



www.companydirectors.com.au



This issue of *Boardroom Report* is brought to you by KPMG

www.kpmg.com.au

THE BOARDROOM REPORT

VOL 3, ISSUE 13. JULY 11, 2005

CEO/CFO SIGN-OFF HAS SHAKY START 2004 was a transition year when it came to having the CEO or CFO sign off on risk management and internal controls ([more...](#))

LACK OF GOVERNANCE HINDERING GOVT ENTERPRISES Federal and state governments may be adept on imposing business rules and regulations but they need lessons in how to run a business commercially and have proper corporate governance processes in place ([more...](#))

INSURING FIT AND PROPER STANDARDS APRA is reviewing the “fit and proper person” standards of those serving or intending to serve as a director on insurance and banking companies ([more...](#))

THE DANGER OF TOO MUCH REGULATION A senior US judge has warned government that corporate regulation has gone far enough and that further regulation will have adverse effects ([more...](#))

A NEW TWIST ON A CHAIRMAN'S RESPONSIBILITY Should shareholders define a chairman's duties? Should the rules under which the board governs the company be amended to specifically reflect the duties and limits of a chairman's power? The board of Boeing is currently grappling with this idea ([more...](#))

DIVIDED BY COMMON LANGUAGE Do we speak the same English language? Well, not quite when it comes to financial reporting and auditing ([more...](#))

NEW DEBT COLLECTION RULES ASIC and the ACCC have revised the draft debt collection rules following comment from industry ([more...](#))

GOVT AGENCIES TO MONITOR CARTEL PRACTICES The ACCC has issued an information package to government procurement agencies to help red flag cartel behaviour ([more...](#))

MAKING SURE THE SME CASH FLOWS Businesses fail not because of a lack of profits but a lack of cash and it is cash flow that give business owners their biggest worry ([more...](#))

** Comment or feedback on these items may be addressed to*
breport@companydirectors.com.au



CEO/CFO SIGN-OFF HAS SHAKY START

In a KPMG study looking at 2004 annual reports, CEOs and CFOs are not fully compliant in signing off on risk issues as recommended under principle 7.2 of the ASX Corporate Governance Council's Principles and Recommendations.

Principle 7.2 requires listed companies to disclose where they have not met the requirements for a CEO or CFO to sign off to the board on the financial statements and the systems of risk management and internal controls.

The KPMG study shows that:

- Some companies have used this opportunity to improve their disclosure around this critical area;
- There is a significant opportunity for companies to extend and improve disclosure in this area to improve transparency across the market;
- Only 44 percent of companies disclosed that the board received the CEO/CFO sign-off (44 percent stated they had received the sign-off, 29 percent implied, 27 percent not stated);
- Only 45 percent of these companies provided any details of the sign-off;
- Only three companies referred to any limitations in the scope or response to an absolute sign-off;
- Only 18 percent disclosed their risk profile; and
- Only 32 percent disclosed a detailed description the system of risk management and internal control.

Full survey is at www.kpmg.com.au

[\(Back to page 1\)](#)

LACK OF GOVERNANCE HINDERING GOVT ENTERPRISES

The Productivity Commission has released an update on the financial performance of 83 state and territory government trading enterprises (GTEs) and they are still not fully achieving their commercial objectives.

The study provides data on their financial performance over time and includes comparisons of performance among GTEs in the same industry.

In 2003-04, profitability increased in all sectors, other than rail and forestry, compared with the previous year. Despite this improvement, over half of the currently monitored GTEs are still not fully achieving their commercial objectives.

The findings of a three-year research program into GTE governance are also included in this study. These findings elaborate on issues raised in the commission's recent National Competition Policy Inquiry report.

Commissioner Tony Hinton said that "without a commitment to better governance, the National Competition Policy reform objective of operating GTEs commercially will not be fully achieved".

"Failure to meet this objective has potentially serious consequences, given that these GTEs have combined assets of more than \$174 billion and generate \$55 billion in revenue annually," he added.

The commission highlighted the following as important areas for improvement in the governance of GTEs:

- clarification and public scrutiny of the rationale for ongoing government ownership of GTEs;
- greater clarification and transparency of GTE objectives (both commercial and public interest); and
- making a clearer distinction between external and internal governance, with improved transparency of the external governance role of government ministers.

The full report is at www.pc.gov.au

[\(Back to page 1\)](#)

INSURING FIT AND PROPER STANDARDS

The Australian Prudential Regulation Authority (APRA) is seeking comment on its revised draft of “fit and proper” standards and guidance notes for authorised deposit-taking institutions, general insurance and life insurance institutions.

