Board Effectiveness & Performance

The State of Play on Board Evaluation in Corporate Australia and Abroad

Study commissioned by
The Australian Council of Superannuation Investors
and prepared by
The Centre for Corporate Governance, UTS

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About the Authors

The Australian Council of Superannuation Investors

The Australian Council of Superannuation Investors ("ACSI") provides independent research and advice to assist its member superannuation funds to manage environmental, social and corporate governance (ESG) investment risk. ACSI believes effective governance structures and processes decrease risk and potentially increase returns, because they create stability that supports the development of long-term investment strategies. ACSI's research platform serves to underpin policy positions and raise awareness of emerging governance issues.

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Foreword

Shareholders rely on boards of directors to ensure that companies are managing their long term interests. It is difficult for shareholders to assess the performance of boards, and in reality, it is often only when disasters occur that we can assess that a board was not performing. The assessment of the performance of individual directors is almost impossible for shareholders, currently our only means is to form a view about directors who have sat on a board when there has been a company failure.

Principle 2 of the ASX Corporate Governance Council's Principles – recommends the disclosure of the process for evaluating the performance of the board, its committees and individual directors.

Is the disclosure of a process sufficient for shareholders to assess board performance or are there other factors that provide real insight into the effectiveness of a board? Do board evaluations provide the means by which shareholders can assess the performance of individual directors?

To answer these questions amongst others, ACSI has commissioned this cornerstone research on director and board evaluation. The research starts by looking at board evaluation policies in Australia, Canada, the United States and Europe, and establishes if and how company boards conduct and disclose evaluation. The second half of the research concentrates on a more in-depth examination of Australian company boards through interviews with Australia's top directors and investors.

The Centre for Corporate Governance at the University of Technology, Sydney (UTS) conducted the research between January and June 2010. The research has been a collaboration of ideas between ACSI and UTS but would not have been possible without the guidance of Professor Thomas Clarke who designed and implemented the research with his team of experts.

I would like to thank the Directors and Fund Managers who participated in the research. Their wealth of practical experience is encapsulated into insights that allow us to understand the state of play of board evaluation in Australia. This report adds a practical dimension to the mainly prescriptive body of research that currently surrounds board evaluation processes. More importantly, the directors' insights are likely to encourage further research and policy debate.

We hope the research will engage both companies and institutional investors on potential improvements that will create sustainable long term value.

Although the intent of the research is exploratory, it represents practice, procedures and opinions in the very largest companies across the world. On behalf of ACSI, I am pleased to commend this report to you.

Ann Byrne
Chief Executive Officer

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1. Executive summary

This research aims to capture the state of play of board and director evaluation processes both internationally and in Australia. Board evaluation is becoming widely established in companies internationally, and in large Australian corporations the commitment and rigour surrounding board evaluation is increasing. Board evaluation processes may have proved nominal in the past but presently board evaluation in large corporations is seen as an essential tool to assist in achieving better board performance and effectiveness.

This report provides a survey of processes of company board evaluation and explores their value in improving board performance. The survey examines the policy and practices of international corporations and a selection of Australian companies in the large listed sector. The first stage of the research involves an analysis of information on board evaluation as published by a sample of companies world-wide. This allows a comparison of Australian companies with international companies in terms of their regulatory environment and how they communicate with shareholders about their efforts to improve board effectiveness and performance. The second stage of the research consists of interviews with Australian directors and investors to explore their perspectives on board evaluation; its association with board effectiveness and performance; and their views on potential improvements to board evaluation.

1.1 Key Findings

International variance

Disclosure on board evaluation is strongly influenced by the regulatory approach of each country. In the US where a rules-based approach to regulation is prevalent, disclosure is relatively standardised and perfunctory. In the principles-based jurisdictions (Australia, UK, Canada and some European countries) there is the opportunity for richer disclosure although a common format is still apparent with only a few companies voluntarily offering more (or different) information.

Flexible processes

As with all corporate governance processes, a performance evaluation process needs to be adapted to a company's circumstances including the stage of the corporate life-cycle and length of tenure of board members. The same process does not have to be used every year.

Continuous improvement

An effective board will not save any performance issues for discussion during the annual board evaluation but will undergo a continual self-improvement process. Good boards will be proactive, not only assessing themselves retrospectively but prospectively.

Individual performance

Opinion is divided on whether performance evaluation of individual directors is a valuable exercise or whether it can inhibit whole-board dynamics and group performance. There perhaps needs to be more discussion over why, in the context of a board, the individual can be less important than the team.

Senior management

The relationship between the board and senior management is vital to effective board performance in terms of information flow and strategy development. For this reason, it is good practice to involve members of senior management in the board evaluation process.

Informal discussion

Many board members find that board effectiveness can be greatly enhanced if the board members, particularly non-executives, have a chance to get together outside of formal board meetings to discuss issues that might not fall within the formal meeting agenda.

External facilitation

The general opinion is that the use of an experienced external consultant can be very valuable but may not be justified every year. External reviews are costly but may be particularly useful when the board is going through change.

Outcomes

Outcomes of board evaluation processes range from relatively minor amendments to board processes (meeting agendas, format of board papers etc) through alteration of committee structures (amalgamation or changes to committee charters) to significant changes in board composition (to fill skill gaps or remove directors contributing to dysfunction).

Implementation

The process of implementing the outcomes of board evaluation is a crucial step that perhaps deserves more attention. It is a vital component in whether a board evaluation process actually leads to better board performance.

Links to other processes

The links between the process of board evaluation and other processes such as director re-election, succession planning and director education and development are becoming clearer and more formalised in practice.

The effective board

Factors necessary for effective board performance include:

- a boardroom culture of mutual respect, honesty and openness that encourages constructive debate
- diversity of experience, styles, thought and, as far as possible, age, gender and nationality
- a good relationship with the CEO and senior management
- a common purpose and strategic clarity
- an experienced chairperson who can manage the board agenda, encourage debate and work in harmony with the CEO
- efficient board structure and processes including committees, board papers, information flow and a good company secretary

The dysfunctional board

Factors that can hinder board effectiveness include the opposites:

- an adversarial atmosphere in the boardroom or an unmotivated board with a tendency to group-think
- skill deficits or lack of genuine independence on the board
- a poor relationship with the CEO and senior management which can impede information flow
- conflicts of interest or factional interests on the board, perhaps due to a dominant shareholder
- poor chairmanship – a chair who is too week, too autocratic or too close to the CEO
- poor processes leading to inefficient use of time

Skills matrices

Boards are creating detailed matrices of the skills required on the board and are using these in their succession planning and nomination processes. However, there is still room for improvement in succession planning in order to reduce the influence of dominant board members and to improve long-term plans.

Disclosure

Some directors were open to the concept of increased reporting on board evaluation including providing more detail on non-sensitive outcomes. Others were of the view that this was of little value and, interestingly, the fund managers we spoke to agreed. It seems that the institutional investors place little value on annual report disclosures preferring to assess board members based on their backgrounds and personal characteristics.

Company performance

Both directors and fund managers understood that the link between board performance and company performance is complex and that even the best of boards can be hindered by factors beyond their control.

Indicators of an effective board

Both directors and fund managers agreed that it is difficult for outsiders to assess whether a board is performing effectively. However indicators include:

- willingness of a company to seek and respond to market feedback
- personal characteristics and credibility of directors
- professional history of directors
- company performance within the industry
- quality of board decisions, particularly in times of crisis

2. Introduction

The need for effective board evaluation is identified as one of the lessons learned from the global financial crisis. The economic chaos resulting from inadequate board oversight indicates the need for greater vigilance to ensure the accountability of boards. This is reflected in recent legislative and policy changes which acknowledge the growing expectation that boards should monitor management as well as take full responsibility for the monitoring of their own performance.

The OECD (2009) recommends that “A board evaluation process, conducted with the support of independent experts on a regular basis, should be used as a structural tool for monitoring board effectiveness and efficiency.” The ASX (2007) Corporate Governance Principles recommend that “Companies should disclose the process for evaluating the performance of the board, its committees and individual directors.” The recent Walker Review of Corporate Governance in the UK Banking Industry (2009) also strongly recommends better board evaluations and better disclosure to investors regarding such evaluation in light of the global financial crisis.

As a key element of effective corporate governance, board evaluation is now well established as good practice, however, many would agree that, if conducted poorly, it can be a waste of time (Aronson 2003:9). What is concerning is that board evaluation and performance could become subject to a “tick-a-box” compliance approach. Though this approach is commonly attributed to investors, it is often companies themselves that encourage this by adopting a ritualistic approach to important and substantive corporate governance processes (Moore 2009).

Similarly, most corporate governance research tends to use prescriptive frameworks to examine (and re-examine) compliance with extensive regulations and guidelines. Inadequate board performance is often explained from the perspective of non-compliance with established regulations (or an almost exclusive reliance on agency theory). While the compliance perspective is important to ensure boards fulfill their fiduciary responsibilities to shareholders, it does not examine or reveal the actual performance of directors both individually and collectively.

In light of this, there is a need to understand how directors assess their performance through board evaluation and how such information can be communicated by companies to investors. This research therefore aims to examine the evaluation processes directors engage in and identify characteristics and processes that determine if the board is performing effectively.

3. Literature review

This literature review draws upon academic research to examine board roles and responsibilities broadly before moving towards board evaluation to understand board effectiveness and performance. Due to the research's unique position of being conducted in the aftermath of the global financial crisis, the changes (or suggested changes) made by professional organisations and regulators to place a greater emphasis on the importance of board evaluation are highlighted to strengthen the context of the research and to provide the rationale for the research questions and intentions.

3.1 Board roles/responsibilities and processes

To assess if a board is performing effectively, there is a need to understand what it ought to be achieving, i.e. the role of the board. The literature on the roles and responsibilities of directors identifies that a board has three key roles:

1. To monitor management (control role)
2. To provide advice and links to external resources (service role); and
3. To set overall corporate strategy (strategic role).

In their seminal article, Zahra and Pearce (1989) set out "an integrative model of board attributes and roles" which demonstrates how board attributes including: board composition (e.g. size, independence); director characteristics (e.g. personality, experience); board structures (e.g. committees, reporting lines); and board process (e.g. meetings, evaluation) each contribute towards the board fulfilling these three main roles.

In discussing the role of a board, Henry Bosch (former chair of ASIC's predecessor, the National Companies and Securities Commission) states: "The board's first responsibility is to ensure that the organisation has clearly established goals; objectives and strategies for achieving them; that they are appropriate in the circumstances; and that they are understood by management" (1995:93). The other responsibility in which a board can contribute to the performance of an organisation is to establish performance indicators with management and to monitor actual results against them (1995). These responsibilities are encapsulated in Garratt (2003)'s overview of how boards and directors should behave through an emphasis on the duties each director must have including duties of care, legitimacy, upholding governance values, trust, loyalty, critical review and independent thought.

Garratt (2003) also points out the elements of a failing board include not only problems of abuse of power and conflicts of interest but also basic laziness and cowardice (2003:117). To avoid the undesirable elements, he introduces the concept of "directorial dashboards" to help boards focus their attention on key business performance indicators (2003:147). This is similar to Forbes and Milliken (1999)'s model that looks at two criteria of board effectiveness:

1. Board task performance defined as the board's ability to perform its control and service tasks effectively
2. The board's ability to continue working together, as evidenced by the cohesiveness of the board.

The first criteria influences firm performance directly, while the second - board cohesiveness - does so indirectly by influencing present and future levels of board task performance (1999:492). This work reveals some of the complexities in external assessment of board performance: it is relatively easy to find indicators that suggest that the members of the board have the right skills and experience to perform their roles but these do not reveal whether the board members are able to work together as a whole. When directors are seen as stewards of organisational resources with significant impacts, the importance of understanding and improving the way they discharge their responsibilities becomes paramount (Forbes & Milliken, 1999).

As Forbes and Milliken explain, researchers can focus on what boards need to do in order to discharge their responsibilities more effectively by treating boards as “decision-making groups” rather than focusing on composition ratios (1999;502). Huse (2009b)’s review of research, for example, found that trust, power games and strategising techniques can all impact on board effectiveness. Huse emphasises that direct access to boards is vital to obtaining relevant data and gaining in-depth understanding. Similarly, Finkelstein and Mooney (2003)’s interview-based research on directors’ engagement in constructive (not destructive) conflict, decision-making and strategy development confirm that these board processes have a significant and palpable impact on the effectiveness of the board and company performance.

Lawler et al (2007) conducted a survey of 768 directors at 660 of the largest publicly traded companies in the US regarding board effectiveness, composition, structure, processes and dynamics and found a significant shift in dynamics where there was an increase in boards behaving independently of management, however, it was much more difficult for outside directors to work in close partnership with management. In addition, a large majority of participants were spending more time on monitoring and less on strategy as a result of recent corporate governance reforms, despite the importance of the role of the board in addressing strategic direction.

Sonnenfeld (2001), in his article “What makes great boards great” argues that it’s not the rules and regulations but the way people work together on boards that make them great. This sentiment is echoed by Daily and Dalton who state that board effectiveness is a matter of integrity:

> *“The performance of any board is a function of the character of the individuals that comprise the board. No structural remedy can overcome poor judgment or apathy. At the same time, no amount of individual character can overcome accountability without responsibility.” (2003:43)*

The above paragraph summarises the difficulty in assessing board effectiveness. A good board undoubtedly requires members with specific skills and experience, its performance will almost always be assisted by good structure and process, however, the crucial ingredient is the quality of human interaction and this is much harder for an outsider, especially investors, to know and measure.

This is where board evaluation ought to have real value. Only the board itself can really assess its ability to work together, to make decisions efficiently and to identify any problems. As Sonnenfeld observed, in 2001, 63% of American corporate boards were not subjected to a performance evaluation. This lack of evaluation and feedback can be “self-destructive.” He states:

> *“People and organizations cannot learn without feedback. No matter how good a board is, it's bound to get better if it's reviewed intelligently… If a board is to truly fulfil its mission - it must become a robust team - one whose members know how to ferret out the truth, challenge one another, and even have a good fight now and then.” (Sommerfield 2002:114)*

3.2 Board evaluation

During the HIH Royal Commission, when Ray Williams, the CEO of HIH, was asked a series of questions about whether his board had ever been evaluated. His answer was a resounding "no"! (Kiel, Nicholson and Barclay, 2005:1-2).

Huse, Gabrielsson and Minchilli (2009a: 147) point out the four main elements in most board evaluation systems comprise:

1. The agents performing the evaluation (e.g. self-evaluation, consultants)
2. The issues to be assessed (e.g. accountability, knowledge and contribution)
3. The stakeholder/s involved; and
4. The way the evaluation is performed (e.g. interviews, observations, surveys).

Building upon this framework, the three authors also look at the practical implications of 'value creating board' programs to show how boards contribute throughout the value chain of the organisation and recognise the importance of leadership from the top (2009b).

