

Disclosure of Corporate Governance Practices by Australian Companies

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It is mandatory for listed companies whose reporting periods end on or after 30 June 1996 to disclose their main corporate governance practices in place during the reporting period: ASX Listing Rule 4.10.3. This study seeks to determine the extent to which Australian listed companies are disclosing their corporate governance practices by examining the latest available annual reports of 268 listed companies.

INTRODUCTION

Australian Stock Exchange (“ASX”) Listing Rule 4.10.3 - which requires listed companies to disclose their corporate governance practices - came into effect for annual reports relating to reporting periods ending on or after 30 June 1996. The Listing Rule has already proved to be controversial. On 5 March 1997 the ASX issued a media release titled “Good Response to ASX Corporate Governance Disclosure Rule”. In the media release, the ASX stated that every one of the largest 150 companies listed on the Exchange complied with the new Listing Rule. A different view was taken a short time later by the Australian Investment Managers’ Association (“AIMA”) which represents the largest institutional investors. In April, AIMA released its own commissioned survey of disclosure of corporate governance practices in the largest 100 Australian companies.¹ In this report, AIMA claimed that only 10 per cent of the largest 100 listed companies had “a clear understanding of the underlying issues, including the rationale and purpose of the [corporate governance disclosure] statement, and [the need for] the application of considerable attention and effort to the preparation of a statement individually tailored to the company”.² A further 80 per cent of the companies made “a genuine effort to address

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¹ Australian Investment Managers’ Association, *Corporate Governance Statements by Major ASX Listed Companies*, 1997. For media coverage of the AIMA Report, see “Institutions Blast Big Companies’ Board Ethics”, *Australian Financial Review*, 17 April 1997, p 1.

² Australian Investment Managers’ Association, *op cit* n 1, p 5.

the corporate governance listing rule but, to a greater or less extent in individual cases, have an imperfect understanding of the underlying issues”.³ Finally, the AIMA report stated that there was about 10 per cent of the companies which appeared to have “gone through the motions” of preparing the disclosure statement “without any significant internal analysis of their own corporate governance or of the underlying issues”.⁴

The ASX responded to the AIMA study claiming that it did not follow “international best practice” in that the study “does not give appropriate acknowledgment to the fact that there is currently debate in Australia and overseas concerning what constitutes best practice in corporate governance”.⁵ There was subsequent criticism of the AIMA study by the ASX.⁶

The vigorous debate between the ASX and AIMA demonstrates the topical nature of disclosure of corporate governance practices. However, a limitation of the AIMA study is that it examines only the disclosure statements of the largest 100 companies. An important issue is whether the disclosure practices of larger companies differ from those of smaller companies. This is one of the key objectives of this study. In order to ascertain the extent of disclosure of corporate governance practices the annual reports of 268 listed Australian companies have been analysed. We also examine the industry classification of companies surveyed. However, prior to discussing the results of the study, it is important to have an understanding of the regulatory regime covering corporate governance disclosure in Australia.

REGULATORY REGIME

Background

In a media release issued on 1 June 1994 the ASX stated that it “wished to take a leadership role in helping to promote corporate governance standards for listed companies”. It released a Discussion Paper titled *Disclosure of Corporate Governance*

³ Ibid, p 2.

⁴ Ibid, p 2.

⁵ “ASX Concern on Corporate Governance”, *Australian Financial Review*, 9 May 1997, p 37.

⁶ “Humphry Rubbishes Calls for Regulation”, *Australian Financial Review*, 30 May 1997, p 39.

Practices by Listed Companies later that same year.⁷ In the Discussion Paper, the ASX stated:

“ASX’s decision to take a leadership role in helping to promote corporate governance standards for listed companies has been prompted mainly by the fairly poor response by some listed companies to guidelines developed by the Working Group on Corporate Practices and Conduct, and by a number of important overseas developments”.⁸

The Working Group referred to by the ASX in its Discussion Paper comprised representatives from the ASX and seven other private sector organisations including the Australian Institute of Company Directors, the Business Council of Australia, the Securities Institute of Australia, the Business Law Section of the Law Council of Australia and the Australian Society of Certified Practising Accountants. In its report titled *Corporate Practices and Conduct* first published in 1991, the Working Group proposed that the annual reports of all listed companies should include a statement by the directors that the company supports and has adhered to principles set out in the *Corporate Practices and Conduct* Report. The principles included recommendations that boards of public companies should include a majority of non-executive directors with an appropriate mix of skills and experience and that each public company board should appoint an audit committee with a majority of non-executive directors. The important overseas developments referred to by the ASX in its Discussion Paper included major overseas stock exchanges introducing or considering introducing rules relating to disclosure of corporate governance practices of listed companies.

The ASX Discussion Paper canvassed a number of options - based on a system of disclosure similar to the Cadbury Code in the United Kingdom - which would have required companies to state in their annual report whether they had followed the practices set out in a Schedule of Corporate Governance Practices and, if not, then why they had not followed the practices.⁹ It outlined three broad options.¹⁰ First, uniform standards set at best practice benchmarks. Second, uniform standards set at reasonable cost benchmarks. Third, differential standards depending on the company’s size. The first option had the disadvantage of being unrealistically demanding for smaller companies,

⁷ Australian Stock Exchange, *Disclosure of Corporate Governance Practices by Listed Companies*, Discussion Paper, September 1994.

⁸ Ibid, para 14.

⁹ Australian Stock Exchange, op cit n 7, para 5.

which was a particular concern given that ASX listed companies tend to be smaller in size than the companies listed on major foreign exchanges.¹¹

Why have a disclosure rule?

There are two main justifications underpinning a disclosure rule relating to corporate governance practices. First, it may assist shareholders and other stakeholders in companies in monitoring directors. This is a common justification for disclosure rules.¹² Second, such a rule may create an environment in which directors reflect upon the corporate governance practices of their companies in order to determine whether they are appropriate. Related to this is the fact that directors may benefit from learning about the corporate governance practices of other companies.

ASX Listing Rule 4.10.3

By the time the final version was unveiled as Listing Rule 3C(3)(j), ASX Chairman Maurice Newman stated that the ASX had decided against a prescriptive approach because it could: result in less rather than more prudent activity; discourage innovation by creating a mandatory standard; discourage better practices by setting a minimum standard; and result in a checklist approach to corporate governance which may give a false impression to investors.¹³

The requirement for disclosure is now contained in Listing Rule 4.10.3, which requires listed companies to include in their annual report:

“A statement of the main corporate governance practices that the entity had in place during the reporting period. If a practice had been in place for only part of the period, the entity must state the period during which it had been in place.”

¹⁰ Ibid, para 27.

¹¹ Ibid, para 28.

¹² M Blair and I M Ramsay, “Mandatory Corporate Disclosure Rules and Securities Regulation” in G Walker and B Fisse (eds), *Securities Regulation in Australia and New Zealand*, 1994, Oxford University Press.

¹³ N Tabakoff, “ASX Chief Alert to the Dangers of Going Too Far”, *Australian Financial Review*, 13 March 1996.

No benchmark standards are set, there are no areas of compulsory disclosure, and there is no minimum level of disclosure. Thus smaller companies are free to disclose less and higher risk companies more, whilst companies can place varying degrees of emphasis on different governance issues depending upon their individual circumstances. There is, however, “an indicative list of corporate governance matters that an entity may take into account” contained in Appendix 4A (previously Appendix 33). Appendix 4A is reprinted at the end of this study. It covers matters such as board composition, appointment and retirement of non-executive directors, remuneration policies, procedures for directors seeking independent advice, audit review, business risk strategy, and ethical standards.

