CHARTERED SECRETARIES
AUSTRALIA

*Leaders in governance*

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Dear Ms Parviez

## *ICGN Position Paper on Gender Diversity*

Chartered Secretaries Australia (CSA) is the peak body for over 7,000 governance and risk professionals. It is the leading independent authority on best practice in board and organisational governance and risk management. Our accredited and internationally recognised education and training offerings are focused on giving governance and risk practitioners the skills they need to improve their organisations' performance.

Our Members have primary responsibility to develop and implement governance frameworks in public listed and unlisted and private companies, and not-for-profit and public sector organisations. A key responsibility of our Members includes working with boards of directors to develop diversity policies, and implement initiatives intended to improve gender balance outcomes within their organisations. Our Members also frequently have responsibility to ensure that their organisations comply with disclosure and reporting requirements on gender diversity under both Principle 2 and 3 of the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations* (the Principles and Recommendations)[1] and the newly introduced *Workplace Gender Equality Act 2012*.[2]

Our Members are, therefore, uniquely positioned to provide independent, expert commentary on the regulatory framework and governance initiatives being undertaken by Australian companies in relation to gender diversity.

Furthermore, in May 2013, as part of our contribution to improving gender diversity in Australian organisations, CSA will be issuing *Guidelines for gender balance performance and reporting Australia.* The Guidelines are intended to support Australian entities to make progress on the

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[1] ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations*, 2nd ed (with 2010 amendments)
[2] The *Workplace Gender Equality Act 2012* introduced requirements for entities of over 100 employees to report on female workforce numbers to the Workplace Gender Equality Agency. The legislation extends beyond listed entities to private and unlisted entities.

employment, retention and promotion of women in the workplace, particularly at senior executive level.[3]

CSA welcomes the opportunity to comment on the ICGN Position Paper on Gender Diversity (the position paper) and draws on the views of our Members in providing our response.

### *General comments*

CSA strongly supports the position that a governance culture that embraces diversity in the composition of corporate boards allows boards to better fulfil their oversight responsibilities.

The representation of women at senior executive and board levels underpins a desire to improve long-term performance and utilise the full range of human capital available to the organisation. As noted in the position paper, there is now substantial research that supports the economic and business case for increased participation by women in senior roles.[4] A diverse board is also able to bring together varied perspectives, produce a more holistic analysis of the issues a company faces and facilitate greater innovation, thereby, leading to improved decision-making[5].

However, despite growing support for improving gender diversity on boards and in senior executive roles, the limited gender balance of Australian corporations was demonstrated by the *Australian Census of Women in Leadership 2012*[6] (the Census). The report showed that the number of women on the boards of Australian Securities Exchange (ASX) 200 companies had increased to 12.3 per cent in 2012, up from 8.4 per cent in 2010.[7] However, this change in gender balance was not mirrored at the senior executive level, with only 9.7 per cent of senior executive roles in ASX 200 companies filled by women in 2012 — a very modest rise from 8.0 per cent in 2010.[8] When coupled with a further finding from the Census that there are 60.6 per cent of ASX 200 companies that do not have any female executive key management personnel (the accounting standards term essentially relating to the senior executive team having the authority to direct or control the activities of a company)[9], the report shows a dispiriting lack of progress on improving gender balance outcomes in Australian companies.

Lord Davies in his *Women on Boards Report 2011* (known as the Davies Report) notes that the 'low number of women on boards is in part a symptom of insufficient numbers emerging at the top of the management structure and the under-representation of women in senior management generally.'[10] CSA's *Guidelines on gender balance performance and reporting Australia* are a direct response to the economic necessity to utilise all appropriately qualified and experienced human talent in the Australian workplace, particularly at senior executive levels, and to provide a 'best practice' framework on the steps and measures for improving gender balance within entities.

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[3] Chartered Secretaries Australia worked with representatives from Women on Boards, Stockland Property Group, Women Lawyers Association of Queensland, UGM Consulting and Financial Services Institute of Australasia to develop *Guidelines for gender performance and reporting Australia*

[4] Goldman Sachs JBWere, *Australia's Hidden Resource: The economic case for increasing female participation*, November 2009; Catalyst, *The Bottom Line: Corporate Performance and Women's Representation on Boards*, October 2007; McKinsey & Company, *Women Matter: Women at the top of corporations*, 2010; Workplace Gender Equality Agency, 2013, *The business case for gender equality*, Australian Government

[5] Workplace Gender Equality Agency, 2013, *The business case for gender equality*, Australian Government, p 4

