issue appears in boards across eight Asian markets. In particular, both China and Hong Kong have the highest percentage of companies with directors from two or more generations. Whilst, Japan has the highest percentage of companies with a single generation boards, followed by South Korea. The research use labels such as baby boomers, generation X and generation Y as descriptors. It has been stated that “Australia was placed fourth out of 50 nations in Forbes’ 2012 ‘global index of employee diversity’, a study analysing various diversity elements, including gender, age, country of birth, part-time or full-time employment, education,

²⁸ Michael Adams and Grace Borsellino, ‘The unspoken reality of diversity on boards’ (2015) 67(2) *Governance Directions* 78, 79.

²⁹ Korn Ferry, *Diversity Matters: Adding Colour to Boards in APAC* (2015) 38.

income and sector. New Zealand, one of Australia's nearest neighbours in proximity and cultural values, ranked second."³⁰

Should we have targets or mandatory quotas?

Australia in relation to this question has been trying the voluntary process, there does not appear to be a lot of change. The pace has been quite glacial and slow. It may be inevitable however that Australia could very well follow what Germany has implemented with their mandatory legislative approach in order to pick up the pace in the race towards change.

Examples from the Asia Pacific region include India as the latest country to have opted for quotas to boost female representation, with a law requiring every listed company to have at least one female director within one to three years, depending on the size of the company.³¹

Australia's rate of change in female board representation has been described as 'glacial' by Blackrock³² (2013), they quote stats of 18.2% of directors of ASX200 companies are female and 41 companies have all female boards. For ASX201-300 companies the percentage falls to just 7.6% in the Board Diversity Index 2013.³³ Four years after the ASX Guidelines adopted a diversity disclosure provision, the KPMG study shows it is evident that many organisations still have a long way to go in terms of establishing clear and measurable objectives and working to improve the number of women on boards."³⁴ Many nations are now developing either mandatory diversity requirements or detailed targets over the next five years. This will see rapid change in governance, disclosures and information. In the Asia Pacific region³⁵ include in June 2011, Malaysia announced that its cabinet approved a policy that women must comprise at least 30% of decision-making positions and the Monetary Authority of Singapore in May 2012 approved a revised Code of Corporate Governance for companies listed on the Singapore Stock Exchange.

The international debate regarding the relative benefits of quotas and targets in achieving gender diversity on boards has proved hotly contested over the last decade. In major European countries mandatory quotas were adopted, while in Australia and other countries the voluntary setting of targets has been encouraged. Quotas secure substantial change through compliance, while targets may encourage change through strategic initiatives. Debates about women on boards have focused on measures designed to achieve equality of access and across countries governmental approaches may be categorised as 'hard' or 'soft'. Hard strategies involve more coercive means of achieving equality of outcomes such as legislation for affirmative action and quotas. The soft strategies involve

³⁰ Jean Du Plessis, James O'Sullivan and Ruth Rentschler, 'Multiple Layers of Gender Diversity on Corporate Boards: To Force or Not to Force?' (2014) 19(1) *Deakin Law Review* 1, 31.

³¹ Korn Ferry, *Diversity Matters: Adding Colour to Boards in APAC* (2015) 36.

³² Blackrock, Glacial change in diversity at ASX200 companies: can Australia escape the imposition of diversity quotas? *Blackrock, Australia* 2013. <https://www.wgea.gov.au/sites/default/files/BlackRock_Glacial_Change_in_Diversity_at_ASX200_companies.pdf> Accessed on 28 November 2014.

³³ See <www.womenonboards.org.au>.

³⁴ KPMG, ASX Corporate Governance Council Principles and Recommendations on Diversity: Analysis of disclosures for financial years ended between 31 December 2012 and 30 December 2013 18.

³⁵ Korn Ferry Institute, *The Diversity Scorecard 2013: Measuring Board Composition in Asia Pacific* (2013) 4 <<http://www.kornferryinstitute.com/reports-insights/diversity-scorecard-2013-measuring-board-composition-asia-pacific>>.

persuasion of market actors to achieve equality of access. The development of these strategies also involves stakeholder engagement which may be classified as coercive eg legislation for quotas; liberal which promotes voluntary actions by corporate actors, and collaborative which involves co-operation amongst stakeholders.³⁶

To resolve the low level of female participation in boards, the two most discussed forms of regulatory intervention are to set gender targets or quotas. These can be imposed as mandatory by law, with sanctions if they are not achieved, for example, Norway's quota of 40% women on boards or Germany's recent legislative approach. Alternatively, they can be softer in nature, for example the UK's recommendation of a target of 25% women on boards which has raised expectations even though adoption is formally voluntary. Both of these methods have been effective at spurring an increase in numbers although it is still too early to judge the effectiveness of the UK's voluntary approach.

Conclusion

The evidence is clear; there is a need for diversity in the composition of the board of directors of listed and major public companies. The real question is whether the use of quotas or mandatory target is the way forward. The glacial pace of change for gender on boards means diversity will probably need specific regulatory intervention in the next five years for Australia.

Judicial Intervention to Corporate Governance: Causes and Approaches

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Introduction

A corporation is a legal person with group personality created by the law and is considered to have the freedom of autonomy as a subject of private law. A corporation is also considered as shareholders' tool to pursue profit just like a kite flown by shareholders especially substantial shareholders. A corporation is considered as a contractual combination, a gathering place of stakeholders and constituting a cell of society. A corporation is described as a Utopia. ...With different interest claims, subjects such as management, shareholders, directors, creditors, employees and others who coexist in a corporation through the certain formal structure of corporate governance.

Whether according to opinion which demands building a corporate governance structure with shareholder's rights as the core, or according to corporate contract theory, which stresses that multiple stakeholders should be subject to a common governance, a corporation always depends on articles of association to realize its autonomy. It seems to be an independent kingdom with a high-degree of autonomy relying on a rights and obligations structure between corporate stakeholders that is constructed by the inner system of board of shareholders, board of directors, managers and board of supervisors. Based on either theoretical analysis or empirical study, the feascance or nonfeascance of company, shareholders, directors and other subjects usually leads to low efficiency, invalidity, injustice and inequality and unbalanced rights during corporate governance. However, the corporate autonomy mechanism is not able to correct itself.

The various company laws in all countries inordinately improve corporate governance through shareholders' rights protection mechanisms by which shareholders protect their or the corporation's rights and ensure that a company runs efficiently through direct action and representative action. However, judicial intervention under this circumstance, just like other private rights protected by public power by virtue of judicial intervention, does not belong within the scope of issues discussed in

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the article. The judicial intervention to corporate governance discussed in this text, beyond the concept of "judicial nonintervention to corporate governance", refers to the judicial involvement and correction to the unjust, unfair and invalid or expired corporate performance shielded by the rights stipulated by the articles of association and resolutions of shareholder meetings affecting a corporation's operations (inner affairs management).

Judicial intervention includes the review and correction of discriminatory¹ and unequal corporate regulations, the resolution of obstacles to convening shareholder meetings and director meetings, special service or recall of company directors, the “tyranny” of prevention of majority decisions regarding capital expenditure which hampers justice, the prevention of director’s illegal behavior, the precaution of harmful connected transaction, etc. Such problems are difficult solve through inner settlement mechanisms within the scope of corporate governance, and therefore judicial intervention is required to make judgments and correction that will uphold justice and fairness.

Justice can satisfy the “need” of corporate governance, but the question is how to “supply” it? In other words, what is the approach of judicial intervention to corporate governance? Specifically, how to effectively construct a litigation system, judgment methods and the limitations to abide by in judicial intervention in corporate governance in the present judicial system? Should courts change their approach of judicial intervention from negative and hysteretic judgment to positive and beforehand intervention? Should the limited intervention turn to a broader scope? How can justice guarantee the company formal and healthy operation during its intervention to corporate governance? How can the effectiveness of the intervention be ensured? Accordingly, there are so many problems need researching. Due to the limitation of space and the author’s capability, the article makes an outline and preliminary discussion of the approach of judicial intervention to corporate governance.

Corporate governance needs judicial intervention

A system is a kind of evolutionary order. The historical track along which common law gradually established the limits to judicial intervention in a company through legal precedents has proved that corporate governance needs judicial intervention. The cause of the need can be analyzed from various perspectives² and this article tries to analyze and explain the necessity and importance of judicial intervention to corporate governance through combining two concepts of corporate governance—shareholder autonomy and stakeholder co-governance with the corporate effectiveness goal.

1. The need to protect the rights of minority shareholder under shareholder autonomy.

The traditional theory of company law insists on company law theory which considers that a company’s legal personality is just its superficial characteristic and shareholders are undertakers of owner’s equity and therefore the fundamental corporate nature is that of a shareholders’ investment tool. Shareholders occupy the core positions as company owners in corporate autonomy and hence modern company autonomy is shareholder’s autonomy in essence. The emergence and development of a company and company systems take place with shareholders as the core pushing power, and the function performance of the company system mainly depends on the realization of shareholder autonomy. However, the corporate governance with shareholder autonomy at its center indicates that the majority shareholders’ opinions will be adopted to deal with company business and management

¹ For instance, “the sales regulation that clients in Putian, Fujian province are recorded as dishonest clients” referred to in the arbitration between Alibaba and its employee in 2014, and the inner recruitment regulations with differentiation and discrimination about gender, health, education background, etc.

² Some scholars point out the necessity of legal interference into corporate governance based on multiple demands of power balance, the privatization of public law, reducing organization cost, improving long-run bargain, adjusting interest conflicts and enhancing cooperation between economic subjects. See Ren Zongli & Yu Qun, “The Legitimacy of Law Governing into the Corporate Governance from the Perspective of Legal Philosophy”.(2003)8 Journal of Shaoguan College.

affairs. Therefore, the majority shareholders in a company have the final decision-making right and their decision on any matter made through an ordinary or special resolution shall be binding on all shareholders. As to the matter decided by majority voting, the minority shareholders have to comply with the majority shareholders' will.³

According to theoretical study and practical observation, the majority shareholders take advantage of their controlling position to suppress the minority shareholders, to avoid certain items in articles of association or to gain the maximum interest and wealth from the company for themselves. When the majority shareholders abuse the so-called democratic rights arbitrarily the company will not ensure an even bargain and shareholders' individual rights will not be respected. The abuse of majority rule shows more obviously in a non-listed company, because "In a closed setting, the corporate norms of centralized control and majority rule can become instruments of oppression. Some decisions vitally important to participants, such as their employment and salary, are left to the board of directors to make. When harmony between participants disappears, the minority participants may find that the majority interest can manage the affairs of the corporation in unexpected ways. The minority dominating the board can terminate minority shareholders' employment as officers, thereby diminishing the return on their investments. The corporation may not pay dividends to any shareholders to avoid double taxation, yet the majority shareholders will continue to receive a return on their investment in the form of salary or perhaps rent or interest on money loaned to the corporation. Indeed, these amounts may increase after the minority shareholders are excluded.

Traditionally, the minority shareholders have had no way to protect themselves against such an occurrence. If minority shareholders attempt to establish a contract for protection against this possibility, such as by agreements that the minority shareholder retain a corporate office and a salary, courts earlier this century struck down the agreement as an unlawful interference with the unfettered discretion of directors. The performance of the corporate form further compounds the minority shareholder's dilemma. Without a job and in the absence of dividends, the minority shareholder may face an indefinite future with no return on the capital he or she contribution to the enterprise. The majority may even be able to deny the minority shareholders any return in the long run by siphoning off corporate assets in the form of high salaries or rents, insulated from judicial review by the business judgment rule. In addition, the majority may force the minority to leave the company with unjust excuses."⁴

There are many state-owned firms and family businesses among listed firms in China mainland. The traditional centralized economic system and cultural atmosphere have resulted in a highly centralized ownership structure in the listed companies. Moreover, the listed firms have a large number of shareholders who are retail investors. A majority of these can exchange shares frequently that is their collective "hitch-hiking" impacts on a corporation's share price, and negatively on corporate governance. All of these factors lead to the ubiquity of "insider control" in listed firms. In these firms, the controlling shareholders enjoy far more practical privileges than the minority shareholders, and they not only own the shareholders' rights but also manipulate and control the

³ See Joseph E. U. Abugu, "A Comparative Analysis of The Extent of Judicial Discretion In Minority Protection Litigation; The United Kingdom and United States," *International Company and Commercial Law Review* (2007) pp. 181-183.

⁴ R. B. Thompson, "The Shareholder's Cause of Action for Oppression ", (1993) 48 *Bus. Law.* p. 703.

practice of the rights of supervisors, directors, even operators. By taking advantage of their control on the general meeting of shareholders and the board of directors, the big shareholders reach resolutions so as to achieve their special purposes while disregarding, even infringing the rights and benefits of small investors. These sorts of disputes frequently occur in the listed companies in respect to affiliate transactions, and annexation of firms' properties.

The board of directors loses its independent status, which makes it difficult to achieve a decision independently and at the same time, fails to perform its function of supervision.⁵ There is an obvious shortcoming of company law; in response, it is reasonable to use resolutions of the shareholders' meetings to replace the common-interest rights of shareholders when the law lacks a legitimate basis to replace and suppress the self-interest actions of shareholders.

2. The demand of balanced protection for multiple interests under common governance

Based on the company contract theory⁶, a company is a nexus of contracts between shareholders, managers, employees, suppliers, customers, creditors and others. This paper argues that the company stakeholders should participate in its governance. For this purpose, it is necessary to build channels and platforms where multiple stakeholders can voice their demands and requirements; for staff, creditors and shareholders representing the interests of disadvantaged organizations, a third party is necessary to judge and correct unjust autonomous conduct, and properly protect the interests of each party.

A company is an individual pursuing profit from head to toe, or alternatively is a miniature cell in society that shoulders responsibility for workers, customers, community members, and the government; the debate will continue. In fact, the theory that shareholders are the center of corporate governance has dominated governance in mainland China. Company legislation and justice are deeply influenced by it.⁷

The shortcomings of company law are: since the relationships between controlling shareholders and minority shareholders, companies and directors, shareholders and directors, debtors and companies, shareholders and directors, and companies and staff are very complicated, and the habitual thought of governing companies centers on shareholders, company law neither emphasizes the rights or problems of many shareholders, nor sets an effective relief system. It is necessary to depend on and learn from some concepts and values in Anglo-American Law such as "fiduciary obligation" "judgment of

⁵ See Peng Zhenming, Lu Jian, Judiciary Intervention and Inner Governance of Listed Companies: the Dilemma of Localization and its Solutions, *Social Science Front* 2011(05), PP.197

⁶ See Michael C Jensen & William H Meckling, Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure, *Journal of Financial Economics* V.3.NO.4.PP.305-360 ; Frank H Easterbrook and Daniel R Fischel, The Corporate Contract, *Columbia Law Review*. Vol.89 P.1418; Easterbrook & Fischel, The Economic Structure of Corporate Law, Harvard University Press, 1991; Lucian Arye Bebchuk: The Debate on Contractual Freedom In Corporate Law, *Columbia Law Review*, V01.89, No.7, PP 1395-1415.

⁷ Some scholars think, the principle of autonomy of private law performance for shareholder autonomy in company law. See Jiang Daxing, Jin Jianfeng, On civil law character of company law -View position to examine the judicial position , *Journal of Nanjing University (Philosophy, Humanities and Social Sciences)*,No.1,2005, PP · 39-46;Chang Jian: Foundation, Value and Achievement of shareholders autonomy,2009, No.6, PP.49-62.In legislation, the legislative purpose of the company law and company organization structure, both embodies the shareholder autonomy theory; On the judiciary, the mainland court is generally not involved in internal disputes referee, is the concentrated reflection of shareholder autonomy theory.

operators” and “business judgment”, so that judges can discretionarily judge the legitimacy of shareholders and protect their rights and benefits in certain cases. In the Chinese mainland judicial system, it may be through the way of a Supreme Court case to guide the Primary Court firstly, and then by way of judicial interpretation, and ultimately by modifying the Companies Act, to determine the principles of judicial intervention on corporate governance, ways and necessary restrictions.

3. The demand of pursuing effective order in company governance

The realization of lawful order in company governance is through unification between company autonomy and national enforcement (legislative regulation and judicial intervention). The judicial intervention in company management substantially reflects the state’s will to correct company autonomy. Cheffins, a Canadian expert on company law analyzes judicial intervention in the operation of company from the dual goals of promoting efficiency and realizing fairness.⁸ When it comes to the goal of efficiency, firstly, it is necessary for the judiciary to get intervention since the problem of incomplete information, including the problem of systematic information and unbalanced information, may cause the existence of a gap in a company contract, fraud in contract system, and a "lemons market", resulting in the waste of company resources; secondly, the cost of private conclusion to a contract is very huge, and the contracting cost can be reduced through mandatory law texts of the state; and thirdly, national enforcement can solve the problem of negative “externalization” as well as collective actions (game theory explains the reason why an individual trader practices in a way that can maximize his own benefits but obtain a result without efficiency). As for a fair goal, national enforcement can appropriately prevent those fraudulent, misleading, and coercive conduct while paying more attention to the underprivileged ones. Moreover, the actual controllers of the company will have to shoulder strict fiduciary duties so that fair treatment to small and big shareholders and balanced interests among them can be realized. Furthermore, national enforcement can also restrict disordered competition and create a market mechanism with fair competition, ensuring that market participants observe the basic moral codes.

Feasibility of judiciary intervention into company management

1. Judiciary function including an exterior safeguard for company management

As a recheck system, company management covers different system structures inside and outside companies. The judiciary and administration together constitute an exterior monitoring mechanism of company management. Judiciary organizations and legal systems represented by the organizations are also an exterior safeguard mechanism of company management. Judiciary organizations represent the will of the state to judge company autonomy (private) conducts, correct autonomy conducts of injustice and imbalanced interests, safeguard the rights of relevant parties, and maintain a sound order of company autonomy. Jurisdiction intervention to company autonomy in the way of civil action can safeguard the rights, coordinate benefits relationships inside companies and the relationship between companies and the outside, and promote company autonomy in ways that are both orderly and efficient.

⁸ See (Canadian) Brlan R.Cheffins, "Company Law: Theory, Structure, and Operation", translated by Lin Weihua, etc., Law Press China (2001), PP.135-168.

(1) Rights safeguard function of jurisdiction (intervention to a rights safeguard and relief type)

Rights are divided into substantial rights and procedural rights (relief rights). “Where there are rights, there is protection; there will be no rights if remedies do not exist”. The purpose of civil action lies in protection for the substantial rights by offering necessary remedies to the substantial rights.⁹ On the other hand, the purpose of civil action also lies in settling disputes, so the system of civil action will become meaningless if disputes between individuals fail to be settled.¹⁰ Disputes are objects of the jurisdiction function and safeguarding rights is the function of judiciary.

There is a rights chain in companies, and shareholders’ rights are the base for other rights in the companies. It is through shareholders’ conduct that a group personality of companies is established. The separation of the shareholders’ rights and companies’ rights maintain their own independent personality. The best organization and structure mode for maintaining companies’ independent personality should be the establishment of a powerful board of directors not a board of shareholders. The members in a board of directors do not have to be shareholders themselves.

Only by an operations group which is not comprised of shareholders completely, can the other personality subject—companies’ benefits--- be taken into consideration independently.¹¹ Besides some main linking points in the rights chain of companies such as shareholders, companies, and directors, there are debtors, staff in companies and other rights-holders. The “ecological balance” of companies’ rights will be destroyed if the rights of each chain are too strong or too weak. Therefore, the remedy on rights is an exterior practice to maintain the ecological balance of companies’ rights. The fundamental standards on evaluating the effectiveness of the jurisdiction’s intervention to company management are whether disputes among relevant parties in company law get settled, and whether the rights get safeguarded.

(2) Order maintenance function of jurisdiction (intervention in an order maintenance type)

Civil action enables parties to obtain safeguards when successful, so that the parties can predict the result of planning and performing in accordance with the norms and regulations of substantial law. Self-discipline in compliance results in an overall stable social life.¹² Company autonomy is a private order inside and outside companies supported by a company management structure. Good company management is a fair, orderly, and effective autonomous structural system formed by multiple rights-holders such as companies, shareholders, directors, managers, debtors, staffs. Jurisdiction’s intervention in company management can correct the malfunction and disorder of company autonomy besides settling disputes and safeguarding rights.

⁹ (Japanese) Shindō Kōji, "New Civil Procedural Law", Lin Feng, Law Press China (2008), p.3

⁰ (Japanese) Shindō Kōji, "New Civil Procedural Law", Lin Feng, Law Press China (2008), p.7

Jiang Daxing, “Concepts of Company Law and Explanations”, Law Press China (2009), p.142.

² See (Japanese) Shindō Kōji, “New Civil Procedural Law”, Lin Feng, Law Press China (2008), p.7

2. Jurisdiction with activity.

As a part of a corporate governance system, the judicial body gives effective and timely intervention to corporate autonomy, and leads to a perfect corporate governance structure so as to achieve the goal of justice, fairness, and effectiveness for corporate governance.