Most board evaluations used in-house or by external consultants tend to consist of general questions like the ones found in Bosch's (1995) prescriptive framework to assess if boards are performing effectively:

- Do the members understand and agree on the key functions of the board – what should they be doing?
- Are those functions being properly performed and is sufficient time being allocated to them?
- Have the most essential objectives been agreed and are they being achieved?
- Can the board's administrative and operating arrangements be improved? (1995:143-144)

Then, to assess the effectiveness of each board director, the following questions are recommended to evaluate the performance of an individual:

- Has X attended meetings regularly?
- Does X seem to devote sufficient time and attention to his responsibilities?
- Has X consistently been properly brief about the matters to be discussed?
- Does X keep himself sufficiently informed by making visits to the organisation's operations and by making contact with appropriate executives?
- Does X bring relevant experience to the board table and does he use it effectively?
- Are X's contributions succinct and to the point?
- Do X's contributions to board discussions carry weight with his colleagues?
- Does X take his fair share of committee work and are his contributions on committee of value?
- Does X maintain good personal relations with his colleagues and with management? Is he cooperative and helpful?
- Has X an actual or potential conflict of interest that may be an embarrassment to the board?

These questions are consistent with Kiel, Nicholson and Barclay's (2005) book on board, director and CEO evaluation, where a step-by-step approach to board evaluation includes justification for the evaluation, the processes, templates for questionnaires and how the results will be communicated and implemented. Of particular interest is the emphasis on board evaluation outcomes, giving specific detail on how the benefits of improved role clarity, accountability and decision-making can flow through to directors, the board and the organisation as a whole as a result of board evaluation (see Table 3.2A).

Table 3.2A: Benefits of Board Evaluation (Kiel et al 2005)

Benefits	To organisation	To board	To individual directors
Leadership	• Sets the performance tone and culture of the organisation • Role model for CEO and senior management team	• An effective chairperson utilising a board evaluation demonstrates leadership to the rest of the board • Demonstrates long-term focus of the board • Leadership behaviours agreed and encouraged	• Demonstrates commitment to improvement at individual level
Role clarity	• Enables clear distinction between the roles of the CEO, management and the board • Enables appropriate delegation principles	• Clarifies director and committee roles • Sets a board norm for roles	• Clarifies duties of individual directors • Clarifies protection of directors • Clarifies expectations
Teamwork	• Builds board/CEO/ management relationships	• Builds trust between board members • Encourages active participation • Develops commitment and sense of ownership	• Encourages individual director involvement • Develops commitment and sense of ownership • Clarifies expectations
Accountability	• Improves stakeholder relationships (eg investors, financial markets) • Improves corporate governance standards • Clarifies delegations	• Focuses board attention on duties to stakeholders • Ensures board is appropriately monitoring organisation	• Ensures directors understand their legal duties and responsibilities • Sets performance expectations for individual board members
Decision-making	• Clarifies strategic focus and corporate goals • Improves organisational decision making	• Clarifies strategic focus • Aids in the identification of skills gaps on the board • Improves the board's decision-making ability	• Identifies areas where the director's skills need development • Identifies areas where the director's skills can be better utilised
Communication	• Improves stakeholder relationships • Improves board-management relationships • Improves board-CEO relationships	• Improves board-management relationships • Builds trust between board meetings	• Builds personal relationships between individual directors
Board operations	• Ensures an appropriate top-level policy framework exists to guide the organisation	• More efficient meetings • Better time management	• Saves directors' time • Increases effectiveness of individual contributors

Despite the potential of board evaluation benefits, Cascio points out that in terms of board performance assessment and feedback, "peer evaluations can be difficult since fellow board members are often hesitant to criticise each other's performance." (2004:99) However "[b]oards, like workgroups, are intact social systems that require regular monitoring and feedback in order to work well." (2004:100). Garratt (2003) looks at this analogy from a benchmarking perspective and states that the key elements of board evaluation are not so different from other appraisal systems:

> *"Identifying key performance areas (tasks) and agreed value-based behaviours (processes) that reinforce the business' purpose and vision, developing a system for assessing them, and doing it regularly and rigorously." (2003:208-209)*

However, such a system can only work where there is openness and collegiality which requires a significant investment of time and effort to cultivate (Garratt, 2003:209).

> *"…the constructive micro-political climate in which open board appraisal takes place can be difficult to create and is often tricky to sustain, unless there is total commitment to it from the chairman and directors. Most board directors have big egos and if appraisal is to be seen as an investment by those directors, what is in it for them? The ultimate answer is protection – of their personal (family) wealth, of their reputation in their professional career and in their community, and ensuring freedom from jail. Most of all, the development of directorial competence and appraisal gives the highest of prizes: the protection and growth of personal integrity." (2003:209).*

For investors, the benefit of board evaluation ultimately comes from the information gained regarding the process itself and the outcomes. The 2007 survey conducted by Price Waterhouse Coopers examined board evaluation practices and disclosure in the UK and identified considerable development between 2005 and 2007, demonstrating greater maturity in terms of both operations and disclosures. The main changes identified were increased use of external facilitators, more emphasis on certifying the effectiveness of the board, committees and directors, as well as providing insights into action plans derived from the evaluation process to shareholders.

It is this last step that is likely to have the most value for investors in terms of gaining information on the value of the board evaluation process. Without information on actions and outcomes, disclosure on board evaluation gives very little indication of actual board performance.

However, when board evaluation disclosure is viewed under the stock exchange guidelines framework, the quality of information disclosed highlights the risk of box-ticking. Moore looks at the UK's 'comply or explain' regulation and the factors that undermine its effectiveness. Unlike many commentators he places blame, not only on investors and ratings agencies, but on the companies themselves:

> *"The utility of the "comply or explain" approach is undermined by corporate boards themselves, who are accustomed in many cases to providing perfunctory or "boiler-plate" explanations for non-compliance with Code norms. This has the adverse effect of reducing the merit of explanation as a substitute for full Code compliance by boards and, in turn, undermines investors' trust in the genuineness of those explanations for non-compliance that are actually motivated by valid strategic reasons."(2009:103)*

The evolution of the check-list approach also means that when boards deviate from compliance, the rigidity of such an explanation may undermine investor confidence unnecessarily. That is, non-compliance can be unjustifiably treated in a tick-a-box and one-size-fits-all perspective. As Moore expounds:

> *"The effect is that the principle of "comply or explain" is instead interpreted by investors and boards as that of "comply or breach", with box ticking of uniform criteria ousting any more fundamental analysis of companies' explanations for deviation from Code Provisions.(2009:119)*

In the context of board evaluation, this means that while a tick-a-box approach does allow some formalisation, its limitations include a parochial approach in assessing if a company has an effective board (or not) according to variables in a particular checklist. Furthermore, such an approach may overlook company- specific situations or circumstances such as ownership restructuring, major blocks of ownership and whether the company is in a growing/dynamic/mature industry:

> *"While the practical benefit of "box ticking" in terms of reduced monitoring costs for investors is clear, it nevertheless completely undermines the value of the "comply or explain" principle by eliminating any scope for the transmission of firm-specific information conducive to the tailoring of governance arrangements to a company's unique features and circumstances (2009:120-121)*

The professionalisation and corporatisation of compliance requirements in relation to corporate governance have also had the unintended effect of narrowing and acting in the opposite direction of a principle-based approach:

> *"The widespread use of quantitative metrics and "tick box" compliance reports is inherently inclined to effect a juridification of corporate governance norms: that is to say, a progressive narrowing of flexible and open-textured principles such that they become, in effect, "bright line" rules with readily identifiable boundaries. In this way, the task of monitoring compliance is transformed from a complex and inter-subjective discursive process between the supervisor (investor) and supervisee (company/board), into a relatively straightforward question of ascertaining whether the supervisee (company/board) has acted within or outside the permissible parameters of the relevant rule." (Moore 2009:124)*

In particular, each board has its own cultural quirks and dynamism; the board culture could largely depend on the ability of a heterogeneous group to work together and monitor the will and authority of the CEO to impose his/her agenda. Aronson (2003) sums up the issue nicely in the context of board evaluation:

> *"As with many issues of corporate governance that have been on the receiving end of legislative help, there is danger that simplistic rules bring about equally simplistic responses – the 'tick-in-the-box' approach. Reduced to an exercise in appearing to comply, the temptation can be to treat all boards the same, directors as one mould, their duties and contributions identical; and to outsource the evaluation to a growing cadre of 'experts'."*

The particular authority vested in a board means evaluation for this body is markedly different from the performance evaluation of other business units of the organisation:

> *"Boards fulfil a different role than management – a different job, not just a higher order of management. Thus the basis of evaluation is different than what is normally thought of inside an organisation. The board is the highest authority – there is no boss to do the evaluation. Boards must do their own evaluation but do so in a way that is credible to shareholders and engaging to members. It must be rigorous and acted upon. It is best done by themselves but with facilitation that provides expertise, challenge and objectivity." (Aronson 2003: 8)*

Therefore, what an effective board evaluation must seek to avoid is the mechanical operation and orientation of a tick-a-box approach. Ultimately, such an evaluation will contribute to a worthwhile assessment of board members and a realisation of their valuable contribution to the organisation.

Concurring with this sentiment, Huse et al (2009) take the view that an effective board contributes to peak performing organisations through its interaction within the whole of the corporate value chain. A variety of board members with knowledge and skills, a facilitative boardroom culture and a board that has set task performances for its managers all contribute to board effectiveness.
Based on literature review above, the following template serves as a summary of good practices in board evaluation that take into consideration the issues discussed.

Table 3.2B: Best Practice Board Evaluation Template

Stage	Process	Options
1. Get agreement to the concept of performance management	Agree upon the purpose of the evaluation	• To improve board effectiveness and organisational performance • To satisfy regulatory requirements and improve accountability/stakeholder relationships
	Agree upon the subjects of the evaluation	• Full board • Individual directors • Board committees
2. Establish the criteria for board performance	Agree upon the content of the evaluation	• Board composition, governance structures, roles, responsibilities and skills • Board process, communication, information flow and external relationships • Board teamwork, internal dynamics, leadership and culture
3. Decide on method of board evaluation	Who should conduct the evaluation?	• Self-evaluation • Committee chair • Board chair • Company secretary • Independent consultant
	How should it be conducted?	• Who should be asked? • Formal Interviews • Questionnaire • Participant observation • Informal mechanisms
4. Undertake evaluation	Conduct review and analyse information	• How frequent? • Time frame
5. Feedback	Who should receive the information and how much?	• Chairperson • Full board and/or Individual directors • Senior management • Investors / regulators • Wider stakeholders
6. Outcomes	Establish director development plans and board action plans Monitor implementation of plans and review evaluation process	• Link to training/education • Link to re-election process • Link to succession planning • Link to stakeholder communication processes • Link back to Stage One regarding the purpose of the evaluation

Adapted from Huse (2009a), Kiel, Nicholson & Barclay (2005), and De Lacy & De Lacy (2004).

3.3 Impact of the Global Financial Crisis on Board Evaluation

Having established the framework, benefits and pitfalls of board evaluation, the next section provides the rationale for the recent focus on board evaluation and why it has attracted significant interest and is likely to continue doing so.

A report for the OECD on the corporate governance lessons learned from the financial crisis, places a good deal of blame on boards of directors for failing to properly supervise risk management and incentive systems (Kirkpatrick, 2009:24). It identifies credit rating agencies, disclosure regimes and accounting standards as contributing to the problem but considers that a good board ought to have been able to overcome these weaknesses:

> *"[There were] significant failures of risk management systems in some major financial institutions made worse by incentive systems that encouraged and rewarded high levels of risk taking. Since reviewing and guiding risk policy is a key function of the board, these deficiencies point to ineffective board oversight." (Kirkpatrick, 2009: 3)*

As a recent report by Egan Partners and Korn Ferry (2009) has pointed out, this realisation has led to a recent global focus on remuneration and corporate governance, the role and accountability of boards and both risk and remuneration committees.

On 18 March 2009, the OECD held a conference in Paris to discuss monitoring, implementation and enforcement of corporate governance as well as possible reforms and improvements to the OECD Principles in light of the crisis. Priority areas for reform were listed as including "board practices, implementation of risk management, governance of the remuneration process and the exercise of shareholder rights".

A follow-up report by the OECD (2009) takes into account both the Kirkpatrick report and the results of the Paris conference and summarises the key findings. It concludes:

> *"The Steering Group's analysis of corporate governance weaknesses in remuneration, risk management, board practices and the exercise of shareholder rights concludes that, at this stage, there is no immediate call for a revision of the OECD Principles. In general, the Principles provide for a good basis to adequately address the key concerns that have been raised. A more urgent challenge for the Steering Group is to encourage and support effective implementation of already agreed standards." (2009:7)*

With regard to board practices the report states:

> *"It appears difficult and perhaps impossible to find a "silver bullet" in the form of laws and regulations to improve board performance. This leaves the private sector with an important responsibility to improve board practices through, inter alia, implementing voluntary standards." (2009:9)*

It goes on to recommend that:

> *"A board evaluation process, conducted with the support of independent experts on a regular basis, should be used as a structural tool for monitoring board effectiveness and efficiency" (2009:10)*

In the UK, the final recommendations of the Walker review of corporate governance in UK banks and other financial industry entities were released in November 2009 and included an entire chapter on the functioning of the board and evaluation of performance. In particular the review examined the role of non-executive directors on the board, ultimately recommending that they be "ready, able and encouraged to challenge and test proposals on strategy put forward by the executive" (2009:56). The review also strongly recommended regular board evaluations and better disclosure to investors regarding such evaluation:

"The evaluation statement on board performance and governance should confirm that a rigorous evaluation process has been undertaken and describe the process for identifying the skills and experience required to address and challenge adequately key risks and decisions that confront, or may confront, the board. The statement should provide such meaningful, high-level information as the board considers necessary to assist shareholders' understanding of the main features of the process, including an indication of the extent to which issues raised in the course of the evaluation have been addressed. It should also provide an indication of the nature and extent of communication with major shareholders and confirmation that the board was fully apprised of views indicated by shareholders in the course of such dialogue." (2009:66)

In contrast, when the Australian Government asked the Corporations and Markets Advisory Committee (CAMAC) in August 2009 to review whether there ought to be more guidance for non-executive directors , in particular to assess if performance of directors could benefit from a code of conduct or best practice guidance from a relevant regulator, CAMAC concluded that the role and performance of directors in Australia did not warrant a new code of conduct or best practice guidance due to the significant amount of guidance already available to directors. (CAMAC, 2010:85).

