



ACCI POLICY STATEMENT

CORPORATE GOVERNANCE AND RESPONSIBILITY POLICY

PRINCIPLES OF CORPORATE GOVERNANCE AND RESPONSIBILITY POLICY

Strong and effective systems of corporate governance are essential to the sustained competitive advantage of commerce and industry and consequently the nation as a whole.

At the same time, optimising corporate performance, and through this shareholder value, requires business environments driven by market forces and robust commercial rivalry.

Effective corporate governance builds on two key pillars: the ability of owners to monitor and, when required, intervene in the management of the enterprise; and the vigour of the market for corporate control, permitting ownership of the enterprise to move to those most capable of delivering superior performance.

Corporate law and regulation have an important role to play in facilitating effective and efficient systems of corporate governance by, *inter alia*, setting minimum standards of accountability, disclosure, responsibility and transparency.

Codes of conduct for individual enterprises, where they are adaptable, voluntary and compatible with the proper role of the private sector, can add value in corporate governance. However, where they are inflexible, subjective or imposed in a coercive manner, they can diminish business competitiveness and efficiency.

Good corporate governance and corporate responsibility are principles and practices held in high regard by reputable firms worldwide and a legitimate asset in business and commercial affairs which underpin competitive advantage and shareholder value.

POLICY OBJECTIVES

ACCI's overarching policy objectives in corporate governance and responsibility are:

- the promotion of world's best achievable practice in the governance of Australian enterprises to maximise shareholder value and the competitiveness of the firm and the economy;
- emphasising that effective competition and market forces will deliver the optimum outcomes in corporate governance, ahead of regulatory impositions and third party interventions;
- ensuring recognition that corporate governance and responsibility issues are dynamic, not static, and there is no single, uniform model relevant to all firms;
- ensuring government business enterprises do not receive any net benefit in their corporate governance as a result of public ownership;
- providing rigorous business input into government policy development and public policy debate on corporate governance and responsibility issues; and

- through our member organisations playing a productive role in informing their members, especially smaller firms, of alternative and better practice approaches to corporate governance and responsibility.

THE POLICY FRAMEWORK

Commerce and industry around the world plays a critical role as the engine of development and growth in market economies, generating investment, employment and trade. They also manage the wealth of nations through savings, investments and increasingly retirement income and allocate value-added amongst those contributing to their success.

However, the nature of commerce and industry is changing, with the traditional image of ‘smoke stack’ or blue-chip corporations being increasingly challenged by firms with greater emphases upon human capital and intangible assets, such as patents, brand names, strategic alliances and organisational know-how.

With the increasing reliance on market forces and, by definition, freer enterprise around the world, the quality of corporate governance and the nature of corporate responsibility will become even more important in building and sustaining public confidence in, and the legitimacy of, commerce and industry.

An expression of such responsibility is codes of conduct, which are operational statements of the policies, principles and values which guide the behaviour of an enterprise in its interaction with its direct stakeholders.

Such codes reflect the circumstances, goals and philosophies of the individual enterprise and will necessarily vary between firms. The absence or presence of a code is no reflection on individual businesses - more important is the conduct of the enterprise than the black-letter content of any written code.

Ultimately, there is no single, uniformly-applicable model of best corporate governance or responsibility. Both concepts are dynamic and must necessarily evolve over time and be sensitive to the commercial, economic and legal and regulatory frameworks within which commerce and industry operate.

Corporate Governance

Corporate governance involves a set of relationships between an enterprise’s board of directors, management, shareholders and direct stakeholders, through which its objectives are decided and the means for achieving them and monitoring performance are determined.

The globalisation of business and the intensifying integration of national markets through highly mobile capital, greater movement of labour and ever more forceful expression of investor demands for more responsive corporate governance must be recognised by governments in setting commercial laws and companies in their strategic planning.

Corporate governance policies, practices and structures are attracting increasing attention in the decision-making of credit rating, insurance, financial and lending institutions and fund and investment management bodies.

Strengthening the confidence of investors - domestic and foreign, householder and institutional - in the governance of a nation’s businesses will benefit the longer term competitiveness of those enterprises and through this the health and vitality of the national economy in the world marketplace.

However, commerce and industry rejects the view that equates business failure with deficiencies in corporate governance.