Judicial activism, a product of the common law system, is a term surrounding the historical relationship of judicial reviews and constitutions. The *Black's Law Dictionary* defines judicial activism as “a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually suggesting that adherents of this philosophy tend to make constitutional violations and are willing to ignore precedent.”¹³ There exists a trade-off relationship between judicial activism and judicial restraint. The application of judicial activism is a confirmation on judicial discretion, which allows judges to extract rules and bridge law gaps to ensure the integration of specific application of laws and justice. Lord Denning had explained the complementary function of judicial discretion for legal limits, and described the basic principle to be followed by judicial discretion as “Judges must not change the texture of laws but ironing the folds”.¹⁴

Conservative judicial concepts need to be alert while judicial activism is followed. One of the conservative judicial concepts is that the court should not intervene in corporate internal management, corporate operations and decision-making activities, or corporate business judgments. Jurisdiction pursues a judicial criterion of “ruling follows disputes”. “The court shall not reject to adjudicate civil disputes on the ground of no provision provided in law” is the basic norms of civil justice. The conception that justice never intervenes in corporate affairs does not accord with the principle of final judicial adjudication. Another conservative judicial concept is that a judicial view on corporate internal affairs is equal to intervening in corporate management, which is similar to the governmental over-controlling of companies in China's planned economy era. Jurisdiction plays a different role from that of administration. Jurisdiction should respect corporate operations, which does not mean jurisdiction needs to be away from corporate operations such as administration.

3. Wary Judicial intervention to the company affairs.

Judicial intervention in corporate autonomy has different intervention initiatives based on different affairs and fields. The company law has prescribed the adjusting affairs of prohibitions on which judges can be actively involved. When intervening in corporate autonomy related to business judgment, judges should be wary of the intervention, because judges are not specialized in commercial activities. If shareholders appeal corporate internal affairs to the court for settlement before going through the remedy procedures within the corporation the court should reject the request to intervene.

¹³ Bryan A. Garner, *Black's Law Dictionary* (8th edition), West Thomson Business(2004) , P862.

¹⁴ (Britain)Lord Denning: *The Discipline of Law* .Translated by Liu Yong'an, Yang Baikui, Ding Jian ,Law Press China(1999),P.112.

In the field of corporate governance disputes, judicial activism exceeds the connotation of review by public power, and is added to with a new connotation of intervention in the private order. It needs to deal with both judicial discretion under the uncertainty of company law, and the range and mechanisms of judicial intervention to corporate business. Judicial intervention to corporate autonomy is limited. “Judicial expansion and discretion have been throughout the development history of company laws in the Anglo-American countries”,¹⁵ which is worthy summarizing. Active judicial intervention often occurs when corporate governance faces risks, and aims to uphold the social justice and correct market disordering. In the US judicial activism is mostly used by the legal realism school created by Holmes. When a judge deals with a specific dispute, a balance needs to be made between codes tightly held in his left hand and some integrated factors such as specific case contents, social influences, mortality, ethics, policies, and legal principles touched by his right hand. Based on this balance, a final decision is made. Therefore, when a judge is involved in corporate governance affairs in the name of judicial review, he /she has to adhere to the principles of legality review first while a rationality review is second, and a formal examination first while a substantial examination second, so as to be wary of corporate affairs, respect corporate autonomy, and maintain corporate ordering.

Judicial intervention to corporate governance could prevent some shareholders’ opportunism. If the cost of suing, or judicial remedies without suing, is low, it may cause the disadvantages associated with opportunism while easing the rights protection of minority stockholders. Once justice intervenes in corporate disputes, the corporate management must make efforts to deal with the intervention, causing some damages to the whole corporation’s benefits. Considering this risk, many shareholders may make use of this risk to blackmail a corporation in exchange for improper benefits.

Under the guidance of shareholder autonomy, company law is gradually inclined to take a court as the center. However, it does not mean that the court can make judgments for shareholders or infringe the corporate autonomous rights of shareholders. The concept of shareholder autonomy suggests that “individuals are the best judges of their own interests”. The court should respect shareholders’ arrangements on corporate affairs in judicial review, and the judicial intervention to corporate affairs should insist on the principle of limited intervention. As the last defensive line of personal rights, judicial remedy is of great importance for defending personal rights. The defense of personal rights needs to be firstly handled according to the principle with private settlement processes as a priority. If the private settlement process does not work, the public power can intervene in the private fields. And it is true of handling internal disputes of a corporation. The court should respect shareholder’s autonomy on corporate affairs, and can intervene in the corporate affairs only when the shareholders fail to settle the disputes. The realization of shareholder autonomy depends on establishing the concept of respecting shareholder autonomy from the perspective of the court and judges.

¹⁵ Luo Peixin: *Contract Interpretation on Corporation Law*, Beijing University Press(8th edition)(2004).P.336.

Approaches of Judicial Intervention to Corporate Governance

1. Perfecting the system of introducing ordinary civil procedure to corporate governance

The Company Law has provisions on protection of substantive rights. In those cases heard through ordinary civil procedure and involving active judicial intervention in the internal decisions of the company and the policymaking of the operator, however, the judicial bodies shall specify and fulfill the mechanism of judicial remedies on substantive rights protection stipulated in the Company Law through the approach of judicial interpretation. The protection of shareholders' rights is an example.

In the existing Company Law, considerable protection has been given to the rights of shareholders, but it is relatively conservative and rigid. It lacks a broader remedy and protection mechanism towards those behaviors that are harmful to the rights of shareholders and are not listed in the Company Law. Examples are lacking a mechanism or policy to remove invalid decisions that could damage parts of the shareholders' rights; to confirm or forbid the stock right transfer that could damage the rights of other shareholders; to force the company or other shareholders to purchase the stock of the shareholder who is treated with unfair prejudice from by a resolution of a shareholder meeting. In the framework of existing Company Law, the following situations shall be handled through the ordinary civil procedure by judicial interpretation: the expansion of shareholder derivative action, the confirmation and valuation of targeted share repurchases and the disputes in corporate governance such as the examination of the legality to the rules, regulation and articles of incorporation.

The unfair prejudice remedy mechanism in British Company Law is worth drawing on. Unfair conducts violating the by-laws of the company usually infringe the personal rights of the shareholders. In the Common Law, shareholders exercise their personal rights endowed by the by-laws of the company in a limited way. They cannot file a lawsuit against internal irregularity. British scholars believe that the personal rights of a shareholder shall not be changed or removed by other shareholders and they advocate the protection of shareholder's rights by expanding their rights endowed by the by-laws to other rights within reasonable anticipation. In 1962, the Company Law Committee also known as Jenkins Committee put up a remedy to unfair prejudicial actions and proposed to expand the judicial power of the court so as to enable the court to interfere with the affairs of the company by offering remedies to unfair prejudicial actions based on the principle of equity. This proposal was not adopted by the British Company Law until 1980.

Article 994 in British Company Law stipulates that a member of a company may apply to the court by petition for an order on the grounds that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or that an actual or proposed act or omission of the company is or would be so prejudicial.¹⁶The Jenkins Committee's report points out that unfairness obviously deviates from fair trade standards, violating the fair game rule set by the shareholders who invest

¹⁶ The original text is :A member of a company may apply to the court by petition for an order under this Part on the ground- (a) that the company' s affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself) · or (b) that an actual or proposed act or omission of the company (including an act or omission on its behalf)is or would be so prejudicial.

money into the company.¹⁷ The legal precedent considers the test criterion of an unfair prejudice as objective rather than subjective, which means that the applicant is not required to testify whether the behavior of the defendant is out of malice. That is to say the court will affirm the establishment of an unfair prejudice when the result leads to unfair prejudice no matter whether the behavior of the defendant is out of malice or not.

The most commonly used remedies for unfair prejudice are command and writ. When the rights of a shareholder are infringed by unfair conduct, the court will order the company or other shareholders in the company to buy the stock of the shareholder so as to help the shareholder get rid of the awkward situation in which he/she is forced to leave the company. But it is fair only when the stock of the shareholder is not sold at a low price with a discount.¹⁸ With regard to the base date, the court may choose one from the following options: the date of occurrence of unfair behavior, the date of filing the application, the date of issuing the stock purchase warrant or the date of evaluating the price warrant. The judges' opinions vary from one to another when it comes to choosing the date in a specific case. The judge Vinelott J believed that the evaluation date shall be the date of filing the application on the grounds that on this day the applicant decides to file a lawsuit against the unfair prejudice and the cooperative foundation of the two sides no longer exists on the same day.¹⁹ The judge Nourse J believes that the base date shall be the date of issuing the stock purchase warrant on the grounds that it is appropriate to evaluate the basic interest when it is decided to be purchased.²⁰

When the unfair infringement is caused by the misconduct of the company itself, the judicial court will issue a writ that the company should perform an act based on the case in which the company is conducting or will conduct an act, or even an omission, if it infringes the shareholder's rights. After the petition for litigation relief, there will be a period of time before the court issues the writ, causing delay of actions and untimely prevention from actual harm of unfair practices to the claimant, like being expelled from the shareholders. Under such a circumstance, the claimant should apply for a temporary command, which will take into full consideration in the decisions, the command effects on the operation order of the company and the protection of the claimant rights. More often, the court will also issue a present-situation-maintenance command for the purpose of guarding the petitioner's rights under a fixed situation.

The adoption of an unfair infringement remedy system, in ordinary civil procedural lawsuits, and granting the court the authority of command (writ) to intervene in the phenomenon of "tyranny of the majority" in the company and protect the property rights of a few shareholders from unfair infringement. As to stock price, the principle should be "it is fair only when one's stock is not sold at a low price with discount"; and as to the date of evaluation, from the perspective of equity, from the day the claimant institutes the legal proceedings to the day he/she submits the application, he/she could not continue to require sharing the profits gained from the proper management of the accused or other managers caused by the breach of trust deeds between the claimant and other shareholders or directors of the company; on the contrary, the claimant shall not assume unfavorable consequences

¹⁷Quoted in John Lowry, *The Pursuit of Effective Minority Shareholder Protection: S 459 of the Companies Act 1985*, *The Company Lawyer* Vol.17 No.3,1996,P.68 .

¹⁸ Fan Yunhui, *The Research on British Minority Shareholders Rights Litigation Relief System*, *China Legal*

¹⁹ *Re a Company* (No 002612 of 1984) (1986) 2 .BCC 99,at P453,492-499.

²⁰ *Re London School of Electronics Ltd* (1986).Ch .211.

would be caused by a reduction of management vigor, business hours or the company's reputation resulting from the proceeding. Accordingly, we should fix the date of evaluation on the second day of the proceeding, which is a price indeterminate for both sides. In this way, the value target of ensuring stock equality can be better realized.

2. Setting up special business procedure for corporate governance

The civil law countries mostly concentrate on special procedures (non-litigation procedures) to intervene in the company's inner governance ahead of time, as is typically the case in Japan. More specifically, the Japanese Commercial Code has an exclusive chapter on special procedures for judicial intervention into corporate governance. Moreover, in its company law, that came into force in April 2006, there is an additional provision on the non-litigation procedural law of companies, including the dismissal of director, the convening of board of directors and so on. In order to rectify and coordinate the operations of a company, the court intervenes in the company's management via judicial order instead of judgment when dealing with disputes.

According to experience from some countries concentrating on judicial judgment, all disputes possibly arising from the establishment to the dissolution of a company are summarized as 48 types.²¹ However, adopting ordinary civil procedure to solve every company dispute has been obstructed by enormous difficulties and challenges. Existing types of company disputes possess at least the following cases that are available to special procedure when the company fails to obtain favorable judgment through ordinary civil procedure. In terms of function, the special procedure focuses on prevention while the usual procedure is on remedy afterwards and supervision. The special procedure does not aim to make a judgment on the dispute of rights and obligations between parties, but takes some detailed measures to intervene in the company operation. By means of judicial intervention, it is possible to promote the effective operation, prevent unfair behaviors and avoid the infringement of company's as well as the related parties' interests. The cases of special business procedure related to company are as follows:

- (1) The case of rights recognition of shareholders such as shareholders request the company to prepare and fill in a roster of the shareholders, sign and issue an investment certificate, and register the modification of shares.
- (2) The case of shareholder's right to be informed; specifically including: reviewing and duplicating company materials, reviewing the financial reports; requesting the company to disclose the information about remunerations received by the directors, supervisors and senior managers. The public shareholders can request the company to disclose the information about business activities, major acquisition and litigation.
- (3) The case of dispute on the convening of shareholders' assembly, board of directors and board of supervisors; including the cases like irregular convening, negative omission, and if the entitled convener appeals to judicial support to conducting a temporary board meeting in accordance with the law.
- (4) The case of dispute on appointment and dismissal of director, supervisors and senior Managers;

²¹ Xi Xiaoming, Jin Jianfeng: *Research on Theory and Practice of Corporation Litigation*, the People's Court Press, 2008.

- (5) The case of exercising power; including supervisors exercise of authority in accordance with law under the circumstance where the company actively participates in, eliminates obstacles and offers financial support.
- (6) The case of disputes on share valuation; including price dispute in share repurchase and share dispute where the major shareholder is forced to purchase the minor shareholder's share under the specific instance.
- (7) The case of dispute on the liquidation of company; the following functions during the process of liquidation may be exercised: liquidating the properties of the company; notifying creditors by mail or public announcement; handling and liquidating the unfinished business of the company; paying off the outstanding taxes and the taxes incurred in the process of liquidation; distributing the remaining properties; and participating in the civil proceedings of the company. The liquidation specialists decide when the special procedure should be involved.

In judicial practices, the Supreme People's Court of China has made special provisions on part of the said cases, like the liquidation of company by judicial interpretation. This provision, however, is still exercised within the framework of existing ordinary civil procedure. A professional and systematic special procedure needs to be further established and improved.

This paper argues that China should learn the concepts, institutions and measures of judicial intervention to company governance from western countries and build a non-litigation intervening mechanism paired with China's civil action system to solve company disputes. Courts should be entrusted some rights to punish violating and unfair conduct by company staff, including the right of judicial curb (ban), the right of invalidation, the right of judicial selection, the right of judicial dismissal and the right of judicially convening stockholders' meeting. Thereby, it is possible to defuse injustice and unfairness, maintain the normal order and enhance the efficiency of corporate governance.

3. Drawing support from judicial experts

Judicial officials should have a profound professional knowledge of corporate governance, and the intrinsic nature of company law as putting judicial intervention into company governance. In the face of professional problems related to company affairs, it is necessary to draw the experts of this field to participate in a collegiate bench, ensuring the quality of judicial intervention and exerting positive effect of the judicature on corporate governance.

In Delaware of the US the cases of company law are exclusively accepted by the court of chancery, where judges spend 70 percent of their time on company affairs. Due to having a professional background in the field of capital markets before getting into the court, these judges gain experience and are honored as the most learned people who deal with company affair in the US. In the court system of Britain, there are usually 12 judges from court of the chancery to tackle company affairs, which is a better reflection of the key mechanism of company litigation than that of North America.²²

²² Brian R. Cheffins: *Company Law: Theory, Structure and Functioning*, translated by Lin Weihua, Law Press China, 2001, P. 1337.

Existing judicial resources are limited, especially the professional level of common judges cannot meet the requirements that case law expects. For example, a court's discretionary power is not exercised well. Therefore courts should set up independent and special commercial courts and shift the hearing model to "consulting specialists". Considering the high professional skill involved in the case of corporate governance, the court in the domicile of a company should be given a clear exclusive jurisdiction and a listed company should be under the jurisdiction of the local intermediate people's court.

These measures guarantee that cases are accepted and administered more easily and effectively. At the same time, other feasible measures should be taken to include "specialist consultants", including organizing the jury, drawing experts in the field of law, accounting and administration of a company, as well as drawing highly respected people from enterprises and chambers of commerce. The speed to modify company law is much slower than that of unveiling of judicial interpretation, on the basis of which the Supreme People's Court of China deals with a certain case, causing a lack of provision of company law. In face of boundless issues in practice, the Supreme People's Court and the supreme courts of various regions direct the judiciary to moderately intervene in company governance by the guidance of precedents, which undoubtedly is a relatively appropriate and low-cost way.

Towards a Team Approach to Understanding Board Effectiveness

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Abstract

Research into board effectiveness has often been approached from a structural perspective and investigated using the financial performance of the organization, with limited success. However, boards are also elite teams and their effectiveness can thus be studied in terms of group constructs. This paper provides a review of the literature which exists to support a team effectiveness approach to the effectiveness of boards, and exactly which parts of the team effectiveness literature are most suitable for behavioural research into board effectiveness.

Keywords

Board effectiveness, Board task performance, Board cohesiveness

Introduction

Boards are the ultimate governance organ of an organization, responsible for insuring that the organization adds value (however that may be defined) for shareholders (in the for-profit context) or some combination of shareholders and other stakeholders (in other organizational contexts). Understanding board performance in adding value, i.e. its effectiveness, is therefore important for stakeholders of all types (including directors, regulators and policy makers). The purpose of this paper

is to illustrate how board effectiveness can be viewed through the lens of small group effectiveness; specifically as teams with interdependent tasks and cognitive outputs.

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Team Effectiveness

Group effectiveness has been the subject of many studies in both the behavioural science and organizational literature over the years¹.

¹ JR Hackman, 'The design of work teams' in J Lorsch (ed), *Handbook of organizational behavior* (Prentice Hall, 1987) ; Daniel J. Beal et al, 'Cohesion and Performance in Groups: A Meta-Analytic Clarification of Construct Relations' (2003) 88(6) *Journal of Applied Psychology* 989; Susan G. Cohen and Diane E. Bailey, 'What Makes Teams Work: Group Effectiveness Research from the Shop Floor to the Executive Suite' (1997) 23(3) (June 1, 1997) *Journal of Management* 239; Carsten K. W. De Dreu, 'Cooperative outcome interdependence, task reflexivity, and team effectiveness: A motivated information processing perspective' (2007) 92(3) *Journal of Applied Psychology* 628; Michael D. Ensley, Allison W. Pearson and Allen C. Amason, 'Understanding the dynamics of new venture top management teams: cohesion, conflict, and new venture performance' (2002) 17(4) *Journal of Business Venturing* 365; Luis L. Martins et al, 'A Contingency View of the Effects of Cognitive Diversity on Team Performance: The Moderating Roles of Team Psychological Safety and

A team can be thought of as a specific type of group, and by one definition is defined as a group whose members have social interaction, some level of interdependency, a common goal or goals, and are part of a larger organizational context which influences their operation². However the terms team and group are often used in a way which, while not exactly interchangeable, makes the actual object of analysis rather less clear. An example of this is “Group cohesion is one of the earliest and most widely studied team-process characteristics”³; with the example of “We use the words ‘team’ and ‘group’ interchangeably in this paper”⁴ at the extreme end of the scale. The terms ‘work group’ and ‘team’ do seem to be used more or less interchangeably in organizational behaviour and management literature however; for example the title of the paper “Enhancing the Effectiveness of Work Groups and Teams”⁵ seems to be the only place in it where these constructs are differentiated.

There are three dimensions of group or team effectiveness according to Cohen and Bailey⁶: performance outcomes; attitudinal outcomes; and behavioural outcomes. The authors believe these outcomes to be a product of a combination of environmental context, group and task design, intra- and inter-group processes (e.g. conflict), and the psychosocial traits of the team (such as norms and cohesiveness). Other authors mention only the two dimensions of task performance and team satisfaction e.g. Shaw et al.⁷. These works, along with many others, employ adaptations of the Input-Process-Outcome (IPO) model first proposed by McGrath some 50 years ago⁸. Others such as Ilgen et al.⁹ have proposed an Input-Mediator-Outcome (IMO) model to account for the fact that some mediators between inputs and outcomes are not in fact processes, but for example, emergent states. This model was further developed by Ilgen et al. (the IMOI, or Input-Mediator-Outcome-Input model) to illustrate the episodic (execution of a set of processes at a particular time) or feedback-loop nature of team work. Mathieu et al.¹⁰ felt it necessary to point out that this feedback occurred in the transitions between episodes of teamwork, and not within them. Hackman¹¹ on the other hand, proposed a normative rather than descriptive model, which specified the factors which should be present for group effectiveness. These factors were grouped into five broad categories: organizational context; group design; group synergy; process criteria of effectiveness and material resources. These

Relationship Conflict' (2013) 44(2) (April 1, 2013) *Small Group Research* 96; John Mathieu et al, 'Team Effectiveness 1997-2007: A Review of Recent Advancements and a Glimpse Into the Future' (2008) 34(3) (June 1, 2008) *Journal of Management* 410; Frances J. Milliken and David A. Vollrath, 'Strategic Decision-Making Tasks and Group Effectiveness: Insights from Theory and Research on Small Group Performance' (1991) 44(12) (December 1, 1991) *Human Relations* 1229; Jason D. Shaw et al, 'A contingency model of conflict and team effectiveness' (2011) 96(2) *Journal of Applied Psychology* 391; Ekaterina S. Bjørnåli, Truls Erikson and Mirjam Knockaert, 'The Impact of Top Management Team Characteristics and Board Strategic Involvement on Team Effectiveness in High-Tech Start-Ups' (2011) *Academy of Management Annual Meeting Proceedings* 1; Bongjin Kim, Mark Suazo and John Prescott, (2008) Exploring the Cognitive Nature of Boards of Directors and Its Implication for Board Effectiveness. College of Business, University of Texas at San Antonio, Working Papers: 0032; Karen A Jehn, Sonja Rispens and Sherry MB Thatcher, 'The effects of conflict asymmetry on work group and individual outcomes' (2010) 53(3) *Academy of Management Journal* 596

² Steve W. J. Kozlowski and Daniel R. Ilgen, 'Enhancing the Effectiveness of Work Groups and Teams' (2006) 7(3) *Psychological Science in the Public Interest* 77

³ Ibid, p87

⁴ Cohen and Bailey, above 1

⁵ Kozlowski and Ilgen, above 2

⁶ Cohen and Bailey, above 1

⁷ Shaw et al, above 1

⁸ McGrath as cited in John Mathieu et al, above 1

⁹ Daniel R Ilgen et al, 'Teams in Organizations: From Input-Process-Output Models to IMOI Models' (2005) 56(1) (02//) *Annual Review of Psychology* 517

¹⁰ Mathieu et al, above 1

¹¹ Hackman, above 1

broad categories do however seem to correspond to the dimensions of effectiveness identified by other authors. In a review of research into the effectiveness of teams, Kozlowski and Ilgen¹² listed a number of cognitive structures and processes (such as team mental models), interpersonal and affective processes and emergent states (for example cohesion), and team behavioural processes (e.g. team cooperation) which had found support in the literature as being related to team effectiveness. These authors criticized the IPO model as being rather dated and in need of extension, by virtue of its limited dynamic perspective of processes underpinning team effectiveness. In this they are in agreement with Hackman¹³, who found the IPO model useful to organize thoughts, but less useful for understanding team effectiveness, as results were contingent upon the type of task being performed.