By not recommending formal reform, the CAMAC report has recognised the dangers of reform that undermines the conditions required for actual effectiveness for the sake of external perceptions of effectiveness. However, the implications of the unavoidable interplay between individual and group performance on overall board performance and effectiveness cannot be ignored:

"An individual board member has a stake in the effectiveness of his or her colleagues and of the whole board. Questions such as the adequacy of the mix of relevant skills and experience on the board to meet the challenges of the company, the ability of the chair to guide open and constructive deliberation and the ability of board members to work together and with management should be matters of concern for each director as well as the board overall" (CAMAC, 2010:11)

Therefore, it is imperative that a crucial part of a board's responsibility is to review its own composition and effectiveness, especially the performance of individual board members as well as the board overall, in light of current and anticipated developments in the company's business and operating environment.

"Directors themselves carry a responsibility to consider these matters to ensure the best performance of the board for the benefit of shareholders." (CAMAC, 2010:11)

4. Research questions and aims

The literature review suggests that effective board evaluation is likely to provide insights into the dynamics and strengths of its members, leading to improved performance and effectiveness. In addition, from a regulatory point of view, the post financial crisis climate is likely to place a stronger emphasis on disclosure in relation to directors' performance (particularly in the UK) to understand the effectiveness of the board and its members. Significantly, the need for better dialogue with investors, through the provision of meaningful information has been recognised.

In view of this direction, the research seeks to understand the state of play of board evaluation in Australia by asking:

1. How should Australian boards assess performance at both individual and group levels? i.e. what does effective board evaluation comprise of?
2. How can shareholders recognise high performing boards? i.e. how can information on board evaluation and performance be communicated by companies or extracted by investors?

The research was conducted through a focus on the following questions:

- What are boards telling us about the evaluation processes they are currently using, both in Australia and overseas?
- How does Australian disclosure compare to overseas disclosure and can we learn anything from overseas practice?
- Do boards provide any information about the outcomes of performance evaluation?
- What are the best indicators of board performance?

5. Methodology

5.1 Stage One

Data on board evaluation processes was collected from a selection of large listed companies worldwide. The aim of Stage One of the research was to compare current practice overseas with that in Australia. The sample included:

- 30 Australian companies, selected from the ASX 100
- 10 United Kingdom companies selected from the FTSE 100
- 10 companies listed on European exchanges
- 10 companies listed on the NYSE
- 10 companies listed on Canada exchanges

For consistency, the largest companies in these categories were selected on the basis that they would be at the forefront of developments in board evaluation i.e. the top 30 ASX listed companies and so on. However, it was surprisingly difficult to obtain this information in a consistent format. Forbes, for example, provided top companies by market capitalisation (as at 8 April 2009) but had no aggregate information for Europe as a whole (Forbes, 2009). The Financial Times in comparison provided top companies by market capitalisation in the US, Canada, UK, Europe and Australia as at 29 May 2009 (Financial Times, 2009). However, there were still issues that had to be addressed:

- Firstly, it only included the top 10 companies for Australia so the Australian Financial Review, 8 January 2010 was used, in order to get the top 30.
- Secondly, its top European companies included UK companies. To avoid an overlap the 5 UK companies in the top 10 were excluded and the next 5 biggest continental companies were included instead.
- Lastly there were a few companies that appeared in more than one top 10 due to dual listings. BHP and Rio Tinto were removed from the UK list as they were also in the Australian sample. Similarly, Imperial Oil was removed from the Canadian list as it is a subsidiary of Exxon Mobile which appears in the US top 10.

The websites and annual reports were reviewed for each of the 70 companies identified (see table), Information specific to board and director evaluation processes was collated.

5.2 Stage Two

Stage Two of the research involved interviews with a sample of company directors and fund managers. Semi-structured interview templates (Appendices A and B) were used – one for company directors and one for fund managers. The questions asked covered board evaluation processes, disclosure regarding those processes, the outcomes of board evaluation and the factors that hinder or promote board effectiveness. Interviews were carried out in face-to-face meetings and it was agreed that information would be confidential and no comments would be attributed (expressly or impliedly) to any individual or company. The target was to speak with fifteen company directors and five fund managers. This proved difficult due to time constraints (and volcanic ash!) and thus the final sample comprised 12 company directors and 3 fund managers, resulting in a response rate of seventy-five percent.

5.3 Limitations of Sample

This section acknowledges the following limitations of the methodology used in the research.

In Stage One, the sample of international companies comprising the top 10 companies in each region by market capitalisation was selected on the assumption that the largest companies usually have the resources to place themselves at the forefront of developments in corporate governance.

In Stage Two, the sample was selective and may lead to sample bias. However, research on boards is normally limited by access (Zahra & Pearce: 1989), the aim was to speak with directors of large listed companies who would have had the most exposure to board evaluation processes. Direct access to the Australian directors in this research meant that the empirical investigation in Stage Two not only complemented the initial survey results of Stage One, but provided the research with rich, contextual data that was not present in Stage One.

The interviews with a small sample of investors/fund managers were designed to further explore the research questions and were not intended to comprise a stand-alone data source. There are of course many more listed companies than there are institutional investors in Australia and thus a small sample of fund managers may represent an adequate proportion of investment funds.

The combination of the two stages of data collection provided a unique insight into board evaluation and its link to performance and effectiveness. Stage One summarised the external perceptions of board performance and evaluation as communicated through company annual reports, while Stage Two provided more profound insights into this process by probing beneath the rhetoric and legalistic compliance.

6. Findings and analysis

6.1 Stage One: Review of International Board Evaluation Practices

As described above, Stage One of the research involved a desk study of the board evaluation practices of a sample of listed companies across the world. The annual reports and websites of 70 companies were reviewed for information on board, committee and director evaluation processes. Subject to the qualifications already mentioned, the sample was made up of the:

- 30 largest companies in Australia
- 10 largest in the United States
- 10 largest in the United Kingdom
- 10 largest in continental Europe; and
- 10 largest in Canada (size being measured by market capitalisation).

A summary of findings in relation to each country, placing them in the context of the differing regulatory requirements in each region is presented below.

For more detail on the relevant regulation see Appendix D.

6.1.1 Australia

The Australian Stock Exchange's Corporate Governance Principles, Recommendation 2.5 states:

> *"Companies should disclose the process for evaluating the performance of the board, its committees and individual directors"*

The ASX Principles also recommend that "development of a process for evaluation of the performance of the board, its committees and directors" should be a responsibility of the nomination committee for the reason that:

> *"An evaluation of the range of skills, experience and expertise on the board is important when considering new candidates for nomination or appointment. Such an evaluation enables identification of the particular skills that will best increase board effectiveness." (p18)*

The ASX Principles recommend that reporting on Principle 2 (Structure the board to add value) includes:

> *"whether a performance evaluation for the board, its committees and directors has taken place in the reporting period and whether it was in accordance with the process disclosed" (p20)*

Interestingly, at the time of writing, the ASX Principles were going through a review process and proposed changes were released in April 2010. The amendments are designed to take into account the findings of three recent independent reviews which focused on issues related to corporate governance: CAMAC's report "Diversity on Boards of Directors" March 2009; CAMAC's report "Aspect's of Market Integrity" June 2009; and the Productivity Commission's report "Executive Remuneration in Australia" January 2010. None of the amendments are directly relevant to board evaluation processes, however, the expanded commentary on board diversity is relevant to succession planning and board performance in achieving diversity objectives. It makes it clear that nomination committees ought to consider the issue of diversity in their succession planning, regularly review the proportion of women employed at all levels of the company; and make recommendations to the board to address board diversity.

The key findings in relation to each of the 30 Australian companies reviewed are summarised in Table 6.1.1A. It is clear that the ASX guidelines have a significant influence on the disclosure provided by Australian companies. Although it is perfectly acceptable for a company to explain why they do not follow these recommendations, only one company of the thirty reviewed, Fortescue Metals, took this route, explaining that they had not formalised their board evaluation process:

"The company does not have a formal process for evaluating the performance of the board or its committees but rather this is done by informal consultation between the Chairman and the CEO and relevant directors as required. The company has held board retreats in the past where evaluation questionnaires have been used to gauge director's views on performance and board effectiveness."

The ASX Principles do not recommend any particular frequency for board evaluations, however, 70% of our sample conducted evaluations annually. Of the remaining 30% or nine companies: five did not state a particular frequency, commenting only that reviews were regular or giving the date of the last review; two companies did a board evaluation every two years (Origin and Coca Cola Amatil); and two companies (ANZ and IAG) committed to review their board only every three years.

Of the companies conducting annual board evaluations, there were five that alternated the process of evaluation each year such that one year a relatively informal self-evaluation would take place and the next year a more formal process would take place involving an independent consultant. BHP Billiton alternates a full board evaluation one year with individual director evaluations the next.

Almost half of the companies reviewed used an independent consultant to facilitate the board evaluation process. For those companies not using external consultants, it was common for the chairman to lead the review process and conduct interviews with each director. Most commonly, the evaluation process would also involve a questionnaire. Of the thirty companies reviewed, six gave a description of the topics covered by the board evaluation ranging from a sentence to a comprehensive list of matters covered, for example, Macquarie Bank states:

"The questionnaire will be agreed by the Board and covers matters such as:

- *the Board's contribution to developing strategy and policy;*
- *the Board's performance relative to its objectives;*
- *interaction between the Board and management and between Board members;*
- *the Board's processes to monitor business performance and compliance, control risks and evaluate management;*
- *Board composition and structure; and*
- *the operation of the Board, including the conduct of Board meetings and group behaviours."*

The majority of Australian companies expressly linked their director evaluation process to the re-election process. Most simply stated that the results of individual director performance evaluations would be used when determining whether a director be recommended for re-election. Some companies went further, for example, at Coca Cola Amatil, directors have agreed that:

"If a majority of Directors consider a Director's performance falls below the predetermined criteria required, then the Director has agreed to retire at the next Annual General Meeting."

Eight companies of the thirty reviewed referred to the outcomes of their board evaluation but only three of those eight (Rio Tinto, Santos and Newcrest Mining) actually gave examples of the actions implemented. For example, Santos stated:

"As a result of recommendations arising from the external Board review, a number of initiatives have been introduced; for example, increasing time spent on strategic issues and improving the style and format of Board papers."

Newcrest's most recent evaluation resulted in a review of their board structure:

"The board completed its most recent review, which it undertook with the assistance of external specialist advisers, in December 2008. As a result, the size of the Board was increased, the Board Committee structure was reviewed and a number of Board internal processes refined."

An example of a company that referred to the outcome of board evaluation without giving examples would be Suncorp-Metway:

"The Board as a whole discusses the report and any recommendations for change or improvement are agreed. Progress against each of the recommendations is assessed in subsequent Board reviews."

6.1.2 United States of America

The key findings with regard to the 10 largest companies in the US are summarised in Table 6.1.2A. Disclosure by these companies follows a very homogenous pattern, strongly influenced by the NYSE listing rules.

Section 303A.09 of the Listing Rules requires listed companies to adopt and disclose corporate governance guidelines and to publish them on its website. One of the subjects to be addressed in these guidelines is described as follows:

> *"Annual performance evaluation of the board. The board should conduct a self-evaluation at least annually to determine whether it and its committees are functioning effectively."*

Thus, for each of the US companies reviewed, information regarding board evaluation was found in the 'Corporate Governance Guidelines' document which included a paragraph dedicated to board evaluation. This paragraph tended to only be a few sentences long, primarily confirming that an annual board self-evaluation is carried out. In eight of the ten companies reviewed it was explained that the board evaluation process was led by the nominating/governance committee which would report the results back to the board. Two of the ten companies reviewed stated that they used an independent consultant to facilitate the process. Only one company expanded on the detail of the process used, providing a list of the topics covered by the evaluation.

6.1.3 Canada

The Toronto Stock Exchange's Corporate Governance Guidelines state that:

> *"The board, its committees and each individual director should be regularly assessed regarding his, her or its effectiveness and contribution. As assessment should consider (a) in the case of the board or a board committee, its mandate or charter, and (b) in the case of an individual director, the applicable position description(s), as well as the competencies and skills each individual director is expected to bring to the board."*

Eight of the ten Canadian companies in the sample conducted board evaluations annually. Of the other two companies, one had no formal board evaluation process but was setting one up, the other gave no specific frequency for board evaluations saying only that they were conducted regularly.

Five of the ten companies included director peer reviews (where directors evaluate each other) in their evaluation process, usually in combination with director self-evaluation. It was common for the evaluation process to be led by the chair of the nomination or governance committee, with three companies also making use of the assistance of an independent consultant.

Interestingly, one company, Potash, stated that it involved key management personnel in the board evaluation process:

> *"As part of the Board's continuing efforts to improve its performance, the Board surveys those members of senior management who regularly interact with the Board and/or its Committees to solicit their input and perspective on the operation of the Board and how the Board might improve its effectiveness. The survey includes subjective management responses to questions and one on one interviews between management respondents and the Chair of the Corporate Governance and Nominating Committee."*

Four companies mentioned that action plans were put in place as a result of the board evaluation. However, only one company, Goldcorp, actually described the substance of such actions:

> *"A number of improvements have been implemented as a result of these Board assessments, including an expansion of the Board's skill sets and a continuous review of the quality of Board briefings."*

Key findings in relation to each Canadian company are summarised in Table 6.1.3A.

6.1.4 United Kingdom

The UK Corporate Governance Code 2008 devotes Principle A.6 to board evaluation:

> *"The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors."*

The Code goes on to suggest that companies should disclose in their annual report how this evaluation has been conducted. The ten top UK companies reviewed all followed a similar pattern in their disclosure on board evaluation, demonstrating the strong influence of the Code (see Table 6.1.4A). However there seems to be some other force at work because the common structure of the disclosures is not detailed in the Code. Most companies disclosed the following:

- The fact that an annual evaluation is carried out and was carried out last year
- That it was led by the chairman (or a committee) and/or facilitated by an independent expert
- That the process involved a questionnaire and/or interviews
- A list of topics covered by the process
- That the information was collected and reported back to board
- The conclusion – usually a statement that the board was performing effectively.
- Two of the ten companies went on to describe the outcome in terms of actions for improvement

The two companies that took the last step of describing the outcomes of their board review were GlaxoSmithKline and BP. GlaxoSmithKline stated:

> *"The Board agreed the following actions to generate more inclusive engagement with the executive management team and further improve its collective decision making process:*
>
> - *Identify how to utilise the time spent in Board and Committee meetings more effectively and facilitate further contribution by Non-Executive Directors on a broader range of issues*
> - *Seek to enhance further the Non-Executive Directors' continuing education process beyond their initial induction*
> - *Provide greater visibility to the Board of GSK's executive talent and the management succession planning process."*

Like, the Australian Corporate Governance Principles, the UK Code has recently undergone a review. A revised version of the Code was published in June 2010, shortly after completion of this research. Many of the changes to the Code are specifically directed towards improving board effectiveness and performance. These changes are summarised as follows:

- To encourage boards to be well balanced and avoid "group think", there are new principles on the composition and selection of the board, including the need to appoint members on merit, against objective criteria, and with due regard for the benefits of diversity, including gender diversity.
- To promote proper debate in the boardroom, there are new principles on the leadership of the chairman, the responsibility of the non-executive directors to provide constructive challenge, and the time commitment expected of all directors.
- To help enhance the board's performance and awareness of its strengths and weaknesses, the chairman should hold regular development reviews with each director and board evaluation reviews in FTSE 350 companies should be externally facilitated at least every three years. (FRC, 2010)

The new Code emphasises the need to follow the spirit, not only the letter of the Code. Chairmen are encouraged to report personally on how they have implemented the principles on the role and effectiveness of the board. One of the major changes introduced is a requirement for directors of FTSE 350 companies to be re-elected every year. This may impact upon processes for individual performance evaluation of directors.

