

Corporate Governance

AUSTRALIAN DEMOCRATS ACTION PLAN
CORPORATE GOVERNANCE
CORPORATE AFFAIRS

Corporate governance is the regulation of the corporate activities of business to achieve checks and balances that provide better process, better safeguards and higher ethical standards in business. The Australian Democrats believe in shareholder democracy, in the application of democratic principles and openness and accountability to business. Strong corporate governance reduces the likelihood of corporate collapses as a result of poor executive or board behaviour.

Steps taken so far

Major improvements in corporate governance have occurred in the last decade through legislative, regulatory and corporate initiatives. Strong campaigning and advocacy by the Australian Democrats and many others has helped this happen. Among the improvements in corporate governance are:

- Improved comprehensive Australian accounting standards harmonised to common international standards;
- Improved corporations law: lifting companies' internal governance standards; and better reporting, eg on executive remuneration disclosure;
- ASIC and ASX demanding higher standards and shareholders, institutions and the media demanding accountability; and
- Shareholder voting on executive remuneration at AGMs.

Our Action Plan

- To campaign on ways to increase effective shareholder engagement and to ensure best practice election processes for directors;
- Campaign to change the law to require institutions holding shares on behalf of others to vote on changes to company constitutions, the election of directors, and directors remuneration – all other votes to be voluntary as at present;
- Campaign to change the law so that chairs of shareholders' meetings disclose at the start of the meeting the results of any proxy votes, and call for a poll if the vote by show of hands does not reflect the votes of proxies received;
- Campaign to change the law to give public company shareholders the option of separating the corporate governance and business management functions of directors by creating a main board elected by shareholding (financial power) and a corporate governance board elected by shareholders (numerical power);

“The concentration of power in a single board allows the corruption of both directors and corporate performance”

Shann Turnbull PhD
International Institute for self-governance



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www.democrats.org.au

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Corporate Governance

- Require all listed companies to have an independent audit committee and for auditors to be truly independent of the company; and
- Require shareholders to approve board political donations policies.

The Issues

Good regulation and good governance contribute to wealth creation and economic stability. Good corporate governance is the starting point for a strong effective corporate sector.

Good corporate governance gives shareholders, employees and other stakeholders confidence in the way that the corporation is run and provides evidence that decision making is optimal and at arms length.

Public companies must be seen to be fully accountable not only to the few largest shareholders but to all shareholders.

The Australian Democrats have been working to achieve more effective corporate governance for well over a decade, and although real progress has been made, and corporate governance is now well established, there is still more to be done.

Corporate Governance Board

The Australian Democrats propose to give shareholders in public companies the option of requiring a separation of the normal business and internal management functions of the Board from vital governance functions of ensuring openness, accountability and good process. This separation would mean:

- As it does now, the main board would concentrate on strategic and operational issues and be elected by the shareholding (so those with the greatest financial stake retain power).
- Creating a Corporate Governance Board elected directly by shareholders, not shareholding, (so those with the greatest numbers gain power).
- The CGB would comprise no more than 3 non-executive directors.
- The CGB would have a limited remit to call and chair shareholders meetings; propose changes to the company constitution; resolve conflicts of interest; determine the remuneration of directors and management; achieve real independence from main board influence by appointing auditors and other advisers such as valuers; and manage the process of electing directors.

Inquiry into Shareholder Engagement and Participation 2007

The Democrats were instrumental in the establishment of an inquiry in 2007 by the federal parliament's Joint Committee on Corporations and Financial Services into shareholder engagement and participation.

Among other things it will focus on barriers to effective shareholder engagement, best practice corporate governance mechanisms, the effectiveness of mechanisms



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for communicating with shareholders and the need for legislative or regulatory change.

Related Companies

Corporate restructuring has been used by some unscrupulous companies to deprive creditors (including employees) of access to assets when a related company collapses. Employees and creditors have lost out where the company responsible for the failure has been a holding company that has washed its hands of the debts of the subsidiary company.

In accordance with recommendations of the Law Reform Commission in 1988, the Democrats propose making related companies liable for the debts of insolvent companies in limited circumstances. It would be up to a court to determine the extent of liability after considering:

- the extent to which the related company took part in the management of the insolvent company;
- the conduct of the related company to the creditors of the insolvent company; and
- the extent to which the circumstances that gave rise to the winding up are attributable to the actions of the related company.

The Democrats believe that the law should also require bonuses paid to directors or management in the 12 months prior to a corporate collapse be returned.

Corporate Democracy

Companies are owned by shareholders, and shares are generally of equal value, as in a democracy. Fundamental to Democrat philosophy is a belief that many of the political principles that apply to popular democracies can transfer across to shareholder democracies. We believe corporate democracy is key to corporate governance. At the heart of democracy is the restraint of power—the notion of checks and balances, accountability and the regular testing of popular support.

So in discussing corporate governance, our political and constitutional language is a helpful tool: best practice regular elections; [compulsory] voting; representative bodies; independent institutions and people; appointments on merit; the separation of powers; transparency, accountability and full disclosure.

Who represents shareholders is particularly important. In a number of public companies the existing methods of electing company directors allows for patronage and dominance by control groups. That may make it difficult for independent directors, or women (who are still badly underrepresented on boards), to be candidates.



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