Mathieu et al.¹⁴ commented on the difficulty of neatly categorizing the constituents of team effectiveness, and the evolving complexity of these categories (ranging from the three outlined by Cohen and Bailey¹⁵, to more than twenty in some studies). For example, in a paper describing an extensive instrument developed to understand teams, Wageman, Hackman and Lehman¹⁶ developed criteria for an effective team based on earlier work by Hackman¹⁷ and others, which like Hackman's original model was normative. Their model did not identify causal or moderating factors for effectiveness, but rather viewed teams as evolutionary in nature which developed according to internal factors, and their interactions across external boundaries. Their criteria were as follows:

1. *The output of team effort is viewed favourably by the recipient or user of that output according to the recipient's criteria (it is possible that teams may be the recipients of their own work)*
2. *Social processes used by the team enhance the ability to work well together in the future*
3. *Team members as individuals are positively affected by their team experience*

Despite claiming not to specify causal factors, Wageman, Hackman & Lehman hedged their bets somewhat by positing five conditions which enabled effectiveness, in their words "...when present increase the likelihood (but do not guarantee) that a team will perform well"¹⁸:

1. *The team is not just a team in name only (it has member boundaries, is interdependent and working to a common purpose, and has some baseline level of membership stability)*
2. *The team's purpose is clear and compelling, with goals specified but the means of achieving them left up to the team*
3. *Team structure (task design, composition and shared conduct norms) enables cooperative work*
4. *The existence of organizational support for team tasks (rewards, learning and information)*
5. *The availability of coaching to minimize process loss and capture maximum process gains*

¹² Kozlowski and Ilgen, above 2

¹³ Ibid

¹⁴ Mathieu et al, above 1

¹⁵ Cohen and Bailey, above 1

¹⁶ Ruth Wageman, J. Richard Hackman and Erin Lehman, 'Team Diagnostic Survey: Development of an Instrument' (2005) 41(4) (December 1, 2005) *The Journal of Applied Behavioral Science* 373

¹⁷ Hackman, above 1

¹⁸ Wageman, Hackman and Lehman, above 16

As can be seen, a simple definition of team or group effectiveness is thus not easy to come by, and as Milliken and Vollrath¹⁹ pointed out, the types of group process and even the types of groups that will produce effectiveness is contingent to a large degree on which kind of tasks the group is to perform.

Board Effectiveness

It is a fairly uncontroversial fact that a board can be considered to be a team²⁰, so a team effectiveness approach to board effectiveness would seem to be reasonable. Forbes & Milliken proposed specific criteria suitable for the evaluation of boards as a specialized and specific type of team or workgroup²¹. The episodic nature of board functions; task complexity that involves the formulation and monitoring of strategy; the lack of implementation tasks; an almost wholly cognitive work output; and the fact that some or even the majority of team members had primary work affiliations with external organizations were given as evidence of this particularity. The authors asserted that the criteria of task performance and the board's cohesiveness (the continued ability to work together) were sufficient to determine board effectiveness²². This would seem to rescue those researchers studying board effectiveness from the untidy definitions of what constitutes team effectiveness detailed above. Lending weight to the inclusion of cohesiveness as an important component of board effectiveness was a meta-analytic study of cohesiveness and group performance which found that cohesiveness benefits performance especially when performance was defined as behaviour rather than outcome, and when the group's tasks involve the group working as a whole on them, e.g. decision making²³. These group characteristics seem to fit boards well. Research findings linking cohesiveness with greater effectiveness in TMTs (top management teams) would also seem to support the inclusion of cohesiveness as a dimension of board effectiveness²⁴.

Cornforth²⁵, in a study of non-profit boards (but where the research methodology was based on works in the corporate board domain) determined a set of five tasks that if performed effectively by the board best explained overall judgements of its effectiveness. These components were selected from a much larger set of board functions grouped into the areas of strategy making; stewardship; advising and overseeing management; board maintenance; and accountability, resource acquisition and networking. Cornforth also identified four process variables which he asserted helped explained variance in overall effectiveness: clarity in board role and responsibilities, shared vision with management of goal attainment, periodic reviews of board and management's working relationship, and ability to constructively resolve intra-board conflict. The lack of social interaction dimensions in this study of the effectiveness of what is essentially a very specialized team of people, and the inclusion of many tasks more suited to a more mature board environment may limit its ability to explain effectiveness

¹⁹ Milliken and Vollrath, above 1

²⁰ Maarten Vandewaerde et al, 'The Board of Directors as a Team: Getting Inside the Black box' (2011) *Proceedings of the European Conference on Management, Leadership & Governance* 435; G. Tyge Payne, George S. Benson and David L. Finegold, 'Corporate Board Attributes, Team Effectiveness and Financial Performance' (2009) 46(4) *Journal of Management Studies* 704

²¹ Daniel P. Forbes and Frances J. Milliken, 'Cognition and Corporate Governance: Understanding Boards of Directors as Strategic Decision-Making Groups' (1999) 24(3) *Academy of Management Review* 489

²² Ibid

²³ Beal et al, above 1

²⁴ Bjørnåli, Erikson and Knockaert, above 1

²⁵ Chris Cornforth, 'What Makes Boards Effective? An examination of the relationships between board inputs, structures, processes and effectiveness in non-profit organisations' (2001) 9(3) *Corporate Governance: An International Review* 217

completely in a dynamic and informal startup board setting. In research which examined the perceptions of board members in New Zealand regarding the characteristics and outcomes they associated with effective boards, Northcott and Smith²⁶ built on these results to construct a balanced scorecard for boards to measure board performance. This work is interesting both because it is grounded in a corporate environment analogous to Australia's, and because it acknowledges that 'softer' aspects of the board environment such as interpersonal dynamics and culture may be of more significance than structural elements in understanding the way that boards function. Directors in this study identified board relationships (both internal to the board and company and external to it) and board culture and practice as both inputs to, and outcomes of, board effectiveness. These directors also identified that both dimensions were of more importance than company performance as a measure of board effectiveness²⁷.

Several aspects of the Northcott and Smith study would seem to diminish its use as a theoretical basis for future research however (while not affecting its practical utility in board evaluations). The first of these is that one of the authors is very much an insider as a director in New Zealand of long standing, which while allowing greater access to interview participants, may result in some biases of interpretation (likely not "enhancing the validity" as claimed²⁸). Secondly the sample selection criteria may have resulted in a somewhat skewed set, with minimum tenure requirements for directors and minimum lifetimes for boards (though this last was explicitly stated as being required to reduce variability), which in an already small corporate environment may have excluded some valuable input. Finally the assertion that performance indicators for effectiveness are guided theoretically by either shareholder or stakeholder perspectives, ignored other worldviews (such as stewardship, political, and resource dependency approaches) and excluded other board functions such as the encouragement of desirable management behaviours, acquisition of resources, and the nurturing of innovation²⁹.

In addition to their assertion that only two board level outcomes were important to understand effectiveness (task performance and cohesiveness), Forbes and Milliken³⁰ identified three board processes which influenced these effectiveness dimensions; effort norms, cognitive conflict, and use of knowledge and skills. Effort norms included such things as devoting sufficient time to board 'homework' and attendance at meetings, in addition to levels of participation, attentiveness in meetings, and analysis of problems before them. Forbes and Milliken characterized cognitive conflict as enhancing the performance of board tasks but contributing via lowered levels of satisfaction to negative effects on cohesiveness. As this paper was written just as Jehn's important studies of intragroup conflict were beginning to be published³¹, the effects of a fuller range of conflict types which include task and relationship conflict did not appear to be considered by the authors. Later works have

²⁶ D. Northcott and J. Smith, 'Managing performance at the top: a balanced scorecard for boards of directors' (2011) 7(1) *Journal of Accounting & Organizational Change* 33

²⁷ Ibid

²⁸ Ibid, p 40

²⁹ Steven Murphy, A. and Michael McIntyre, L., 'Board of director performance: a group dynamics perspective' (2007) 7(2) *Corporate Governance: The International Journal of Effective Board Performance* 209

³⁰ Forbes and Milliken, above 21

³¹ Karen A. Jehn, 'A Multimethod Examination of the Benefits and Detriments of Intragroup Conflict' (1995) 40(2) *Administrative Science Quarterly* 256; Karen A. Jehn, 'A Qualitative Analysis of Conflict Types and Dimensions in Organizational Groups' (1997) 42(3) *Administrative Science Quarterly* 530

shown these additional conflict types to be influential in Forbes and Milliken's effectiveness criteria³². These studies also emphasize the complexity of intra-group conflict processes and outcomes, which was perhaps not able to be accounted for in the Forbes and Milliken paper. Although these authors presented persuasive arguments in support of their useful restricted set of effectiveness criteria for boards, with the benefit of hindsight it would appear that the processes that they have identified as influencing these may be a necessary but insufficient set.

The integrated model presented in the Forbes and Milliken paper has since been employed by other authors such as Minichilli and Nielsen et al.³³, and at least partially validated empirically by van Ees, van der Laan and Postma³⁴ who found that process variables such effort norms, conflict and use of knowledge and skills influenced task performance in the monitoring and strategy board roles (although the authors found opposite polarities in the effects of cognitive conflict on these roles, perhaps due to limitations discussed above). A 2011 study which employed the Forbes and Milliken³⁵ integrated model and also focussed on the antecedents of task performance, validated the positive effects of effort norms, use of knowledge, and cognitive conflict in a survey-based study of 119 listed company boards in the United States³⁶. The cohesiveness component of the model on the other hand, seems to be little studied.

Board Task Performance

There are two main areas of focus in the board task performance literature, namely how to predict it, and how to measure it. It has been observed that various effects interacting in a dynamic fashion shape board task performance, and this complexity makes the isolation of predictors for it far from simple³⁷. Huse³⁸ however, singled-out the decision-making culture of a board as the key predictor of task performance. This difficulty in identifying predictors of task performance may to some extent be due to the variation in task characteristics devolving from the various roles of the board, and the necessity for researchers not to treat these as an undifferentiated set in seeking to understand predictors for

³² Jehn, Karen A. and Elizabeth A. Mannix, 'The Dynamic Nature of Conflict: A Longitudinal Study of Intragroup Conflict and Group Performance' (2001) 44(2) *The Academy of Management Journal* 238; Jehn, Karen A. and Corinne Bendersky, 'Intragroup Conflict in Organizations: a Contingency Perspective on the Conflict-Outcome Relationship' (2003) 25(0) *Research in Organizational Behavior* 187; Jehn, Karen A et al, 'The Effects of Conflict Types, Dimensions, and Emergent States on Group Outcomes' (2008) 17(6) (2008/11/01) *Group Decision and Negotiation* 465; Jehn, Karen A. and Katerina Bezrukova, 'The faultline activation process and the effects of activated faultlines on coalition formation, conflict, and group outcomes' (2010) 112(1) (5//) *Organizational Behavior and Human Decision Processes* 24; Jehn et al (2010); Kerwin, Shannon, Alison Doherty and Alanna Harman, "It's Not Conflict, It's Differences of Opinion" (2011) 42(5) (October 1, 2011) *Small Group Research* 562; Shaw et al, above 1; Martins et al, above 1

³³ Alessandro Minichilli et al, 'Board task performance: An exploration of micro- and macro-level determinants of board effectiveness' (2012) 33(2) *Journal of Organizational Behavior* 193; Nielsen, Sabina et al, 'Board Diversity and Firm Performance: An Empirical Investigation of the Mediating Effects of Board Processes and Task Performance' (2008) *Academy of Management Annual Meeting Proceedings* 1

³⁴ Hans van Ees, Gerwin van der Laan and Theo J. B. M. Postma, 'Effective board behavior in The Netherlands' (2008) 26(2) (4//) *European Management Journal* 84

³⁵ Forbes and Milliken, above 21

³⁶ Bernard C. Bailey and Simon I. Peck, 'Board Processes, Climate and the Impact on Board Task Performance' (2011) *First International Conference on Engaged Management Scholarship, June 2011*

³⁷ Pye, A. and A. Pettigrew, 'Studying board context, process and dynamics: Some challenges for the future' (2005) 16(SPEC. ISS.) *British Journal of Management* S27

³⁸ Huse, Morten, 'Accountability and Creating Accountability: a Framework for Exploring Behavioural Perspectives of Corporate Governance' (2005) 16 *British Journal of Management* S65

them³⁹. Another difficulty is, given that performance criteria may be different for the same group for different tasks, and boards by their episodic nature⁴⁰ tend to perform a number of these tasks in the one session, the overall task performance of the board for a particular episode may be difficult to predict or assess.

Several studies looking at board task performance have taken the approach suggested by the model proposed by Forbes and Milliken⁴¹; i.e. that the group-level processes of effort norms, task conflict, and use of skills and knowledge, all positively influenced task performance. One approach to the problem of assessing task performance is to evaluate various process criteria involved in the quality of strategies to perform tasks, effort, and use of skills and knowledge⁴². These map to the processes which influence task performance given by Forbes and Milliken⁴³, though Wageman, Hackman & Lehman omitted interpersonal criteria (such as the presence of, or quantum of, conflict) in the assessment of task performance (though did include them elsewhere in the instrument). Another, later, study took an approach that was more closely based on Forbes and Milliken's model, and asked CEOs to rate control performance and advisory task performance, and operationalized the concepts of effort norms (three items), cognitive conflict (four items based on Jehn's 1995 scale), and use of knowledge (three items). This study found support for effort norms and use of knowledge as predictors of both control and advisory task performance (positive), but a more confused picture with respect to cognitive conflict, which they suggested may be "context-specifically relevant" in a negative fashion⁴⁴. This reflects the complexity perhaps inherent in seeking to ascertain magnitude and polarity of a highly contingent process using aggregation techniques.

The impact of various aspects of 'board climate' and board processes on the board control and service tasks, (with the Forbes and Milliken⁴⁵ model as a starting point), was investigated by Bailey and Peck⁴⁶, who found strong correlations between intra-group respect and a collaborative approach to board/TMT relations to effort norms and the use of knowledge and skills by the board, and the presence of cognitive conflict in decision making; all of which related positively to board task performance in control and service roles. Specifically, they found support for collaboration leading to positive effects in all of effort norms, cognitive conflict and use of skills and knowledge; and intra-group respect having a positive effect on effort norms and cognitive conflict.

Given the difficulties in understanding board task performance previously outlined, it would seem important to be able to identify the range of board tasks and their performance criteria, in order to gain an understanding of overall board task performance. Minichilli et al.⁴⁷ presented six tasks (three in each of the service and control roles, one in each role with each of internal, external and strategic foci), and scales for the evaluation of these. The authors gave these tasks as advice (service, internal), networking (service, external), strategic participation (service, strategic), behavioural control

³⁹ Alessandro Minichilli, Alessandro Zattoni and Fabio Zona, 'Making Boards Effective: An Empirical Examination of Board Task Performance' (2009) 20(1) *British Journal of Management* 55

⁴⁰ Forbes and Milliken, above 21

⁴¹ Ibid

⁴² Wageman et al, above 16

⁴³ Forbes and Milliken, above 21

⁴⁴ Minichilli et al, above 33, p 209

⁴⁵ Forbes and Milliken, above 21

⁴⁶ Bailey and Peck, above 36

⁴⁷ Minichilli, Zattoni and Zona, above 39

(internal), output control (external) and strategic control (strategic). Other similar lists have been given in research on balanced scorecards for corporate boards in New Zealand (hiring and mentoring the CEO, directing and developing strategy, monitoring an compliance, adding value for and communications to shareholders, leadership around organizational culture, critical debate of issues, contribution of knowledge and skills), these being derived from the opinions of the directors themselves⁴⁸; and board effectiveness in non-profits (17, divided up into the categories of strategy and policy making, stewardship, supervising and supporting management, board maintenance and external relations and accountability)⁴⁹.

In perhaps the most interesting approach, a list of tasks derived from board roles and used in coding transcriptions of actual board meetings was detailed in recent research by Machold and Farquhar⁵⁰. These authors developed thirteen board tasks for their coding framework, allocated to one of five role categories (monitoring and control, service, strategy, dealing with external events, dealing with internal events). These last two categories are a deviation from most other categorizations, and were due to the observation that boards in reality spent considerable time on both being passive consumers of the dissemination of information, and in dealing with legal and compliance issues. This seems to correlate to anecdotal evidence from board practitioners that boards spend a lot of time 'ticking boxes' to comply with increasing levels of regulation and a lot of time listening to operational status reports.

Research studying the impact of shared leadership on board task performance has highlighted the impact of allowing those directors better able to lead the group at various times according to the subject at hand (e.g. directors who may be financial experts or IT experts) to do so. As this effect has been previously studied in other groups with cognitive outputs, where significant benefits have been shown, the authors have posited a similar effect on performance in control and service tasks for boards⁵¹.

The Special Case of Early Stage Boards

Interestingly, only two of the five tasks identified by Cornforth are among those discussed above as explicitly being part of the role of a startup board, namely resource acquisition and decision making around strategy. Another, overseeing financial management, is normally done in a more informal manner, and one, determining organizational culture, is implicit rather than explicit in nature. Reviewing board performance did not figure to any extent in the literature on startup board tasks. This would suggest that perhaps the performance of other tasks in Cornforth's⁵² set, such as provide advice to management, networking with external actors and representing stakeholders may be more useful in determining the overall effectiveness of the startup board.

Additionally, Forbes and Milliken⁵³ recognized that boards of smaller firms (by the authors' classification, those with revenues of \$25 million or less) tend to perform a greater number of, and a

⁴⁸ Northcott and Smith, above 26

⁴⁹ Cornforth, above 25

⁵⁰ Silke Machold and Stuart Farquhar, 'Board Task Evolution: A Longitudinal Field Study in the UK' (2013) 21(2) *Corporate Governance: An International Review* 147

⁵¹ Maarten Vandewaerde et al, 'The Board of Directors as a Team: Investigating the Influence of Shared Leadership on Board Task Performance' (2010) *Proceedings of the European Conference on Management, Leadership & Governance* 365

⁵² Cornforth, above 25

⁵³ Forbes and Milliken, above 21

greater range of, service tasks due to the comparative lack of formality and lack of diversification. They also pointed out that because the senior management of small firms may be entrepreneurs lacking general management proficiency, the use of the board's knowledge and skills may assume a greater importance in board effectiveness in this case. High technology firms (both large and small) were also thought by Forbes and Milliken to be a special case, as directors needed knowledge and skills beyond those required for typical board service (i.e. technological and technology market knowledge), and typically had greater discretion in action because they possessed and could use this knowledge.

Board Cohesiveness

offered “a dynamic process which is reflected in the tendency for a group to stick together and remain united in the pursuit of its goals and objectives”⁵⁴. At least one study has treated cohesiveness as an emergent state rather than a process, and posited that it has a positive effect on what they termed “group viability”; this latter was however defined in such a way to be fairly close to Carron's definition of cohesiveness above⁵⁵. Much of the literature supports some sort of positive relationship between group cohesiveness and group performance⁵⁶, even if the precise nature of that relationship has not been entirely clearly characterized. At least one study however, found that group cohesiveness was an antecedent of group performance, but the reverse relationship (which had been hypothesized by the authors) did not exist⁵⁷. The absence of a causal relationship from group performance (self-rated) to cohesiveness was in direct opposition to early research (in a group of deep sea divers) where performance over time was found to engender cohesiveness, but not vice versa⁵⁸. This may have been due to the fact that in this latter case team performance was taken to be mean total hours the team spent on task performance, or was an effect of observing cohesiveness during leisure time (only), or perhaps the fact that performance was a temporal antecedent to cohesiveness was inherent in the cohesiveness construct (some time is obviously required for a group to become cohesive⁵⁹).