In opting for a non-prescriptive approach, the ASX was sensitive to concerns about whether it is value-maximising for smaller companies to comply with “best practice” corporate governance standards. Much debate about corporate governance concerns practices that are only recommended - or at least only realistic - for large companies. Smaller companies may have neither the need nor the expertise to follow such best practice. Moreover, the costs of reviewing, formalising and adopting detailed corporate governance practices:

“may be proportionately larger for small companies either due to smaller companies having further to move to achieve compliance or because the cost of, say, forming and running an audit committee is not dependent on the size of the company. A cost which is approximately the same for all sizes of company will represent a larger proportion of sales revenue for a smaller company. If compliance brings less benefits and more costs as company size reduces, costs could begin to outweigh benefits for companies below a certain size.”¹⁴

By opting for a flexible and non-prescriptive approach, the ASX has ensured that smaller companies are not overwhelmed by the burden of compliance. The risk is that larger companies may therefore feel free to avoid complying with best practice standards too.

CORPORATE GOVERNANCE PRACTICES STUDIES

¹⁴ A Belcher, “Regulation by the Market: The Case of the Cadbury Code and Compliance Statement” [1995] *Journal of Business Law* 321, p 326. This quote addresses concerns raised by the Cadbury Code in the United Kingdom, but the comments are equally apposite in Australia.

The AIMA study referred to above was the first publicly available study of the disclosure practices of companies subject to Listing Rule 4.10.3. However, there are related studies which can be referred to briefly. One study examined the corporate governance practices of listed companies in West Australia by conducting a series of interviews with the company secretaries of 16 West Australian companies.¹⁵ The corporate governance matters discussed in the interviews included awareness and understanding of the concepts of corporate governance, sources of corporate governance advice, the committee systems of the board of directors, and the independence of directors.

Another survey of corporate governance practices was undertaken by the Australian Institute of Company Directors and KPMG.¹⁶ Five hundred and fourteen directors of different types of companies were surveyed. They included directors of listed public companies, unlisted public companies, private companies and statutory authorities. Some of the results of the survey include:

- 61 per cent of the company directors surveyed indicated that they believe corporate governance is important, or very important, in enhancing the performance of their company
- 32 per cent of the directors surveyed are implementing a number of corporate governance initiatives.

It is stated in the study that:

“Given the current ASX listing rules and other legal requirements facing directors, and particularly directors of publicly listed companies, it is of significant concern that 8 per cent of respondents from this category [of publicly listed companies] have not considered corporate governance seriously as an issue and do not intend to do so in the near future.”¹⁷

Because the ASX gave advance notice of the new Listing Rule which was to apply from 30 June 1996, it was possible to conduct an analysis of the disclosure of

¹⁵ L Factor, “Corporate Governance Practices of Listed Companies in WA: LR 3C(3)(J)” (1996) 6 *Australian Journal of Corporate Law* 380.

¹⁶ The results of the survey are reported in “Performance, Strategy and Vision” (1997) *Company Director* (May) 35.

corporate governance practices by listed companies prior to the Listing Rule commencing operation. Such a study was undertaken by Elizabeth Carson.¹⁸ In her study, Carson found that larger companies were more likely to disclose information regarding corporate governance practices in their annual reports than smaller companies and, in addition, Australian companies which were listed on overseas stock exchanges, in addition to being listed on the ASX, were also likely to disclose more information.

A United Kingdom study was undertaken by Alice Belcher.¹⁹ The London Stock Exchange has a listing rule, based on a Code, relating to disclosure of corporate governance practices by listed companies. The rule requires listed companies to state whether they comply with the Code and, if not, then why not. Belcher investigated the first year of operation of the listing rule by examining the annual reports of 106 listed companies. The conclusion of the author was that:

“The listing obligation to make a statement about compliance with the Code has been effective. Corporate governance reporting has increased rapidly, a development which can be attributed directly to the Cadbury Report and Code coupled with the listing obligation.”²⁰

EMPIRICAL STUDY

Data

To collect the data for this study, all listed companies were divided into three groupings based on their market capitalisation: “Large” (the largest 100; most having a market capitalisation over \$1 billion), “Medium” (companies ranked from 101 to 500; most having a capitalisation between \$50 million and \$1 billion), and “Small” (companies ranked from 501 to 1144; being the remaining listed companies).²¹ This was intended to enable comparison between companies of varying sizes. A sample of 100 companies was drawn from each grouping: all the Large companies; and a random

¹⁷ Ibid, p 36.

¹⁸ E Carson, “Corporate Governance Disclosure in Australia: The State of Play” (1996) 6(2) *Australian Accounting Review* 3.

¹⁹ A Belcher, “Compliance with the Cadbury Code and the Reporting of Corporate Governance” (1996) 17(1) *Company Lawyer* 11.

²⁰ Ibid, p 17.

²¹ The market capitalisation figures are as at 7 March 1997, being the date at which the ASX was requested to print a market capitalisation report for the purpose of this study.

sample from the Medium and Small companies. Many companies were discarded because they were principally foreign listed companies, or had not, at the time of collection of the data, published an annual report for a year ending on or after 30 June 1996.²² Discarded Small and Medium companies were replaced by another company of similar capitalisation; but as the sample of Large companies was only 100 to begin with, companies that were discarded from this group could not be replaced. Consequently, the data was drawn from 68 Large companies, 100 Medium companies, and 100 Small companies. We also undertook an industry classification of the 268 companies in the sample which enabled industry comparisons to be made.

Based upon Appendix 4A (but distilled into a more manageable format), disclosure of the following issues was examined:

A. Board Composition

1. Whether a majority of the board is executive, non-executive or independent
2. Whether the chairperson is executive, non-executive or independent
3. Procedures for the nomination of directors and criteria for board membership
4. Procedures for reviewing the performance of directors and management
5. Procedures and policies relating to the retirement of directors

B. Access to Independent Advice

6. Access of individual directors to independent advice at the company's expense

C. Remuneration for Management and Directors

7. Procedures for setting and reviewing management remuneration
8. Procedures for setting and reviewing directors' remuneration

D. Audit, Risks and Ethics

9. Procedures for nominating auditors and reviewing audit arrangements
10. Procedures for identifying and managing business risks
11. Policies on the establishment and maintenance of ethical standards

²² Essentially, these companies fell into one of two categories: companies whose reporting periods ended after 31 December 1996; and recently listed companies yet to publish an annual report.

Although not mentioned in Appendix 4A, we also examined disclosure of several other issues including the role of directors and shareholders, share trading by directors and officers, and political donations.

General observations

There are a number of factors which make a meaningful survey very difficult. First, the list in Appendix 4A is stated to be merely indicative, making comparison difficult. Second, the statements varied greatly in the degree of disclosure - in terms of both quality and quantity. Some of the briefest were the most informative, and some of the longest were mostly puff. Most of the best statements were by Large companies (including ANZ, Coles Myer, Commonwealth Bank, Goodman Fielder, Lend Lease, North, Pacific Dunlop and WMC²³). However, some statements by Large companies were the least informative. A number of Medium companies (in particular CSL and Perpetual Trustee) and Small companies (for example Nova Pacific Capital) produced very informative corporate governance statements.