Good corporate governance does not prevent business failure; nor does business failure necessarily indicate poor corporate governance. Well governed businesses can and do fail for exogenous reasons.

Indeed, we recall the foundation of the limited liability system of corporations law is that failure alone is not culpable and business risk is acknowledged and shared by those participating in the endeavour.

Regulatory Interventions

Commerce and industry supports a careful, reasoned and analytical approach to any legislative or regulatory interventions in corporate governance.

As a matter of principle, we prefer, where necessary, proportionate, robust, self-regulatory initiatives driven by the private sector.

Where such approaches are inappropriate or proven to be ineffective, we recognise there can be a proper role for well-designed legislative and official regulatory intervention.

Such interventions must be targeted at the particular issue(s) concerned and proportional to the real problem to be actioned.

At the same time, any government regulation should aim to find the appropriate balance between protecting investors and market participants, without stifling competition, entrepreneurship or wealth creation.

Corporate Social Responsibility

Corporate Social Responsibility (CSR), triple bottom line and environmental reporting initiatives should be voluntary initiatives undertaken by business.

Commerce and industry opposes any approach to enshrine in legislation, regulations or procurement criteria any CSR principles.

Legislating or regulating for CSR does not stimulate a culture of philanthropy, environmental or social awareness.

Private sector support for CSR may raise awareness of these principles within the business community without adding additional regulatory or compliance burdens.

Businesses that pursue these initiatives should do so if they have determined that it is in the interest of their businesses, in particular the best interests of shareholders.

Boards of Directors

The quality, propriety and strength of boards are key determinants of the effectiveness of corporate governance arrangements and through this the sustained competitive performance of the enterprise.

While executive leadership and management have important roles to play, final responsibility for the performance of the enterprise rests with the board.

Board members must be capable of exercising objective judgement on corporate affairs, both in general terms and specific to the enterprise, competently and independently of management.

Commerce and industry supports as a matter of principle the highest possible educational standards for directors.

However, pursuit, achievement and maintenance of such standards should be a voluntary matter of individual initiative and responsibility and not be made mandatory.

The composition and size of publicly listed boards should be tailored to the requirements of individual enterprises, although the Chamber prefers to see boards having a clear majority of independent/non-executive directors and chairman.

While there should not be mandatory limits on the number of directorships or chairmanships an individual can hold, those holding directorships must be able to contribute the capabilities and time required to perform their functions to a high standard, and in compliance with the law.

The main functions of the board are to provide a broader strategic direction for the enterprise and monitor the conduct and performance of management, with the relative weights attached to each function varying according to the circumstances of the firm concerned.

Board committees, focusing on matters such as audit, remuneration and risk, can have merit, and should be formed within the broader context of the needs of the individual enterprise.

However, such committees should not in any way diminish the primary responsibilities of the board for the overall governance of the corporation.

Boards are also accountable to shareholders for the sound governance of the enterprise and must ensure compliance with applicable laws and fair dealings with all groups of shareholders.

Other particular responsibilities of boards include reviewing corporate strategy and planning, overseeing management (including remuneration and succession planning), dealing with potential conflicts of interest and ensuring the integrity of accounting and reporting systems.

Corporate governance also requires effective supervision by boards of the executive leadership and management of the enterprise to ensure such higher level employees are not pursuing objectives which are not in the longer term best interests of shareholders.

Shareholders

The primary and overriding obligation of boards, the executive leadership and management are to pursue, within the rule of law, objectives which are in the longer term best interests of shareholders; in short, to maximise shareholder value. All other interests, however defined, are subordinate to this obligation.

Corporate governance arrangements should also advance the core rights of shareholders, including to secure ownership and registration of shares, residual profits of the enterprise and participation in fundamental decisions concerning the company, especially in general shareholder meetings.

Transfers of controlling interests of publicly-held enterprises should take place under reasonable and transparent conditions reflecting the best interests of shareholders. Opposition to mergers and/or takeovers should not be used to protect the interests of management, especially from accountability.

Shareholders should also be treated equitably, without discrimination between domestic and foreign investors.

There should be maximum transparency in the distribution of voting rights amongst classes of shareholders and non-discrimination between shareholders within classes. Insider trading and self-dealing must be prohibited at law, with these laws enforced effectively.

The rights of minority shareholders must also be taken into account in developing models of corporate governance, to ensure their views are not marginalised but are heard and taken into account in corporate decision-making.