One approach to understanding the way that group cohesiveness may be measured is that of ‘perceived’ cohesiveness. In their paper, Bollen & Hoyle⁶⁰ chose to define cohesiveness as a combination of the sense of belonging to the group, and of feelings of morale; both as appraised by the individual. This research is interesting because it took a subjective approach to cohesiveness, rather than going down the objective path of observing and timing interactions as proxies of cohesiveness as did others (e.g. Bakeman and Helmreich⁶¹). However, their assertion that the cumulative effect of individual perceived cohesiveness could be used to characterize group cohesiveness stood on

⁵⁴ Albert V Carron, 'Cohesiveness in sport groups: Interpretations and considerations' (1982) 4(2) *Journal of Sport Psychology*, p 124

⁵⁵ Jehn et al 2008, above 32

⁵⁶ Kozlowski and Ilgen, above 2

⁵⁷ Artemis Chang and Prashant Bordia, 'A Multidimensional Approach to the Group Cohesion-Group Performance Relationship' (2001) 32(4) (August 1, 2001) *Small Group Research* 379

⁵⁸ Roger Bakeman and Robert Helmreich, 'Cohesiveness and performance: Covariation and causality in an undersea environment' (1975) 11(5) *Journal of Experimental Social Psychology* 478

⁵⁹ Beal et al, above 1

⁶⁰ Kenneth A. Bollen and Rick H. Hoyle, 'Perceived Cohesion: A Conceptual and Empirical Examination' (1990) 69(2) *Social Forces (University of North Carolina Press)* 479

⁶¹ Bakeman and Helmreich, above 42

somewhat shaky foundations on both theoretical (both Beal et al. and Kozlowski & Ilgen⁶² take issue with confounding individual with group levels of analysis), and practical grounds (an individual's perceived cohesiveness must remain invariant, and the total population of the group must be sampled).

It has been asserted that cohesiveness performs an important role in linking group outcomes with group processes, but that just how cohesiveness fits in, and the direction of causality, is unclear⁶³. These authors posited that there are efficiency gains to be had by cohesive groups by way of greater motivation to complete tasks and because of a level of comfort between group members (which may lead to increased use of transactive memory, 'knowing who knows what' for example). For this reason they felt that investigating efficiency (where inputs were taken into account) rather than effectiveness outcomes (where inputs were not taken into account) would demonstrate stronger correlations between cohesiveness and performance. Their meta-analysis of 64 articles on the components of cohesiveness also found the correlation to be much greater where performance was defined as behaviours rather than outcomes of those behaviours (since these were likely to include exogenous factors⁶⁴), and where the workflow of the group (task interdependence) was such that teamwork and collaboration was required⁶⁵.

Beal et al.⁶⁶ also determined that three components of cohesiveness commonly used in research all had positive effects on performance, in ascending order of effect: interpersonal attraction, group pride and task commitment. Unfortunately results comparing these individual components of cohesiveness to behaviour/outcome, efficiency/effectiveness and workflow were not as conclusive due to sample size issues. Kozlowski and Ilgen's⁶⁷ commentary on various meta-analyses restated Beal et al.'s position that many previous meta-analyses had confounded group-level and individual level effects and that under conditions of task interdependence, the relationship between cohesiveness and performance is stronger, and asserted that group cohesion is best understood as an emergent state, and is related to group performance in perhaps a reciprocal fashion.

Despite a number a research papers on cohesiveness being published in organizational literature (sufficient to conduct meta-analytic studies, e.g. Beal et al.⁶⁸), very little which directly examines the components or dimensions of cohesiveness in boards of directors exists. In contrast to a number of studies in the psychological literature which have examined cohesiveness⁶⁹, board literature has focussed largely on the effects of structural variables such as diversity (e.g. Erhardt, Werbel and Shrader⁷⁰) and size (e.g. Muth and Donaldson⁷¹) on the social cohesiveness of the board. Even then, cohesiveness has typically been investigated either only as one of a number of precursors to financial

⁶² Beal et al, above 1; Kozlowski & Ilgen, above 2

⁶³ Beal et al, above 1

⁶⁴ Kozlowski and Ilgen, above 2

⁶⁵ Beal et al, above 1

⁶⁶ Ibid

⁶⁷ Kozlowski and Ilgen, above 2

⁶⁸ Beal et al, above 1

⁶⁹ Bakeman and Helmreich, above 42 ; Bollen and Hoyle, above 60; Rex Stockton, 'Developing cohesion in small groups: Theory and research' (1981) 6(4) (1981/11/01) *The Journal for Specialists in Group Work* 188; Albert A. Cota et al, 'The Structure of Group Cohesion' (1995) 21(6) (June 1, 1995) *Personality and Social Psychology Bulletin* 572

⁷⁰ Niclas L. Erhardt, James D. Werbel and Charles B. Shrader, 'Board of Director Diversity and Firm Financial Performance' (2003) 11(2) *Corporate Governance: An International Review* 102

⁷¹ Melinda Muth and Lex Donaldson, 'Stewardship Theory and Board Structure: a contingency approach' (1998) 6(1) *Corporate Governance: An International Review* 5

performance of firms (or where firm performance has been used as a proxy for board performance), e.g. Dalton et al.⁷², or as a mediator between diversity and groupthink, rather than focussing on how cohesiveness *per se* is to be understood in the board context.

Conclusion

It can be seen that boards are elite teams, and as such board effectiveness may be understood in terms of team effectiveness. Forbes and Milliken⁷³, supported by van Ees et al.⁷⁴ and Bailey and Peck⁷⁵ have shown that for this particular case of effectiveness, only the criteria of task performance and board cohesiveness need be considered, and have identified cognitive conflict, effort norms and the use of knowledge and skills as processes which influence task performance. Other conflict types and the cohesiveness criterion in general, have however been less studied and less well understood in the board context, and just which board tasks should be included and how contingent they might be in various organization types needs further study. Research to determine just how conflict and other group dynamics affect cohesiveness and task performance, and how these are manifested in real boards is also required.

⁷² Dan R Dalton et al, 'Number of directors and financial performance: A meta-analysis' (1999) 42(6) *Academy of Management Journal* 674

⁷³ Forbes and Milliken, above 21; Bailey and Peck, above 36; van Ees, van der Laan and Postma, above 34

⁷⁴ Van Ees, van der Laan and Postma, above 34

⁷⁵ Bailey and Peck, above 36

Australian Female Board Representation

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Abstract

This article provides a descriptive analysis of the increase in female directors on Australian company boards from 2001 to 2010. After outlining the female board representation of the largest 500 companies in Australia based on their ASX market capitalisation from 2001 to 2010, an overall snapshot of the female participation on boards is based on a general, industry, corporate and individual level. With an increasing representation since 2001 to 2010, female directors consistently have more seats in the boardrooms of Insurance and Banking companies; while in Energy, Materials and Utilities sectors, female directors have been under-represented. In addition, female directors are most likely to serve on Audit Committee and are more likely to chair Audit Committee and Remuneration Committee. The findings of this article examine the effectiveness of existing gender diversity initiatives and shed a light on future corporate governance proposals advocating greater gender diversity on company boards.

Introduction

In recent years there has been growing world-wide interest in the importance of female participation in business practices, among both scholars and the business community (Jurkus, Park, & Woodard, 2008; Nielsen & Huse, 2010; Nielsen & Morten, 2010; O'Reilly III & Main, 2012; Wellalage, 2011). This, to a great extent, is due to the significant role people legitimately expect females to play in global business activities. However, the evidence suggests that females still constitute a relatively small percentage of directors on corporate boards. For example, in the United States, based on the 500 companies in the survey of Corporate Women Directors International (CWDI) in 2012, women held 16.1 percent of the board seats (CWDI, 2012). In other countries, there is a similarly small proportion of female representation on corporate boards. For example, based on the data of the European Professional Women's Network (EPWN), in Germany only 11.2 percent of company directors were women in 2004 and this number rose slightly to 14.1 percent in 2014 (Catalyst, 2014). In Canada the proportion of female directors on company boards was 10.3 percent, while in Japan it was only 1.1 percent (Catalyst, 2014). Similar surveys have been performed by the Equal Opportunity for Women

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in the Workplace Agency (EOWA) for female director representation on Australian company boards. There is evidence indicating a modest progression in Australian female board representation over the last decade. Australia generally reports substantial levels of participation of women in the workforce, however only a tiny percentage of this substantial group occupy leadership roles or top positions.

According to the EOWA census¹, only 8.2 percent of board seats in ASX top 200 companies were held by women in 2004 (EOWA, 2010). This figure only rose slightly to 8.4 percent in 2010, although in the following years Australia increased this representation to a level above that of Canada and New Zealand. More recently there were some promising developments regarding women in senior business positions. For example, in 2012, 61.5 percent of the ASX 200² companies had at least one female director on their boards, and women made up 12.3 percent of the ASX 200 directorships and 9.2 percent of the ASX 500³ directorships (EOWA, 2012). More recent data in March 2014 shows that Australia currently claims the highest rates of female board participation in the Asian-Pacific region and is rising on an international comparative basis (see Figure 1).

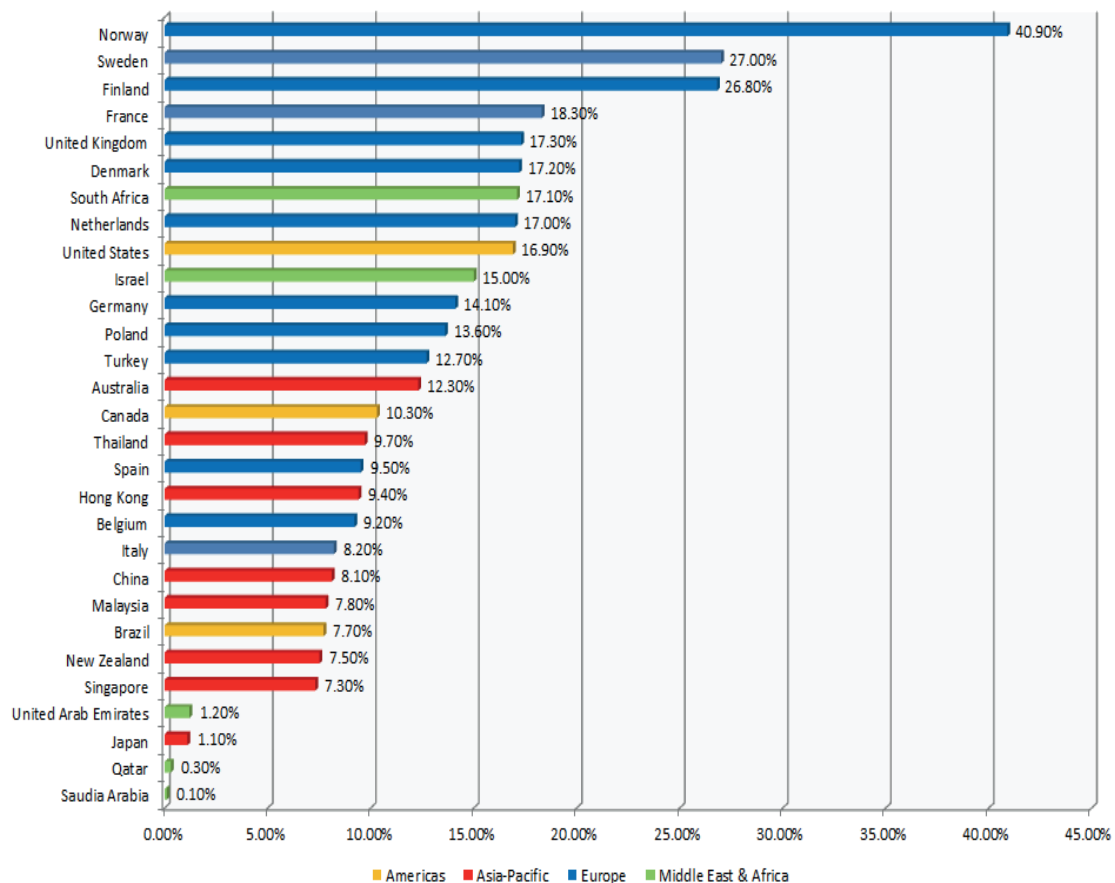


Figure 1 Worldwide female director representation

Source Catalyst (2014)

Based on the data of Australian Census of Women in Leadership, a trend of increasing participation of women in both boardrooms and executive teams has occurred from 2002 to 2012. As mentioned above, women held only 8.2 percent of ASX 200 directorships in 2002. While being a long way short of achieving gender parity, there was a significant improvement in directorships being held by women by 2012 (see Figure 2). By this date, the percentage of ASX 200 companies with at least one female

¹ Australian Census of Women in Leadership.

² The ASX 200 refers to ASX 200 index companies as at 16 March 2012. The ASX 200 index measures the performance of the 200 largest index-eligible stocks listed on the ASX by float-adjusted market capitalisation.

³ The ASX 500 refers to ASX 500 index companies as at 16 March 2012. The ASX 500 index refers to the All Ordinaries Index comprising the 500 largest securities listed on the ASX and the constituents are not screened for liquidity. The index is not float-adjusted.

director had also improved significantly to 61.5 percent. Finally, in 2012, 43.8 percent of the ASX.

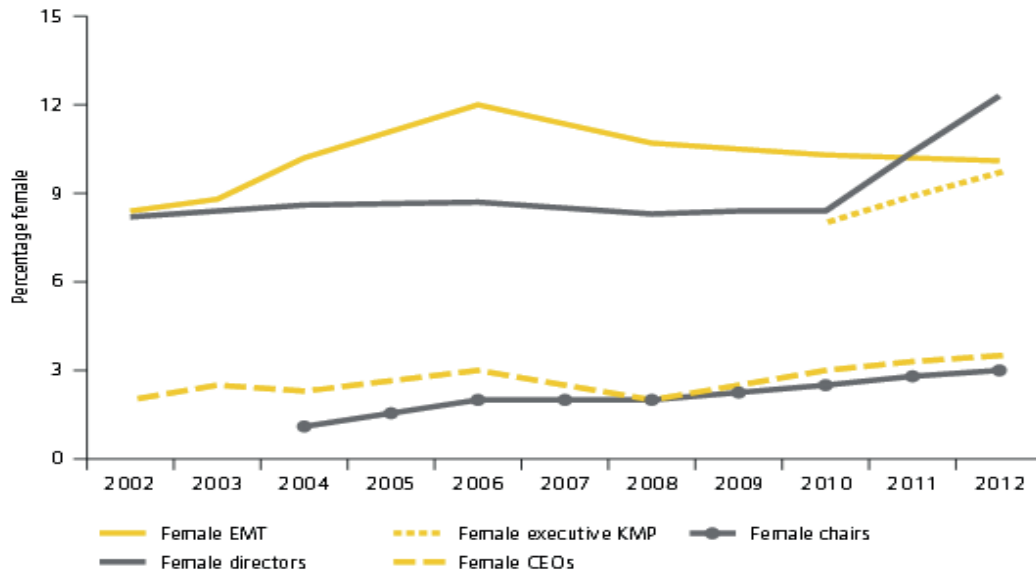


Figure 2 Female representations in leadership in ASX 200 companies (2002-2012)

Source: EOWA (2012).

General descriptions of female directors from 2001 to 2010

This article outlines the female board representation of the largest 500 companies⁴ in Australia based on their ASX market capitalisation from 2001 to 2010. An overall snapshot of the female participation on boards is based on a general, industry, corporate and individual level. The sample size in different years which are examined are represented in the table below (see Table 1). The research period is from 2001 to 2010.

Table 1 Sample size in different years

Year	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	Total
Firm	500	483	478	454	425	396	358	311	299	283	3,987

⁴ The list of the largest 500 companies ranked by their ASX market capitalisation was collected based on the market capitalisation on the end of 2010.

Changes of female director representation over time

Based on the sample data, the female directorships on company boards are represented in Figure 3. Both the percentage of female directors and percentage of companies with at least one female director have increased between 2001 and 2010. In terms of representation on company boards, the percentage of female directors in the sample companies rose slightly from 5.05 percent in 2001 to 6.71 percent in 2010. However, a more significant increase saw a 24.53 percent increase in sample companies with at least one female director from 26.50 percent in 2001 to 33.00 percent in 2010. In particular, it should be noted that the figures have shown a small reduction from 2007 to 2009 which possibly could be attributed to the global financial crisis.

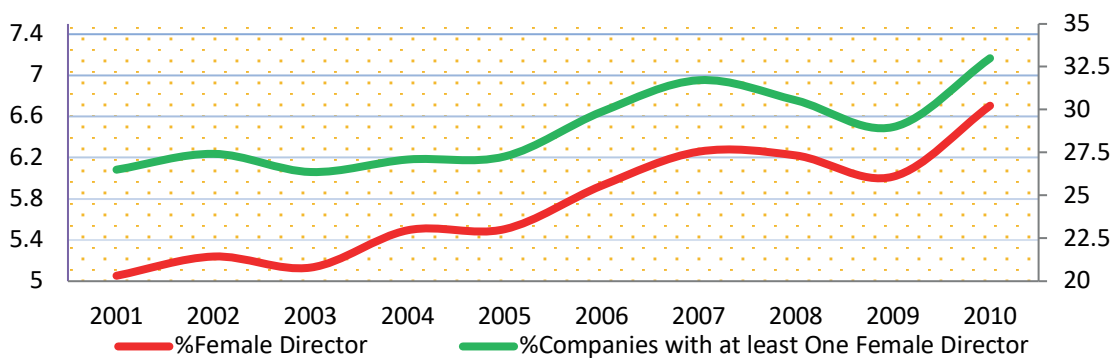


Figure 3 General description of female representations on boards (2001-2010)

Female director representation and company size

Hillman, Shropshire, and Cannella (2007) found that larger companies are more likely to have a greater number of female directors on their board. This finding is supported by the results of EOWA (2012) showing that more female directors are found in larger companies based on their ASX market capitalisation (see Table 2). In this study, as utilised in other literature (Adjaoud & Ben-Amar, 2010; Carter, Simkins, & Simpson, 2003), total assets of the sample companies are used to measure company size. A clear relationship between the percentage of female directors and company size is indicated in Figure 4. Following the classification criteria of EOWA (2012), the sample companies are ranked and categorised into five groups based on their total assets: Rank 1-20, Rank 21-50, Rank 51-100, Rank 101-200, and Rank 201-500. As the sample size is smaller in the years 2001 to 2009, a proportion is used in these sample companies, Rank top 4%, Rank >4%-10%, Rank >10%-20%, Rank >20%-40%, and others. The range of total assets for each group is shown in Table 3.

Table 2 Female directors and company size in 2012

Company size	ASX Top 20	ASX 21-50	ASX 51-100	ASX 101-200	ASX 201-500
Percentage of female directors	18.8%	15.7%	11.8%	9.1%	6.1%

Source: (EOWA, 2012).

Table 3 Company size and classification in the sample companies

2001 (283 Firms)					
Company size	Rank 1-11	Rank 12-28	Rank 29-57	Rank 58-113	Rank 114-283
Total assets (\$ million)	27,848 - 374,720	4,825 - 19,585	1,564 - 4,222	251 - 1,546	0.57 - 244
2002 (299 Firms)					
Company size	Rank 1-12	Rank 13-30	Rank 31-60	Rank 61-120	Rank 121-299
Total assets (\$ million)	30,234 - 377,387	4,030 - 20,537	1,695 - 3,907	264 - 1,669	0.10 - 252
2003 (311 Firms)					
Company size	Rank 1-12	Rank 13-31	Rank 32-62	Rank 63-124	Rank 125-311
Total assets (\$ million)	31,610 - 397,471	4,355 - 20,478	1,741 - 4,038	268 - 1,725	0.03 - 262
2004 (358 Firms)					
Company size	Rank 1-14	Rank 15-36	Rank 37-72	Rank 73-143	Rank 144-358
Total assets (\$ million)	25,102 - 411,309	4,376 - 17,574	1,499 - 4,346	265 - 1,489	0.21 - 255
2005 (394 Firms, 2 firms no size data is available)					
Company size	Rank 1-16	Rank 17-40	Rank 41-79	Rank 80-158	Rank 159-394
Total assets (\$ million)	17,147 - 419,588	4,697 - 13,262	1,865 - 4,636	286 - 1,737	0.18 - 285
2006 (422 Firms, 3 firms no size data is available)					
Company size	Rank 1-17	Rank 18-42	Rank 43-84	Rank 85-169	Rank 170-422
Total assets (\$ million)	16,972 - 484,785	5,587 - 16,927	2,019 - 5,397	352 - 1,961	0.12 - 343
2007 (452 Firms, 2 firms no size data is available)					
Company size	Rank 1-18	Rank 19-45	Rank 46-90	Rank 91-181	Rank 182-452
Total assets (\$ million)	20,037 - 564,634	5,912 - 19,606	2,306 - 5,851	460 - 2,188	0.11 - 454
2008 (478 Firms)					
Company size	Rank 1-19	Rank 20-48	Rank 49-96	Rank 97-191	Rank 192-478
Total assets (\$ million)	19,700 - 656,799	6,464 - 19,380	2,325 - 6,122	538 - 2,325	0.20 - 536

Table 4 Company size and classification in the sample companies (Continued)

2009 (483 Firms)					
Company size	Rank 1-19	Rank 20-48	Rank 49-97	Rank 98-193	Rank 194-483
Total assets (\$ million)	22,102 - 654,120	6,339 - 20,049	2,261 - 6,284	524 - 2,225	0.01 - 515
2010 (499 Firms, 1 firm no size data is available)					
Company size	Rank 1-20	Rank 21-50	Rank 51-100	Rank 101-200	Rank 201-499
Total assets (\$ million)	19,910 - 685,952	5,761 - 19,872	2,210 - 5,711	560 - 2,163	4 - 559

As indicated by Figure 4, in general, larger companies are more likely to have female directors than smaller companies, and they are also more likely to have a higher percentage of female directors. Although in 2001 the proportion of female directors was only 9.57 percent in the TOP 4% sample companies, there was a significant increase of up to 18.50 percent by 2010. According to EOWA census data, female director representation had generally increased in companies of all sizes by the end of 2012. Beyond this general trend however, the percentage and number of female directors do show some difference according to the different levels of company size (see Figure 4).