Section B of the Code is now entitled 'effectiveness' and it is now Principle B.6 that deals with board evaluation. The overarching principle has not changed although there is a new supporting principle setting out the need for externally facilitated reviews for FTSE 350 companies every three years. This principle also suggests that a statement should be made regarding the independence of the external facilitator.

6.1.5 Europe

There was much more variety in the information provided by the European companies reviewed as seen in Table 6.1.5A. This was not surprising as the sample included three Swiss companies, three French companies, one German company, one Spanish, one Russian and one Italian. Thus, as a whole, this group of companies is subject to a wide variety of relevant regulation. For example, the French corporate governance code suggests formal board evaluation must be done every three years at a minimum (ideally annually) whereas the German code has no express provision on board evaluation. This is because most German companies have a dual board structure. In theory, the Supervisory board monitors the Management board and evaluates its performance on an ongoing basis. It was the Italian company, Eni, that had the most information on board evaluation, giving a list of the topics reviewed by the independent consultants and a list of areas where positive outcomes were reported:

> *"The current Board performed its first review supported by a specialized consulting firm, Egon Zehnder, the same company of the preceding two years, to guarantee continuity and homogeneity of analyses. Egon Zehnder's work was focused on: (i) size and composition, level of functioning and efficiency of the Board; (ii) identifying areas of improvement or weakness in the functionality and efficacy of the Board; (iii) efficiency of improvement actions decided after the previous Board review and the related level of satisfaction of Board members; (iv) assessing Eni's Board efficiency by benchmarking it against national companies of comparable size, complexity and scope. Consultants performed an in-depth interview of each member and presented the results to the Board of Directors, that discussed and confirmed them in its meeting of February 26, 2009. The review was substantially positive.*
>
> *The Board in fact confirmed the positive elements and areas of excellence registered in the previous years, in particular: (i) efficient size; (ii) the transparency in presenting issues to the Board; (iii) the satisfying level of quantity and quality of information provided; (iv) excellent relations with top management and their availability to provide information; (v) valuable and accurate work performed by committees, in particular the Internal Control Committee; the Board also expressed its appreciation to the new Oil-gas Energy Committee.*
>
> *Independent directors expressed interest and availability to provide an even more constructive support to the CEO and Chairman, also through separate meetings as provided for by the Eni Code".*

6.2 Conclusion

Disclosure on board evaluation is strongly influenced by the regulatory approach of each country. In the US where a rules-based approach to regulation is prevalent, disclosure appears to be much more standardised and perfunctory. In the principles-based jurisdictions there is the opportunity for richer disclosure although a common format is still apparent with only a few companies voluntarily offering more (or different) information. It will be interesting to explore via interviews to what extent this information is of value to investors and whether there ought to be support and encouragement for all companies to follow the minority in taking the extra step of disclosing information about the outcomes and actions arising from their board evaluation procedures. The regulatory changes in the UK, following the global financial crisis and the Walker report will start to take effect next year and have the potential for significant improvements in board performance and effectiveness. If their impact is positive, other countries, including Australia, may follow suit.

Table 6.1.1A: Australia

Company	Industry	Frequency	Evaluation process	External assistance	Disclosure of outcomes
BHP Billiton	Materials	Annual	Alternates full board one year then individual directors the next, external facilitation, managed by chairman	Yes	
Commonwealth Bank	Banks	Annual	Every second year facilitated by independent consultant	Biennial	
Westpac Bank	Banks	Annual	Ongoing self-assessment plus annual external review	Yes	
National Australia Bank	Banks	Annual	External expert reviews and compiles results, individual directors have interviews with chairman	Yes	
ANZ Bank	Banks	Triennial	External review to chair of governance committee	Yes	
Rio Tinto	Materials	Annual	Led by chairman with support of company secretary, detailed questionnaire, description of topics given, each non-executive reviewed by chairman		Actions described as further training in risk management and booking procedures
Telstra Corporation	Telecoms	Annual	In 2009 internal review led by chairman including full board discussion and individual meetings between chair and each director		
News Corporation	Media	Annual	Self-evaluation form - process conducted by committee		
Woodside Petroleum	Energy	Annual	Questionnaire collated by external consultant who prepares report	Yes	
Wesfarmers	Retail	Not stated	Detailed questionnaire given to directors and some managers		
Woolworths	Retail	Not stated	Chairman is responsible, external assistance engaged as appropriate and was used in 2009	Sometimes	
Westfield	Real Estate	Ongoing	Self assessment/regular surveys, gives list of topics discussed		Overall finding: board is working well
QBE Insurance	Insurance	Annual	Combination of written questions and answers plus interviews with each director		Committee reviews led to the conclusion that each operating soundly and no changes required
CSL	Pharmaceuticals	Annual	Committee reviews performance, chairman holds discussions with directors to facilitate peer review		
Newcrest Mining	Materials	Annual	Led by chairman based on questionnaire		Changes effected where required - as a result of recent review size of board increased, committee structure was reviewed and a number of board internal processes refined

Company	Industry	Frequency	Evaluation process	External assistance	Disclosure of outcomes
Macquarie Group	Finance	Annual	Questionnaire and individual interviews, topics to be covered are listed		
Fortescue Metals Group	Materials	Not stated	No formal process, informal consultation as required, questionnaires have been used at board retreats		
Origin Energy	Energy	Biennial	External consultants - gives description of areas covered	Yes	Initiatives to improve performance considered and recommended
AXA Asia Pacific	Insurance	Regular	In 2008 a formal review with the assistance of external consultant	Sometimes	
AMP	Insurance	Annual	Discussion led by chairman, chairman reviewed every 2 years		
Leighton Holdings	Capital Goods	Annual	Self evaluation using questionnaire, gives sentence on topics covered		Significant issues identified or changes recommended are actioned in the Board's ongoing development program
Santos	Energy	Annual	Internal review one year, external the next	Biennial	Examples of initiatives introduced - more strategy, better board papers
Suncorp-Metway	Insurance	Annual	Independent consultant used every second year, chairman conducts the review other years, questionnaire and interviews, lists the main objectives	Biennial	Progress against recommendations for improvement is assessed in subsequent reviews
Foster's Group	Food, Beverage & Tobacco	Annual	Internal discussion one year and external review the next	Biennial	
Brambles	Services	Annual	Form determined each year, for 2009 it was an enhanced internal evaluation involving completion of a questionnaire by both directors and management		
Stockland	Real Estate	Annual	Questionnaire to chairman		
Orica	Materials	Annual	Process involves setting annual board objectives and assessing at end of year the extent to which they were achieved, assessment of individual directors done by chairman using surveys of directors, interviews and (on occasions) use of external facilitator	Sometimes	
IAG	Insurance	Triennial	questionnaire to chairman, external facilitation	Yes	
Coca-Cola Amatil	Food, Beverage & Tobacco	Biennial	Nothing on process		
Oil Search	Energy	Annual	Questionnaire to chairman		

Table 6.1.2A: United States of America

Company	Industry	Summary of Board Evaluation Processes
Exxon-Mobil	Energy	Annual self-evaluation of the board.
Wal-Mart	Retail	Annual self-evaluation of the board led by a board committee. The committee reports to the board.
Microsoft	Technology	Annual self-evaluation overseen by the governance and nominating committee. The committee reports to the board including recommendations for improvement. Each board member is also evaluated which is related to the re-election process.
AT&T	Telecoms	Annual self-evaluation led by a board committee, the board committee reports the results to the board.
Johnson & Johnson	Pharmaceutical	Annual self-evaluation of the board overseen by a committee.
Procter & Gamble	Household Goods	Annual self-evaluation of the board led by a committee. The evaluation is periodically facilitated by independent expert. Results are then given to the board committee which reports back to the board.
Chevron	Energy	Annual self-evaluation of the board overseen by the nominating and governance committee. The evaluation also invites input on director performance, with the committee recommending changes to improve the board and individual director effectiveness.
Berkshire Hathaway	Finance	Annual self-evaluation of the board led by a board committee. The conclusions are reported to the board.
IBM	Technology	Annual self-evaluation of the board.
GE	Industrial	Annual self-evaluation of the board overseen by a board committee and facilitated by an independent expert. The process is described in detail including list of topics covered; options for change are discussed at board meetings.

Table 6.1.3A: Canada

Company	Industry	Summary of Board Evaluation Processes
Royal Bank of Canada	Bank	Annual board evaluation and regular director peer reviews with the assistance of an independent consultant.
EnCana	Energy	Regular self-evaluation. The chair of each board committee meets with each director and a questionnaire and self and peer evaluations are also conducted.
Toronto Dominion Bank	Bank	Annual board evaluation and annual director peer and self evaluation. This process is facilitated by the corporate governance committee, chairman and independent consultant. The board is also evaluated with a 360 degree feedback by management. The bank has a detailed description of the process and the action plans resulting from the evaluation which is then monitored by the committee.
Barrick Gold	Materials	Annual board evaluation reported to the full board. The process involves questionnaires which are returned to outside legal counsel who report back to the committee chair, which then reports to the board.
Bank of Nova Scotia	Bank	Annual board review and director peer reviews.
Goldcorp	Materials	Annual self-evaluation via questionnaire, gives a list of topics covered. The chairman also holds formal discussions with each director, results are collated by committee chair, then presented to board. In 2009, outcomes of the evaluation included looking to expand the skill sets of its members and a continuous review of the quality of board briefings.
Research in Motion	Technology	No formal board evaluation process in place in 2009.
Potash Corporation	Materials	Annual self-evaluation via questionnaire which is reviewed by the company secretary and committee chair. Results are reported to the full board, action plans developed and monitored by committee. Individual directors have formal interviews with the corporate governance and nominating committee chair “to engage in full and frank discussion of any and all issues which either wish to raise.” (Proxy Circular 2009: 16) Key management personnel are also interviewed over the board’s effectiveness by the corporate governance and nominating committee chair.
Canadian Natural Resources	Materials	Annual self-assessment.
Suncor Energy	Energy	Annual evaluation led by committee with a questionnaire which includes both self and peer review. The data is analysed by a committee and reported to the full board with recommendations for enhancing or strengthening performance.

Table 6.1.4A: United Kingdom

Company	Industry	Summary of Board Evaluation Processes
Royal Dutch Shell	Energy	Annual internal board evaluation led by the nomination and succession committee. There is a structured interview process described in detail with steps for continuous improvement of the board to meet the operational and strategic challenges of the company in the wake of the global financial crisis.
BP	Energy	Annual board evaluation, annual chairman evaluation and periodic director evaluation. In 2008, the board evaluation was conducted by internal questionnaire. The company provides a list of topics covered and the main outcomes of the evaluation are described.
HSBC	Bank	Annual board evaluation conducted by the chairman and an independent consultant. The evaluation examined eight key areas: board role and responsibilities; oversight; board meetings; information received; support for the board; board composition; working together; and outcome and achievements. Conclusions drawn were that the board and its committees were functioning effectively.
Vodafone Group	Telecoms	Annual board evaluation led by the chairman involving a questionnaire and individual meetings. Outcomes were reported to the committee and the board. The report gives a summary of the purpose of the evaluation and topics covered. The conclusion of the 2008 evaluation was that the board was performing effectively.
GlaxoSmith Kline	Pharmaceuticals	Board evaluation comprised a questionnaire and interviews conducted by an independent consultant. Feedback to the board included a written report. Details of the actions resulting from the evaluation are provided
AstraZeneca	Pharmaceuticals	Annual board evaluation based on questionnaires and interviews and facilitated by an external consultant. The company gives a list of topics covered by the evaluation and its conclusion: that the board was operating effectively.
BG Group	Energy	Last year the board evaluation involved questionnaires and interviews. The topics covered are described and results of the evaluation were given as feedback to board. The evaluation concluded the board was performing well.
British American Tobacco	Tobacco	Annual board self-evaluation led by the company secretary. The company secretary conducts interviews and reports findings to the deputy chairman who then presents the results to the board.
Tesco	Retail	Regular board self-evaluation with a questionnaire prepared by the chairman and company secretary. Interviews were also conducted with results confirming a good performance by the board.
Diageo	Beverages	Internal questionnaire used for the board self-evaluation. The company gives a description of topics covered. The evaluation concluded that the board was operating effectively and appropriate actions for improvement were identified. For individual directors, the chairman conducted interviews and these interviews were linked to the director re-election process.

Table 6.1.5A: Europe

Company and country	Industry	Summary of Board Evaluation Processes
Nestle (Switzerland)	Food	Annual discussion and self-evaluation every three years.
Roche (Switzerland)	Pharmaceutical	Does not conduct board evaluation, however the chairman is assessed once a year by the board
Total (France)	Energy	Annual discussion and self-evaluation every three years.
Novartis (Switzerland)	Pharmaceutical	Does not conduct board evaluation but does review the performance of the CEO annually. Each board committee conducts a self-evaluation annually.
Volkswagen (Germany)	Auto	Does not conduct board evaluation.
Telefonica (Spain)	Telecoms	The board approves periodic evaluation of the board but does not say if this has actually happened.
Gazprom (Russia)	Energy	As a state-owned company, there is no disclosure on whether the board conducts evaluation.
Eni (Italy)	Energy	Annual self-assessment of the board and board committees facilitated by an external consultant firm. Company gives detail of the topics covered and the outcomes.
GDF Suez (France)	Energy	The board processes of this company were being harmonised after its recent merger. There was no disclosure on whether a board evaluation of the merged board had taken place.
Sanofi-Aventis (France)	Pharmaceutical	Appointments and Governance Committee monitors board evaluation processes. However, there was no disclosure on whether a board evaluation had taken place.

6.3 Stage Two: Qualitative Analysis of Australian Board Evaluation Practices

The second stage of the research involved interviews with 12 company directors and 3 fund managers. The interview questions can be found in Appendices A and B. The company directors were asked 17 standard questions which were grouped under four topics: board evaluation in general; board evaluation process, board performance; and disclosure. The 12 directors interviewed were able to draw on their experience gained through both past and current directorships. Their combined current directorships covered 26 ASX listed companies (see Appendix C). For the 3 fund managers, 10 standard questions were asked under four slightly different topics: board performance indicators, company performance, board evaluation and other information, to provide another perspective on these issues.