APRA also released a discussion paper addressing submissions received on the original draft fit and proper standards published in March 2004.

The package, which follows extensive industry consultation, outlines proposals for APRA-regulated institutions to:

- be responsible for assessing the fitness and propriety of persons to act as a director, senior manager, auditor or actuary;
- develop and document appropriate policies for making fit and proper assessments;
- require responsible persons to co-operate in the process of gathering information for such assessments; and
- inform APRA of changes in responsible persons.

APRA’s chairman Dr John Laker said that the proposed standards make clear that it is the responsibility of each APRA-regulated institution to ensure that persons who fill positions of responsibility are fit and proper. APRA will only become involved when it has specific concerns about an individual and the institution concerned cannot or will not take action to overcome the problem.

“The proposals are designed to give institutions flexibility to develop their own policies on fitness and propriety. APRA will not be prescribing detailed criteria which these policies will need to meet, but it will provide guidance to help institutions meet their obligations. APRA expects institutions to exercise sound judgment and to act prudently”, he said.

The AICD is currently reviewing the paper with the view to responding regarding the areas that most impact directors.

Details are at www.apra.gov.au

[\(Back to page 1\)](#)

THE DANGER OF TOO MUCH REGULATION

A senior American judge, Leo Strine, has attacked the controversial Sarbanes-Oxley legislation and warned that further federal reforms might raise costs for companies, far outweighing the intended protective benefits for their shareholder. His comments echo concerns raised in Australia in terms of excessive corporate regulation.

Judge Strine, who ruled against Conrad Black attempts to sell London's *The Daily Telegraph*, told a European Policy Forum in London that the new corporate governance rules are having unintended consequences.

One of those consequences is the obsession with independent directors that the judge said leaves CEOs increasingly isolated as the sole decision makers on company matters.

"The emerging model is a board comprised of one insider - the CEO - who knows everything about the corporation and who has a keen interest in its future, and 10 independent directors selected precisely because they have no affiliation with or, interest in, the business or its fate," he said.

"That is an odd group to help develop a business strategy and seems likely to function largely as a monitor, with strategy being left to the CEO and subordinates outside the board's presence."

The full speech is at www.epfltd.org

[\(Back to page 1\)](#)

A NEW TWIST ON A CHAIRMAN'S RESPONSIBILITY

Shareholder activism isn't new but US shareholder activist John Chevedden put the issue of executive versus non-executive chairman to the test in a resolution to the board of Boeing Co. when it appointed Boeing director James McNerney Jr as its new chairman. McNerney became Boeing's fourth leader since December 2003, when an ethics scandal threatened to derail the company and started a merry-go-round of executive changes.

The scandal, involving two Boeing executives, forced Phil Condit to resign as chairman and CEO. Harry Stonecipher, once Boeing's president, came out of retirement to replace Condit. In March, the board forced Stonecipher to resign after his extramarital affair was made public by an anonymous tipster. Chief financial officer James Bell served as interim chief until McNerney's appointment.

What upsets Chevedden is that McNerney will be Boeing's chief executive, chairman, and president.

Chevedden's resolution stated that the chairman of the Boeing board should have oversight responsibilities only.

In Australia, recent court judgements alluded to the possibility that chairmen have greater responsibilities than other directors even if they are non-executive chairmen. While these judgements still have to be tested in law, the fear in Australia is that in imposing these kinds of responsibilities on to a chairman the distinction between executive and non-executive is blurred.

It is why Chevedden's resolution to have shareholders define the limits of a chairman's duties is interesting. In the US, the same person often has the roles of both chairman and CEO.

According to the Chevedden resolution:



Stockholders request that our board of directors change our governing documents to require that the chairman of our board serve in that capacity only and have no management duties, titles, or responsibilities.

When a person acts both as a corporation's chairman and its CEO, a vital separation of power and responsibility is eliminated - and we as the owners of the corporation are deprived not only of a crucial protection against conflicts of interest, but also of a clear and direct channel of communication to the corporation through our chairman.

What stockholder-damaging conflicts of interest can be more serious than those that so often occur when overseers are allowed to oversee themselves? When a corporation's chairman

Continued on next page

From previous page

is also its CEO, such conflicts can and do happen.

“It is well to remember that at Enron, WorldCom, Tyco, and other legends of mis-management and/or corruption, the chairman also served as CEO. And these dual roles helped those individuals to achieve virtually total control of the companies.

“Clearly, when a chairman runs a company as chairman and CEO, the information received by directors and others may or may not be accurate. If a CEO wants to cover up corporate improprieties, how difficult is it to convince subordinates to go along? If they disagree, with whom do they lodge complaints? The chairman?