Company size as a determining factor

It was expected that the quantity and quality of disclosure would be greatest amongst Large companies, and least amongst Small companies. This is based upon the fact that larger companies have greater resources available to prepare detailed disclosure statements, are more exposed to international trends, and are more easily subject to shareholder pressure because of the presence of large institutional shareholders on their register (particularly given that the largest 100 listed companies account for the overwhelming proportion of market turnover and market capitalisation of the ASX).²⁴

RESULTS

²³ It is interesting that several of these companies have been the subject of criticism by shareholders and commentators in the financial press in recent years. The agitation of shareholders has clearly forced a rethink of the way the companies are run.

²⁴ The largest 25 companies listed on the ASX account for 65.5 per cent of market turnover (by value) and 60.4 per cent of market capitalisation: Australian Stock Exchange, *Fact Book: Statistics to 31 December 1995*, pp 13 and 14.

Position of statement

The statement outlining the company's corporate governance practices could appear anywhere in the annual report, under any heading, and need not be listed in a table of contents. Given that this information is provided for shareholders, ease of access and understanding should be the primary aim, and to enable this it is preferable that a separate section be devoted to corporate governance.²⁵ One hundred per cent of the Large companies, 98 per cent of the Medium companies, and 97 per cent of the Small companies did have a separate section, usually headed "Corporate Governance Statement". In most cases, the statement appeared towards the end of the report and before the accounts, or alternatively after the accounts.

Length of statement

The average length of the statements is directly proportional to the company's size. The average length for Large companies was 2.33 pages, whilst it was 1.71 for Medium and 1.41 for Small companies.²⁶ (The average overall was 1.75 pages.).

When we compared companies in different industries, based on the ASX industry classifications, it was found that the longest statements were by Banks and Finance companies (3.56 pages); followed by Developers and Contractors (2.64 pages), Retail (2.36 pages) and Tourism and Leisure (2.50 pages). The shortest statements included Investment and Financial Services (1.25 pages), Gold (1.32 pages) and Media (1.57 pages).

Disclosure of issues

²⁵ In fact, the AIMA Guidelines state that a company should disclose its corporate governance practices prominently and clearly in a separate section: Australian Investment Managers' Association, *Corporate Governance: A Guide for Investment Managers and A Statement of Recommended Corporate Practice* (1995) [hereafter "AIMA Corporate Governance Guidelines"].

²⁶ This is a necessarily imprecise measurement. For each statement, the number of pages was rounded to the nearest half-page. Thus a statement of less than 1.25 pages but more than 0.75 pages was recorded as "1", and a statement of more than 1.25 but less than 1.75 pages was recorded as "1.5". Clearly this does not take into account different font sizes and spacing, much less quality of disclosure, but it is a rough indication of quantity.

Much more important than the quantity of disclosure, however, is its quality. Most companies structure their statement along the lines of the ASX indicative list in Appendix 4A.

A. Board Composition (Table A)

1. Whether a majority of the board is executive, non-executive or independent

Board composition is one of the primary foci of recent corporate governance debates. The Bosch Committee recommended that boards be composed of a majority of non-executive directors (NEDs), a majority of whom are independent.²⁷ The AIMA Corporate Governance Guidelines state that a majority of the board should be independent.²⁸

As shown in Table A, 60 per cent of the companies surveyed stated that their boards contain a majority of non-executive directors. A further 7 per cent state that their boards contain a majority of independent directors; whilst 13 per cent state that their boards contain a majority of executive directors, and 6 per cent that there is an equal number of executive and non-executive directors. The figures for the different capitalisation groupings indicate that larger companies are more likely to have a majority of NEDs, and smaller companies are more likely to have a majority of executive directors.

A recent empirical study of the composition of the boards of directors of the largest Australian companies found that 40 per cent of the largest 100 companies have a majority of independent non-executive directors on their boards.²⁹ Yet in the present study, only 16 per cent of the largest companies actually stated that this was the case in their corporate governance statements. This indicates that companies are not clearly addressing this issue in their corporate governance statements. In fact, the ASX indicative list of corporate governance matters in Appendix 4A refers only to non-executive directors and not independent directors. There is a significant difference between the two: the latter means that the director has no significant ties with the company which are

²⁷ Working Group of the Australian Institute of Company Directors *et al* (Henry Bosch AO, Chair), *Corporate Practices and Conduct* (3rd ed, 1995) [hereafter “Bosch Report”].

²⁸ AIMA, *op cit* n 25.

²⁹ G Stapledon and J Lawrence, *Corporate Governance in the Top 100: An Empirical Study of the Top 100 Companies’ Boards of Directors*, Centre for Corporate Law and Securities Regulation, The University of Melbourne, June 1996, p 18.

likely to affect his or her judgment, other than being a director. It would be preferable if the ASX clarified this matter and required companies to disclose more precise information than just whether the majority of the board is non-executive.

In terms of industry classification, one of the highest proportions of companies with boards consisting of a majority of executive directors was in the Developers and Contractors Industry (36 per cent). The highest rate of non-disclosure of the issue of the composition of the board was by companies in the Tourism and Leisure Industry (30 per cent not discussing this issue) and Miscellaneous Industrials (23 per cent).

2. Whether the chairperson is executive, non-executive or independent

The Bosch Report recommends that the chairperson be a non-executive director and the AIMA Corporate Governance Guidelines state that the chairperson should be independent. The empirical study referred to above found that 83 per cent of the 100 largest companies had a non-executive chairperson, but that only 45 per cent had an independent chairperson.³⁰ In the present study, the level of disclosure in the corporate governance statement was again much lower. Only 57 per cent of companies reported having a non-executive chairperson, and a mere 4 per cent stated that their chairperson was independent. This again indicates a significant discrepancy between what companies are disclosing and the precise background of the chairperson. The ASX indicative list in Appendix 4A refers only to non-executive chairpersons and few companies voluntarily provide the additional information regarding whether their chairperson is independent.

Large companies were more likely to have a non-executive chairperson. A particularly noticeable feature is that 25 per cent of all companies surveyed chose not to address this issue in their corporate governance statements.

The highest proportion of companies with executive chairpersons was in the Retail Industry (27 per cent) and the Developers and Contractors Industry (also 27 per cent). Non-disclosure of this issue was highest in the Tourism and Leisure Industry (40 per cent not discussing this issue) followed by Oil and Gas (30 per cent) and Miscellaneous Industrials (29 per cent).

³⁰ Ibid, p 18.

3. *Procedures for the nomination of directors and criteria for board membership*

Many companies outlined the criteria for board membership in very basic terms, such as ensuring “an appropriate mix of skill and experience”. Only 10 per cent of companies offered something more. An example is Lend Lease’s 1996 annual report:

“In recruiting Directors the Board pays attention to the range of skills and experience it will require during their term. We look for Directors with the appropriate background to further our success and, in particular, those who have expertise and knowledge to support our goals in the international marketplace. Directors are also expected to be discerning and forthright in their questioning of the management team and constructive in putting forward and resolving different points of view.”

The annual report of Lend Lease then proceeds to state that after a process of interviews and discussion the board recruited a particular director in 1996 who, because of his experience and expertise, will benefit the company as it expands its global operations. The annual report then states:

“To maximise the contribution of Directors of such stature, Lend Lease encourages them to gain direct experience of all the Group’s businesses and use the knowledge acquired to benefit the Group as a whole. This informed independence ensures that Directors’ skills are optimally employed.”

In terms of nomination procedures, 48 per cent of companies stated that directors were nominated by the Board alone, whilst 22 per cent had a nomination committee (14 per cent having a nomination committee with a majority of NEDs). One in four companies did not discuss the procedures for the nomination of new directors, although mostly these were Small companies. A number of companies stated that they also use search firms to suggest potential directors.