6.3.1 Interviews with Company Directors

1. Board Evaluation - General

"In my experience colleagues have all taken the evaluation as an important part of the board's activity. There is a bit of grumbling but when all is said and done only because it is an imposition on their time. On a good board you would expect it to be taken seriously."

Board evaluation is well entrenched in large Australian companies and has become routine practice over the last decade. The earliest board evaluation mentioned by participants was in 1996 with most companies starting in the early 2000s. Most companies conduct some sort of evaluation annually but they do not necessarily use the same process each year. In fact, it is becoming quite common for companies to alternate the procedure used such that they carry out an internal assessment one year and use an external consultant the next. Also the type of board evaluation chosen may reflect the issues facing the company at the time.

> *"How long the board evaluation takes depends on where the board is at: if there has been a significant changeover, up to half the people are relatively new, then you would adopt a different approach to an experienced board. You need to balance the approach with the longevity of the board - using a prospective evaluation if it is a new board, or a retrospective evaluation if it is an experienced board. The centre of gravity shifts depending on the longevity of the board."*

Over time it seems that board evaluation processes have been refined, updated and become more formalised. An important change noted by the directors is that they are more comfortable with board evaluation now than years ago when board evaluation was in its infancy. This has resulted in a greater willingness to engage in board evaluation. Also, the questions posed in evaluations have evolved in line with changing attitudes to governance and the challenges of the moment.

> *"It is now very much a formalised process rather than an ad hoc process as in the past. There is more rigour around it, and more documentation. As people have become familiar with the process, there is greater willingness to be open about the issues and ask the right questions."*

2. The Impact of the Global Financial Crisis on Board Evaluation

'The GFC has not had a particular impact on board evaluation. However, it certainly has had an mpact on risk management and material business risks and stress testing… When we do the ıext board evaluation I'm sure we'll recognise that we've strengthened risk processes."

The question of whether the global financial crisis had impacted upon board evaluation was generally answered in the negative. However, the GFC did cause boards to self-evaluate their performance, particularly in terms of whether the company's risk management systems were robust enough; a good example of how effective boards go through a (sometimes subconscious) continuous improvement process.

> *"The GFC had an effect in that a lot more boards look at their processes in general. Boards looked in their financials for more details. Balance sheet management became a key issue, people's strengths and weaknesses."*
>
> *"I don't think the GFC has had a specific effect other than to highlight how well a board can deal with a crisis of that magnitude."*

In relation to the findings of the UK's Walker Report, it was interesting that most directors considered they had got through the GFC relatively well. Only one director said the GFC had made them look at "the ability of the board to be challenging but also collegiate".

3. The Process of Board Evaluation

"I get the most senior director to canvass others about my performance. I hope they are candid."

When asked about the process of board evaluation, the directors reported that most of their companies use a mixture of questionnaires and one-on-one interviews to collect information. Most of the questionnaires were originally developed by external consultants who continue to refine and update their content in order to expose key issues. When evaluation is done internally, the board will choose a preferred consultant, or create a hybrid questionnaire that is likely to be self-administered.

A standard board evaluation process is summarised below:

> *"The board briefs an outside advisor or internal resources on what it hopes to achieve through a survey and agrees the questions. The board members complete it and it is analysed internally or externally. The findings are presented to the chair and the full board and are blended into anonymous form. In many surveys board members are asked to offer feedback on their colleagues. Information is provided specific to each member in the form of a score or anonymous written comments. The whole process can take 4-8 weeks."*

The information collected is analysed either by the chairman, company secretary, a committee chair or external consultant. It is then fed back to the board either in one-on-one meetings or through whole-board discussion. One-on-one meetings will be used for individual director feedback and it is here that an independent, third party may ease the transmission of any sensitive information.

4. Individual assessment of directors

"It is much more about the performance of the board as a whole: are we spending time on the right things, are processes working, are we making the right decisions and documenting things well? …. most boards shy away from rating their colleagues because they work in a collegial way."

Directors were divided on the issue of whether board evaluation ought to include assessments of individual directors' performance. According to the directors, many companies do not conduct individual performance assessments. Some of the reasons given for the reluctance to assess individuals are as follows:

> *"These people are elected and are meant to be independent. I think it is very important that there is respect for their independence so I don't engage in personal evaluations. I encourage them to be as different as they want to be, not push them to the average or the middle."*

> *"At [company] it is clear that board evaluations are about the board, not individual directors. You can have the best people on the board, but it does not work. Or potentially you could have the worst people on the board and it works. The board is a team of rowers, or football players. We need to become the best team, to listen, to discuss and make decisions."*

The other interesting issue that emerged was whether boards invited feedback from senior management on their performance.

> *"[Company] includes senior management in the evaluation and you can get skewed results - directors v management on questions like, are directors knowledgeable and do directors have enough information."*

5. Board evaluation as a continuous process

The other thing we do is to have periodic meetings of the independent directors outside of board meetings. We have dinner and some wine and everyone gets things off their chests – about relationships and board operations – you get candid feedback.

An important point that emerged in the interviews was that the formal annual board evaluation is not the only opportunity for boards to assess themselves and implement improvements. In a good board, evaluation is a continuous process – problems are ironed out as and when they happen, certainly in terms of board processes. For example, directors would not wait until the annual evaluation to tell the company secretary about obvious deficits in the board papers:

> *"There is a sense that boards go through a process of continuous improvement, that board evaluation is just a helpful complement to what we already do. This doesn't mean that members are opposed to it but that it is not the only way things get surfaced. It just rounds out what already happens."*

At some companies opportunities are actively created whereby issues can be surfaced:

> *"We have more spontaneous meetings, for example, at [company] we met recently to discuss [industry] developments here and in Europe – those who could came along. There is a willingness. Also the non-executives meet together without management, often before the board meeting. All this makes it easier to discuss performance issues without having to schedule a separate meeting."*

6. External facilitation

"I did have a dissident director and I had the one-on-one explaining that he had a conflict and he basically said – yes, tough luck. A third person would have been useful."

When asked about the value of external facilitation most directors acknowledged the value of using external consultants but considered the dollar cost may not be justifiable every year. The prevailing opinion was that an external consultant should be used every second or third year.

Comments included the following:

> *"When we switched to external engagement, with the external facilitator, the quality of responses went high and there was more honesty. When it was done internally the assessment was far more polite."*
>
> *"If there are real issues with the board, an external evaluation puts more rigour around the process, and concerns can be professionally identified, which depersonalises the process, and you get more productive discussion."*
>
> *"When extending the analysis to help a board act upon the results [an external advisor] can be better placed than if you use internal resources"*

Disadvantages of using external consultants relate to the wide variation in the quality of consultants and the risk of the process and/or recommendations causing disagreements within the board. A director concluded:

> *"Board evaluation has to be a supportive process- if mishandled, it can have unintended consequences. If the process provokes internal bickering and resentment - it is not good. One of the most important things on a board is the quality and openness of discussion – a constructive atmosphere. Of course bickering can result from an internal review too."*

7. Outcomes of Board Evaluation

"A large part of it is group function. You must have a common purpose, leadership, a mix of experience, styles and a certain 'je ne sais quoi'."

Of the responses recorded, the outcomes deemed as most significant to the directors were changes in board composition (due to identification of skill deficits or directors contributing to board dysfunction).

When asked about other outcomes generated from board evaluations, the examples provided were fairly consistent across all the directors interviewed. They included:

- Increased number of site visits
- More time allocated in the boardroom to strategy sessions
- Fostering an internal culture that promotes open communication- does bad news travel quickly to the board for example.
- The retirement of directors who were not performing at the right level.
- Improvements in board processes (meeting agendas, format of board papers etc)
- Alteration of committee structures (amalgamating committees or clarifying their charters)

The issue of whether board evaluation actually leads to improved board performance was put to the directors as a direct question and the answers were generally positive.

> *"You have to look at the big picture – it's about getting into the hall of mirrors and being deeply, honestly objective with yourself on how you see corporate performance and management performance and therefore how effective the board has been – effectiveness in terms of returns to shareholders"*

The process of implementation of outcomes is a crucial step that perhaps deserves more attention in descriptions of board evaluation processes – how actions are followed through and monitored. This was seen by directors as a vital component in whether board evaluations actually lead to better board performance. Changes identified as necessary can lead to improved board performance if there is rigour in the follow up. The commitment of the chair provides another crucial element to success in terms of providing positive leadership and support for change.

Lastly, it was pointed out that board evaluation does not only help through identifying areas of change. The simple fact that the board has got together to reflect on its performance has value of itself:

> *"[Board evaluation] also gets used to strengthen the bonds through whole-board discussion on a different topic to usual - an opportunity to be honest and open about how you are working as a group. It helps the performance of the team in and of itself, not only through the next steps."*

8. Connection to other governance processes

> *"If you have a situation where a director is not performing, he will not be supported by colleagues in terms of re-election. This is a powerful mechanism, individuals often will choose not to stand for nomination for election if they know the board will not support them."*

Interestingly, when asked if board evaluation was connected to other corporate governance processes, several directors asked for elaboration of the question. When it was suggested that it might link into the director re-election process or succession planning, most directors agreed. It was clear that in companies where directors were not assessed individually these links were less strong.

> *"Generally yes, you should always reflect on anything you do by stepping back and looking at what you are doing. How – by a methodical review of how you operate – it is an opportunity for people to raise issues that are not on the regular agenda. It is a great stimulus for the succession process."*

> *"One of the deliverables of these surveys is to point to gaps in the composition of the board and suggest the skills sets the board should look at. It might point out issues around succession planning or that some directors are short of the mark or that board renewal would be a healthy thing or where board oversight needs to be strengthened, for example, if risk management processes are weak."*

The other area that came up was director training and education. Individual director evaluations can identify skill deficits that can be fixed through basic training. Several examples were given of directors who were extremely valuable on the board but needed some upgrading of specific skills.

> *"Even if you are a highly qualified executive, you don't necessarily know all you need to know to be a director."*

9. Board Performance and Effectiveness

In terms of the factors required for good board performance, directors emphasised the collegial nature of a board where consensus decision-making rather than an adversarial atmosphere should prevail. Other elements that the directors identified to be important in contributing to effective board performance covered aspects of the board culture, board composition, board member characteristics and board processes:

9.1 Culture

In order to operate effectively, directors valued an honest, transparent board culture conducive to "healthy, challenging" debate. Mutual respect for each other was seen as vital in order to create an atmosphere within which the board could function effectively as a team.

> *"You have to have differences of view. You get through the differences of view and come out on the other side with agreement. On the big issues you want debate, even disagreement. You do not want acrimony, but you do want differences of opinion."*

For these directors, a collegial board based on consensus-decision making was seen to be ideal, based on mutual respect for colleagues and an appreciation of the diversity of thought and experience contributed by each individual. The ensuing frank dialogue in the board-room was seen as vital for good board performance. In addition, the ideal board culture would support an open relationship with management:

> *"There must be openness and transparency between the management and the board, and with the environment to explain it….you have to make sure the environment is there to receive good news, bad news and have the CEO share his ideas. It's good that he can come to us and not be bullet-proof saying "if we go with this it could go left or right" and vet the views around the table. Why not ask a group of people (that is, the board) if he won't, he can't benefit from our experience."*

Overall, the directors interviewed were united behind a board culture that values open communication and effective dialogue. To them, it was clear that a board is likely to benefit from having a common sense of direction and a clear vision in terms of strategy.

9.2 Composition

> *"Australian boards tended to fall into the "WASPy, 60 year old, been a CEO trap but changes are coming…"*

The many comments on board diversity and its importance in effective board performance demonstrate the increasing awareness of this issue amongst the directors interviewed. The AICD's new mentoring scheme for female executives was mentioned most frequently when board diversity was discussed. However, it was also quickly pointed out that diversity does not only refer to gender but also factors such as age, background, personal characteristics and skills. The directors also made it clear that diversity was important not only in experience but also in thought.

> *"[You need] diversity in people with independent thinking who can constructively challenge management and each other. That is actually quite difficult – you have to do it in a way that doesn't leave lots of bruises and hard feelings."*

A director commented that, "industry experience is a value-add thing rather than a mitigate-risk thing" clearly demonstrating that the board's role is not only to monitor management but also to improve company performance. Another director who was a non-executive chair saw board composition as akin to a cricket team where there is a need to, "balance the board with the fast bowlers and spinners".

9.3 Chair

> *"You certainly need a good chair who encourages debate and draws out contributions from each of the members and doesn't allow the loudest voice to dominate. A chair who drives decisions to a consensus or makes decisions that the board will support."*

The role of the chair was seen as pivotal in creating an effective high-performing board by these directors. Most of them saw the chair as the leader who sets the agenda and the culture of the board. The chair is the *primus inter pares* – the first among equals in a board made up of formidable people and egos. Therefore, an effective chair is seen as a tremendous asset to the company:

> *"You need an experienced chair who can set and manage the agenda and make sure that the board is dealing with the important issues that affect the company strategically and operationally."*

A positive relationship between the chair and CEO was also highlighted by directors with one pointing out that harmony must exist between the two:

> *"A professional but constructive relationship with the CEO. You cannot have an adversarial relationship."*

This is vital due to the importance of the CEO:

> *"I can't stress how important the CEO is…The CEO sets the tone, sets strategy and he or she is the driving force in the company's success."*

9.4 Board Processes

Other factors contributing to an effective board include the infrastructure in place such as having good management information systems or having the 'right' number of committees and length of board papers.

> *"With regard to material, more is not necessarily better. You need enough material to support consideration of an issue but not so much information the issue is lost."*

The need for professionalism in board support services was also highlighted by the directors. Noting the failure of one particular Australian company, the director highlighted the skills necessary in a company secretary:

> *"If the company secretary at [company] had been more professional, there would have been due consideration of the communication that misled the public. That debacle would not have been a debacle. You need a very professional recording of what is going on. Papers should be out at least one week in advance. The professionalism of the papers is critical. A good company secretary can really help with that process."*

10. The Dysfunctional Board

"Dysfunction in the board. You will know of cases in recent times. It becomes public and it directly affects the leadership of the company in many ways, not just 'do we know who the boss is?' It tears at the heart of the company and leads to poor performance. A chair of a dysfunctional board has a lot to do to fix it up. If there is a dysfunctional director, the chair has to act. It is not an easy thing, it is not just 'come and have a cup of tea'. A re-shaping of the board can take up to three years. It can take an average of 18 months, if someone digs their heels in."

