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Corporate Governance

John H. Farrar
Bond University

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Corporate Governance

Abstract
Corporate governance which is the subject of this issue is a fashionable concept but like most fashionable ideas it is remarkably imprecise. It is about corporate power, corporate accountability and the standards by which the corporation is to be governed and by whom.

Keywords
corporate law, corporate governance

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OPINION

CORPORATE GOVERNANCE

By JOHN H FARRAR, Professor of Law, Bond University and Professorial Associate, University of Melbourne.

Corporate governance which is the subject of this issue is a fashionable concept but like most fashionable ideas it is remarkably imprecise. It is about corporate power, corporate accountability and the standards by which the corporation is to be governed and by whom. It obviously covers the relevant provisions of the Corporations Law dealing with directors' duties and shareholders rights but it also goes beyond law to cover self regulation. Self regulation can take the form of a code such as Corporate Practices and Conduct, Guidelines such as those of the AIMA now the IFSA and semilegal norms such as the listing rules of the ASX or the statements of accounting practice.

Corporate governance is often about the method as opposed to the substance of corporate decision making but it seems too narrow to limit it exclusively to questions of method or form.

Each country develops its rules of corporate governance against a background of its own distinctive culture. In Australia one sometimes has the impression that this lies somewhat easily between the culture of Ned Kelly and that of its gaoler. We love a larrikin but also rejoice in the down fall of 'Tall poppies'.

Corporate governance now not only transcends the law it also transcends the nation state. Globalisation and increasing international investment by overseas institutional investors are forcing us to consider the development of global norms of corporate governance. The first such attempt has been made by the OECD in its Draft Principles. Although membership of the OECD is somewhat eclectic, its influence is considerable and its draft Principles are likely to be taken up by the World Bank. What the South East Asia financial crisis has shown is the need to develop better systems of corporate governance in the countries affected.

This issue of the Bond Law Review addresses some of these issues. It deals with the concept of legal personality and the various stakeholders, groups, corporatised entities, not for profits, directors' duties, institutional investors and corporate governance in New Zealand and the Peoples Republic of China. If this issue seems overweight it is because of the importance and topicality of the subject matter.