A number of companies indicated that when a new director is appointed, he or she receives an appointment letter which covers particular matters. For example, Gunns Limited stated that the terms and conditions of the appointment and retirement of non-executive directors are set out in a letter of appointment which covers the following matters:

- “the manner in which remuneration is determined
- the term of the appointment, subject to shareholder approval
- the expectation of the board in relation to attending and preparation for all board meetings
- the procedures for dealing with conflicts of interest and
- the availability of independent professional advice.”

4. *Procedures for reviewing the performance of directors and management*

Only 21 per cent of companies stated that they regularly reviewed the performance of individual directors of the board. In addition, only 23 per cent stated that they regularly reviewed the performance of management. This figure is much lower than one might expect given that it is usually recognised (often explicitly in the corporate governance statement) that it is the board’s task to supervise the management of the company. Notably, this figure is much lower for Small companies (8 per cent compared with 41 per cent for Large companies).

A lack of discussion of procedures for reviewing the performance of directors and management was highest in respect of those companies in the Engineering Industry (88 per cent not discussing this issue), the Investment and Financial Services Industry (83 per cent), the “Other Metals” Industry (79 per cent) and the Gold Industry (76 per cent).

Two examples of more detailed disclosure of procedures for reviewing the performance of directors are contained in the annual reports of North Limited and Perpetual Trustees Australia Limited. The annual report of North Limited states:

“Each year the Board carries out a formal review of its performance in meeting its key responsibilities. These cover a number of aspects of corporate governance, including:

- reporting to the market
- compliance with regulations
- reviewing the performance of the business and top management
- review of strategy, the budget and five year plan
- compensation
- maintaining the Company’s reputation and
- Board composition and performance.

The purpose of the review is to identify any areas of weakness and mechanisms for improving the functioning and performance of the Board.

In addition, the Board has instituted a process for assessing the performance of each director against a range of relevant criteria. The outcome of each review is discussed with the director concerned.”

The annual report of Perpetual Trustees Australia Limited states:

“The Board has during 1996 formally resolved what its functions are, and the Chairman has, with the Board’s approval, set out his objectives for the year. The Board has also adopted procedures for reviewing its own performance. Each year the Chairman reviews with individual directors their performance during the year, while the Deputy Chairman discusses with each director the performance of the Chairman. As the main task of the Board is enhancing the performance of the company, setting performance targets for and reviewing the achievements of the Managing Director and other senior executives is an integral part of the Board’s work.”

It is also stated in the annual report of Perpetual Trustees that in order to keep up to date with developments in the law and management theory and practice, directors are encouraged to undertake relevant continuing education at the expense of the company.

5. Procedures and policies relating to the retirement of directors

Approximately half of all companies discussed the retirement of directors, although the figure is significantly higher for Large companies (69 per cent). Usually this involved a reference to the relevant provisions of the Corporations Law and the Articles of Association (including those relating to the age of directors), and sometimes to the fact that letters of appointment include matters relating to retirement. Some companies also discussed the provision of superannuation to retiring directors, and the maximum term a director can serve on the board.

B. Access to Independent Advice (Table B)

6. Access of individual directors to independent advice at the company's expense

The power of independent directors is severely curtailed if they are unable to properly investigate perceived irregularities. It is therefore encouraging to note that three in four companies state that directors are entitled to seek independent advice at the company's expense. Interestingly, the figures are very similar across all three capitalisation groupings.

It is also interesting to note what restrictions are placed upon this access, other than criteria which are self-evident - for example, that the advice must be in respect of a company-related matter, and that the costs be reasonable. In total, 22 per cent of companies did not state that conditions are imposed upon access; but most require some form of approval or notification. Most common was the requirement that the director obtain the approval of the chairperson (35 per cent); others require the approval of the board (7 per cent), a committee (1 per cent), or notification of some kind (9 per cent). Only 21 per cent stated that the necessary approval will not be unreasonably withheld. Finally, only 7 per cent state that the advice received must be made available to the rest of the board.

Non-disclosure of the issue of access of individual directors to independent advice at the company's expense was highest in the Media Industry (36 per cent not disclosing) followed by the Investment and Financial Services Industry (33 per cent).

C. Remuneration for Management and Directors (Table C)

7. Procedures for setting and reviewing management remuneration

Given the recent scrutiny of remuneration levels, particularly for executives, it was hoped that there would be meaningful discussion on the setting of remuneration levels. Most Large and Medium companies discussed management remuneration, although 43 per cent of Small companies failed to do so. It is interesting to examine the use of committees: 75 per cent of Large companies have remuneration committees (including 53 per cent which have a remuneration committee with a majority of NEDs); compared to 71

per cent of Medium companies (including 36 per cent with a majority of NEDs) and 26 per cent of Small companies (including 13 per cent with a majority of NEDs).

However, the level of disclosure varied widely. Some companies provide detailed discussion of their policy on base salary, incentives and share options; others stated that they compare salary levels with those in comparable industries; whilst others merely stated that it was a matter for determination by the board or the remuneration committee.

An example of more detailed and informative disclosure was Lend Lease, which takes independent advice where appropriate and has identified four elements of executive remuneration packages:

- “1. a capital allocation of shares or units to encourage the senior executive to remain with the Group
- 2. base salary and fringe benefit budget
- 3. performance bonus
- 4. superannuation

Item 1, with a five-year horizon, will generally only apply to the top dozen or so executives and is designed to keep the leadership team intact.

Items 2 and 3 are linked. Executives are paid below median for **2**, but can obtain a bonus that would put them in the upper quartile if certain performance criteria are met. Although the criteria are different for each executive, the principles are similar:

40 per cent achievement of profit, earnings per share, total shareholder return and other relevant financial targets
 30 per cent achievement of strategic objectives
 30 per cent continuing contribution to an environment in which all employees are highly motivated to create wealth, enhance our reputation and ensure continuity of leadership and best practice throughout the Group.

No bonus is paid below a 60 per cent score, and pro-rata payments are made between 60 per cent and 100 per cent.

Item 4 is applicable to all employees, each of whom is entitled to a defined benefit superannuation payout, for each year of service, of 15 per cent of their average cash remuneration over three consecutive years of service.”

A lack of discussion of the issue of procedures for setting and reviewing management remuneration was most evident in the Oil and Gas Industry (50 per cent not disclosing) and the Investment and Financial Services Industry (42 per cent).

8. Procedures for setting and reviewing directors' remuneration

The disclosure of procedures relating to directors' remuneration was similar in some respects to the disclosure of management remuneration. Most Large and Medium companies discussed directors' remuneration, but 40 per cent of Small companies failed to do so. The use of committees was less widespread than for management remuneration, however: 43 per cent of Large companies have a remuneration committee (including 31 per cent which have a remuneration committee with a majority of NEDs); compared to 47 per cent of Medium companies and 18 per cent of Small companies. Lend Lease provides the following succinct and clear information:

“When setting fees and other remuneration for non-executive Directors, the Board takes independent advice, applying Australian and international benchmarks. Directors' fees, effective from 1 January 1996, are \$60,000 per annum. The Deputy Chairman receives a multiple of two and the Chairman a multiple of three.”

D. Audit, Risks and Ethics (Table D)

9. Procedures for nominating auditors and reviewing audit arrangements

It is in the area of audit review that the use of committees is most prevalent. The Bosch Report notes the importance of a committee system to ensuring effective corporate governance, whilst conceding “that larger companies, and larger boards, will make use of more committees”.³¹ To ensure their effectiveness, it is recommended in both the Bosch Report and the AIMA Corporate Governance Guidelines that board committees have a majority of independent directors.