[6] Equal Opportunity for Women in the Workplace Agency (now the Workplace Gender Equality Agency), 2012, *Australian Census of Women in Leadership*, Australian Government

[7] The Australian Institute of Company Directors tracks new appointments of women to boards on a real-time basis. The latest percentage of women on ASX 200 boards is 15.6% (31 March 2013)

[8] Workplace Gender Equality Agency, 2012, *Australian Census of Women in Leadership*, p 6

[9] Workplace Gender Equality Agency, 2012, *Australian Census of Women in Leadership*, p 9

[10] Lord Davies of Abersoch, CBE, 2011, *Women on boards: Final Report* (known as the Davies Report), February 2011

The Guidelines are intended to assist entities to achieve cultural change rather than to achieve compliance with reporting obligations. The Guidelines will aid companies in setting out measurable targets for increased participation by women at senior levels as a means of addressing workforce management and risk mitigation. Importantly, however, the Guidelines also establish a framework within which companies can:

- implement a set of gender balance indicators to provide organisations with information on gender balance
- ensure that their measurable objectives are sustainable so that they can assess performance against them, and
- report to stakeholders on progress.

CSA will send a copy of the Guidelines to ICGN upon publication.

While CSA is pleased to see that the position paper tackles the issues of gender balance at board level, we note that there is little discussion in the paper on gender diversity at the senior executive level. As the 2012 Census revealed, while companies are hiring, training and developing women from the ground up, they are failing to arrest the significant shortfall of women in middle to senior management. CSA's concern is that without attention to the pipeline of female talent within companies, initiatives to address poor gender balance on boards will be undermined and may lead to little or no improvement in gender balance at board level.

CSA recommends, therefore, that the ICGN include a section in the position paper on the need for boards and companies to address gender diversity at senior executive level, to ensure that a pipeline of skilled female talent is available to populate boards in the future.

Our detailed comments on the questions put forward in the position paper are set out on the following pages.

Yours sincerely

Tim Sheehy

Tim Sheehy
CHIEF EXECUTIVE

***In your opinion, which action would be most effective in improving gender diversity on boards, binding quotas, or a 'comply or explain' approach?***

CSA strongly supports the 'comply or explain' approach to improving gender diversity on boards. In Australia, this is known as the 'if not, why not' approach, where if a company considers that a recommended governance practice is inappropriate to its circumstances, it has the flexibility not to adopt it — a flexibility tempered by the requirement to explain why.

In 2010, while discussion was taking place as to whether Australia should introduce quotas, the ASX Corporate Governance Council, of which CSA is a founding member, introduced amendments to the *Corporate Governance Principles and Recommendation*s addressing corporate Australia's historically poor performance on gender balance.[11] Aimed at providing greater transparency as to how entities are progressing with increasing the participation of women in senior roles, entities listed on the ASX were for the first time required to establish a diversity policy and publish it, and boards of listed companies were also required to set measurable objectives for achieving gender diversity. The reporting is under the 'if not, why not' regime. The Recommendations are set out in Appendix A.

CSA believes that the 'if not, why not' approach is more effective in achieving cultural change in organisations than the adoption of a strict 'black letter' law approach, such as the requirement to meet binding quotas. The 'if not, why not' approach does not require a 'one size fits all' approach to corporate governance, but states suggestions for practices designed to optimise corporate performance and accountability in the interests of shareholders and the broader economy. The Principles and Recommendations encourage companies to re-examine their corporate governance practices and to determine whether and to what extent the company may benefit from a change in approach, having regard to the company's particular circumstances. The history of the Principles and Recommendations is one of practical statements on governance that have brought meaningful change to governance practice and behaviour in Australia since their introduction in 2003.

CSA notes that the 'if not, why not' approach does not mean that companies can evade their governance responsibilities, but rather that boards must take decisions on a governance framework which are transparent to their investors. Accountability to investors is a central component of this approach. It is the promotion of cultural and behavioural change that has been the hallmark of the success of the 'if not, why not' approach to corporate governance in Australia. Providing transparency as to the decision making on governance frameworks enhances shareholder engagement and dialogue, as investors can challenge boards in relation to the explanation of a particular governance approach.

CSA also points to the recognition in other jurisdictions of the value of the 'comply or explain' approach, with Lord Davies in his report on women on boards conducted in 2012[12] noting that:

> I now believe that we are finally seeing a cultural change taking place right at the very heart of British business in relation to how women are seen within the workforce.

CSA supports the ICGN position which advocates a principles-based approach to gender diversity, encouraging disclosure of objectives and, in cases of non-compliance, holding companies accountable for explaining their reasons. CSA does not support the introduction of quotas.