Not surprisingly, a dysfunctional board culture is characterised by the direct opposites of a functional, collegial board culture. A board culture that does not allow transparent, open communication or that creates an adversarial environment can severely hinder board performance. In the absence of a positive role model for leadership, the entire company can be affected by a dysfunctional board. All directors had experience of a poorly performing board and one summarised the problem succinctly above in terms of the wider effects of board dysfunctionality and the time it takes to 'fix' the board:

From a well-performing to a poorly-performing board, the characteristics that can cause a board to become dysfunctional include:

- lack of genuine independence
- not enough business experience or savviness (lack of commerciality, lack of industry experience)
- conflicts of interest – people who have them really can't see the forest for the trees
- group-think
- directors who give up and leave the ship too early if the company's got problems
- disruptive directors
- boards working on automatic pilot
- failure to have the relevant skill set on the board

As one director commented, if views cannot be aired in a formal setting such as the board meetings, then the grievances will be aired in informal settings and will perhaps not be resolved as they should:

> *"The openness of discussion around the table and what is left unsaid, is the meeting now finished? The conversations in the airport lounge over coffee if people are frustrated with the board."*

Most directors commented on how different individuals on a board or the lack of institutional processes in place to deal with conflict, could contribute to a dysfunctional board. A dysfunctional board exposes the relationships and attitudes that individual board members have as human beings:

> *"I don't think that there is room for egos in a competitive sense. I've seen it from time to time – when that starts to happen it makes effectiveness a challenge."*

10.1 Poor Chairmanship

"The Chairman who's too autocratic, doesn't encourage debate, hinders people who can say they didn't understand. One bad apple, one renegade director can leave the entire company dysfunctional."

According to the directors interviewed, a poorly performing chair was someone who was either captured by the CEO or too dominant in the board. An autocratic chair is likely to hinder the transparent atmosphere in a board. On the other hand, a Chair who is dominated by the CEO creates an imbalance of power at the expense of the board's ability to effectively monitor management:

> *"If there is too close a relationship between the CEO and chair, and the chairman doesn't involve the rest of the board enough such that, as a non-executive you get there and everything is a fait accompli. That happens."*

> *"Or a weak chair and a strong-minded CEO who doesn't respect the chairman's input such that the board cannot exert its influence."*

Finding the right balance in managing the board and managing the CEO is therefore crucial and is often a challenge for board chairs.

10.2 Senior Management

> *"Challenging management is a qualitative question which boards do not tend to ask themselves."*

Closely linked with the perception of the dominant CEO was the communication between the board and senior management. Several interviewees referred to the power held by senior management in terms of control over information:

> *"…they can always hide information if they want"*

> *"At the end of the day management has the information and if they want to mislead they can. You have got to have a culture of, "I'll give you the bad news today and the good news at the end of the month". Unless there is openness, your position as a non-executive director is extremely vulnerable."*

Ultimately, the development of a two-way relationship of trust and transparency between board and management is essential if a board is to be able to put its skills to work. As one director put it:

> *"Trust is one of the most important things among directors, and between directors and executives. Absent trust and you are in for a tricky time."*

10.3 Weak Processes

> *"Poorly structured board meetings where the balance is wrong e.g. between strategic and operational issues or too much time spent on detail and not enough on operations."*

Weaknesses in institutional or board processes can contribute to the ineffective handling of conflict and challenges, leading to dysfunctionality. Common on directors' lists of factors that hinder board performance were:

- Sloppy board processes
- No process for soliciting director views on processes
- No institutional processes for surfacing issues.

The ability of the board to discuss relevant issues and to access the proper and right information is linked to process:

"If you don't have good process – this becomes more of an irritation. If the papers are late or the agenda has not allocated enough time – usually everyone realises and fixes it. In a large company you are reliant on risk management processes and internal audit and people processes. You have problems if management is disconnected from what comes to the board or if the board doesn't get the right information or any information."

10.4 Dominant Shareholder/s

"If you have a single dominant shareholder on the board, that is very difficult. You can't imagine you can reach a decision that the founder or major shareholder disagrees with and yet his judgment may be flawed."

The presence of a dominant shareholder exercising his/her influence on the board is likely to have a detrimental effect on the board's ability to perform.Similarly, when a director or a group of directors have different agendas, it is likely to hinder a board from performing effectively:

"once you get caucuses on a board it starts to become dysfunctional."

"Dysfunctional relationships – fortunately I have not had to deal with that but, for example, factional interests or a person who is too much of a specialist or who loves the sound of their own voice or who can't give in graciously- Indications of dysfunction."

Board members are generally highly experienced, elite business people. The boardroom is a highly controlled environment underlined by policies, regulations and processes. However, boards are still vulnerable to traits common to all and the intricacies of human relationships. As one director put it:

"Putting [all the dysfunctional board factors] to one side, [the ability of the board to work effectively] depends more on individuals and relationships and respect."

Table 6.2.A: Effective and Dysfunctional Boards

Factors	Effective Performing Board	Dysfunctional Board
Culture	Collegial atmosphere Openness Transparency Honesty Trust Consensus Opportunity to air differing viewpoints Diversity (of thought, skills and experience) Professionalism Strategic insight	Adversarial atmosphere Acrimonious discussion Conformity Self-interested Unquestioning Dominant shareholder Narrow vision Lost in detail Group-think
Chair	Experienced Encourages debate Draws contributions Professional relationship with the CEO Takes responsibility for effective board Manages agenda	Autocratic Weak Hinders debate Dominated by the CEO
Directors	Good skill set and right fit for company Work as a team Constructive engagement Willingness to challenge	Lack of business experience Conflicts of interest With agendas Disruptive Egos that get in the way
Senior Management	Effective communication with board Asks questions and “uses” experience of board members	Withholding information from the board Lack of transparency Lack of trust in the information presented to the board
Processes	Open discussion Management information systems Right number of committees Board agenda papers (right length and time) Succession planning	No process to solicit views No process in place to deal with conflict or issues Poor information Poorly structured meetings and papers No succession planning

11. Skills Matrix

"I do think this is the thing that needs the most work still. The process has been driven too much by the chairmen. It is amazing how many companies, when the chair leaves he chooses his successor. This area needs a lot of work – the chair will say – I think Fred would be good. And you can't really quash this decision unless you have a really strong objection. However, it was amazing, at two of my boards last year we did. One director said they were not sure and then all the others raised minor concerns too. The proposed person was knocked back which I think was right and proper."

All directors said they used a skill matrix for board evaluation which was linked to the succession process and nomination of new directors. With the exception of one who saw the skills matrix as tending to be a motherhood statement, the directors believed that use of a matrix identifying the different skills required will ultimately optimise the board.

> *"Yes, most of us nowadays are acutely aware of this and supplement any deficits of skill and expertise on the board."*

Having a skills matrix is a useful way for boards to identify gaps or weaknesses in a board's composition:

> *"With a matrix you can then target your searches. For example looking for regulatory or political skills or financial skills and where gaps will be coming up. It can take up to 3 years to find and induct someone new. While all of us think we are experts, I have found it does take 3 years to get across the detail in order to be credible in a new industry."*
>
> *"The mix of skills is always a matter for board evaluation. Who is coming up for re-election? A board evaluation really helps. You want a series of rolling conversations with potential people."*

However, the directors acknowledged the complexity of designing and using the skills matrix. It may be asking too much of it to account for all the factors surrounding an effective board. Equally, over-reliance on a skills matrix could cause you to overlook someone whose input might be extremely valuable but not fall within the relevant boxes:

> *"Boards are not a loose association of people. A board takes a long time to put together, nurture and develop. The board has a dynamic in its own right that is easily disrupted. A board has a personality of its own you have to manage: is it anxious, does it need reassuring, is it confident?"*
>
> *"Different companies have different [requirements]. At one company [the matrix] includes the work experience of all the directors, overlaid with their knowledge. It's really tricky as you want to throw other things in that make people valuable. You can tick a box e.g. international experience but it might not be in the area you want. We do that in terms of looking at potential members."*
>
> *"There can be some skills that you don't foresee that can be extraordinarily helpful"*
>
> *"…you don't appoint boards on the basis of an expert in each area – narrow expertise can be a disadvantage – if you have, say, a marketing expert who then makes every marketing decision. More important for skills and experience is a career and general level of business understanding."*

In associating the use of a skills matrix with succession planning, several directors thought that the process still required improvement as the whole concept of formal succession planning remained challenging and was not necessarily done properly in many companies:

> *"We have a skills matrix and we use it to think about new directors. I think what we can do better is to have a longer-term pipeline. It still tends to be a bit quick - we need 2 new directors in the next 6 months. We would do a better job if we had 10 or 20 people on the radar screen for positions over the next 2-5 years. This is true particularly if you are in international company as people who can work with an Australian-based office are few and far between."*

12. Disclosure

…people consider that information regarding individual performance is not a suitable matter for public record, based on a whole range of things. I have never really had a formal discussion with the board about this. You are appointed to a board to oversee the running of a company. I think it is going too far to expect public reporting on individual performance. Certainly it must be monitored and steps taken in circumstances of under-performance. Public reporting goes against the purpose of corporate governance. It would be intrusive and discourage directors.

The directors reported that most Australian companies provide a brief description of their board evaluation process and a few then go on to give some insights into the outcomes and actions resulting from the process. There were two instances where directors recalled that they had disclosed significant conclusions drawn by external board assessors and this was in order to justify a departure from the ASX Corporate Governance Principles. In short, Australian companies tend to disclose the minimum recommended by the ASX Principles unless they need to explain or justify a departure from recommended practice.

The ASX Principles do not recommend any disclosure about board evaluation outcomes but both here and overseas there are a few companies that are taking this extra step. We asked directors what they thought about disclosing more information about board evaluation. Directors were fairly unanimous in their belief that many of the issues arising out of board evaluations are too sensitive to be disclosed – for example, personality or skill deficits:

> *"Besides the problem of the defamation laws it would not be helpful to disclose that someone was not performing (and this was the reason they were leaving the board)."*

There were two camps in terms of whether it would be possible to disclose anything more regarding board evaluation:

> *"If investors really wanted to know it would depend. There would be no problem saying we've decided to alter our charter – themes would be fine – we could disclose what it covers - but there are some more sensitive issues – people issues get sensitive."*

> *"I really hope that ACSI does not want us to state what the outcomes of the evaluation are. The evaluation should be a tool of the board to achieve the right mix of directors. The actual performance of the directors and how it works is a very personal thing and people have different views on this. If we disclose outcomes we are going to numb the capacity of the board to improve itself."*

The directors interviewed believed that board evaluation provides an opportunity to reflect on past performance. An interesting point made was that if investors were to be told more about the outcomes of board evaluation this would be too late anyway– any detriment to the company would have been and gone.

One director recommended an auditing approach towards disclosure on board evaluation. This approach would assure shareholders that the companies they invest in had done a vigorous evaluation, that nothing materially adverse to the company was found, that proposals for change were made and that these were implemented over time.

13. Indicators of Board Performance

"Investors have a lot of opportunity to see management in action - at investor information days, during the visits around major institutional investors to explain issue prior to the AGM, at the AGM. Investors can get to know individual directors and form an opinion. It is similar to the board's relationship with management, how the board forms a view on management performance."

When asked how investors or other outsiders might assess whether a board was performing effectively several directors believed this to be a "mission impossible". However, investor knowledge of director history, information in board charters, meeting attendance records, quality of decisions made and share price are points of reference that would be useful.

Directors also proposed that board performance could be assessed using the following criteria:

- Has the company performed well in its industry?
- Has it clearly communicated its board renewal and succession strategy?
- Have the CEO appointments been good ones?
- Are its spokespeople, particularly the chairman, credible?
- How has the board performed in a crisis e.g. an ACCC intervention etc

None of the directors thought that additional disclosure would provide information of much value:

"Can [investors] assess whether a company board is performing based on disclosure? - No. Disclosure can be crafted in a way to prevent this, it can be managed."

"You would not get better outcomes by telling the world about them. You could explain the outcomes in generic terms – but what would be the point?"

"I don't see any benefit [in increased disclosure]. It would remove the candour. People would potentially be more defensive in the way they reported. In the end the market will tell you. You'll hear from shareholders if they think the board is not performing – the market works."

"Really, looking at performance reviews is too late – you need to look at the strategic issues."

Directors also pointed out that although a really bad board is likely to lead to a poorly performing company the reverse is not always true. A company with a very good board may perform badly due to external market factors that are beyond its control: government policy, volcanic ash and flu epidemics are all good examples. Equally, an average board may be in charge of a very successful company if market conditions are particularly favourable.

6.3.2 Findings from Interviews with Fund Managers

The previous section discusses findings from speaking with company directors about their board evaluation processes and the information that they disclose about those processes. In order to understand the broader picture, three senior fund managers from major institutions were asked how they assess whether a board is performing effectively, whether they link board performance closely with company performance and if current disclosures made by companies assist in this task.
It is important, in considering the views of investors to be aware of the guidance on board performance evaluation in the Investment and Financial Services Association (IFSA) "Blue Book" which is an important source of guidance for fund managers on corporate governance. The purpose and aim of the Blue Book is summarised as follows:

> *"This Guidance Note is published by IFSA to assist its Members to pursue an active role in monitoring the Corporate Governance responsibilities of the companies in which they invest. IFSA's Members manage over $1.1 trillion on behalf of superannuation members and retail/wholesale clients. IFSA Members' investment in the domestic market accounts for about 25% of the capitalisation of the Australian Securities Exchange (ASX). Fund Managers are significant shareholders in Australian listed companies on behalf of over 9 million Australians.*
>
> *As major shareholders, IFSA Members are in a position to promote improved company performance that provides positive benefits to all shareholders and the economy as a whole. While shareholders are not involved in the day-today management of companies, the Corporations Act, ASX Listing Rules and industry best practice provide many opportunities for shareholders to monitor and influence company decision-making which drives ultimate company performance." (IFSA, 2009: 5)*

In terms of specific guidance on board performance evaluation the Blue Book states in Guideline 10 for companies:

> *"The board should develop a formal performance evaluation process for the regular review of its performance, the performance of individual directors, the company and management. As a key part of that process, the independent directors should meet on their own at least once annually to review performance" (2009:22)*

Commentary on this principle recommends that board evaluation processes should be systematic and regular and that the standards of performance used must be robust and made available to shareholders. Suggested criteria for measuring board performance include "monitoring of the group's performance against business plans and budgets, long-term return objectives, strategic objectives and the performance of competitors". In terms of the purpose of board evaluation the Blue Book states:

> *"Regular and independent review of the performance of the board, individual directors, the company and management, including the Chief Executive Officer, is an important element of the board's monitoring role, especially with regard to the long-term growth of the company and of shareholder value."*

Also, ACSI provides guidelines for trustees of superannuation funds to assist in their monitoring of listed Australian companies:

a) The board should have mechanisms to evaluate and improve its performance in governing the company.
b) The board should disclose its approach to regularly assessing the performance and effectiveness of individual directors and the board as a whole, measured against criteria set by the board.
c) The purpose of board evaluation is to review an individual director's contribution and to identify gaps in skills, experience and expertise that would need to be addressed in order to promote board effectiveness and company performance over the long-term. (ACSI, 2009)

The interviews below set out to explore how this guidance is put into practice by fund managers in terms of how they assess board performance and how important it is to them in their investment decisions.