As indicated in Figure 4 and Figure 5, there was a general increase in the percentage of female directors until 2010 for all sample companies except for the Rank 4%-10% sample companies. The Top 4% sample companies continually have the highest figures in terms of gender diversity with increases occurring consistently. This trend is less apparent in the 10%-20%, 20%-40% and other sample companies.

Rank 4%-10% sample companies showed very different patterns than those discussed above. From a starting point of 14.10 percent as the percentage of female directors in 2001, this number fell to 11.20 percent in 2010. In 2009, there was a transitory increase for the percentage of female directors while the numbers of female directors were the same as 2008. Another specific trend emerges in the Rank 10%-20% sample companies, in which the percentage of female director peaked in 2003 but followed a continuous decline with a slight increase in 2008.

This trend is reflected among all other groups of sample companies. With a slight decrease for both numbers and percentage of female directors, these sample companies show a slowly increasing trend during the ten years. Overall, all figures used have shown modest growth from 2001 to 2010

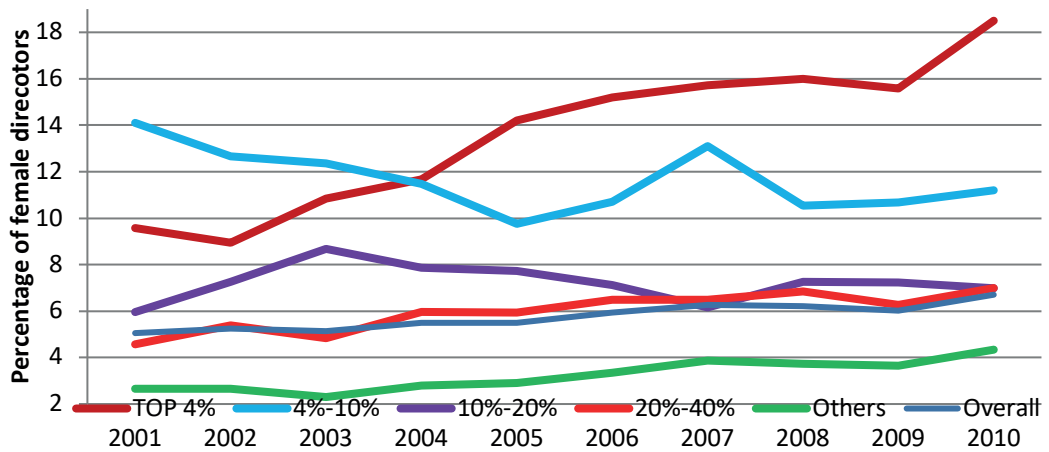


Figure 4 Percentage of female directors and company size (2001-2010).

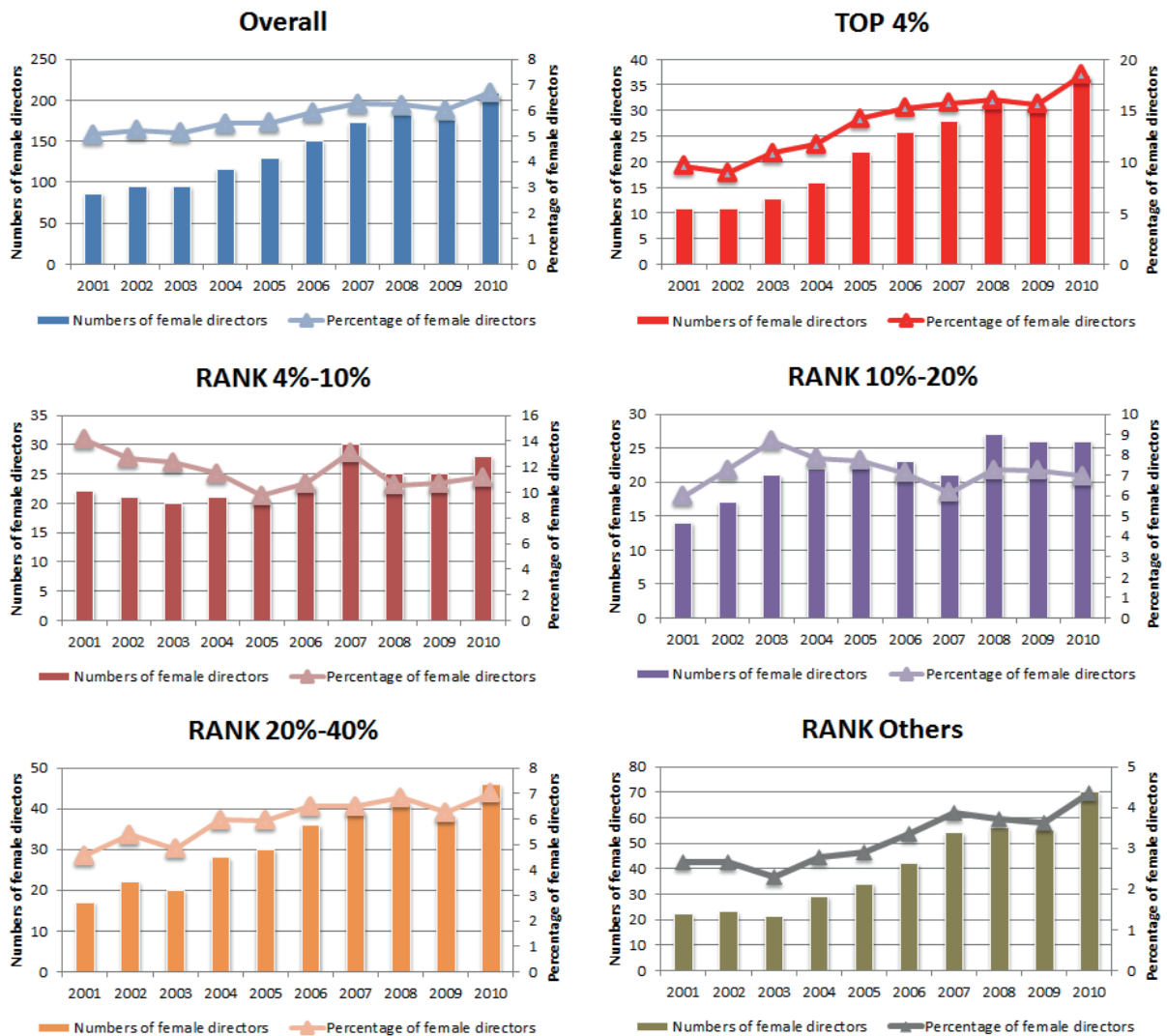


Figure 5 Number & percentage of female directors and company size (2001-2010)

Industry representation of female directors

Industry sectors show a significant divergence in female director representation across sample companies. In this study, the industries of each sample company are distinguished by their Global Industry Classification Standard (GICS) group code⁵. All the analysis in this thesis is at the GICS group level. The sample observations and the percentage of female directors in the sample companies in this study based on GICS are shown in Table 4.

⁵ GICS is a joint Standard and Poor's / Morgan Stanley Capital International product, which standardises industry definitions. GICS consists of 10 Sectors aggregated from 24 Industry Groups, 67 Industries, and 147 Sub-Industries. Resource from <http://www.asx.com.au/products/gics.htm>

Table 5 Percentage of female directors and GICS group in sample companies (2001-2010)

Industry	2001		2002		2003		2004		2005	
	Samples	%Female Directors	Samples	%Female Directors	Samples	%Female Directors	Samples	%Female Directors	Samples	%Female Directors
Banks	8	9.23	8	7.94	8	11.11	8	10.94	8	12.31
Capital Goods	17	4.46	17	4.50	17	4.42	20	3.76	24	2.74
Commercial & Professional Services	14	4.49	14	3.13	15	2.91	17	3.60	19	3.15
Consumer Durables & Apparel	8	4.44	8	6.38	8	6.52	8	4.76	9	6.25
Consumer Services	6	2.94	7	6.38	7	4.55	8	8.16	10	6.56
Diversified Financials	26	4.90	28	5.37	28	4.46	38	6.25	43	6.64
Energy	33	1.91	35	1.79	36	2.20	41	2.50	45	3.17
Food & Staples Retailing	3	6.67	3	6.45	3	10.34	3	10.00	3	10.00
Food, Beverage & Tobacco	5	2.56	6	4.44	6	4.44	8	4.69	8	4.76
Healthcare Equipment & Services	8	8.06	9	8.57	10	6.67	10	7.46	10	5.63
Insurance	5	15.91	5	20.93	5	20.45	6	18.60	6	16.28

Table 4 Percentage of female directors and GICS group in sample companies (2001-2010) (Continued)

Industry	2001			2002			2003			2004			2005		
	Samples	%Female Directors	%Female Directors	Samples	%Female Directors	%Female Directors	Samples	%Female Directors	%Female Directors	Samples	%Female Directors	%Female Directors	Samples	%Female Directors	%Female Directors
Materials	71	4.36	4.67	76	4.67	5.11	81	5.11	4.37	93	4.37	101	4.55		
Media	9	7.46	6.49	10	6.49	6.85	10	6.85	8.24	11	8.24	11	7.32		
Pharmaceuticals, Biotechnology & Life Sciences	6	5.71	5.56	6	5.56	4.44	7	4.44	10.34	9	10.34	11	8.70		
Real Estate	21	6.11	6.82	22	6.82	4.41	24	4.41	5.56	26	5.56	32	6.47		
Retailing	11	3.45	1.79	11	1.79	1.69	11	1.69	4.88	15	4.88	17	4.17		
Semiconductors & Semiconductor Equipment	1	0.00	0.00	1	0.00	0.00	1	0.00	0.00	1	0.00	1	0.00		
Software & Services	14	4.17	2.82	14	2.82	4.00	14	4.00	3.95	14	3.95	14	5.41		
Technology, Hardware & Equipment	--	--	--	--	--	--	--	--	0.00	1	0.00	1	0.00		
Telecommunication Services	6	4.88	3.77	7	3.77	6.00	7	6.00	5.36	7	5.36	8	3.51		
Transportation	7	7.84	8.62	8	8.62	6.78	8	6.78	7.35	9	7.35	9	7.69		
Utilities	4	0.00	0.00	4	0.00	0.00	5	0.00	0.00	5	0.00	6	4.65		
TOTAL	283			299			311			358			396		

Table 4 Percentage of female directors and GICS group in sample companies (2001-2010) (Continued)

Industry	2006			2007			2008			2009			2010		
	Samples	%Female Directors	%Female Directors	Samples	%Female Directors	%Female Directors	Samples	%Female Directors	%Female Directors	Samples	%Female Directors	%Female Directors	Samples	%Female Directors	%Female Directors
Banks	8	16.18	15.71	8	17.65	17.65	8	16.22	16.22	8	16.22	16.22	9	16.67	16.67
Capital Goods	27	2.98	2.78	29	2.94	2.94	32	2.53	2.53	32	2.53	2.53	35	3.62	3.62
Commercial & Professional Services	20	6.67	5.84	21	6.87	6.87	21	6.82	6.82	21	6.82	6.82	21	9.02	9.02
Consumer Durables & Apparel	9	6.82	5.84	9	7.14	7.14	9	5.88	5.88	10	5.88	5.88	10	5.77	5.77
Consumer Services	12	10.53	11.54	13	10.75	10.75	15	14.58	14.58	15	14.58	14.58	15	14.13	14.13
Diversified Financials	44	6.72	7.19	51	7.03	7.03	55	6.62	6.62	55	6.62	6.62	56	6.77	6.77
Energy	47	3.42	3.20	48	3.44	3.44	49	3.38	3.38	49	3.38	3.38	50	3.94	3.94
Food & Staples Retailing	3	10.34	13.33	3	10.34	10.34	3	10.71	10.71	3	10.71	10.71	3	16.67	16.67
Food, Beverage & Tobacco	9	4.29	5.06	10	6.85	6.85	10	6.15	6.15	10	6.15	6.15	10	6.58	6.58
Healthcare Equipment & Services	10	5.33	9.09	12	8.79	8.79	13	9.78	9.78	13	9.78	9.78	14	9.68	9.68
Insurance	7	16.00	17.65	7	19.67	19.67	8	17.24	17.24	8	17.24	17.24	8	16.95	16.95
Materials	109	3.87	3.84	115	3.40	3.40	125	2.97	2.97	127	2.97	2.97	132	3.65	3.65

Table 4 Percentage of female directors and GICS group in sample companies (2001-2010) (Continued)

Industry	2006			2007			2008			2009			2010		
	Samples	%Female Directors	Director	Samples	%Female Directors	Director	Samples	%Female Directors	Director	Samples	%Female Directors	Director	Samples	%Female Directors	Director
Media	12	7.61	12	8.00	13	7.45	13	4.12	13	8.25					
Pharmaceuticals, Biotechnology & Life Sciences	11	9.23	13	9.21	13	9.21	13	9.33	13	10.67					
Real Estate	33	7.01	33	7.91	34	8.33	34	7.73	35	7.96					
Retailing	19	4.76	20	4.39	20	5.00	20	5.93	22	7.46					
Semiconductors & Semiconductor Equipment	2	11.11	2	11.11	2	0.00	2	0.00	2	11.11					
Software & Services	15	5.13	16	6.98	16	7.06	16	9.09	17	9.18					
Technology, Hardware & Equipment	1	0.00	1	0.00	1	0.00	1	0.00	1	0.00					
Telecommunication Services	8	5.45	8	6.67	8	5.08	9	6.15	9	7.46					
Transportation	10	7.14	12	7.50	12	7.79	13	6.25	14	6.45					
Utilities	9	4.62	11	5.06	11	4.94	11	4.94	11	5.13					
TOTAL	425		454		478		483		500						

To compare female director representation in different industries more intuitively, the best and worst five companies in relation to their percentage of female directors are listed in Table 5.

Table 5 Best and worst performing industries of female director representation in sample companies (2001-2010)

	Best Performing	Worst Performing
2001	Insurance	Semiconductors & Semiconductor Equipment
	Banks	Utilities
	Healthcare Equipment & Services	Energy
	Transportation	Food, Beverage & Tobacco
	Media	Consumer Services
2002	Insurance	Semiconductors & Semiconductor Equipment
	Transportation	Utilities
	Healthcare Equipment & Services	Energy
	Banks	Retailing
	Real Estate	Software & Services
2003	Insurance	Semiconductors & Semiconductor Equipment
	Banks	Utilities
	Food & Staples Retailing	Retailing
	Media	Energy
	Transportation	Commercial & Professional Services
2004	Insurance	Technology, Hardware & Equipment
	Banks	Semiconductors & Semiconductor Equipment
	Pharmaceuticals, Biotechnology & Life Sciences	Utilities
	Food & Staples Retailing	Energy
	Media	Commercial & Professional Services

Table 5 Best and worst performing industries of female director representation in sample companies (2001-2010) (Continued)

	Best Performing	Worst Performing
2005	Insurance	Technology, Hardware & Equipment
	Banks	Semiconductors & Semiconductor Equipment
	Food & Staples Retailing	Capital Goods
	Pharmaceuticals, Biotechnology & Life Sciences	Commercial & Professional Services
	Transportation	Energy
2006	Banks	Technology, Hardware & Equipment
	Insurance	Capital Goods
	Semiconductors & Semiconductor Equipment	Energy
	Consumer Services	Materials
	Food & Staples Retailing	Food, Beverage & Tobacco
2007	Insurance	Technology, Hardware & Equipment
	Banks	Capital Goods
	Food & Staples Retailing	Energy
	Consumer Services	Materials
	Semiconductors & Semiconductor Equipment	Retailing
2008	Insurance	Technology, Hardware & Equipment
	Banks	Semiconductors & Semiconductor Equipment
	Consumer Services	Capital Goods
	Food & Staples Retailing	Materials
	Pharmaceuticals, Biotechnology & Life Sciences	Energy

Table 5 Best and worst performing industries of female director representation in sample companies (2001-2010) (Continued)

	Best Performing	Worst Performing
2009	Insurance	Technology, Hardware & Equipment
	Banks	Semiconductors & Semiconductor Equipment
	Consumer Services	Capital Goods
	Food & Staples Retailing	Materials
	Healthcare Equipment & Services	Energy
2010	Insurance	Technology, Hardware & Equipment
	Banks	Capital Goods
	Food & Staples Retailing	Materials
	Consumer Services	Energy
	Semiconductors & Semiconductor Equipment	Utilities

As shown in Table 5, the industries containing sample companies with the highest percentage of female directors have remained fairly consistent from 2001 to 2010, as have those with under-representation of female directors. The Insurance and Banking sectors in particular have consistently held the highest representation out of the sample companies over the decade. Food & Staples, Retailing and Consumer Services have also been among the top five best industry sectors for female representation in most of the years from 2001 to 2010. Notably, there are only three sample companies included in the Food & Staples Retailing sector and two in the Semiconductors & Semiconductor Equipment sector. This suggests that the above result may not be entirely representative for the whole of these two industries. Generally speaking, companies in the Insurance and Banking sectors are most likely to have a gender-diverse board: an assessment supported by the census of EOWA (2010) and EOWA (2012). The difference of the representation of female directors on boards has already been emphasised by some empirical studies (Farrell & Hersch, 2005; Harrigan, 1981; Hillman et al., 2007; Kang, Cheng, & Gray, 2007). In addition, some researchers found that female directors are more likely to serve in service and financial companies (Harrigan, 1981; Hyland & Marcellino, 2002). There are several reasons which may explain the differences of female director representation in different industries, one of which is the female employment rate (Hillman et al., 2007). Based on the data of the Australian Bureau of Statistics¹⁴¹, employment distribution of genders varies in industries (see Figure 6). In Figure 6, it is shown clearly that by the end of November 2010, the female employment rate is higher in the industries of Health Care and Social Assistance, Education and Training, Retail Trade, Accommodation and Food Services, Public Administration and Safety, Financial and Insurance Services, Administrative and Support Services. As the companies in these industries have a larger female employment base, it is expected that these companies may have more female directors (Hillman et al., 2007).

¹⁴¹ Source from 4125.0 - Gender Indicators, Australia, Jan 2012. Australian Bureau of Statistics.
<http://www.abs.gov.au/ausstats/abs@nsf/Lookup/by+Subject/4125.0~Jan+2012~Main+Features~Labour+force~1110>

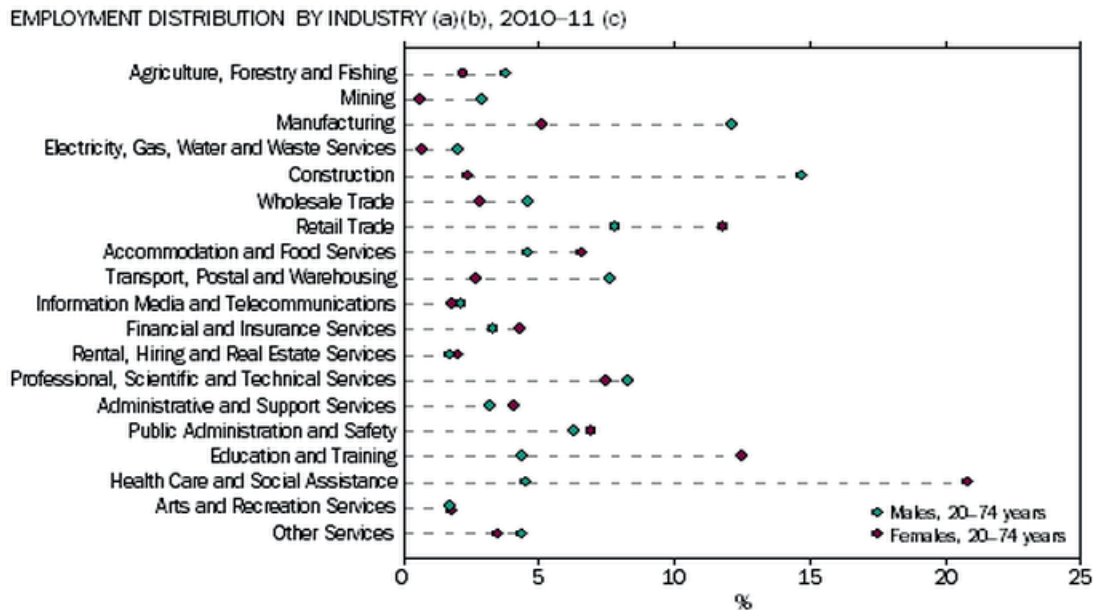


Figure 6 Female employments by industry (2010)

Source: Australian Bureau of Statistics (2012).

