

FOREWORD

SENATOR IAN CAMPBELL*

Corporate governance has become an increasingly high profile international issue. In modern economies, the corporation is the fundamental vehicle for investment, development and innovation, employment growth and the accumulation of capital. Good corporate governance facilitates the most effective use of scarce resources, ensuring the best possible return to investors, benefiting the economy as well as the wider community. Poor or negligent corporate governance often results in a misuse of resources to the disadvantage of the community at large. Recent experience shows that the conduct of company directors and executives can have a significant impact on public perceptions and market confidence.

Broadly speaking, the existence of good corporate governance is a judgment best made by the market. Good corporate governance practices are a set of developing concepts, and must be dynamic. Public corporations need to demonstrate to investors that their governance mechanisms are appropriate so that the return on investors' capital will be maximised. The federal government actively encourages the adoption of effective governance structures — it has a responsibility to ensure the market is fair and efficient, with clear laws about the responsibilities of corporate managers.

The corporate governance structures in Australia are based on what is known as the 'shareholder approach' or 'outsider model' of corporate control. Under this model, the achievement of corporate goals and profit maximisation are monitored by the owners of the corporation (the shareholders), to whom corporate management is accountable. This can be contrasted with the so-called 'insider model' favoured by continental Europe and some Asian nations. This model is characterised by concentrated shareholdings, closer control of management by shareholders, and discipline provided by banks and large shareholders rather than open markets. Although corporate governance standards differ markedly across the world, on a fundamental level they are merging, steered on the one hand by calls from the market for transparency, disclosure and high performance, and on the other by business's search for capital and growth.

In Australia, the debate on corporate governance has been of a very high standard for many years. The development and implementation of world leading

* Parliamentary Secretary to the Treasurer.

best practice such as the continuous disclosure regime, and the separation of the role of chairman and chief executive officer, is evidence of this. This leadership role has, I believe, been partly responsible for Australia having suffered less than many other nations through the Asian financial 'meltdown' and the more recent disasters in the United States. This is not to say, however, that Australia is immune, or that we can afford to be complacent.

Today, we see this issue on centre stage following the Enron and WorldCom disasters in the United States and the collapses of some of Australia's own major listed companies, such as HIH, Ansett, One.Tel and Harris Scarfe.

In recognition of the important role played by corporations in entrepreneurial, business and investment activity, successive governments in Australia have sought to effectively regulate in order to protect the integrity of the financial system, without hindering the development of an efficient and competitive business environment. Achieving that balance ensures that efficient mechanisms are established to promote good corporate governance without placing excessive regulatory burdens on market participants.

Australia has an acknowledged world-class regulatory framework stemming from the federal government's Corporate Law and Economic Reform Program ('CLERP') which started in 1996. This program of continual improvement has given us a strong, modern and flexible structure which aims to encourage business innovation and promote higher standards of corporate governance. The most recent addition to this body of reform is CLERP 9, which focuses on audit regulation, advances to the continuous disclosure regime, enforcement provisions and increased shareholder participation in companies through use of the Internet. It builds on the reforms of the past six years and is aimed at creating a disclosure regime that utilises the latest information and communication technologies. The underlying theme and primary objective of CLERP 9 centres on improving the quality and timeliness of information provided to the market.

These are measures which governments can legislate. What governments cannot mandate is a culture of business morality — a theme that emerges in several articles in this volume. Good corporate governance is about integrity, openness, honesty and fairness. It is critical to the restoration of public confidence in the market. There is no doubt in my mind that a significant cultural shift is underway in corporate Australia as business leaders come to the growing realisation that some of the practices and behaviours of the past decade simply do not and will not meet the standards of today's new era of public accountability. The extent to which boards and management do develop new core cultures will vary considerably, but change is certain and those who resist it will pay a high price. In developing CLERP 9, the federal government has been determined to avoid over-reacting to corporate failure, seeking instead to strike a balance between regulation and freedom for initiative. All of the measures taken are aimed at creating a corporate regulatory environment that promotes business activity, market integrity and investor confidence, thus enhancing Australia's reputation for leadership in this area.

In this context of rapidly evolving policy, this issue of the *University of New South Wales Law Journal* represents a timely addition to corporate governance

scholarship. The authors in this volume provide critical comment not just on recent events, but on fundamental issues that underlie the governance debate. They discuss the role of regulators, shareholders, auditors and directors as well as issues of disclosure, remuneration and corporate ownership structure. Corporate social responsibility is examined, as are governance issues in government corporations and dual listed companies. The international dimension of this topic is highlighted through an exploration of current governance issues in Indonesia and Greater China. In this diverse collection of ideas, the publication truly represents a snapshot of contemporary thought on corporate governance.

The contributors to this issue draw on their expertise and experience as regulators, academics and practitioners to analyse various aspects of corporate governance. The resulting collection of articles will provide a springboard for further informed debate on a topic that holds great significance for business and society at large. The federal government recognises that it has a responsibility to ensure there is continual improvement to our corporate regulatory regime in order to further enhance Australia's reputation as a competitive and secure market for domestic and international investors. It will not shirk that responsibility; it is our aim to stay well in front in this vitally important game.