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[11] The disclosure requirement against the Principles and Recommendations is given force through Listing Rule 4.10.

[12] Lord Davies of Abersoch, CBE, 2012 ' Women on Boards: Review Report 2012, accessed on 17 April 2013 from http://www.womenonboards.co.uk/resource-centre/reports/board/lord-davies-review-report-2012.pdf

### *What other, if any, steps can investors take in order to galvanise gender diversity on boards?*

CSA believes that it is for shareholders and investors to test directors' thinking and behaviour through shareholder engagement and for boards to be accountable to justify their decisions to shareholders. The 'if not, why not' (or 'comply or explain') approach places emphasis on investors taking an active role in promoting gender diversity discussions with the companies in which they invest.

CSA supports the ICGN position on investor responsibilities in requiring investors to:

- engage in regular dialogue on governance practices with the boards of investee companies to seek the development and implementation of gender diversity policies
- advocate high corporate governance standards including those involving gender diversity
- develop governance and voting guidelines on appointment and re-election of board members, and
- use voting rights to effect improvement at board level of investee companies.

CSA is of the view that another major step investors can take to galvanise improved gender diversity on boards is to assess company initiatives in place to improve gender balance at senior executive level.

The research shows that leadership trumps everything else in securing change.[13] If there is a lack of interest at the board and senior leadership team level, and no consequences, either financial or otherwise, for poor performance on gender balance, gender equality will not occur. The culture of 'the way we do things around here' needs to be subject to a change management program, which requires leadership. Boards need to ensure that its executive team understands that gender equality is of bottom-line importance to ensure corporate sustainability.

Boards need to oversee initiatives to address unconscious bias, which can render gender imbalance invisible, and which influences decision making in a manner of which an individual is unaware. We are most frequently drawn toward people who are similar to ourselves, which in organisational terms perpetuates a view of leadership as male, with boards of directors and CEOs (unconsciously) recruiting and promoting people like themselves rather than strictly applying a merit selection process.[14] And because most executive teams are male, the relative invisibility of the issue to them has the effect of making women practically invisible in top jobs. People often are not aware that they have these preferences.

Above all, if the board embeds KPIs for improving gender parity in the performance plan of the CEO, and the CEO in turn embeds similar KPIs in the performance plans of his or her direct reports, change in relation to gender balance will begin to happen. Bluntly put, if people's bonuses are tied to gender balance improvement as a strategic outcome, they will give it the same attention as they do to other strategic initiatives.

### *What other, if any, board responsibilities are material for the promotion of gender diversity?*

A key area where boards can improve gender diversity in relation to board composition is in the development of the board skills matrix. As noted above, unconscious bias results in in-built discrimination.

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[13] Hrdlicka, Cottrell and Sanders, *Level the playing field: A call for action on gender parity in Australia*, Bain & Co, September 22, 2010

[14] Australian Institute of Management, *Gender diversity in management: Targeting untapped talent*, White Paper, February 2012, pp 10—11

Any skills matrix that the board develops needs to address unconscious gender bias, as many such matrices state that CEO experience is essential for a board appointment. However, the experience in Australia, as demonstrated in the *2012 Census on Women in Leadership* which showed that there are only 12 female CEOs in the ASX500, is likely to be repeated in other jurisdictions. The results of requiring CEO experience in a skills matrix is that many experienced and skilled women are not being considered for director appointments.

Boards need to develop a skills matrix that avoids such unconscious gender bias and therefore provides for women candidates to be considered.

To reiterate earlier comments, the board needs to assign accountability to the CEO and his or her senior executive team to improve gender diversity at senior executive levels. For example, in development and recruitment processes, a company should examine, by gender, both the number of employees targeted for leadership roles and mentoring and the participation in leadership and mentoring programs. Companies should assess, by gender, the number of applicants considered for senior positions, the number of employees promoted while on parental leave and the number of those promoted to senior roles. Companies can put in place requirements that there be percentages of both male and female employees considered for senior roles and promoted to senior roles, as well as targeted for promotion and given access to leadership programs. This is all in the company's control.

The position paper notes that

> Disclosures of programs to enable and encourage gender diversity throughout the organisation should encompass:
>
> - Appropriately tailored recruitment policies
> - Ongoing skills development and mentoring
> - Human capital strategy overall
> - Flexible working and telecommuting opportunities

CSA is of the view that analysis of pay by gender, including base remuneration, salary benefits and performance-based remuneration, as well as identification of, and strategies to reduce, the gender pay gap, is also essential to improving gender diversity throughout the organisation and should be included in the position paper.