In addition, based on the occupational background of female directors in sample companies (details in the following section), it can be seen that a large number of female directors have a professional background, especially in accounting, finance and banking. It seems reasonable to assume that these female directors would use this skill set to contribute to corporate decision-making and operating processes, especially in financial sectors such as Insurance and Banking.

The worst performing industries have also remained constant from 2001 to 2010 among the sample companies, with the low performers being the Energy, Semiconductors & Semiconductor Equipment, Technology, Hardware & Equipment, Capital Goods, Materials and Utilities industry sectors. However, it should be noted that there is only one sample company included in the Technology, Hardware & Equipment sector and two in the Semiconductors & Semiconductor Equipment sector. Generally speaking, Energy and Materials, as well as Capital Goods and Utilities appear fairly consistently at the bottom rung of female director representation. These findings are consistent with the results of EOWA censuses (EOWA, 2000, 2010, 2012) and are not considered surprising due to the tendency of masculine-oriented industries such as Engineering, Building, Construction and Utilities to claim difficulties in finding female directors in practice (Harrigan, 1981; Sealy, Vinnicombe, & Singh, 2008).

As distinct from these general trends of consistently high or low representation, the Semiconductors & Semiconductor Equipment, and Consumer Services sectors have shown differing results over time. As mentioned above, only two sample companies were classified as Semiconductors & Semiconductor Equipment companies. Therefore, the results of this industry are significantly influenced by the performance of Dyesol Limited; one of the two companies from this industry. In contrast, the Consumer Services sector followed a different trend. Although female director representation was relatively low in 2001, this industry has shown a significant increase since 2003 resulting in it being one of the five highest industries for female director representation over five years.

Female directors and their formal role in companies

This section describes female director representation and their role within corporations.

Female director representation and leadership

Female representation in leadership positions in corporations has undergone a similar trend as that outlined previously in regards to industries. As Figure 7 shows, both the percentage of female chairpersons and female Chief Executive Officers (CEOs) showed an upward trend at the end of 2010. Of the sample companies there has been an irregular but increasing pattern of representation of women in these positions; with performance in this area decreasing slightly between 2001 and 2003 (by 1.06 percent), with the exception of the years 2006 to 2008, which despite a temporary drop in representation still saw five female chairpersons. This somewhat erratically upward trend is echoed in female CEO representation in the sample companies, which increased to 1.67 percent in 2002, dropped to 1.29 percent in 2003, and has been steadily increasing since 2006, as reflected in the findings of EOWA (2012). In summary, the percentage of female CEOs is dramatically less than male CEOs although it has increased from 0.71 percent in 2001 to 3.20 percent in 2010.

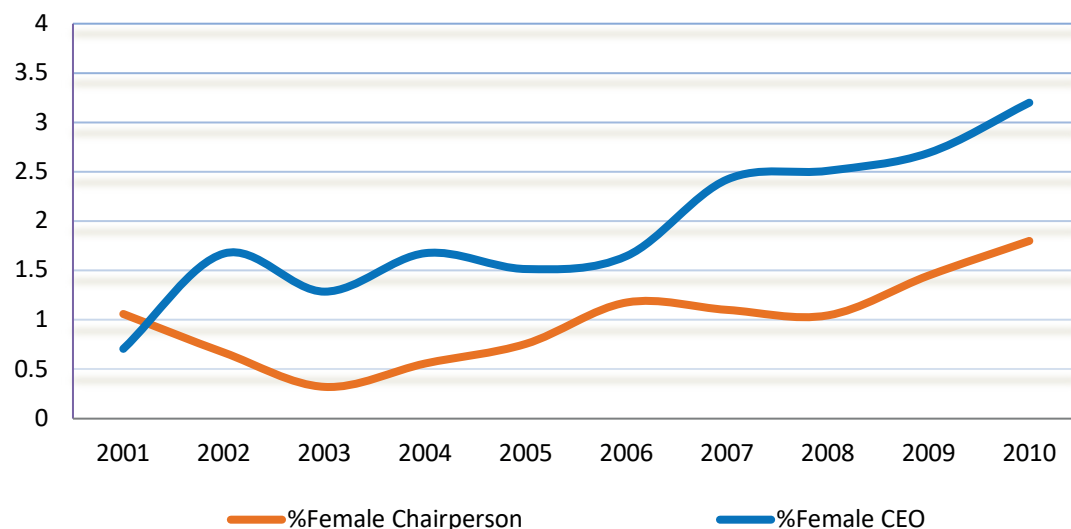


Figure 7 Female representation in leadership positions (2001-2010)

Female director representation and board size

Some researchers (Campbell & Miguez-Vera, 2008; Carter et al., 2003) find that in larger boards there is a greater probability of female directors being selected. Figure 8 indicates the distribution of board size for the sample companies.

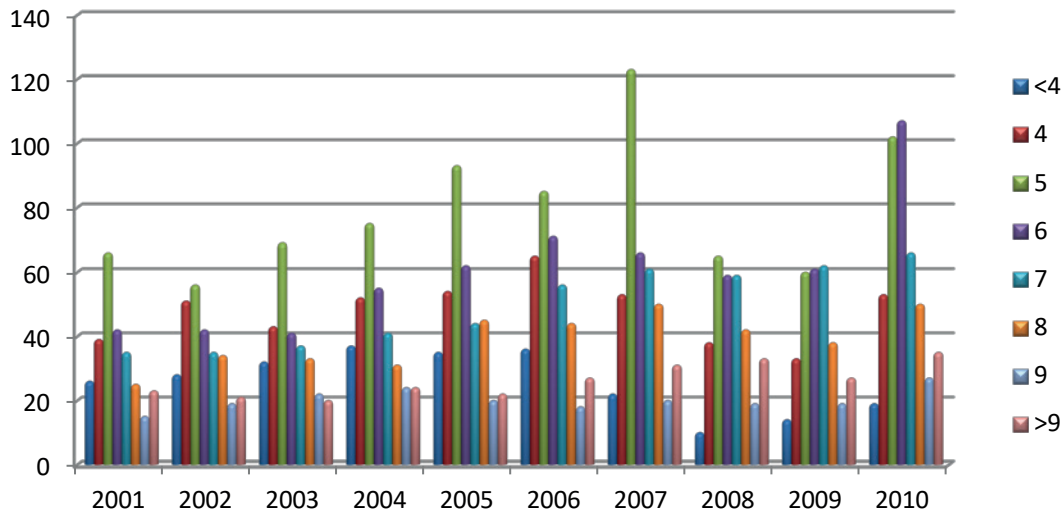


Figure 8 Distribution of board size in sample companies (2001-2010)

From Figure 8, most sample companies have five to six directors on their boards, with board sizes marginally increasing since 2007.

Figure 9 and Figure 10 show the average board size and the total number of female directors and average board size and percentage of female directors in the sample companies from 2001 to 2010 respectively.

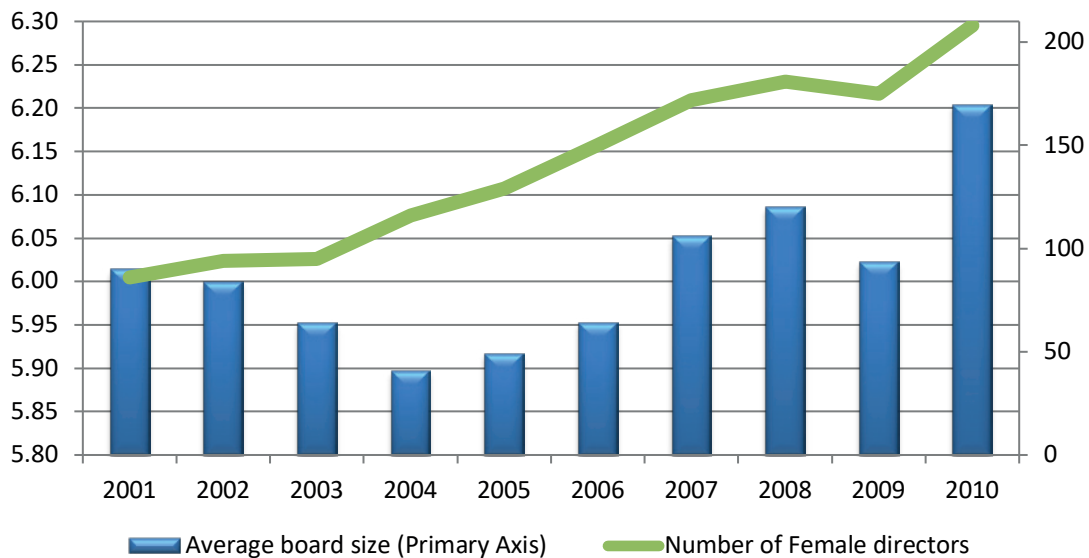


Figure 9 Number of female directors and board size (2001-2010)

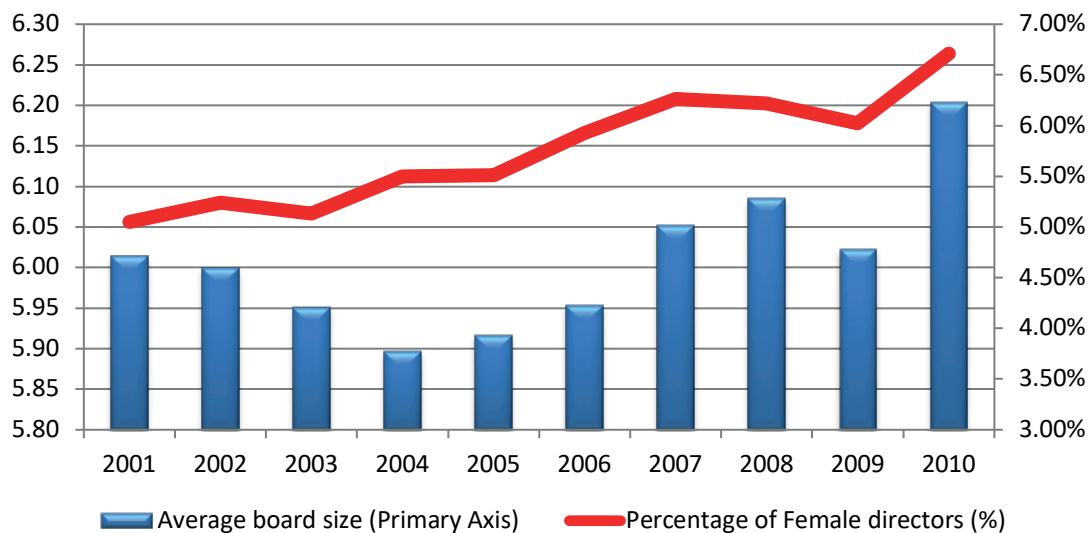


Figure 10 Percentage of female directors and board size (2001-2010)

As seen in the above figures, both the total number and percentage of female directors have grown alongside the average board size of the sample companies from 2004 to 2010. The average board size in the sample companies is 5-6 persons with a percentage of female directors at 6-7 percent. This percentage involves an increasing number of female directors from 86 in 2001 to 208 in 2010. As the figures do not show a visually significant relationship between female director representation and board size for all ten years, especially from the year 2001 to 2003, a Spearman's rank correlation coefficient is employed.

The Pearson correlation coefficient is the most widely used method to identify correlations between the variables. However, it is only applied to measure the strength of the linear relationship between normally distributed variables. As the data here is not normally distributed based on the normality test, a Spearman rank-order correlation coefficient is employed. Spearman's rank correlation is a nonparametric test and thus has no assumptions of normal distribution and sample size (Spearman, 1904).

Table 6 Spearman's correlation on female director representation and board size

	Board Size		
	Observations	Spearman's rho	<i>p</i> -value
Number of female directors	3,987	0.4243	0.0000
Percentage of female directors	3,987	0.3416	0.0000

The null hypothesis of the Spearman's correlation test is that the two variables are independent. As the results show, *p*-values of both number and percentage of female directors are 0.0000, which indicates that the null hypotheses are both rejected. In general, there are monotonic relationships between number of female directors and board size, and between the percentage of female directors and board size. The positive Spearman's rho (coefficient) reveals that a larger board is associated with a greater number and a higher percentage of female directors. Notably, the association between number of female directors and board size is even stronger than between the percentage of female directors and board size.

Female director representation and board committees

The Australian Institute of Company Directors emphasises the importance of establishing committees of directors for companies, especially for large organisations, to deal with complex and specialised issues. These initiatives are also required by the law and regulators such as the *Corporations Act 2001*, ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations* and the Australian Prudential and Regulation Authority (APRA)¹⁴².

All companies listed on the ASX are recommended (ASX Revised Corporate Governance Principles and Recommendations, 2007; Corporate Governance Principles and Recommendations with 2010 Amendments, 2010; Corporate Governance Principles and Recommendations third edition, 2014) to establish at least three board committees: an Audit Committee, Nomination Committee and Remuneration Committee (Kesner, 1988). These three committees focus on important board responsibilities and are thus seen as important formal committees of review. The Audit Committee is charged with "overseeing companies' financial reporting and disclosure", the Nomination Committee is responsible for "evaluating the board of directors and examining the skills and characteristics of nominees" and the Remuneration Committee focuses on "deciding on the pay and incentive schemes for executive directors" (EOWA, 2012). Figure 11 and Figure 12 show the numbers of female directors serving on these committees and the number of female directors holding committee chairs on these committees.

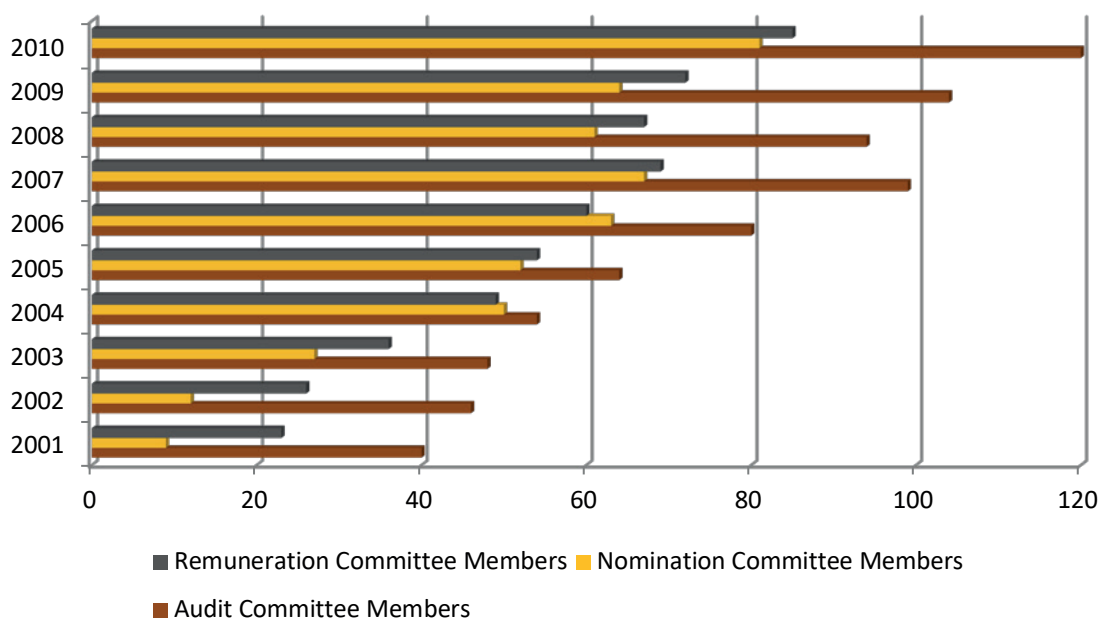


Figure 11 Female director representation on board committees (2001-2010)

¹⁴²Source from the Australian Institute of Company Directors, <http://www.companydirectors.com.au/Director-Resource-Centre/Director-QA/Roles-Duties-and-Responsibilities/Board-Committees>.

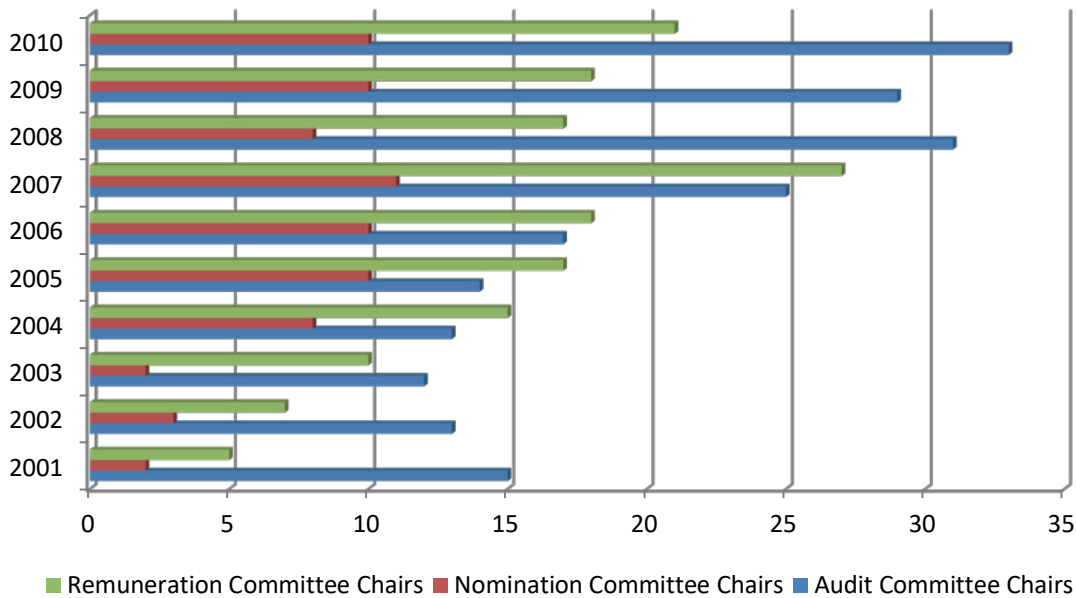


Figure 12 Female directors holding committee chairs (2001-2010)

As shown in the above figures, female directors are more likely to serve on the Audit Committee than on any other committee, though it might be noted that there has been a significant increase of the number of female directors on the Nomination Committee from 2001 to 2010. Despite this increase however, the Nomination committee has remained dominated by male committee chairpersons since 2001. In addition, female directors are more likely to chair Audit Committee and Remuneration Committee. These findings are supported by the census of EOWA (2012).

Individual descriptions of female directors

This section describes female director representation based on the individual characteristics.

Female directorships

In the sample companies, some female directors held directorships in more than one company. Figure 13 reveals the number of female directors holding multiple directorships in the sample companies.

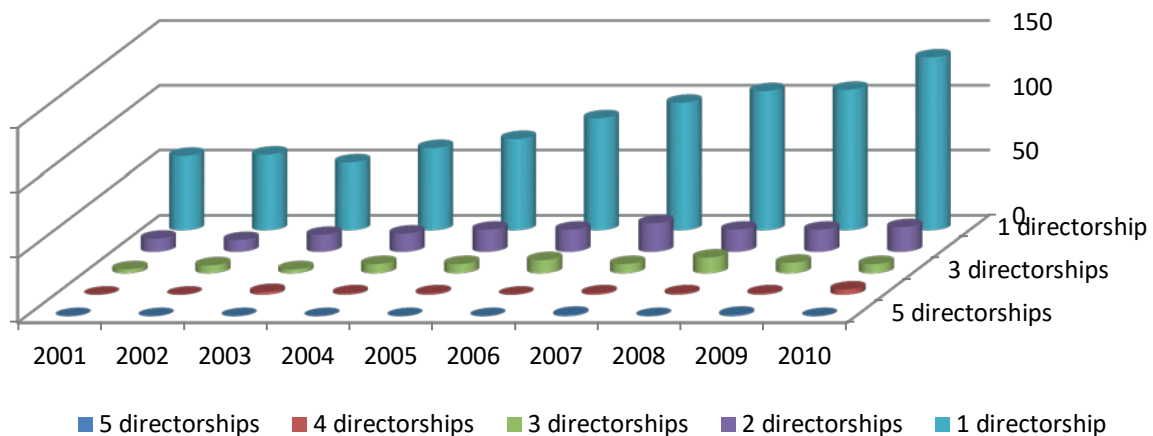


Figure 13 Directorships of female directors in sample companies (2001-2010)

As seen in Figure 13, most female directors held only one directorship. However between 13 (in 2001) to 30 (in 2010) female directors held multiple directorships and served on at least two sample company boards in the same year, and nearly all of them served on the largest 200 sample companies based on their market capitalisation or their total assets. This result may be considered unsurprising on account of the high standards female directors in these companies generally hold in terms of qualification and reputation. As expressed by one female ASX 200 director, “I think because I am on a few boards – there are lots of invitations to join boards – really it is no reflection on me other than the fact that I’ve been tested and I’m female” (EOWA, 2012).