1. <u>Board performance indicators</u>

"The reality is that it is only when disasters happen that we can assess that a board is not performing."

When the fund managers were asked how if they could assess whether the board of a company is performing well (as opposed to the company as a whole), their answer was similar to the directors' response; that assessment would be nearly impossible. From their perspective as investors, company performance is the main indicator of board performance. However, although they considered that a poorly performing company was usually a good indicator of a poor board, they were aware that a good board might not always have the power to cause a company to perform due to intervening factors beyond the board's control.

> *"Other than asking the chairmen or directors to comment, we can't form a view independently. It's very much by inference. If a company is performing, management is working well, directors are knowledgeable about the enterprise, with succession in place and so forth, the board must be performing well."*

When asked to list the indicators of a good board, the fund managers mentioned openness, transparency and proactivity in terms of responding to shareholders.

> *"The good companies are proactive and that is an indicator of a good board – that they are looking for feedback from the market."*

> *"One of the things we look for is how well they understand where our interests are and align that with the company's interests."*

For these investors, obtaining knowledge and opinions regarding the personal characteristics of the individual directors on the board seemed to be a significant factor in gauging the quality of a board.

> *"There are some Rolls Royce directors – you know when they speak to you – they clearly outline what they do."*

> *"You never really know, you are guessing from implied success. You respect certain individuals, for example [name], if [s/he] is on a board it must be a good board. Or [name] gives some sense of security."*

> *"Evaluating their direct responses to our questions is our most effective way of assessing them. The way they respond to letters, frequency of contact, meeting with chairmen, coming in and talking to us..."*

In addition, the fund managers expressed a clear preference for a good CEO over a good board. In the event that they perceive a company to have a weak chairman, a highly rated CEO is likely to negate any ambiguity towards the board.

> *"In companies with a stronger CEO the Boards play a less critical role, the CEO can take the Board with them."*

> *"It depends on our confidence in the CEO (whether he or she has a good track record, demonstrable experience in the market etc) more than board performance."*

For these fund managers, the assessment of board performance is used selectively in investment decisions. It may not be seen as a vital factor in investment decision-making because of the difficulty in obtaining information and ambiguity regarding its link to company performance. However, the assessment can be valuable in 'screening' out boards that are perceived negatively.

> *"This area is not sophisticated enough that it drives our portfolios. There is not a single company where I could say we own it because it has got a great board. Having said that, there are some we would simply not own because their board and management are particularly poor."*

2. Disclosure by companies

> *"What should be published without creating loss of boardroom confidence and confidentiality? If you have a personality in the board who takes a negative view and represents a different way of thinking it could be necessary for the board (which the rest of board may not like) but you want diversity…"*

The fund managers were asked to select which of the following sources of information would be most useful to assess board performance.

a) annual report
b) AGM
c) investor briefings
d) informal communication with company officials
e) communication with other investors
f) industry groups
g) regulators

The answer received from all the fund managers was that they gained the most information from informal communication with company officials, particularly if they were "lucky enough to meet in person with the chair of a company". They also pointed out that they are not likely to get access to other non-executive directors in most engagements although they would like to:

> *"We tend to ask chairmen about board structures – skills of the board, how long board directors have been on it, their value addition to the board, board diversity and performance and how the performance objectives are in place. We ask if there's a board review, peer reviews, we do tend to ask them about how they see the board instead of the airy-fairy or vanilla answers, you need the frank answers."*

> *"Maybe we could see a broader spectrum of the board. Traditionally we see the Chairman and CEO, and maybe one or two execs. Of the non-execs we only see the Chairman."*

None of the fund managers interviewed believed that going to the AGM, nor reading annual reports would provide them with relevant information.

> *"Most institutional investors don't go to the AGMs. We vote on every resolution, and have done for years. But there is no value in being at a meeting for 6 hours, AGMs are mainly for retail investors."*

> *"We really don't go to the AGMs. We vote on all our shares and meet with the chairmen in the lead to the AGM. "*

> *"AGMs are a waste of time. Professional investors don't waste their time. It's a PR exercise. It's a shame, 20 years ago they were useful, today it's a compliance function. The annual report – it's a legal document. We don't get too many surprises."*

Not surprisingly, there was no call from the institutional investors for increased reporting requirements. It seems they had been sorely disappointed by past developments in this area:

> *"Once you make a company report, it gets in the hands of the lawyers and becomes next to useless."*

> *"I was one of the people who got excited when the corporate governance guidelines included an ethics statement but what we could scarily do was to work out which law firm each company employed rather than gain any real information."*

> *"We will look at the annual report but it tends to be more the bios - our officers look at the names and because they've been doing this for years it will be obvious if they've done anything dodgy before."*

Overall, it seems that fund managers and directors are in agreement when it comes to disclosure – that too much disclosure may hinder independence and board function rather than acting as a catalyst for improvement.

7. Discussion

To explore the two research questions, the research exercise has examined the relevant literature on the topic, created a best practice board evaluation template (Table 3.2B) and compared it to actual practice in large listed companies both in Australia and overseas. Findings are derived from two main sources of information: (1) a review of 70 company websites and annual reports in Australia, Europe, the USA and Canada and (2) interviews with Australian directors and institutional investors.

The ability to derive rich data indicates that the process of evaluating the board overall is well entrenched and accepted as a valuable exercise in large Australian and overseas companies. However, in comparing actual practice against the theoretical best practice template there are several areas that emerge as requiring attention. To add to existing knowledge of board evaluation, these areas of interest are discussed against the different stages of the board evaluation process as set out in the best practice template.

7.1 Research Question 1:

How should Australian boards assess performance at both individual and group levels? i.e. what does effective board evaluation comprise?

Similar to most areas of corporate governance, there is no one best way to conduct a board evaluation. In developing a process, boards must consider their aims, current circumstances and both past and likely future developments. Having said this, there is broad consensus that companies ought to conduct reviews regularly and assess both whole board performance and that of each individual director. What must be avoided is treating board evaluation as just another corporate governance box that must be ticked. If anything can be said to be best practice, it is the development of a process that is tailored to the company and that is not seen as a stand-alone event but an ongoing process of information gathering, analysis and implementation of changes. The findings in this report support the concept of a cycle of improvement:

> *Leading Boards will treat evaluation as a continuous improvement process… Board evaluation as a key element of effective corporate governance is worth investment. Done poorly it is at best a waste of time and frustrating; done well it can positively impact on the long-term health of a company. Shareholders will increasingly expect the latter.” (Aronson 2003: 9)*

7.1.1 The purpose of the evaluation

The board must consider at this stage what they hope to achieve from the evaluation and this will require an assessment of their current circumstances:

- Do they have any problematic directors that might respond better to an external consultant?
- Have they recently gone through a process of board renewal or has the board composition been relatively stable?
- Has the company or industry gone through any major changes that might require new skills on the board?

7.1.2 The subjects of the evaluation

Should board evaluation include individual performance assessment of each director? It appears opinion is divided on this issue and the answer may depend on the view of the chairman. In any event, the pros and cons of individual assessment ought to be discussed. The arguments against individual director evaluation centre around whether it hinders honest communication, individuality and teamwork. These arguments perhaps need to be examined more closely on the basis that individual performance evaluation is deemed essential for executives. Why is it less important for non-executive directors? Henry Bosch makes the following comment:

> *"To be effective a board must act as a team. It must come to collective decisions, it must question and test management proposals and actions by a process of discussion, and in so doing it creates an atmosphere which sets the tone of the organisation. The CEO and the executive directors act as individuals when discharging their management responsibilities but when they enter the boardroom and put on their director's hats individual action is precluded" (1995:236-237)*

Nevertheless, most countries (including Australia) do recommend performance evaluations of individual directors. Recent reviews in the UK, in the wake of the global financial crisis, have focused on the effectiveness of non-executive directors and have resulted in the UK Corporate Governance Code specifically recognising the Chairman's responsibility for leading the board and the non-executive directors' role in challenging and developing strategy. It also recommends that the Chairman regularly review the training and development needs of each director. All of this points to the need for individual performance evaluation.

7.1.3 The content of the evaluation

The discussions with directors have raised the issue of whether board evaluation ought to be retrospective or prospective or both. Again, this may depend on the circumstances of the company at the time but is something the board ought to be aware of. Questions must be asked about whether the content of the evaluation is regularly reviewed and updated, for example, following the GFC have boards included discussion of risk management processes in their board evaluation process? Do they ask themselves whether they challenge management enough? After all, dispelling the conformist approaches to board processes that can undermine directors attempting to fulfill their responsibilities is an important task:

> *"Apart from the inadequacy of relevant financial experience in some (but not all) failed boards, it is clear that serious shortcomings of other kinds were also relevant, above all the failure of individuals or of NEDs as a group to challenge the executive on substantive issues as distinct from a conventional relatively box-ticking focus on process. In some cases this will have reflected the diffidence of a NED in probing complex matters where even the forming of an appropriate question is itself a challenge. But beyond and separately from this, the pressure for conformity on boards can be strong, generating corresponding difficulty for an individual board member who wishes to challenge group thinking. Such challenge on substantive policy issues can be seen as disruptive, non-collegial and even as disloyal. Yet, without it, there can be an illusion of unanimity in a board, with silence assumed to be acquiescence. The potential tensions here are likely to be greater the larger the board size, so that an individual who wishes to question or challenge is at greater risk of feeling and, indeed, of being isolated" (Walker Review 2009:53).*

In essence, boards and directors that discover an equilibrium that allows effective challenge without undermining essential collegiality are likely to benefit from the elusive diversity of thought:

> *"NEDs and the boards of which they are members need to find the right point on the spectrum which ranges from relatively unquestioning support of the executive at one end to persistent and ultimately unconstructive challenge at the other. The importance of challenge will be greater the greater the entrenchment of the CEO, especially if he or she is believed to face or tolerate little challenge from within the executive team and unreceptive or inaccessible to critical input from any other source. In an ideal situation, appropriate balance should be neither unduly acquiescent nor unduly intrusive. But the balance actually struck before the recent crisis phase was much too close to the acquiescent or supportive end of the spectrum in several important cases" (Walker, 2009:54-55).*

7.1.4 Who should conduct the evaluation?

Methods of board evaluation appear to be fairly well established – the interesting fact is that many companies do not want to use the same method every year – the practice of conducting an internal-led evaluation one year and an external-led evaluation the next appears to be quite common. In a fairly radical new development, the UK has now recommended that all FTSE 350 companies have an externally facilitated review every three years. It has also recommended that companies provide a statement as to the independence of the external facilitator.

7.1.5 How should the evaluation be conducted?

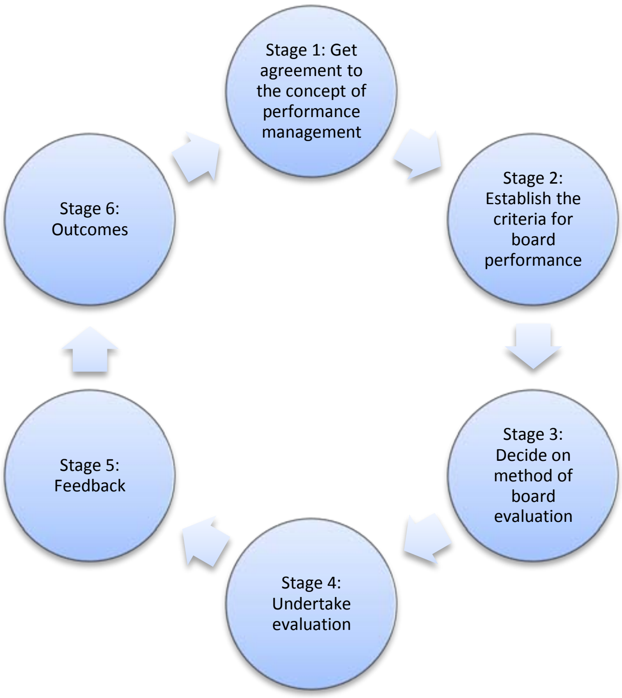
The issue of who should be asked about how the board is performing is also more complicated than it looks – some processes will ask management to evaluate the board, some only ask the directors to evaluate the board and/or each other as individuals. Based on the importance of the relationship between senior management on the board it would seem appropriate for senior management to have an opportunity to give feedback to the board.

Also relevant is the fact that good boards tend to go through a process of continual self-assessment – discussions that have been had throughout the year ought to be fed into the formal evaluation process. Informal mechanisms can be just as important as the formal process, including meetings of directors outside of board meetings.

7.1.6 The evaluation cycle

The continuous and cyclical nature of the process should be emphasised. Board evaluation should not be perceived as an annual event but as an ongoing process of self-assessment and improvement as Figure 4 below demonstrates.

Table 7.1.6A: The Evaluation Cycle



7.2 Research Question 2:

How can shareholders recognise high performing boards? i.e. how can information on board evaluation and performance be communicated by companies or extracted by investors?

The second research question of how shareholders can recognise high performing boards is much more challenging. As soon as information is required to be disclosed in annual reports it seems it quickly becomes standardised and therefore meaningless. The findings in this report support the view that:

> *"…a major impediment to investors' ability to undertake genuine qualitative evaluation of corporate governance statements is the commonality of "boiler-plate" statements, which contain only generic and/or perfunctory remarks that make little or no reference to the specific circumstances of the relevant company." (Moore 2009: 125)*

The biggest issues revolve around the feedback and outcome stages of the board evaluation process. In terms of disclosure on board evaluation, some companies are distinguishing themselves from their peers by not only describing the basic process used but also giving some information about the content of the evaluation (topics covered) and the outcomes of the process (overall outcome and/or specific actions). Whether this ought to be encouraged or mandated warrants further debate.

Overall, it seems there is very little support for increased reporting as neither directors nor fund managers appear to see much value in increased formal disclosure on the basis that it quickly becomes standardised and meaningless. There is a clear preference towards more informal and direct communication between board members and investors.

However, there has been some concern recently over these types of investor briefings due to the risk of breaching continuous disclosure rules or releasing inside information (CAMAC 2009a). Companies are under an obligation to make price-sensitive information available to all shareholders equally and thus should not provide any new or previously undisclosed information at these meetings. However, even if a meeting only provides further explanation of disclosed information there is still an issue of fairness in that some investors are getting more detailed information than others (CAMAC, 2009a). In this case, the research findings support others that indicate:

> *"…analysts rated private contact with companies, including private analysts' meetings, as a more important primary source of information than reliance on public documents (CAMAC, 2010:145)*

Although CAMAC has acknowledged the risk of "inadvertent selective disclosure of confidential price-sensitive information" at private briefings it was agreed that they provide a "useful and probably necessary supplement to [companies'] formal disclosures" and therefore ought not be banned. Instead CAMAC recommended that companies keep better records of briefings and use technology such as webcasts to disseminate the information more widely. These points have been incorporated into the suggested amendments to the ASX Principles (ASX, 2010).

