

une

University of
New England

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Technological Impact of Corporate Governance

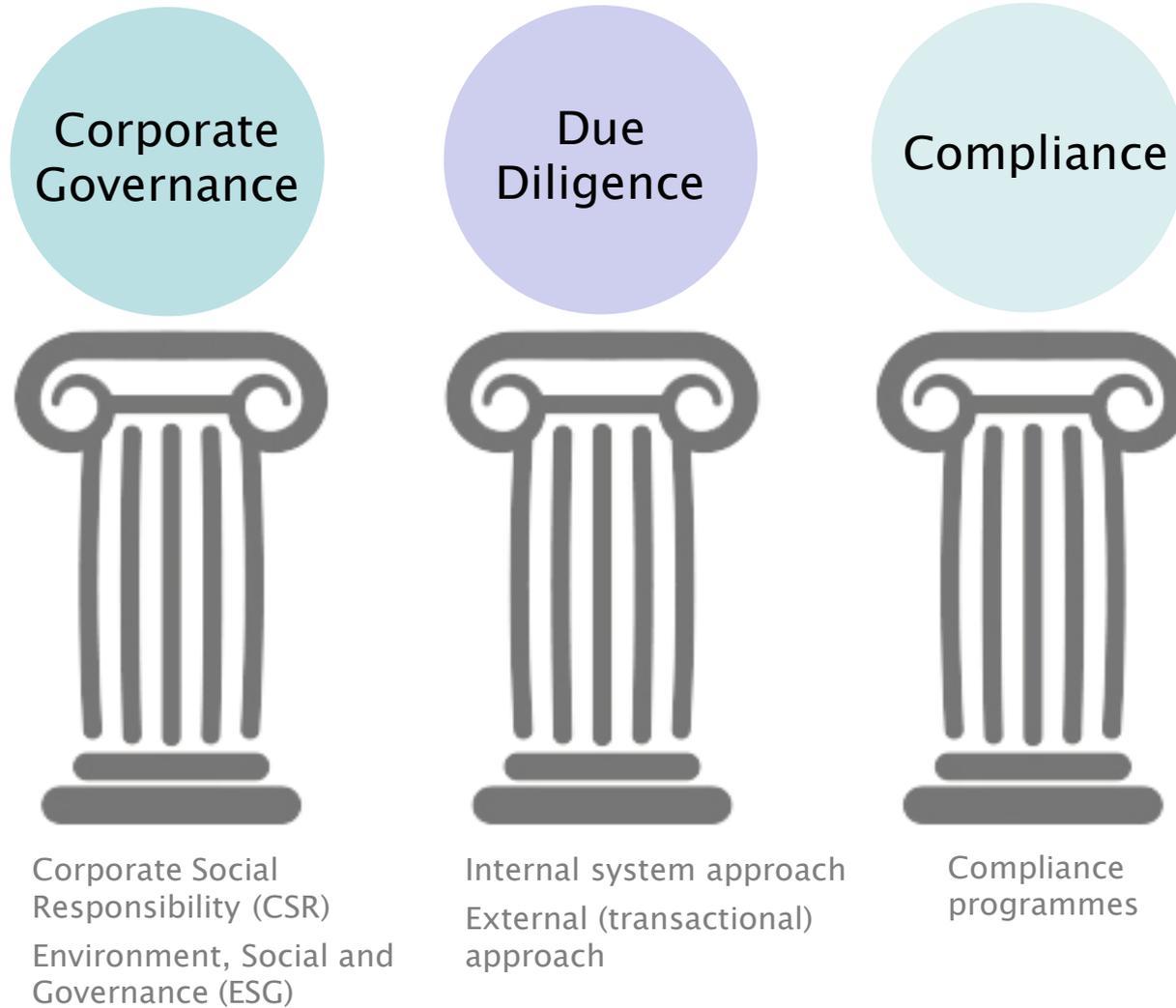
Professor Michael A Adams

ATHOC Industry Conference 2019

Introduction

- Overview of issues that arise in world of corporate governance and compliance
- Balance between corporate and not-for-profits organisations
- Influence of technologies on information governance & in particular social media

Governance connection theory



Adams, M; "Three pillars of good governance" 2004 *Risk Magazine* - 2018 version (update)



CORPORATE
GOVERNANCE



COMPLIANCE
PROGRAMS

DUE
DILIGENCE

Adams, M; “Three pillars of good governance” 2004 *Risk Magazine* – 2018 version

What keeps a director awake at night?