Institutional shareholders represent increasingly large proportions of share registers and thus have the potential to play a much greater role in corporate governance and performance.

Mindful of the fiduciary duty of funds managers to their clients, institutional investors should take a greater degree of active interest and engagement in the affairs of those companies where they, on behalf of their clients, have substantial economic interests.

While commerce and industry recognises direct stakeholders - such as creditors, employees and suppliers - have a genuine interest in the governance and performance of the enterprise and these interests should be taken into account by corporate leadership, the first obligation of an enterprise is to its shareholders.

Accounting and Financial Reporting

High standards of objectivity, rigour and transparency in accounting standards and financial reporting are essential to good corporate governance and investor confidence.

Corporate financial reporting must be done to ensure full compliance with the requirements of the relevant accounting standards and the Corporations Act.

Commerce and industry regards existing corporate financial reporting requirements to be broadly adequate, with any augmentation focusing on enforcement ahead of expanded regulatory intervention.

Nonetheless, we see merit in introducing the chief executive/chief financial officer certification regime into the Australian Corporations Act, however this should not diminish the responsibilities of directors.

Commerce and industry does not accept that the provision of different professional services by a single provider, such as an auditor, demonstrates conflict of interest.

Rather, there are likely to be sound and commonsense commercial reasons for an enterprise to purchase related services from a single provider, where doing otherwise may be inefficient and/or sub-optimal.

The better approach would see world's best practice standards adopted and enhanced disciplinary measures implemented by relevant professional associations for dealing with conflict of interest matters, provided that professional associations are objective and rigorous in their enforcement of these standards.

Disclosure of Information

An effective system of continuous disclosure of material information is essential for the proper functioning of a well-informed market. Indeed, enhanced continuous disclosure can obviate the demand for more invasive government regulation.

Continuous disclosure should not extend to requiring companies to respond to 'rumours in the market', given the potential of rumours to be (mis)used for gaming or strategic advantage.

Commerce and industry recognises the traditional role of analysts' briefings in the dissemination of corporate information, but remains concerned at their potential for misuse (and their vulnerability to facilitating insider trading).

On balance, we do not support such briefings being prohibited. Rather, they should be subject to rigorous treatment under the continuous disclosure provisions of the Corporations Act, based on real-time public disclosure of all of the information exchanged.

Enforcement

Effective enforcement of corporate law is essential, under the auspices of an adequately resourced, independent single national corporate enforcement agency responsible for all aspects of corporate governance and law.

However, we do not support providing investigative agencies with quasi-judicial powers (that is, to impose penalties). Where there are alleged breaches of the law, especially the Corporations Law, these matters should be treated in courts of competent jurisdiction.

While the enforcement agency may make submissions to the court on the appropriate penalties/remedies, such matters should ultimately be a matter of judicial prerogative within the law.

Executive Remuneration

Chief and other high-level executives are critical players in the leadership and wealth creation capacities of companies.

As a matter of principle, commerce and industry supports levels and compositions of remuneration necessary to attract and retain the high quality people needed to lead and manage Australian companies in a competitive global market and aligned with the best interests of shareholders.

The level, composition and performance requirements for any executive remuneration arrangement or policy must be a matter for each enterprise in negotiation with the individual executive(s), in accordance with the law.

Businesses should be capable of offering share options to key executives as part of their remuneration packages. However, this should be done in a transparent manner, with appropriate disclosures in company financial reports, recognising international best practice.

Share option schemes should be fully transparent in corporate financial statements and their issuance and redemption subject to the continuous disclosure requirements of the Corporations Law.

Government Business Enterprises

Government business enterprises have been, and are likely to remain, substantial players on the commercial and economic landscape in Australia, both as monopolies and in competition with private sector enterprises.

Traditionally, the corporate governance processes and standards of government business enterprises have been determined by their usually individual enabling legislation. This is no longer appropriate.

Government business enterprises should be subject to the general requirements of the Corporations Law to the same extent as comparable business entities, with any exceptions set down transparently in any enabling legislation.

Particular attention should be given in promulgating any such exceptions or special treatments to issues such as relationships with Ministers and any other shareholders, treatment of community service obligations and any other statutory accountability.

(This section should also be read in conjunction with the Chamber's Policy Statement on Competition Policy.)

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