Finally, CSA notes that the position paper calls on the nomination committee to:

> conduct a structured evaluation of the board of directors on an annual basis to identify ways to strengthen the board's effectiveness, to assess gender balance, and to highlight gaps between the skills and background of existing directors and the optimal mix.

The board has ultimate responsibility for examining the selection and appointment practices of the company, whether or not a separate nomination committee exists. The board should develop a documented process for reviewing external and internal director nominations. A nomination committee of the board is commonly constituted for this purpose (and should be constituted for larger companies) and will meet as required to review and seek suitably qualified persons when a board vacancy occurs or is anticipated or required as a result of a review of board skills.

However, companies with small boards may be unable to constitute a separate nomination committee. CSA recommends that such companies should explain in their corporate governance statements how they deal with the matters normally dealt with by a nomination committee. They may find it beneficial to focus the board's mind on these issues by closing the board meeting and having the board reconvene as a nomination committee with a separate agenda and minutes.

CSA recommends that the position paper give consideration to clarifying that it is the responsibility of the board (either through its nomination committee or other mechanism) to formulate a policy for board composition, renewal and evaluation.

### *What other, if any, notable policies in terms of reporting, would you include?*

In the Australian context, the ASX Corporate Governance Council already requires boards to:

- develop a diversity policy
- set and disclose in the annual report:
  - measurable targets for achieving gender diversity, and
  - the company's progress toward achieving those targets, as well as
  - the proportion of women on the board, in senior management and employed throughout the whole organisation.

More recently, the Australian Government has also enacted the *Workplace Gender Equality Act 2012* which requires non-public sector entities with 100 or more employees to report on gender equality outcomes and provide the Workplace Gender Equality Agency with standardised data by 2014.

Both measures are geared towards seeking greater transparency as to how entities are progressing with increasing the participation of women on boards, in senior executive roles and throughout the organisation. In this regard, CSA notes that the Australian reporting requirements mirror those proposed as reporting triggers in the Position paper.

CSA supports the ICGN positions in relation to reporting responsibilities, including the disclosure of gender diversity policies, targets and aspirations to regulators, shareholders and other stakeholders.

However, CSA notes that the position paper states:

> Regulators and exchange providers should establish a reporting policy on the number of women on boards. At a minimum, this policy should provide for timely benchmark targets for achieving gender diversity on boards and in senior management, as well as within policies across corporate operations ...

The Australian approach has been to provide the flexibility for boards to establish measurable objectives for achieving gender diversity. The measurable objectives the board sets should include appropriate benchmarks that are able to be, and are, measured and monitored for effectiveness. These could involve achieving specific numerical targets (for example, a target percentage) for the proportion of women employed by the organisation generally, in senior executive roles and on the board within a specified timeframe, or completing specific plans or programs by a specified date intended to achieve greater gender diversity across the organisation generally, in senior executive roles and on the board.

CSA does not support regulators and exchange providers establishing the 'timely benchmark targets for achieving gender diversity on boards and in senior management'. Such a proposal is, effectively, a call for quotas to be set, which conflicts with the earlier position stated in the paper that ICGN supports a principles-based approach. CSA recommends that this be reworded to clarify that boards retain the flexibility to set their measurable targets, and it is for investors to engage with boards on the suitability of those targets and progress toward achieving them.

# *Appendix A: Corporate Governance Principles and Recommendations (2nd ed, with 2010 amendments)*

Entities listed on the ASX are required under the listing rules to report against the Corporate Governance Principles and Recommendations annually. Reporting is on an ‘if not, why not’ basis.

Principle 2 addresses structuring the board to add value. It recommends companies have a board of an effective composition, size and commitment to adequately discharge its responsibilities and duties.

**Recommendation 2.6** requires companies to include in the corporate governance statement in the annual report ‘a statement as to the mix of skills and diversity for which the board of directors is looking to achieve in membership of the board’.

Principle 3 addresses the promotion of ethical and responsible decision-making. Its key recommendations on diversity are as follows.

**Recommendation 3.2**
Companies should establish a policy concerning diversity and disclose the policy or a summary of that policy. The policy should include requirements for the board to establish measurable objectives for achieving gender diversity and for the board to assess annually both the objectives and progress in achieving them.

**Recommendation 3.3**
Companies should disclose in each annual report the measurable objectives for achieving gender diversity set by the board in accordance with the balance policy and progress towards achieving them.

**Recommendation 3.4**
Companies should disclose in each annual report the proportion of women employees in the whole organisation, women in senior executive positions and women on the board.