In comparison, the recent review of the UK Code now encourages chairmen to report personally in their annual statements about the role and effectiveness of the board. The preface to the Code explains:

> *"Above all, the personal reporting on governance by chairmen as the leaders of boards might be a turning point in attacking the fungus of ''boiler-plate'' which is so often the preferred and easy option in sensitive areas but which is dead communication." (FRC, 2010).*

In an interesting attempt to overcome the problem of 'boiler-plate' statements, the UK regulator is encouraging chairmen to write personal statements about board performance in annual reports. These changes stem from the Walker Review which made the following two recommendations:

> *"The board should undertake a formal and rigorous evaluation of its performance, and that of committees of the board, with external facilitation of the process every second or third year. The evaluation statement should either be included as a dedicated section of the chairman's statement or as a separate section of the annual report, signed by the chairman. Where an external facilitator is used, this should be indicated in the statement, together with their name and a clear indication of any other business relationships with the company and that the board is satisfied that any potential conflict given such other business relationship has been appropriately managed.*
>
> *The evaluation statement on board performance and governance should confirm that a rigorous evaluation process has been undertaken and describe the process for identifying the skills and experience required to address and challenge adequately key risks and decisions that confront, or may confront, the board. The statement should provide such meaningful, high-level information as the board considers necessary to assist shareholders' understanding of the main features of the process, including an indication of the extent to which issues raised in the course of the evaluation have been addressed. It should also provide an indication of the nature and extent of communication with major shareholders and confirmation that the board was fully apprised of views indicated by shareholders in the course of such dialogue." (Walker Review 2009: 16-17)*

Lastly, in another interesting development stemming from the Walker Review, the UK has introduced a Stewardship Code for investors which aims to enhance the quality of engagement between companies and institutional investors (FRC, 2010). The Code is intended to complement the UK Corporate Governance Code and, like the Corporate Governance Code, is designed to be applied on a 'comply or explain' basis.

8. Conclusion

This research represents practice, procedures and opinions in the very largest companies across the world but does not demonstrate how smaller companies are coping with board performance evaluation. The number of interviews may be limited but is significant in that the interviewees were very experienced directors and chairmen of some of the largest listed companies in Australia.

Research of this nature is rare because access to this caliber of professional director is famously difficult to obtain (Leblanc and Schwartz, 2007). The fact that the sample is not random is a limitation that is generally accepted by researchers in this field and justified against the alternative of non-access to boards (Leblanc and Schwartz, 2007:849; Pettigrew and McNulty, 1995:851). Within academia there have been calls for more of this type of qualitative research for many years but access remains an issue. Most of the significant surveys done in recent times in the area of board effectiveness have been carried out in collaboration with industry (Lawler and Dysert, 2007) or by professional consultants (Deloitte, 2008).

In conclusion, this was a study into board performance and effectiveness aimed at exploring how Australian boards of directors are evaluating their performance, how they compare internationally, how they compare against best practice guidelines and how they communicate the value of board performance evaluation to their shareholders. In presenting this information to ACSI members, the wider objective of the research is to act as a platform for engagement with both investors and companies on how both the process of board evaluation and disclosure of information about that process could be improved.

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10. Appendices

Appendix A: Interview Template for Company Directors

Company Name	
Date / Location of Interview	
Interviewee / Position	
Interviewer	

Board evaluation - general	
1. When was the first board evaluation conducted / for how many years have processes been in place? 2. How often do evaluations occur and how long does the process take? 3. How was the board evaluation process developed and has it changed over time? 4. What is the attitude of the board towards evaluation? 5. Has the global financial crisis had any impact on board evaluation?	
Process of board evaluation	
6. How is information collected and from whom? 7. How is information fed back – who receives it and in what form? 8. If you have used an external expert - what are the benefits of externally driven evaluations?	
Outcome of board evaluation	
9. What are the outcomes of board evaluation – how is the information ultimately used? 10. Is it linked to other corporate governance processes? 11. Does the evaluation process lead to improved board performance and, if so, how?	
Board Performance	
12. What are the most important factors necessary for effective board performance 13. What are the most common factors that can hinder a board from performing effectively? 14. Do you have a skills matrix for board evaluation? If no, how do you assess the skills of current/new directors?	
Disclosure	
15. Does your company communicate the processes of board evaluation to investors and other shareholders? 16. How does your company communicate the outcomes of board evaluation to investors and other stakeholders? 17. Do you think investors can effectively assess whether a company board is performing based on your disclosure? What suggestions can you make to provide investors with reasonable insights into measuring board performance?	

Appendix B: Interview Template for Fund Managers

Fund Name	
Date / Location of Interview	
Interviewee / Position	
Interviewer	

Board performance indicators	
1. How do you assess whether the board of a company is performing well (as opposed to the company as a whole)? 2. Can you give an example of what constitutes an effective, high performance board? 3. Can you give an example of the factors that might make a board ineffective or dysfunctional?	
Company performance	
4. How much of an impact does board performance have on company performance? 5. Does this impact vary in different circumstances?	
Board evaluation	
6. In making investment decisions, how much value do you place on information regarding: a. Frequency of board evaluation b. Process of board evaluation c. Outcomes of board evaluation 7. Could board evaluation processes (or disclosure regarding those processes) be improved so as to be more useful to investors?	
Other information	
8. Is there any other information that companies could disclose that would assist you in assessing board performance? 9. Which of the following sources of information are most important in assessing board performance: a. annual report b. AGM c. investor briefings d. informal communication with company officials e. communication with other investors f. industry groups g. regulators 10. How would you know if a company board is working well?	

Appendix C: Companies Represented

Directors interviewed in Stage Two represented the following ASX listed companies:

1. AMP
2. ANZ
3. Ansell
4. ASX
5. BlueScope Steel
6. Boral
7. Coca-Cola Amatil
8. Commonwealth Bank
9. David Jones
10. Healthscope
11. IAG
12. Investec
13. Macquarie Bank
14. Macquarie Group
15. Metcash
16. NAB
17. News Corporation
18. Origin Energy
19. Qantas
20. Suncorp-Metway
21. Stockland
22. Tabcorp
23. Telstra
24. Wesfarmers
25. Woolworths
26. Worley Parsons

Appendix D: Relevant Regulation

Supervisory authority	Relevant regulation (applicable to 2009 annual reports)
Australian Stock Exchange (ASX)[1]	Principle 1 – Lay solid foundations for management and oversight Recommendation 1.2: **Disclose the process for evaluating the performance of senior executives.**
	Principle 2 – Structure the Board to add value Recommendation 2.5: **Disclose the process for evaluating the performance of the Board, its committees and individual directors.**
New York Stock Exchange[2]	S303A.04 4. (a) Listed companies must have a nominating/corporate governance committee composed entirely of independent directors. (b) The nominating/corporate governance committee must have a written charter that addresses: (i) the committee's purpose and responsibilities – which, at minimum, must be to: identify individuals qualified to become board members, consistent with criteria approved by the board, and to select, or to recommend that the board select, the director nominees for the next annual meeting of shareholders; develop and recommend to the board a set of corporate governance principles applicable to the corporation; and oversee the evaluation of the board and management; and **(ii) an annual performance evaluation of the committee.**
	S303A.05 5. (a) Listed companies must have a compensation committee composed entirely of independent directors. (b) The compensation committee must have a written charter that addresses: (i) the committee's purpose and responsibilities – which, at minimum, must be to have direct responsibility to: (A) review and approve corporate goals and objectives relevant to CEO compensation, evaluate the CEO's performance in light of those goals and objectives, and, either as a committee or together with the other independent directors (as directed by the board), determine and approve the CEO's compensation level based on this evaluation; and (B) make recommendations to the board with respect to non-CEO compensation, incentive-compensation plans and equity-based plans; and (C) produce a compensation committee report on executive compensation as required by the SEC to be included in the company's annual proxy statement or annual report on Form 10-K filed with the SEC; **(ii) an annual performance evaluation of the compensation committee.**

[1] http://www.asx.com.au/about/corporate_governance/revised_corporate_governance_principles_recommendations.htm
[2] http://www.nyse.com/pdfs/finalcorpgovrules.pdf

	S303A.07 7. (a) The audit committee must have a minimum of three members. (b) In addition to any requirement of Rule 10A-3(b)(1), all audit committee members must satisfy the requirements for independence set out in Section 303A.02. (c) The audit committee must have a written charter that addresses: (i) the committee's purpose – which, at minimum, must be to: (A) assist board oversight of (1) the integrity of the company's financial statements, (2) the company's compliance with legal and regulatory requirements, (3) the independent auditor's qualifications and independence, and (4) the performance of the company's internal audit function and independent auditors; and (B) prepare an audit committee report as required by the SEC to be included in the company's annual proxy statement; **(ii) an annual performance evaluation of the audit committee;** and (iii) the duties and responsibilities of the audit committee – which, at a minimum, must include those set out in Rule 10A-3(b)(2), (3), (4) and (5) of the Exchange Act , as well as to: (A) at least annually, obtain and review a report by the independent auditor describing: the firm's internal quality-control procedures; any material issues raised by the most recent internal quality-control review, or peer review, of the firm, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years, respecting one or more independent audits carried out by the firm, and any steps taken to deal with any such issues; and (to assess the auditor's independence) all relationships between the independent auditor and the company;
	S303A.09 9. Listed companies must adopt and disclose corporate governance guidelines. The following subjects must be addressed in the corporate governance guidelines: • Director qualification standards • Director responsibilities • Director access to management and, as necessary and appropriate, • independent advisors. • Director compensation • Director orientation and continuing education. • Management succession. Succession planning should include policies and principles for CEO selection and performance review, as well as policies regarding succession in the event of an emergency or the retirement of the CEO. • **Annual performance evaluation of the board. The board should conduct a self-evaluation at least annually to determine whether it and its committees are functioning effectively.**

Toronto Stock Exchange (TSX)[3]	National Policy 58-201 Corporate Governance Guidelines (NP 58-201) 3.17 Compensation Committee The compensation committee should be responsible for: (a) reviewing and approving corporate goals and objectives relevant to CEO compensation, **evaluating the CEO's performance** in light of those corporate goals and objectives, and determining (or making recommendations to the board with respect to) the CEO's compensation level based on this evaluation; **3.18 Regular Board Assessments** The board, its committees and each individual director should be regularly assessed regarding his, her or its effectiveness and contribution. An assessment should consider (a) in the case of the board or a board committee, its mandate or charter, and (b) in the case of an individual director, the applicable position description(s), as well as the competencies and skills each individual director is expected to bring to the board.
	Disclosure required in Corporate Governance Disclosure Form 58-101F11 **9. Assessments** Disclose whether or not the board, its committees and individual directors are regularly assessed with respect to their effectiveness and contribution. If assessments are regularly conducted, describe the process used for the assessments. If assessments are not regularly conducted, describe how the board satisfies itself that the board, its committees, and its individual directors are performing effectively.
UK[4] **Combined Code (2008)**	A.1 The Board Main Principle Every company should be headed by an effective board, which is collectively responsible for the success of the company.
	A.4 Appointments to the Board A.4.2 **The nomination committee should evaluate the balance of skills, knowledge and experience on the board** and, in the light of this evaluation, prepare a description of the role and capabilities required for a particular appointment
	A.6 Performance Evaluation Main Principle The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors. Supporting Principle Individual evaluation should aim to show whether each director continues to contribute effectively and to demonstrate commitment to the role (including commitment of time for board and committee meetings and any other duties). The chairman should act on the results of the performance evaluation by recognising the strengths and addressing the weaknesses of the board and, where appropriate, proposing new members be appointed to the board or seeking the resignation of directors. Code Provision A.6.1 The board should state in the annual report how performance evaluation of the board, its committees and its individual directors has been conducted. The non-executive directors, led by the senior independent director, should be responsible for performance evaluation of the chairman, taking into account the views of executive directors.

[3] http://www.ecgi.org/codes/documents/tsx_guide_to_good_disclosure.pdf
[4] http://www.ecgi.org/codes/documents/combined_code_june2008_en.pdf

France[5] **Association Francaise des Enterprises Privees– Mouvement des Enterprises de France (MEDEF) Code**	**9.The evaluation of the board of directors**[6] 9.1. In practicing good corporate governance, the board must carry out a periodic evaluation of its performance as expected from shareholders who have given it the mandate to manage the company. The board review should address its composition, organisation and operation (it is implied the same review must be undertaken with the committees of the board). Thus, each board must reflect on the desirable balance between its composition and that of the composition of its committees to address its adequacy in the tasks of the company and its functions. 9.2. The evaluation must have three aims: * To give a progress report on the procedure of the board * To check that important matters are suitably prepared and discussed by the board. * To measure the effective contribution and competence of each board member. 9.3. It is desirable that the board evaluation is undertaken annually and must be carried out according to the following methods: * Once a year, the board of directors must devote one day on the evaluation of its operations. * A formal evaluation must be undertaken at least once every three years managed by an independent director with possible assistance from an external consultant. * Disclosure of the evaluation (if any) must be made in the company's annual report to its shareholders and any actions taken by the board as a result from the evaluation. *It is recommended that the independent board directors meet periodically without the presence of executive directors. The charter for the board of directors must include a board meeting devoted to evaluation once a year. This addresses board evaluation of management. A performance evaluation must be carried out on the company president, the managing director and other senior executives of the company

[5] In the case of France, the Code was initiated and spearheaded by two private sector bodies and not the supervisory authority.
[6] Rudimentary translation from Yahoo Babelfish of this page http://www.code-afep-medef.com/evaluation-du-conseil-d-administration.html

Germany[7] **Corporate Governance Code**	1.0 Foreword A dual board system is prescribed by law for German stock corporations: The Management Board is responsible for managing the enterprise. Its members are jointly accountable for the management of the enterprise. The Chairman of the Management Board coordinates the work of the Management Board. The Supervisory Board appoints, supervises and advises the members of the Management Board and is directly involved in decisions of fundamental importance to the enterprise. The chairman of the Supervisory Board coordinates the work of the Supervisory Board. 3.1 The Management Board and Supervisory Board cooperate closely to the benefit of the enterprise. 3.2 The Management Board coordinates the enterprise's strategic approach with the Supervisory Board and discusses the current state of strategy implementation with the Supervisory Board in regular intervals. 4.2 Composition and Compensation If the Supervisory Board calls upon an external compensation expert to evaluate the appropriateness of the compensation, care must be exercised to ensure that said expert is independent of respectively the Management Board and the enterprise. 5.1 Supervisory Board’s Tasks and Responsibilities 5.1.1 The task of the Supervisory Board is to advise regularly and supervise the Management Board in the management of the enterprise. It must be involved in decisions of fundamental importance to the enterprise. 5.6 Examination of Efficiency The Supervisory Board shall examine the efficiency of its activities on a regular basis.

[7] http://www.corporate-governance-code.de/index-e.html

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