



BOARD DIVERSITY – IF NOT, WHY NOT?

Catherine Evans

Existing obligation to report – all employers with at least 100 employees

Organisations employing at least 100 employees in Australia (including employees of subsidiaries) currently have obligations to develop programs and lodge public reports regarding equal opportunity issues for women in the workplace¹.

As part of developing a workplace program, an employer is required to consult with employees, prepare a workforce profile, analyse equal opportunity issues, identify action items and evaluate the effectiveness of actions in achieving equal opportunity for women in the employer's workplace.

The employer must prepare and lodge with the Equal Opportunity for Women in the Workplace Agency an annual public report which sets out key information including the actions taken by the employer to address priority issues, the actions the employer plans to take in the following year and an evaluation of the effectiveness of the actions in achieving equal opportunity for women². The report for this year is due 31 May 2010. For more details about these requirements, please refer to ["Equal Opportunities for Women in the Workplace"](#) by Julia Swift.

Expansion to the listed board setting – ASX principles and recommendations

On 22 April 2010 the ASX Corporate Governance Council (**Council**) released its exposure draft on the Council's proposed amendments to the Corporate Governance Principles and Recommendations (**Principles**) to address board diversity. The changes are a result of concern over the under representation of women on listed company boards and in executive positions.

What are the proposed requirements?

The changes will require:

- Companies to establish and disclose a diversity policy that includes measureable objectives for achieving diversity on an "if not, why not" basis.
- Companies to disclose in their annual reports details of the proportion of women on the board, in senior executive positions and employed in the whole organisation.
- Reporting of achievements against measureable objectives on gender diversity in a company's annual report.
- Nomination committees to make recommendations to boards about strategies to address board diversity.
- The charter of any nomination committee to provide for regular review of the proportion of women employed at all levels of the company.

¹ *Equal Opportunity for Women in the Workplace Act 1999*. Once the Act applies to an organisation, it will continue to apply even if the number of employees falls below 100 unless the number of employees falls below 80.

² This last item can be covered separately in a confidential report.

- The board to consider diversity objectives at all levels in the company in reviewing the performance of the board and to disclose the mix of skills and diversity which the board is looking for in its membership.

When will the new requirements come into effect?

It is intended that the change in reporting requirements will apply to an entity's first financial year commencing on or after 1 January 2011 (resulting in a requirement for disclosure in relation to the financial year ending in 2012 and the report published for that year). However, where a listed entity has a balance date of 30 June 2010, the Council considers that the company should be able to establish a diversity policy and report on diversity issues in respect of the year commencing 1 July 2010.

What listed companies should be doing in response

All organisations employing at least 100 employees should be:

- formulating, reviewing and evaluating their existing equal opportunity program. While not strictly relevant to unlisted employers, the ASX guidelines referred to below may be helpful to employers in formulating or reviewing their policies; and
- preparing their *Equal Opportunity for Women in the Workplace Act* report ready for lodgement on or before 31 May 2010.

In addition, those employers who are listed companies should be:

- developing a diversity policy with measureable objectives for board diversity. ASX has given guidance in the exposure draft about what should be included in a diversity policy;
- developing and implementing initiatives to assist women in gaining experience to prepare them for senior management and board roles; and
- reviewing the nomination committee's charter and if necessary, amending it to include the role of advising on strategies to address board diversity and to provide for regular review of the proportion of women employed at all levels of the company.

Please contact Richard Beissel or Catherine Evans if you want any further information or assistance.

Richard Beissel

Partner

T +61 8 8228 1140

E RBeissel@cowellclarke.com.au

Catherine Evans

Senior Associate

T +61 8 8228 1182

E CEvans@cowellclarke.com.au

DISCLAIMER

This publication is intended only to provide a summary of the subject matter covered, without the assumption of a duty of care by Cowell Clarke. It does not purport to be comprehensive or to render legal advice and should not be relied upon as a substitute for legal or other professional advice. No reader should act on the basis of any matter contained in this publication without first obtaining specific personal advice.

© Cowell Clarke 2010.