Given that companies which do not have an audit committee are required to explain in their Annual Report why they do not have one,³² it was expected that disclosure here

³¹ Bosch Report, op cit n 27, p 17.

³² ASX Listing Rule 4.10.2.

would be particularly high. In fact, only 2 per cent of companies failed to discuss audit procedures in their corporate governance statement, all of which were Small companies.

Whilst 32 per cent of Small companies stated that they did not consider an audit committee to be necessary, the corresponding figure for Medium companies was 5 per cent, and none for Large companies. One hundred per cent of Large companies stated that they had an audit committee (including 81 per cent which had a majority of NEDs); whilst the corresponding figures for Medium companies are 95 per cent (58 per cent with a majority of NEDs) and for Small companies 62 per cent (33 per cent with a majority of NEDs).

When industry classification is examined, companies which indicated that an audit committee was not considered necessary were found most frequently in the Gold Industry (39 per cent) closely followed by companies in the “Other Metals” Industry (36 per cent). In relation to those companies which have audit committees but which also have a majority of non-executive directors constituting the audit committee, the smallest number of such companies was found in the Gold Industry (12 per cent). A high number of companies with such audit committees was in the Food and Household Industry (80 per cent) and the Tourism and Leisure Industry (80 per cent).

An example of detailed disclosure concerning the role of the audit committee is contained in the annual report of Centennial Coal Limited. It is stated in the annual report that:

“The role of the Audit Committee is documented in a Charter which is approved by the Board of Directors. In accordance with this Charter, all members of the Committee are Non-Executive Directors. The role of the Committee is to advise on the establishment and maintenance of a framework of internal control and appropriate ethical standards for the management of the economic entity.

It also gives the Board of Directors additional assurance regarding the quality and reliability of financial information prepared for use by the Board in determining policies or for inclusion in the accounts.

The members of the Audit Committee during the year were...

The external auditors, the Managing Director and the General Manager: Finance and Administration are invited to Audit Committee meetings at the discretion of the Committee.

The responsibilities of the Audit Committee include:

- reviewing external audit reports to ensure that where major deficiencies or breakdowns in controls or procedures have been identified appropriate and prompt remedial action is taken by management;
- liaising with the external auditors and ensuring that the annual statutory audit and half-year audit review are conducted in an effective manner;
- reviewing internal controls and recommending enhancements;
- monitoring compliance with the Corporations Law, Stock Exchange Listing Rules and any matters outstanding with the auditors, Australian Taxation Office, Australian Securities Commission, Australian Stock Exchange and financial institutions;
- reviewing reports on any major defalcations, frauds and thefts from the Company and ensuring that appropriate action is taken; and
- improving the quality of the accounting function.

The Audit Committee reviews the performance of the external auditors on an annual basis and as a part of their ongoing responsibilities meets with them during the year as follows:

Audit planning

- to discuss the external audit plan;
- to discuss any significant problems that may be foreseen;
- to discuss the impact of any proposed changes in accounting policies on the accounts;
- to review the nature and impact of any changes in accounting policies adopted by the economic entity during the year; and
- to review the fees proposed for the audit work to be performed.

Prior to announcement of results

- to review the proforma preliminary final statement prior to lodgement of those documents with the ASX and any significant adjustments required as a result of the audit; and
- to make the necessary recommendation to the Board for the approval of these documents.

Half-year and annual reporting

- to review the results and findings of the audit, the adequacy of financial and operating controls and to monitor the implementation of any recommendations made; and
- to review the draft financial statements and the audit report and to make the necessary recommendation to the Board for the approval of the financial statements.

As required

- to organise, review and report on any special reviews or investigations deemed necessary by the Board.”

10. Procedures for identifying and managing business risks

Most companies mentioned the importance of risk management (84 per cent), and many outlined the major business risks and/or strategies to deal with such risks (39 per cent). Again, Large companies were more likely to go into detail (62 per cent) than Medium (44 per cent) or Small (19 per cent) companies. Not surprisingly, discussion was particularly detailed amongst the banks, most of which presented very detailed explanations of their exposure to risk. For example, ANZ has two pages outlining procedures to manage credit risk, market risk, and operating risk; whilst Westpac had seven pages dealing solely with risk management. Mining companies often went into significant detail about their hedging policies.

An example from a Small company is Howard Financial Holdings Ltd, which states that its risk management procedures include the following:

- “Board approval of a strategic plan, which encompasses the entity’s vision, mission and strategy statements, designed to meet stakeholders’ needs and manage business risk;
- Board participation in the development of initiatives and strategies designed to ensure ... continued growth and success ...;
- Monitoring by the Board of operating plans and management budgets which includes the establishment and monitoring of key performance indicators (both financial and non-financial) for all significant business processes;

- A review by the Board of environmental issues and occupational health and safety concerns; ... and
- The review and approval by the Board of all significant investments, including loans exceeding limits pre-determined by the Board.”

A detailed statement of how a company identifies and manages significant business risks is provided in the annual report of Finemore Holdings Limited:

“The board recognises that it has principal responsibility to identify areas of significant business risk and ensure that arrangements are put in place to adequately monitor them. This is achieved by a combination of the procedures mentioned elsewhere in this document and the further measures covered below:

- Responsibility for operation of the company is devolved to the chief executive officer, the executive directors, and the senior management of the company comprising the general managers of the operating divisions and certain specialist service function managers.
- The board ensures that this management team is properly qualified and experienced to enable them to effectively discharge their duties. It receives regular reports from executive directors on performance of all members of this team and regularly assesses the performance of executive directors. Executive directors report to the board in respect of their areas of responsibility at each board meeting.
- The board periodically approves major strategic directions and objectives for the company and ensures that these and the vision and mission statements of the company are aligned.
- The executive directors and senior managers present an annual operating and financial budget of the company to the board for consideration, review and approval.
- Management provides reports to each meeting of the board to monitor progress against the budget in all key financial and performance areas covering all significant business processes.
- All items of capital and special expenditure in excess of \$20,000 are reviewed and approved by the executive directors. The Deputy Chairman then independently reviews these items and makes recommendation to the board for approval of that expenditure.
- Major projects or acquisitions are considered in detail by the board before approval.
- The company has issued an environmental policy and published it to all staff. Each senior manager reports to each board meeting via the executive directors regarding any environmental matter affecting the business area for which that manager is responsible. Each senior manager is required to certify to the audit committee every six months

as to the existence of any condition which gives rise to environmental liability in that area.

- The board has issued an occupational health and safety policy and published this to all staff. A statement has been issued to all senior managers setting out the minimum compliance to OHS procedures which the board demands of those managers and employees. A National Safety Officer is employed to facilitate the development of good OHS practices.
- The Executive Finance Director reports to the board at each meeting regarding variable interest rate debt exposure and any liability which attaches to hedging positions taken. The board approves all hedging strategies before they are entered into. The company has no direct exposure to foreign currency transactions.
- The Executive Finance Director reports to the board at each meeting regarding actual and forecast cash requirements of the company and the board approves establishment and terms of all major debt funding.
- The board is informed of and receives a report at least annually of all insurance contracts entered into. The board approves all self-insurance strategies adopted by the company. It periodically receives reports as to the performance of and outstanding claims against all self-insurance arrangements. A National Risk Manager holds office.
- The company has in place procedures for immediate notification to senior management of any actual or threatened legal action, and each senior manager is required to certify to the audit committee every six months as to the existence of any threatened or actual legal action, allowance for which has not been made in the books of the company.
- The board and the senior managers regularly assess and plan company response to the potential risks from competition, economic and legislative change, social and community issues, economic dependency upon various client companies and customers' industries, technological change, supplier viability and capability to meet company requirements and other wide-ranging issues."