Occupational background

As performed in previous censuses by EOWA, the occupational backgrounds of female directors are categorised in this study in one of four different groups: executive (senior executive experience), professional (legal, accounting and finance experience), support (human resource, consulting experience and specific experience in a certain industry), and public (public service experience such as regulator and academic).

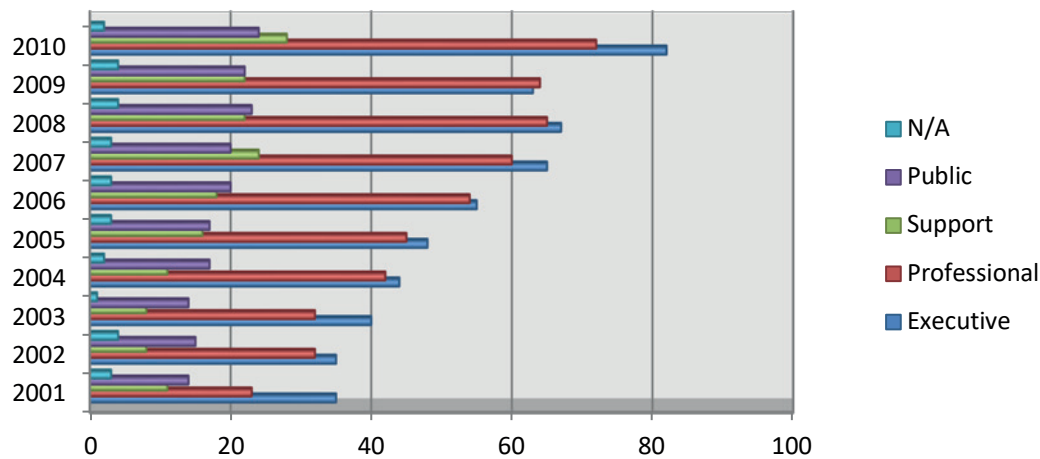


Figure 14 Occupational backgrounds of female directors in sample companies (2001-2010)

Figure 14 demonstrates the distribution of female directors’ occupational backgrounds in the sample companies. As seen in this figure, female directors with senior executive experience and professional backgrounds are strongly representative of the whole group. It would also appear that female directors with professional backgrounds as well as those with senior executive experience are most likely to be on company boards during the years from 2001 to 2010.

Entire Observations

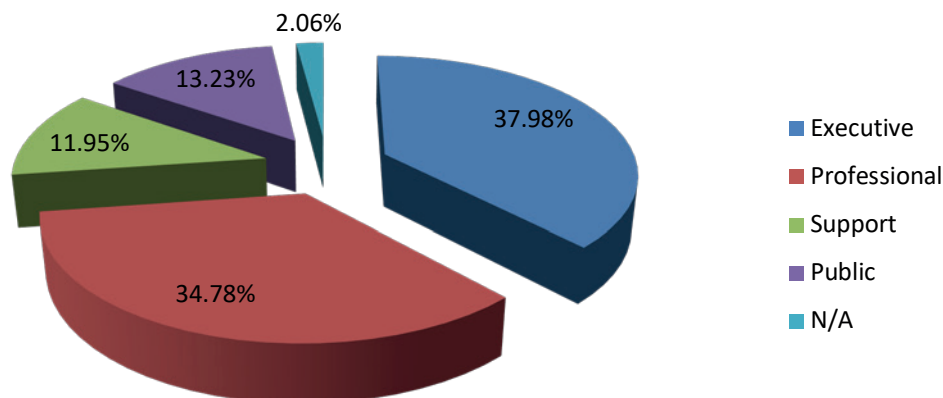


Figure 15 Occupational backgrounds of female directors (Entire Observations)

Figure 15 reveals the distribution of female directors' occupational backgrounds in this study's entire observations over the decade from 2001 to 2010. In general, female directors with executive backgrounds appear to be the most common group in the sample companies. Companies also seem willing to include on their boards female directors with experience and a background in law, accounting and finance. In addition, within the sample companies there are more female directors with public service experience as regulators, politicians or academics than those with corporate or specific industry experience.

Study Results

This article so far has provided snapshots of female director representation from a general, industry, corporate and individual level. A clear picture can thus be drawn of female director representation and how it has changed from 2001 to 2010 in the largest 500 companies in Australia.

From 2001 to 2010, female director representation (including the number and percentage of female directors, the number and percentage of female chairpersons and female CEOs) and companies with at least one female director have all increased. Based on the figures indicating a relationship between female directors and company size, larger companies have a higher percentage of female directors than smaller companies, with female director representation in the largest 20% of companies being significantly higher than the overall level of sample companies.

In terms of different industry sectors, female director representation has shown a significant divergence. However, the sectors with the highest and lowest percentage of female directors have all remained consistent from 2001 to 2010. Female directors consistently have more seats in the boardrooms of Insurance and Banking companies; while in some traditionally masculine-led industries, such as Energy, Materials and Utilities, female directors have been under-represented.

Notably the study finds not only that larger boards have greater numbers of female directors, (a point which has been argued and shown by many other researchers), but also that larger boards have a greater percentage of female directors. In the sample companies, those with more directors are more likely to embrace a diverse board with greater female director representation.

With respect to committee representation, female directors are most likely to serve on Audit Committee and are more likely to chair Audit Committee and Remuneration Committee. These results are not surprising as more than one third of female directors have executive and professional (legal, accounting and finance) backgrounds, which are relevant to these responsibilities.

Although most of the female directors of the sample companies have only one directorship, there are nearly 30 female directors in 2010 who held at least two company directorships in the sample companies. Almost all of these women serve on the largest 200 companies.

The findings of this article provides a useful introduction into the board question of what impact female directors had on company activities and performance during this time, which may be supportive of direction of future study focusing on the association between female director characteristics and corporate performance. In addition, the results also examine the effectiveness of existing gender diversity initiatives and shed a light on future corporate governance proposals advocating greater gender diversity on company boards.

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Using the Theory of Institutional Isomorphism to Create a Conceptual Framework of the Governance of Clinical Research in Relation to National Mutual Acceptance

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Abstract

The objective of this paper is to develop a conceptual framework, based on the corporate governance theory of institutional isomorphism, to explain key drivers of the varied research governance practices in Victorian hospitals in relation to the newly introduced National Mutual Acceptance (NMA). The paper commences with a brief discussion of the clinical and economic importance of clinical research. This is followed by a conceptualisation of four pillars in research governance. The following step overlays the constructs of institutional isomorphic theory: organisational legitimacy, organisational fields and the mechanisms of coercive, mimetic and normative isomorphism, on the governance pillars. This conceptual crossover identifies potential areas that, in addition to regulatory obligations, may influence the level of organisational engagement with NMA objectives. In so doing the model provides meaning and significance to different corporate approaches to the governance of clinical research in organisational address of the implications of the National Mutual Acceptance

Keywords

Foreign Direct Investment, Democracy, Panel Data

Aim

The objective of this paper is to develop a conceptual framework, based on the corporate governance theory of institutional isomorphism, in order to explain the key drivers behind research governance practices developed by Victorian hospitals in relation to the newly introduced National Mutual Acceptance (NMA).

Background

National Mutual Acceptance (NMA) is a national system of single scientific and ethical review of multi-centre clinical trials conducted in publicly funded health services. It was introduced by the Australian Commonwealth Government (2012) to help reduce the costs and time taken to approve trials that were to be undertaken at multiple sites. The specific goal of the NMA is that the ethical and scientific review is completed in 60 days. Single review means that an approval from an accredited ethics committee (National Health and Medical Research Council, 2014) anywhere in Australia can

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be accepted by all affiliated public hospitals. The hospital, however, is then responsible for ensuring that it has the capacity to undertake the trial through a process termed site specific assessment. This assessment involves consideration of such matters as resources, staff, insurance, indemnity requirements and that the roles and responsibilities of all parties are clearly delineated. Research governance

involves the processes, customs, policies, laws, management practices and institutions affecting the way research is controlled and managed. An appropriate organisational research governance framework incorporates these factors in order to meet the goals of responsible research practices in the most effective and efficient manner possible (Commonwealth of Australia, 2007). Effective corporate governance strategy enables an organisation to manage all aspects of its business in order to meet its objectives (ASX Corporate Governance Council, 2007). Research governance is a subset of corporate governance and hence a part of the individual organisation’s governance strategy but there is also a need to establish consistency in this area especially for those projects approved through single ethical review (National Health and Medical Research Council, 2011).

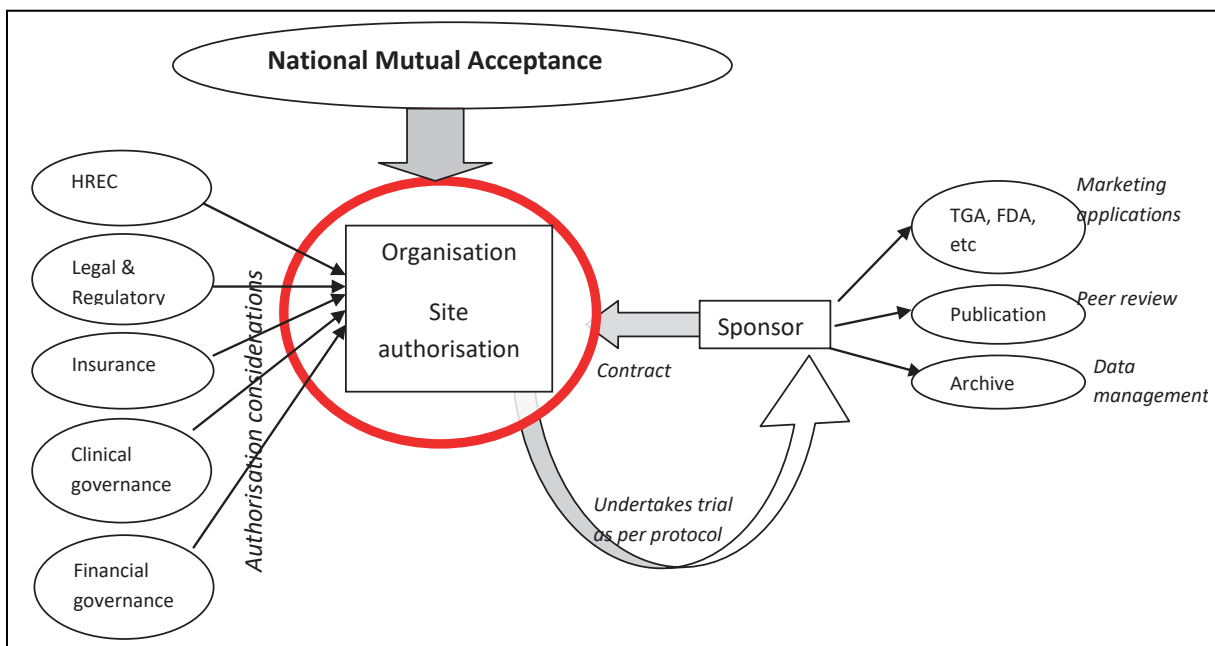


Figure 1: The complexity of clinical trial governance

Governance of clinical research and trials presents a number of challenges to scholars especially if the project involves more than one site. Figure 1 provides an overview of the diverse stakeholders involved in undertaking clinical research. Each stakeholder has specific requirements, which may not always converge with other stakeholders. For example, the trial sponsor may urge for prompt contract resolution, but agreement may be constrained by specific clinical practices, such as number of available inpatient bed days, which may require further negotiation.

Although a full analysis of all the stakeholder requirements is beyond the scope of this paper, it will, however, focus specifically research governance in relation to the NMA.

Why study research governance?

Proponents of clinical trials list many advantages to hospitals being involved with clinical trials such as clinical and financial returns. They emphasise that clinical trials provide the critical link between new clinical discoveries and population health, as indicated in Figure 2 below.



Figure 2: Critical role of clinical trials in clinical ‘pipeline’ (Australian Clinical Trial Alliance, 2014, p. 3)

They argue that clinical advantages include access to innovative treatments not yet available to the general public; professional benefits to study staff; and that hospitals undertaking the trial are able to access free clinical treatment for their patients (Advisen Insurance Intelligence, 2012; Australian Clinical Trial Alliance, 2014; Bourgeois; Medicines Australia, 2011).

Other proponents note the financial advantages. Global investment in research and development has been estimated at \$1.6 trillion and attracting commercial investment has become very competitive (Battelle, 2014). Within Australia, it is estimated that the medicines industry invests over \$1 billion in research and development every year and over 14,000 people are directly employed in the sector (Research Australia, 2011). However, recent changes in the clinical research landscape indicate that Australia may not be in a position to command this investment into the future (Campion & Engwall, 2013).

Globally clinical research, especially the clinical trials, has entered an era of unprecedented change and challenge as breakthroughs in biomedical sciences, such as human genomics, combined with commercial requirements for fast results, have resulted in multicentre research (that is, research which is simultaneously undertaken at many sites) becoming more common. At the same time, multicentre research, especially commercial clinical trials are relocating from the traditional Western research markets (Sung et al., 2003) into areas such as Asia, which offers large target populations (Battelle, 2014; Clark, 2009). Hence, the timeliness of research governance has been the subject of recent worldwide debate and discussion (Campion & Engwall, 2013; Manville, Hackett, Gunashekar, & Morgan Jones, 2013). Specifically, single ethics review and separation of site specific review process from the ethics review are being adopted in order to undertake ethical and site considerations simultaneously. There are varying levels of regulatory control supporting the process. The USA and the UK, for example, have both adopted highly regulated governance frameworks (Howarth, Kneafsey, & Haigh, 2008; Manville et al., 2013). However in Australia there is no authority to force the uptake of mutual acceptance or centralised model of ethics review (Breen, 2005). Hence, in Australia the extent to which hospitals have complied with benchmark expectations for rapid review of multicentre clinical research varies (Hasthorpe, 2014).

The concept of research governance is a relatively new area and the literature is limited. The concept does not fit neatly with existing health care clinical and financial governance practices (Victorian Department of Health, 2008). However, there is data indicating that organisations engaged with the NMA, where the concept of research governance is central, are failing to consistently reach target approval times (Hasthorpe, 2014). Hence, there is a critical gap in understanding the influences on organisation behaviour in research governance.

Research reform in Australia

By the mid-2000's, pharmaceutical and research lobbyists had identified a 'four pillar' approach to improve Australia's attraction as a clinical trial environment (National Museum of Australia, 2006). The four interconnected pillars were identified as timeliness quality, value and capacity. Table 1 provides the key attributes of each pillar and examples of organisational behaviour that indicate support of the pillars.

Table 1: Attributes of corporate research governance in relation to the four pillar model

Pillar	Key attribute	Evidence
Timeliness	Single ethics review	Regulatory compliance NMA benchmark performance e.g. speed of review
Quality	Excellence	Research strategy indicating research is a core hospital activity Certification programs e.g. formal HREC accreditation, certification of researchers qualification , standard position descriptions
Value	Costs	Use of standardisation /centralisation e.g. research agreements, service costs Research strategy is in keeping with research guidelines (codes/ legislation/ government direction)
Capacity	Competence	Recruitment capability Transparent organisational research strategy Profile of organisational research Audit and reporting systems

Timeliness has been identified as the critical factor in the success of clinical research projects, to ensure that projects remain in budget and that study data is made available promptly (National Museum of Australia, 2006; NSW Ministry of Health, 2013). However, while timeliness centres on improving time to project start-up by employing a model of single ethics review, start-up speed also depends on the effectiveness of the other pillars. *Quality* in research is indicated through evidence of education such as training in Good Clinical Practice (GCP), formal accreditation of human research ethics committees and standards for scientific and ethical review. *Value* refers to efforts to minimise costs and increase transparency of negotiation, hence the development of the National Efficient Price for a list of standard items associated with conducting Clinical Trials(Independent Hospital Pricing Authority (IHPA), 2013). *Capacity* refers to the competence of the research site in reaching target while adhering to protocol. In particular, this refers to recruitment strategies (Clinical Trial Action Group, 2011).

60 day benchmark of the National Mutual Acceptance (NMA)

The primary aim of the NMA is to limit the time taken for scientific and ethical review and decision by applying a 60 calendar day benchmark. Victoria has further qualified the NMA benchmark to 30 working days for ethical review undertaken by Victorian HRECs (Victorian Department of Health, 2013). However, recent Victorian data indicates that, despite extensive support and guidance for those involved with the NMA, there remains considerable variation in times to full research authorisation (Hasthorpe, 2014).

Theoretical basis: Institutional Isomorphism Theory

The model is based on the corporate governance theory of Institutional Isomorphism, through the organisation is viewed as a social entity that desires to appear legitimate in its social circle. Isomorphism occurs when the structure or processes of one organisation develops similarity to another. This is driven less by the desire for efficiency but the desire to appear to be behaving in a legitimate or appropriate manner (DiMaggio & Powell, 1983). The theory rests three closely connected mechanisms; coercive, mimetic and normative.

Organisational legitimacy

Organisational legitimacy is a critical but somewhat abstract concept that has been defined as a 'generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions' (Suchman, 1995, p. 574). It is conferred by those outside the organisation who have legitimacy-determining power (Pfeffer & Salancik, 1978) but it is also dynamic, reflecting the needs of organisations to perpetuate acceptance in a changing society.

Organisational fields

Organisational fields are defined as 'sets of organizations that, in the aggregate, constitute a recognized area of institutional life; key suppliers, resource and product consumers, regulatory agencies, and other organizations that produce similar services or products' (DiMaggio & Powell, 1983, p. 148). The concept is elemental in institutional isomorphic theory, as it defines and delimits the activities of the organisations and other social actors within that field (Machado-da-Silva, Guarido Filho, & Rossoni, 2006).

Mechanisms of isomorphism

Three key mechanisms have been identified: coercive isomorphism, mimetic isomorphism and normative isomorphism.

Coercive isomorphism is that which stems from political influence and by the cultural expectations of legitimacy of the society in which the organisation functions (DiMaggio & Powell, 1983). For example, in order to participate in the National Mutual Acceptance (NMA), hospitals are required to use the specified software and appoint a dedicated role, the Research Governance officer (RGO).

Mimetic isomorphism refers to an organisation's response to uncertainty by copying others. That is, the pressure to copy or emulate the activities, systems, or structures of other organisations, is particularly strong in times when goals are ambiguous or when organisational technologies are poorly understood (DiMaggio & Powell, 1983). In this situation, mimicking another organisation, which is perceived as successful or legitimate, becomes a 'safe' way to proceed. Such mimicry also helps to preserve the status quo among comparable organisations, stabilising the leader relative positions while raising the possibility of failure for those that at differently. In other words, an organisation conforms to strategic behavioural norms in order to demonstrate that it is acting in an acceptable manner and that social actors should evaluate it as legitimate (Meyer & Rowan, 1977).

Normative isomorphism is associated with professionalization, that is, pressures brought about by a profession establishing a cognitive base and legitimisation (DiMaggio & Powell, 1983). This can be through formal education or professional networks that span organisations so that the end result is that personnel from similar backgrounds will approach problems in much the same way.

While there is some overlap between the three mechanisms, they derive from different conditions. Mimetic and normative processes derive from internal drivers, whereas coercive isomorphism is linked to the environment surrounding the organisational field (Frumkin & Galaskiewicz 2004). It could reasonably be expected that the dominant isomorphic mechanism in public health care organisations would be coercive. Coercive pressures can be seen clearly in the NMA through the use of memorandums of understanding between parties which explain organisational responsibilities as the use of benchmark targets (Victorian Department of Health, 2014). Literature, however, has found that government organisations are susceptible to other isomorphic influences (Frumkin & Galaskiewicz 2004) and that responses to coercive influence can vary (Ashworth, Boyne, & Delbridge, 2007). Hence, the proposed model includes coercive, mimetic and normative isomorphism.

Logistical basis to legitimacy

Figure 3, below, unpacks the connection between isomorphic theory and the intended outcome of legitimacy. Legitimacy may be attained through one or more endorsements: government, public or professional endorsement. It is important to note that one endorsement does not automatically imply others. In other words, an organisation could achieve legitimacy, such as government endorsement if it fulfilled compliance requirements, but difficulties may arise if such compliance was achieved using processes and structures that were not in keeping with peers. For example, an organisation that required vastly different research application forms than other hospitals might be avoided if this meant that research applications absorbed more time and resources than equitable applications elsewhere.