- Snoring? Robots or AI taking every ones jobs?
- ABC Four Corners and/or AFR headline – 60 minutes?
- D & O insurance premiums?
- Class actions – with litigation funders on the side
- Appearing before the Royal Commission?
 - Alternative ASX/ASIC/APRA/ACCC/ATO or other State/Territory bodies?
- Paying A\$700 million in penalties (plus legal costs) or US\$1 billion?
- Being known for ‘pay-for-no-services’ or ripping off members super?
- Employers not paying wages or breach WHS laws etc?
- **Risks failed to be identified!** (PhD thesis, S Cooke, Jan 2019 UNE)

Lessons from Corporate governance research

- The ASX Shareholder ownership survey
- Academic research in Australia and internationally
- Asian Corporate Governance Association (with CLSA researchers) produced the 2016 “CG Watch 2016 – Ecosystems matter” which covers countries from Thailand/Malaysia/Philippines/China/India HK/Indonesia/Singapore/Japan/South Korea and Australia
 - Australia was not included in the 2010/2012/2014 surveys
- UN – OECD – European Union – World Bank: all produced reports



Evidence of good governance

- Academic proof that good corporate governance practices **increases share price** over time
- Clear (global) evidence of **sustainability**
- **Talent/skill** of Board and Management

Evidence of good compliance?

- Success in **corporate governance!**



Australian HIH Report (2003)

Chapter Six: Corporate Governance

“Corporate governance is **not a term of art.**”

“Obviously, primary governance responsibility **lies with the board of directors.**”

“Another danger with an overly prescriptive approach to systems and structures is that it may **unwittingly encourage a superficial or ‘tick the box’ approach** to the achievement of governance objectives.”



Hayne's Royal Commission (2018)

Royal Commission into the Misconduct of Banking, Superannuation & Financial Services Industry

Interim findings (28th Sept)

1. **Obey the law;**
2. Do not mislead or deceive;
3. Be fair;
4. Provide services that are fit for purpose;
5. Deliver services with reasonable care and skill; and
6. When acting for another, always act in their best interests.



Enforcement data

ASIC	1995	2001	2011	2013	2017	2018
Companies	0.9 m	1.2 m	1.8 m	2 m	2.5 m	2.6 m
Jailed	12	25	16	9	13	6
Successful	81%	71%	90%	95%	90%	99%
Litigation	74	150	202	144	220	138
Misconduct	7,287	6,946	15,634	11,682	9,011	9,567

Data: Government regulator = ASIC *Annual Reports*

From 2000 to 2018 there were **336 officers sent to jail**

Average jail time **doubled** in that period

Corporate culture

- Probably the hardest area to examine in a short time
- Unlike corporate governance, which has a standard definition or at least a common understanding
 - Corporate culture falls outside the norms of legal training and fits with other disciplines
 - Regulators and organisations talk about corporate culture and leadership, but can mean very different things to different people
- CBA April 2018 “Prudential inquiry into the bank”
- Hayne’s Royal Commission into AMP “fee for no service” for personal lending (Mrs. Flanagan and the Amadio family) and small business lending practices (BankWest – Westpac)
- Mixed messages and conflicts of self-interest

Business context...

“Top 10 Topics for Directors 2018” (Harvard Law School Forum on Corporate Governance & Financial Regulation) by Kerry Berchem & Christine LaFollette

- No. 1: Cyber–security threats
- No. 2: Corporate social responsibility
- No. 4: Corporate strategy
- No. 5: Board composition

Top 10 2019

- No. 1: Corporate Culture
- No. 2: Board diversity and #MeToo
- No. 5: Corporate Social Responsibility
- No. 8: Cyber–security

AICD/KWM “2016 Directions report”

- No. 3: Digital disruption

Diligent “2019 Board Outlook”

- board composition & director competencies
- culture
- Environment, Social & Governance
- diversity & rem reports



Amazing changes...

My old 1989 PC to my new 2018 Mac AirBook....



Law and Technology impact

- Importance of the 4th industrial revolution
- Beyond disruption for firm's clients
- How to harness AI?
- What is the impact of automation business?
- Intellectual Property and data privacy?
- Employment confidentiality? Competition?
- The importance of Information Governance
- **Government use of technology**
- **Competitors use of corporate compliance technology systems**



Learning from media (social)?

- Impact of the mainstream media on businesses?
- The immediate impact of social media
Twitter – LinkedIn – Facebook – Yammer
- eDiscovery and GDPR (Europe)
- Requests from regulators (ATO–ASIC–ACCC–ACNC)
- Class actions?
- 2017 and 2019 InfoGov Report – interesting data



The Future...

“If you are sure you understand everything that is going on, you are hopelessly confused.”

Walter Mondale (1978)

Any questions?

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