Some companies specifically addressed financial risk, use of derivatives and hedging strategies. ANI Limited states in its annual report that:

"The ANI board has adopted a number of policies to manage the financial risks associated with exposures to foreign currencies and interest rates. Risk management is centrally controlled by the Treasury function. All ANI Divisions are required to hedge foreign exchange risks in excess of \$10,000 with Treasury. Treasury hedges its net position from a list of approved counterparties and reports its net position to the ANI board."

AWA Limited provides detailed information about its use of derivatives which may be viewed as a response to the substantial difficulties the company has had with derivatives trading which lead to extensive litigation.³³ It is stated in the AWA annual report:

“Use of derivatives

The economic entity makes limited use of derivatives. They are only entered into to manage foreign exchange exposure. The economic entity is primarily exposed to the risk of adverse movements in the market price of foreign currency.

Forward foreign exchange contracts are used to hedge anticipated future foreign currency receipts and payments. These derivatives are used specifically for hedging and not for speculative purposes.

At year end, the economic entity had entered into net forward foreign contracts to the value of \$33.4 million. These contracts cover to maturity all known long-term export proceeds at balance date.

The economic entity is exposed to credit losses in the event of non-performance by counterparties. This risk however is assessed as being minimal. Dealings are only conducted with financial institutions of the highest standing. The economic entity fully anticipates that counterparties will be able to satisfy their obligations under the contracts. Security to support any credit risk is not sought but the credit standing of counterparties is monitored.

Internal control over the use of derivatives

Policies and procedures have been established to provide internal control over the use of derivatives, and address responsibilities for dealing, confirmation, settlement, accounting, delegated authority levels and the regular reporting to the Board on dealings in derivatives.”

In terms of industry classification of procedures for identifying and managing business risks, we have already noted that there was extensive disclosure by companies in the Banking and Finance Industry. Lack of disclosure of risk management procedures was most evident by companies in the Investment and Financial Services Industry (42 per cent not disclosing), the Media Industry (29 per cent) and the Retail Industry (27 per cent).

³³ See *AWA Ltd v Daniels* (1992) 7 ACSR 759; 10 ACLC 933; on appeal *Daniels v Anderson* (1995) 16 ACSR 607; 13 ACLC 614.

11. Policies on the establishment and maintenance of ethical standards

It is initially encouraging that 72 per cent of companies mentioned the importance of ethical standards although only 15 per cent actually outlined their policies (with 35 per cent of Large companies disclosing their policy). In its annual report, National Mutual Limited states under the heading Ethical Standards:

“In addition to the compliance program that exists in respect of regulatory matters that apply to the National Mutual Group, the operation of the group is in conformity with a mission statement that sets out the group values, all of which are equally important. They are that the group:

- is profit driven for the benefit of its stakeholders;
- understands and satisfies the needs and expectations of its clients;
- strives continually to improve productivity and performance;
- acknowledges and rewards the success of its people;
- supports and encourages staff in realising their potential;
- cooperates to maximise the value of its business;
- is honest and open in communication;
- respects individual differences as a strength;
- staff are personally accountable for delivering what is promised;
- conducts business with integrity in an ethical and responsible manner;
- encourages initiative and innovation;
- applies rigour and commercial discipline in decision-making.”

In addition, around one in three companies stated that they have a corporate Code of Conduct in place, with these much more prevalent amongst Large companies (66 per cent) than Small companies (15 per cent). One of the more detailed examples - perhaps not surprisingly given recent events - is Coles Myer Ltd, which sets out the key principles of its Code of Conduct as being:

- “Situations involving conflicts of interest must be avoided.
- Company assets must not be used for personal gain.
- Unauthorised disclosure of confidential and company information is prohibited.
- The company is committed to providing all employees with equal opportunity.
- All employees are responsible for maintaining and protecting the environment.
- Employees must not engage in any unethical or improper payment practices either to obtain business or for personal gain.

- Employees should deal fairly and honestly with each other and with customers, suppliers and competitors.
- Coles Myer Ltd will provide a safe, healthy and productive working environment.”

It is stated that the Coles Myer Code also provides guidance on the resolution of uncertainties, and on procedures to be followed when a breach of the Code is suspected.

Some companies disclosed that they had Codes of Conduct which applied only to directors. For example, ANI Limited states that its Code of Conduct for directors covers the following topics: the director as a fiduciary; duties of a director; conflicts of interest; directors’ benefits; directors’ needs; confidentiality; insider trading; policy on dealing in securities; accounts; and other obligations of directors. ANI states in its annual report that the board intends to adopt a formal corporate code of ethics for ANI directors, executives and employees in the 1997 financial year.

Gibson Chemical Industries Limited discloses that it has a Code of Ethics with which all employees must conform. The Code defines “employees” to include directors. The Code is summarised as follows in the annual report:

- “(1) The Company aims to increase its value to Customers, Employees, and Shareholders by providing products and services - at a profit - which benefit Customers. While achieving this aim it must uphold the highest level of ethical conduct and act as a good corporate citizen.
- (2) Although laws and customs will vary in the different countries in which the Company operates, our basic ethical approach must cover all our activities.
- (3) Under our Code of Ethics, Employees must:
 - become familiar with, and conduct Company business in compliance with all applicable laws and this Code of Ethics which affects the Employees’ duties;
 - maintain confidentiality of non-public information and not act on such information for personal gain;
 - avoid situations where personal interests conflict with the Company interests or appear to conflict;
 - disclose any situations which may involve a conflict of interest;

- deal honestly and fairly with Customers, Suppliers, Contractors, Government Agencies, Communities in which we operate, and the Company;
- protect, and use properly, Company funds, property, and information, as well as those of other organisations entrusted to the Company;
- comply with all Trade Practices Law;
- use only legitimate sources to obtain knowledge about our competitors;
- where applicable, exercise good judgment in making legal/political contributions or in using political influence;
- comply with employee-related issues covered in the Code eg non-discriminatory employment practices; harassment; drug taking, smoking, and alcohol consumption;
- meet the Company standards for protecting the environment and the safety and health of Employees, our Contractors, our Customers, Suppliers and our Community.

(4) As an overall philosophy Employees are expected to maintain respect and dignity for each individual and treat them all fairly.”

Non-disclosure of policies on the establishment and maintenance of ethical standards was most evident in the Gold Industry (34 per cent not disclosing), the Investment and Financial Services Industry (33 per cent) and the Miscellaneous Industrials Industry (32 per cent).

E. Other issues

In addition to those matters mentioned in the ASX indicative list in Appendix 4A, a number of companies disclosed other corporate governance practice issues.

12. Role of the board of directors and shareholders

Some companies commenced the sections of their annual reports dealing with corporate governance practices by making the general observation that the board of directors is responsible for overall corporate governance. Other companies stated that the board is responsible for the strategic direction of the company's business. A few

companies provided more detailed disclosure. For example, Howard Smith Limited states in its annual report:

“The principal functions of the Board include:

- reviewing goals, strategy and annual business plans
- monitoring operational and financial performance of each of the company’s activities
- reviewing major capital expenditure, acquisitions, divestments and funding
- reviewing performance, remuneration and succession of the Managing Director and senior management
- monitoring compliance with regulatory requirements, including occupational and safety laws and the protection of the environment.”