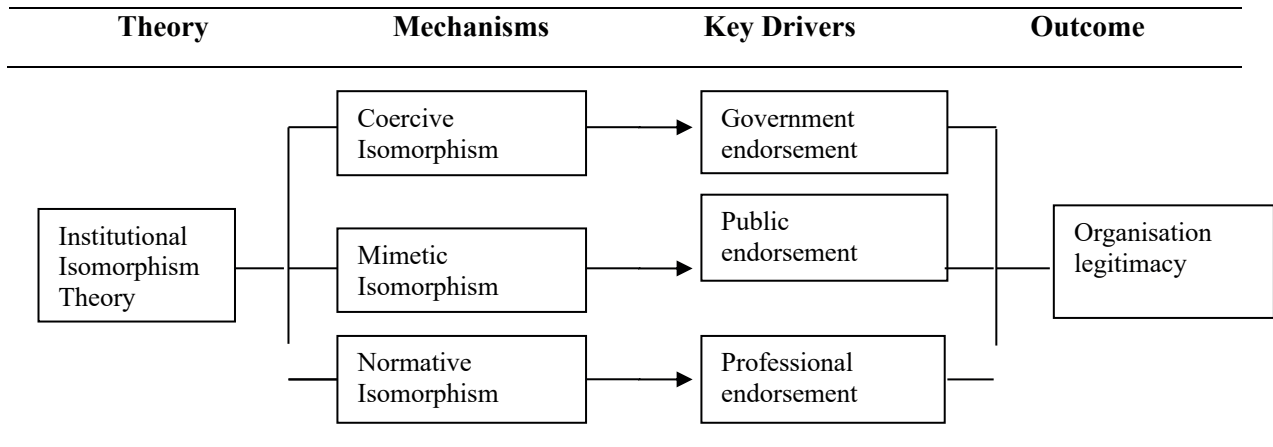


Figure 3: Logistics of isomorphic theory leading to legitimacy

Conceptualisation of a the research governance model

Drawing on the data from Table 1 and the connections outlined in Figure 3, the next step was to create a conceptual crossover of isomorphic theory and single ethical review (Figure 4) through which the organisation’s Board of Directors stratagem is linked to drivers of organisational legitimacy.

Figure 4 demonstrates the isomorphic mechanics that connect corporate strategy to endorsement of the NMA as a legitimate outcome. Governance endorsement of legitimacy is driven by coercive isomorphism to achieve timeliness. Public endorsement is driven by mimetic isomorphism to address stakeholder perception of organisational value and capacity. Professional endorsement is driven by normative isomorphism to achieve perceptions of quality. However, as indicated in the model, hospital demographics and characteristics of the Board of Directors may also impact significantly on the level of endorsements.

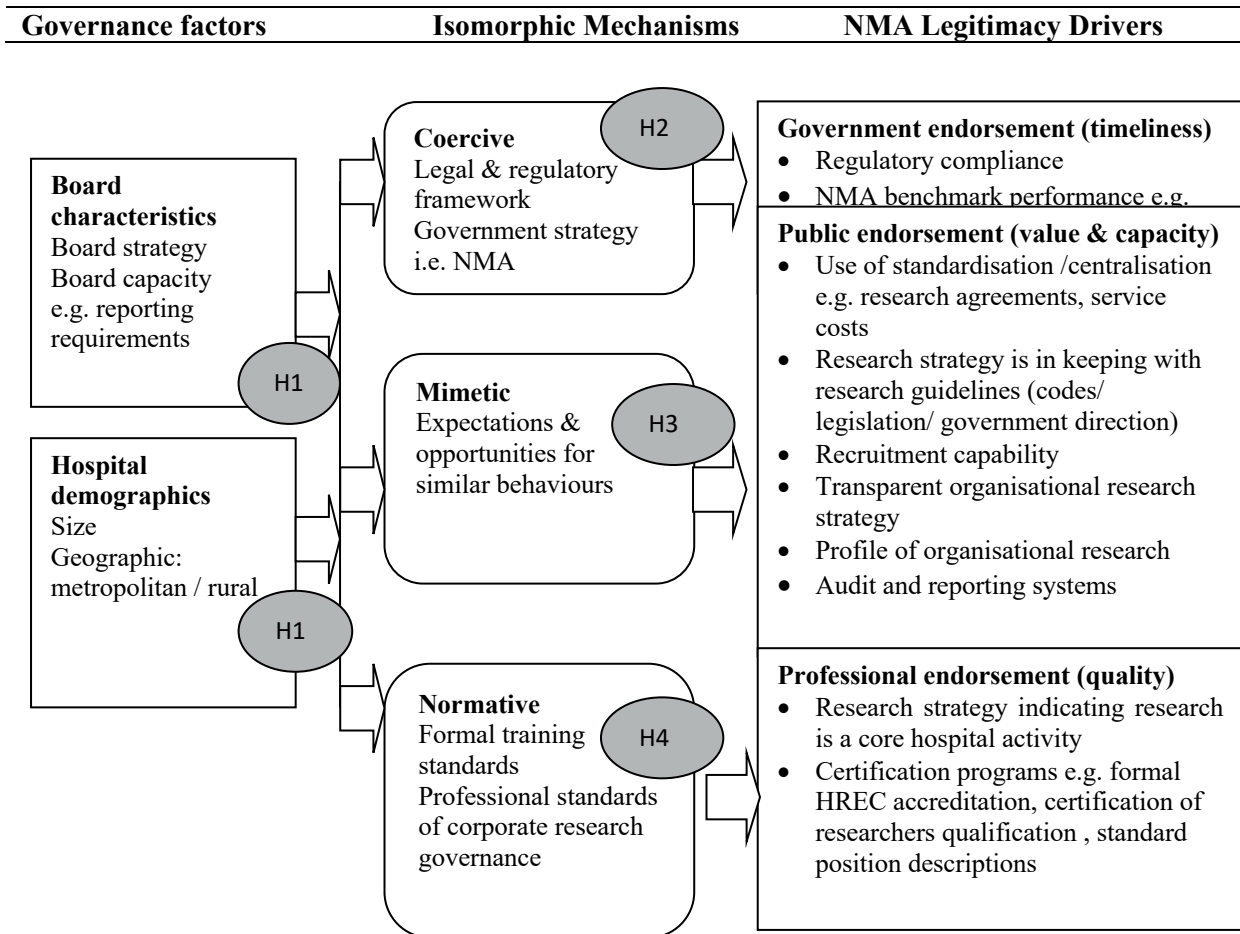


Figure 4: The conceptual crossover of isomorphic theory and single ethical review

Development of the hypotheses

The main research question leading to the development of this model asks ‘what practices in corporate governance of clinical research best address the implications of the National Mutual Acceptance?’ which led to the development of the following hypotheses.

Summary of Hypotheses

The hypotheses developed in this study are based on the belief that the greater degree to which hospitals recognise research as a core activity will have a positive impact on the compliance with the National Mutual Acceptance.

Organisational legitimacy

Literature suggests that organisational survival depends not just on material resources and technical information, but also on the organisation being perceived as acceptable and credible, or in other words, legitimate (DiMaggio & Powell, 1983). Currently governance of research is not included in health service governance (Victorian Department of Health, 2008) and the degree to which public hospitals comply with the NMA benchmarks is not consistent (Hasthorpe, 2014). The inference is that

there is a variation in the perception of value of research in hospitals. Thus, we expect that the degree to which research is viewed as a core hospital activity is expected to provide the strongest predictor of NMA compliance and remain significant at all other points of measurement.

H1(a): The extent to which research is regarded as a core hospital activity is positively associated with the perceived importance of formalising corporate research governance strategy

Drawing from the above arguments, the relevance of the NMA to change in the public hospitals may depend on organisational characteristics. Thus we propose that dependency will be most salient for those metropolitan organisations with a large clinical research division.

H1(b): The extent to which research is regarded as a core hospital activity will be moderated by organisational demographics, particularly geographic location and size of the research division.

Organisational dependence

Organisations depend on stakeholders to acknowledge them as more ‘meaningful, predictable, and trustworthy’ (Suchman, 1995, p. 575). Stakeholders proffer or withhold their support in return for the organisation producing an output valued by the stakeholder (goods and/or services). Hence organisations depend on stakeholders for survival. The key isomorphic mechanism is coercive. Within the context of public health, the dominant stakeholder in coercive isomorphism is generally seen as government but in this research context, stakeholders also include research sponsors such as commercial companies whose withdrawal from a site may have profound financial or clinical implications.

H 2: The extent to which hospitals depend upon the NMA, is positively associated with higher level of coercive isomorphism

Managing uncertainty

Mimetic isomorphism is the mechanism whereby organisations model themselves on other organisations in order to gain legitimacy when the environment is uncertain (DiMaggio & Powell, 1983). Such mimetic behaviour is rational because it conserves search costs to reduce the uncertainty being faced by the organisation (Meyer & Rowan, 1977). The nature of clinical research has become very complex, characterised by numerous stakeholders and increasingly involved regulatory requirements. Currently, compliance to the NMA cannot be enforced leading to variations in the subsequent behaviour.

Hypothesis 3: The extent to which the environment is regarded as uncertain is positively associated with hospitals adopting similar structure and processes

The impact of professionalization

The degree to which normative isomorphism, or pressures from professionalization and formal training, affects organisational behaviours has been much promoted in institutional isomorphism theory (DiMaggio & Powell, 1983; Meyer & Rowan, 1977). Theorists argue that people from the same educational backgrounds will approach problems in similar ways. In other words, inter-organisational socialization such as professional networks or inter-organisational hiring will reinforce norms and routines.

Research administrators are recruited from a variety of backgrounds but traditionally there has been a lack of clear boundaries and role definitions (Dunscombe, 2008). Currently there is no standardised position description or career path, but the state government offers limited networking opportunities (Victorian Department of Health, 2015).

Hypothesis 4: The extent to which to which the field is professionalised is positively associated with greater isomorphism

Conclusion

Determining organisational behaviour in relation to the NMA is a novel area of academic pursuit. This paper presented a conceptual framework, based on the institutional isomorphism theory, in order to explain the key drivers or mechanisms behind Victorian hospitals research governance practices developed in relation to the NMA. Following from the crossover of the institutional isomorphism theory with the key terms of single ethical review presented here, it is proposed that research should now focus on identifying such constructs that can add to the prediction of organisational behaviour over and above what is already known. The present work will advance institutional isomorphism research by developing the theoretical perspectives to account for dynamic influences on organisation behaviours in the governance of research.

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Public Sector Audit Committees: A Behavioural Reflection

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Background

Australian public sector audit committees are part of a governance process (Farrar, 2008) and assist in the maintenance of reliable systems of financial and performance reporting and internal controls as well as enhancing the internal auditor's independence to provide unfettered advice (Cameron 2008, 2004). The Australian National Audit Office in its analysis of processes and practices described public sector governance as 'how an organisation is managed, its corporate and other structures, its culture, and the way it deals with its stakeholders' (Australian National Audit Office 2003, p. 6).

The distinguishing feature of governance in the public sector as compared to the private sector was the emphasis on accountability, stewardship and prudent decision making. Effective public sector governance focuses on the requirements of performance and compliance of the public sector body. The relevance of the concepts of organisational performance and conformance to this paper is that the former related to delivery of services to the community, whilst the latter related to governance which conformed to legal requirements and community expectations of accountability, probity and transparency.

Corporate governance is an extensive area within the academic literature, although the effectiveness of audit committees in the public sector governance was limited. However, there was considerable support and guidance for the operations of audit committees in the public sector, for example, Association of Government Accountants (2008); Cameron (2008, 2004); Chartered Institute of Public Finance and Accountancy (2004); Controller and Auditor-General, New Zealand (2008b); Department of Local Government (2008b); Department of Local Government and Regional Development (2006); HM Treasury (2007); Institute of Public Finance (2006) and National Audit Office (2007a, 2007). It was also noted that the effectiveness of audit committees in local government had been examined in both Wales and Scotland, by Davies (2009) and Crawford, Henry, McKendrick and Stein (2008) respectively, with West and Berman (2003) having undertaken a national survey of the effectiveness of local government audit committees in the United States of America. For public sector audit committees in Australia, the starting point for audit committee and governance practices is the *Corporations Act, 2001* and *Corporate Governance Principles and Recommendations* (Australian Stock Exchange 2007), supplemented by public sector governance standards and ethos. For example, the Victorian Government has policies in relation to: (1) *public sector governance* (State Service Authority 2007a, 2006a, 2005; Public Sector Standards Commissioner 2006); (2) *financial management* (Local Government Victoria 2003); (3) *audit committees in local government* (Department of Infrastructure 2000; Department of Planning and Community Development 2011, 2009); and (4) *a model code of conduct for councils* (Local Government

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Victoria 2004; Ombudsman, Victoria 2008). These policies were complemented by the perspectives of the Auditor-General, Victoria on local government audit committees (Cameron 2008, 2004; Pearson 2008).

Purpose

This paper addresses the gap in knowledge relating to the effectiveness of public sector audit committees from a behavioural perspective (Cutting & Kouzmin 2000; Leung & Cooper 2003; Marnet 2008). From the literature, there was a similarity of views in relation to the inputs of an audit committee (charter, skills, activities, communications and induction and training) although it does appear that there are some questions that are both important for public sector committees and as yet unanswered. Those questions, which run to the heart of this paper, are the behavioural nuances of the rigour of: debate, trust and effective communications; and the relationships with politicians and management.

Literature review

From organisational behavioural perspective an audit committee has systems and processes to support its activities but it is behaviours exhibited at the audit committee which make it effective and assist in the decision making. It is relevant to differentiate between accountabilities of the audit committee and its activities and *McKinsey's 7S Theory* (Waterman et al. 1980) could thus be used as an alternative mechanism to assess audit committee effectiveness. This theory linked the behavioural theory of governance (Marnet 2008, 2007, 2005, 2004) and quantifiable relationships between measures of corporate performance and solutions to agency problems, for example, independent directors, external audits, accounting standards and shareholders (Bolton 2006; Chi 2005; Ertugrul 2005; Fridman 2004; Kelly 2005; Popescu 2006). The significance and relevance of the *McKinsey 7S Theory* was that it placed an equal emphasis on organisational components (structure, strategy and systems) and the mechanisms (style, staff and skills) to undertake strategies and realise shared values of the organisation, which binds the organisation. Its significance was that it provided another interpretation to view the complexity, interdependence and relationships between accountabilities and outcomes of the audit committee. As noted, DeZoort et al. (2002) considered that audit committees are formed to protect the interests of shareholders, as agency theory holds that management may not always act in the interests of entity owners. Whilst the emphasis of the audit committee was on organisational risk, some audit committees focus on financial reporting and external audit relationships, without clearly focusing on measures and outcomes of organisational effectiveness.

Behavioural theory argues that multiple factors can impact the governance of organisations and various participants including stakeholders (Cutting & Kouzmin 2000; Leung & Cooper 2003; Marnet 2008, 2007, 2005; Pech & Durden 2004). These factors included: (1) *power and self-interest*; (2) *decision making*; (3) *leadership*; (4) *organisational culture and values*; and (5) *group dynamics*. Marnet (2008, 2007) questioned the application of rationality in decision making within governance models and concluded that “behavioural analysis appeared to explain some paradoxes on which the rational approach founders, or at best provides arduous explanations” (Marnet 2008, p. 207). A knowledge of such behaviours reflects an understanding of the composition of the board; decision-making structures; and networks within the board (Young & Thyil 2008, p. 95). Cutting and Kouzmin (2000) considered that boards can fail to serve the company effectively due to apathy, ignorance and negligence of their fiduciary duties. They referred to the collapse of state banks in South Australia and Victoria in the 1980s as two examples of the board of directors not knowing what was going on.

The research from a behavioural perspective recognises the interrelationship between the formal processes of an audit committee and the dimensions of informal relationships and power structures, for example: Beasley et al. (2009); Bedard & Gendron (2009); Brennan & Solomon (2008); Humphrey (2008); and Turley & Zaman (2007). The exponents of behavioural theory and its application to corporate governance include: Cutting & Kouzmin (2000); Leung & Cooper (2003); Marnet (2008, 2007, 2005, and 2004); Pech & Durden (2004). What emerges from the literature are the following considerations which are influential in the local government audit committee research: (1) audit committees have become an important mechanism for strengthening corporate governance; (2) the corporate law reforms are aimed at improving accountability and the integrity of financial reporting and performance reporting; (3) audit committees can be viewed as a mechanism to enhance financial reporting, audit independence; and (4) can be a mechanism for the monitoring and the protecting the interests of the community as the agents of the councillors. Ramsey (2001, p. 85-89) considered that: (1) an effective audit committee should exist in both form and substance and be active; (2) there is a functional relationship between the composition of the audit committee and effectiveness with independence being the most important of these factors; and (3) members of the audit committee should be financially literate.

Discussion

The attributes and responsibilities of audit committees and these were represented are influenced by the principles of integrity, accountability and impartiality, as well as leadership from the audit committee and trust relationships between the council, the audit committee and management. Whilst strategies and structures are important to support the functions of public sector audit committees, the litmus test are the behaviours practised and articulated at the audit committees.

Wayne (2003) explained audit committee effectiveness by populating audit committees on a matrix of trust and oversight to form his four perspectives of audit committee effectiveness (pp. 76–83). The limitation of this perspective is that it does not recognise that audit committees can evolve over time, due in part to: (1) a response to changes in legislation and regulations; (2) the emergence of new risks and their impact upon the council; (3) new members of the audit committee with different skills; and (4) changing management attitudes. The evidence in this thesis leads to the conclusion that audit committees are not static and evolve and grow in competence over time. As such, Bloom's (1956) taxonomy of learning, coupled with the principles of trust and audit committee behaviours, provides an alternative interpretative lens in which to contextualise audit committee effectiveness. In thinking about audit committee effectiveness, the issues of competency, capability and capacity emerged during the research and especially the distinction between the audit committees in rural and regional councils as compared to metropolitan councils. Levels of competency can be viewed from two perspectives, namely: the level of complexity of the issues discussed at the audit committee and member's degree of skill in contributing to the audit committee. The research in relation to competency originates from the action verbs developed by Bloom with 'learning objectives beginning at knowledge and advancing to comprehension, application, synthesis and evaluation' (cited in Gebbie 2010, p. 210). In relation to an audit committee, inexperienced audit committee members could be considered to be 'novices', but may need support from more experienced audit committee members and management. A 'proficient' audit committee member would have higher level skills and competencies and an 'expert' audit committee member would perform his or her functions without any direction.

The idea of using metaphors as a vehicle for discussion is not new, as Lakoff and Johnson (1980) showed that metaphors can be used in all 'types of analysis, because they are embedded in conversations and texts that both constitute and characterise so much of everyday life' (Reidy 2006, p. 25). Grant and Oswick (1996) considered that metaphors 'shape the way we think and the way we see' and they 'play a highly influential role in shaping organisational theory and analysis' (p.17). When assessing the skills of audit committee members, one could assess the level of: (1) primary

skills; (2) range of skills; (3) maintenance of skills; and (4) competence. Primary skills could be held to mean, the assessment of the principal skills that are required for an audit committee member to satisfactorily perform in the role. The range of skills could be those skills above the minimum requirement for the audit committee member. The maintenance of skills could relate to the level of continuous professional development and competency could relate to the ability to perform the role of an audit committee member, after assessing primary skills, range of skills and level of skill maintenance.

There are two further factors which impact the capacity, competence and capabilities of an audit committee, namely, the level of trust and oversight relationships. The oversight relationship can range on a continuum from 'symbolic' to 'substantive' and reflect the level of maturity of relationships with the audit committee. It can also refer to the level of diligence of members, for example, preparing for the meeting by reading and reflecting upon the papers and following through on commitments and attendance at meetings. Herzberg, Mausner and Snyderman (1959) and Schein (1970) considered these to be 'hygiene factors', whereas the contribution to audit committee effectiveness comes from members sharing information, participating in discussions, asking relevant questions and translating their wider professional and personal experiences into a relevant context. The level of trust, namely the attributes of: integrity, loyalty, openness, consistency and competence (Robbins 2003, p. 336) contribute to audit committee effectiveness, which extends Schein's (1984) seminal work on the culture of visual artefacts and values and basic assumptions, which support the culture.

Conclusions

The research in this paper supports the prevailing governance theories (agency, institutional, managerial hegemony, resource dependence & stewardship) and notes the increasing importance of behavioural theory to explain the actions and outcomes of audit committees. These theories provide the interpretative lenses in which to assess the effectiveness of public sector audit committees.

Financial probity, the adherence to independence to avoid conflict of interests and conformance to ethical practices are the tenants of effective governance. Audit committees can be one of the mechanisms to monitor the risks of the public sector and the executive management team especially where "self-interest" conflicts with the governance requirements of legislation, societal norms and community expectations.

An effective audit committee can provide a behavioural oversight of governance processes, although one cannot legislate for integrity and honesty. It is suggested that the audit committee can be the monitoring mechanism for the council as its agent, notwithstanding that politicians cannot abrogate their responsibilities and accountabilities. The presence of an effective and contributing audit committee negates a politician from listening, or subverting positive actions by the audit committee and provides a signal to the external auditor of organisational risks. Stakeholders will always be more receptive to the creation of structured and credible systems which serve to remove temptation rather than one that attempts to bludgeon people into a state of compliance.

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