Thus this proposal is consistent with our company’s prodigious effort to improve company ethics.

Stockholders must continue to expect the unexpected unless and until they help cause company boards to be composed of substantial majorities of independent and objective outside directors - and until those directors select a chairman those who is similarly independent of management.



The resolution was submitted on June 30.

[\(Back to page 1\)](#)

DIVIDED BY COMMON LANGUAGE

We may have a common language base but when it comes to financial reporting and auditing the language used in the Anglo-American context can be misleading, according to a paper, written by Tim Bush of Hermes Pension Management.

Divided by Common Language looks at where economics meets the law and highlights the major differences that exist between the US and other countries surrounding the purpose, authority and enforcement of financial reporting and audit.

The paper emphasises that the common language of the UK and US can at times create a superficial similarity in both governance and reporting matters, when beneath the surface, the law is entirely different in intent and effect. With the globalisation of capital, understanding these differences is important for policymakers, not just in the UK and the US, but also in emerging markets worldwide.

In particular the paper examines:

- the evolution of the US financial reporting model;
- contrasting approaches to accounting and auditing principles versus prescription;
- shareholder rights and the governance function of annual financial statements;
- investor behaviour and corporate governance; and
- accounting convergence with the US or recognition of the differences.

Divided by Common Language is the first in the Beyond the Myth of Anglo-American corporate governance series which aims to:

- Challenge commonly held assumptions regarding the perceived similarity of US and UK corporate governance systems;
- Identify possible areas for convergence and, where not practical, clarify why elements of one system may not be appropriate for incorporation into another; and
- Anticipate developments and set out challenges for future thinking about the US and UK models and encourage transatlantic dialogue.

The paper is at www.icaew.co.uk

[\(Back to page 1\)](#)

NEW DEBT COLLECTION RULES

A second draft of the guideline on consumer protection laws for those involved in the debt collection industry has been issued by the Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investments Commission (ASIC).

More than 50 submissions, including many detailed and useful comments, were received about the first draft.

In light of the submissions received, ASIC and the ACCC have decided to undertake a further round of consultations before finalising the guideline.

New or revised content in the guideline includes:

- the privacy obligations of debt collectors - developed in conjunction with the Commonwealth Office of the Privacy Commissioner;
- contact following bankruptcy - developed in conjunction with the Insolvency Trustee Service Australia;
- dealing with debtors at a special disadvantage; and
- dispute resolution.

Stakeholder comments are sought on the additional content and changes made to the guideline, including any new implementation issues posed by the revised draft.

Details are at www.asic.gov.au

[\(Back to page 1\)](#)

GOVT AGENCIES TO MONITOR CARTEL PRACTICES

The ACCC has launched an information package to raise awareness of the signs of possible cartel behaviour affecting government procurement.

“The ACCC seeks to work with government agencies at all levels which are involved in the procurement process to raise awareness of possible cartel conduct and increase the likelihood that it will be detected,” chairman Graeme Samuel said.

“Experience domestically and abroad has shown that government procurement is susceptible to cartel conduct. The package will help identify suspect tender practices and allow agencies to report them to the ACCC.”

The package will assist government agencies to identify and report suspicious tender practices. In particular, it provides information about:

- the behaviour that constitutes a cartel;
- warning signs in the procurement process;
- what to do if the agency suspects a cartel; and
- the penalties attached to cartel conduct.

“The package is part of the ACCC’s focus on cracking cartel behaviour and is preparatory to changes to the Trade Practices Act which will lead to higher civil penalties and criminal sanctions, including the possibility of jail terms for company executives.”

Further information at www.accc.gov.au

[\(Back to page 1\)](#)

MAKING SURE THE SME CASH FLOWS

Concern about cash flow issues was the second biggest issue that kept business owners and managers awake at night, according to a recent survey conducted by National Australia Bank. Failing to plan cash flow requirements and understand your business operating cycle can affect sound businesses.

“It is a lack of cash that leads to business failure, not a lack of profit,” cautions George Frazis, executive general manager of business and private banking at NAB.

“A cash flow crisis can occur in the best business if cash flow management is neglected.”

According to Frazis, a good starting point is to consult your accountant or business adviser to design specific strategies for managing cash flow.

Some of the options they may provide include reducing your “lazy cash”, improving efficiency by reducing excess stock and obtain stock on consignment, so you don’t have to pay for it until it’s sold, better management of inflows and outflows, better planning of finance and creating cash forecasts for the business.

Further details at www.national.com.au

[\(Back to page 1\)](#)