Macquarie Bank Limited states that its board of directors is responsible for:

- “setting and monitoring of objectives, goals and strategic direction for management with a view to maximising shareholder wealth
- adopting an annual budget and the monitoring of financial performance
- ensuring adequate internal controls exist and are appropriately monitored for compliance
- ensuring significant business risks are identified and appropriately managed
- selecting, appointing and reviewing the performance of the Managing Director
- selecting and appointing new Voting Directors and
- maintaining the highest business standards and ethical behaviour.”

MIM Limited states that the role of its board of directors is to:

- “promote the good health of the company by embracing all the issues of good corporate governance
- formulate strategy and policies for the company
- overview the establishment of appropriate systems to enable the company’s assets to be safeguarded and to enable business to be conducted in compliance with laws and regulations and
- review the performance of the Chief Executive and Senior Executives and provide advice and counsel to them.”

Few companies provided details of the relationship between the board of directors and the managers of the company. However, ICI Australia Limited states that its board of directors directs and monitors the company on behalf of shareholders while:

“responsibility for managing and promoting the profitable operation and development of the company, consistent with the primary objective of enhancing long-term shareholder value, is delegated to the managing director, who is accountable to the board.”

Southcorp Holdings Limited states in its annual report:

“The management of the business of the Company is conducted by or under the supervision of the Chief Executive Officer, and by those other officers and employees to whom the management function is properly delegated by the Chief Executive Officer...The Board receives detailed briefings from senior management on a regular basis during the year. These briefings are designed to enhance the directors’ knowledge of the Company’s businesses and to assist them in assessing the performance of senior managers. The Board also visits Company operations on a regular basis to give directors a greater understanding of the businesses.”

Some companies provided information in their corporate governance practices disclosure statements about the role of shareholders. An example of more detailed disclosure is contained in the annual report of Tabcorp Holdings Limited:

“It is the Board’s intention that shareholders are informed of major developments affecting the company. This information is communicated to shareholders typically twice yearly in the form of the Half-Yearly Report and Annual Report, each of which is distributed to all shareholders unless the shareholder has specifically requested not to receive the document.

The Half-Yearly Report contains a summary of the key financial information and a review of the operations of the company during the half-year in respect of which the report is made. Half-year financial statements prepared in accordance with the requirements of accounting standards and the Corporations Law are subjected to an audit review and are lodged with the Australian Securities Commission and the Australian Stock Exchange.

The Annual Report includes relevant information about the operations of the company during the year, changes in the state of affairs of the

company and details of future developments in addition to a number of other disclosures required under the Corporations Law. The Annual Report contains a complete set of the audited financial statements required under the Corporations Law.

The company encourages the full participation of shareholders at its Annual General Meeting. Important issues are presented to shareholders as single resolutions and full discussion of each item is encouraged. Explanatory memorandums, where considered appropriate, are included with the notice of Annual General Meeting in respect of items to be voted on at the meeting.”

13. Share trading by directors and officers

A small number of companies disclosed guidelines with respect to trading in the shares of the company by directors and officers. Some of these companies stated only that directors and officers must not buy or sell shares when in possession of price sensitive confidential information. This type of guideline only repeats what is contained in the prohibition on insider trading in the Corporations Law. Some companies provided more specific guidelines and stated that their directors are permitted to buy and sell shares only during specified periods of time. For example, the Bank of Melbourne states that its directors and officers must not, nor allow their associates to, trade in the shares of the Bank without the prior approval of the board of directors except within the period of six weeks following the release of price sensitive information to the market such as the Bank’s half-yearly and final results. It is stated that approval by the board will not be given within six weeks prior to such an announcement.

The policy of National Australia Bank is that directors may only trade in the Bank’s shares or options during each of the four weeks following the quarterly, half-yearly and annual profit announcements or the date of issue of a prospectus. It is stated that directors should discuss their intention to trade in the Bank’s securities with the Chairman prior to trading.

Some other examples are:

- Directors and senior officers may only buy or sell shares within six weeks following the announcement of the Bank's interim and final results and within three weeks following the Bank's annual general meeting (St George Bank Limited);
- Directors and executive staff may only buy and sell shares (unless special circumstances apply) within a period of 30 days following the company's announcement of its yearly and half-yearly results or the holding of its annual general meeting. In addition, directors and executive staff are not permitted to engage in "short-term trading" of the company's shares (Western Mining Corporation Limited);
- Directors may only buy and sell shares during the four week periods following the annual and half-yearly announcements and the annual general meeting unless exceptional circumstances apply. Senior executives may participate in the employee share plan outside these periods (G E Crane Holdings Limited);
- Directors and officers may only buy or sell shares in the company within one month after the release of half-year and annual results to the ASX; from the lodgement of the company's printed annual report with the ASX up to one month after the holding of the company's annual general meeting; and the rights trading period when the company has issued a prospectus for those rights. Directors and officers are prohibited from trading in the company's shares where the trading would be for a short-term gain or in the two months preceding the lodgement of the company's half-year and annual results to the ASX. In addition, a director is required to discuss a proposed trade in the company's shares with the Chairman prior to any trade while an officer must discuss a proposed trade in the company's shares with the Company Secretary or, in his absence with the Chief Executive prior to any trade (David Jones Limited);
- Without the prior approval of the Board, directors are only able to buy or sell the company's shares in the six weeks following the company's profit announcements and its annual general meeting (Hills Industries Limited).

A different approach is provided by Keycorp Limited. This company's policy provides that while directors and officers are not permitted to buy or sell the company's shares within a period of six weeks prior to the company's scheduled half-yearly and preliminary final announcements to the ASX, trading in the company's shares is permitted at other times with the prior consent of the Chairman of Directors "who will examine the transaction (and any information known by the director or officer) prior to

giving approval, to ensure that the transaction is not related, or could be seen to be related, to insider information”. Where employees of Keycorp wish to buy or sell shares, they must first obtain the approval of the Company Secretary or, in his absence, the General Manager. At the time of obtaining approval, employees must also disclose the name in which the transaction is to be conducted.

14. Political donations

In its annual report, Lend Lease specifically addresses the issue of political donations. It is stated in the annual report:

“The Lend Lease Group makes even-handed donations to major political parties. The Board regards this practice as supporting the democratic process which is necessary to preserve the modern society in which Lend Lease carries out much of its business.”

The annual report then proceeds to identify the precise amount of donations made to various political parties at both the State and Federal levels during the 1996 financial year.

15. Adverse disclosure

Boral Limited made specific reference in its corporate governance disclosure statement about fines which the company had incurred in relation to breaches of particular legislation. The company also stated how it had dealt with these problems:

“The Board has adopted policies which require the Company and its executives to observe both the letter and spirit of regulations concerning occupational health and safety, environmental protection and trade practices.

There is an ongoing program for audit of the large number of Boral operating sites. Occupational health and safety, environmental and other risk matters are covered by these audits. Boral also has staff to monitor and advise on workplace health and safety and environmental issues and in addition, education programs provide training and information on regulatory issues.

Despite the efforts to avoid occurrences which infringe regulations, there have regrettably been a small number of prosecutions against subsidiary

companies for breach of occupational health and safety legislation and environmental offences such as substance escapes or spillages. Some fines have been incurred with the largest fine imposed during 1995/96 being \$85,000.

During the year, a major trade practices issue was resolved concerning improper conduct in the South East Queensland pre-mixed concrete market which occurred from 1989 to 1994. On the issue being raised, the Company cooperated fully with the Australian Competition and Consumer Commission (formerly the Trade Practices Commission) and agreed penalties totalling \$6,800,800 were imposed on a subsidiary of the Company and certain executives. The Company issued a public apology for its involvement in this matter and its compliance procedures were reviewed and reinforced to prevent any repetition. As part of the review, a computer-based Trade Practices training program has been introduced for managers and sales staff.”

CONCLUSION

It is the divergence of interests of the various stakeholders in companies which makes the corporate governance debate crucial. Good corporate governance should be about protecting and balancing the interests of stakeholders by setting up the appropriate mechanisms to align these divergent interests where possible and to ensure adequate monitoring of management. Detailed disclosure of corporate governance practices enables market participants to assess the adequacy of such practices and mechanisms and, where necessary, to campaign for their improvement.

Listing Rule 4.10.3 has only been in operation for a relatively short period of time. Consequently, only one year of information contained in the annual reports of companies could be analysed for this study. However, it is possible to state a number of conclusions. First, many companies are now disclosing detailed information about a range of corporate governance practices. As previously stated, such disclosure may assist shareholders and other stakeholders in companies in monitoring directors and may also cause directors to reflect upon the appropriateness and adequacy of the corporate governance practices of their companies.

Second, the extent and quality of disclosure is typically better for larger companies than for smaller companies.

Third, there is clearly substantial scope for improvement in disclosure of corporate governance practices. A number of important issues were not discussed by many companies. For example, 25 per cent of the companies surveyed did not discuss criteria for board membership, whether the chairperson is executive or non-executive, or whether directors are able to obtain their own independent advice at the company's expense. Twenty-three per cent of the companies did not discuss management remuneration. A particularly noticeable failing was the fact that 65 per cent of the companies did not discuss procedures for reviewing the performance of management and directors. Only 41 per cent of Large companies stated that they regularly reviewed the performance of management.

Another area for improvement is the failure of the vast majority of the companies surveyed to distinguish between non-executive and independent directors and non-executive and independent chairpersons. It would be desirable for the ASX to address this issue in its indicative list of corporate governance matters contained in Appendix 4A.

Australian Stock Exchange Listing Rules
Appendix 4A
List of corporate governance matters

The following is an indicative list of corporate governance matters that an entity may take into account when making the statement in its annual financial statements under rule 4.10.3:

1. If the entity is a body corporate, whether individual directors, including the Chair, are executive or non-executive directors (in the case of a trust, whether individual directors of the management company, including the Chair, are executive or non-executive directors).
2. The main procedures the entity has in place for:
 - devising criteria for membership of the entity's governing body;
 - reviewing the membership of that body; and
 - nominating representatives to that body.

If a procedure involves a nomination committee, set out, or summarise, the committee's main responsibilities, the names of committee members and their positions in relation to the entity (eg, director of the company).

3. The policies relating to the appointment and retirement of non-executive directors (in the case of a trust, non-executive directors of the management company).
4. The main procedures by which the governing body or individual members of it can seek independent professional advice, at the entity's expense, in carrying out their duties.
5. If the entity is a body corporate, the main procedures for establishing and reviewing the compensation arrangements for:
 - the chief executive officer (or equivalent), and other senior executives of the governing body, and
 - non-executive members of the governing body.

If a procedure involves a remuneration committee, set out, or summarise, the committee's main responsibilities and rights, and the names of committee members.

If a member of the committee is not a member of the entity's governing body (eg, director of the company), state that person's position.

6. If the entity is a trust, the main procedures for establishing and reviewing the compensation arrangements for the governing body.

If a procedure involves a remuneration committee, set out, or summarise, the committee's main responsibilities and rights, and the names of committee members.

If

a member of the committee is not a member of the entity's governing body (eg, a director of the management company), state that person's position.

7. The main procedures the entity has in place for the nomination of external auditors, and for reviewing the adequacy of existing external audit arrangements (particularly the scope and quality of the audit).

If a procedure involves an audit committee, set out, or summarise, the committee's main responsibilities and rights, and the names of committee members. If a member

of

the committee is not a member of the entity's governing body (eg, director of the company), state that person's position.

8. The governing body's approach to identifying areas of significant business risk, and to putting arrangements in place to manage them.
9. The entity's policy on the establishment and maintenance of appropriate ethical standards.

Table A
Board Composition

		Disclosure By Capitalisation Grouping			
		Large	Medium	Small	TOTAL
Board majority	Executive	7%	14%	15%	13%
	Non-executive	68%	61%	54%	60%
	Independent non-executive	16%	4%	3%	7%
	Equal executive and non-executive	3%	5%	10%	6%
	Not discussed	6%	16%	18%	14%
Chairperson	Executive	10%	9%	20%	13%
	Non-executive	62%	62%	49%	57%
	Independent non-executive	12%	2%	1%	4%
	Not discussed	16%	27%	30%	25%
Appointment	Specifically discuss criteria for board membership	15%	11%	5%	10%
	By board	34%	56%	49%	48%
	By nomination ctee (without majority of NEDs)	15%	10%	2%	8%
	By nomination ctee (majority of NEDs)	37%	6%	6%	14%
	Not discussed	12%	23%	40%	26%
Performance review	Of board	22%	17%	25%	21%
	Of management	41%	26%	8%	23%
	Not discussed	51%	67%	72%	65%
Retirement	Discussed	69%	37%	46%	49%

Table B
Access to Independent Advice

		Disclosure By Capitalisation Grouping			
		Large	Medium	Small	TOTAL
Independent advice	No conditions stated	22%	20%	23%	22%
	Approval of chairperson	29%	36%	37%	35%
	Approval of board	4%	9%	8%	7%
	Approval of committee	3%	1%	1%	1%
	Approval of CEO	0%	0%	1%	0%
	Notify chair, board, CEO, secretary or ctee	19%	7%	5%	9%
	Total allowing independent advice	78%	73%	75%	75%
	Approval not unreasonably withheld	9%	25%	24%	21%
	Made available to entire board	16%	6%	3%	7%
	Not discussed	22%	27%	25%	25%

Table C
Remuneration for Management and Directors

		Disclosure By Capitalisation Grouping			
		Large	Medium	Small	TOTAL
Management remuneration	By board	13%	18%	31%	22%
	By remuneration ctee (without majority of NEDs)	22%	35%	13%	24%
	By remuneration ctee (majority of NEDs)	53%	36%	13%	32%
	Not discussed	12%	11%	43%	23%
Directors' remuneration	By board	35%	25%	42%	34%
	By remuneration ctee (without majority of NEDs)	12%	29%	8%	17%
	By remuneration ctee (majority of NEDs)	31%	18%	10%	18%
	Not discussed	22%	28%	40%	31%

Table D
Audit, Risks and Ethics

		Disclosure By Capitalisation Grouping			
		Large	Medium	Small	TOTAL
Audit	Ctee not considered necessary	0%	5%	32%	14%
	Audit ctee (without majority of NEDs)	19%	37%	29%	29%
	Audit ctee (majority of NEDs)	81%	58%	33%	54%
	Not discussed	0%	0%	6%	2%
Risk management	Brief mention	22%	47%	58%	45%
	Discussion of risks and/or strategies	62%	44%	19%	39%
	Not mentioned	16%	9%	23%	16%
Ethical standards	Brief mention	15%	41%	47%	37%
	Outline of policies	35%	10%	7%	15%
	Code of conduct in place	66%	34%	15%	35%
	Not mentioned	29%	21%	33%	28%