Principles of Contemporary Corporate Governance

Second edition

Following the success of the first edition, *Principles of Contemporary Corporate Governance Second Edition* maintains the delineation of core principles of corporate governance and provides a concise presentation of vital topics and emerging themes in corporate governance within the private sector. This definitive book not only exposes the fundamental principles of corporate governance, it builds upon them by illustrating how they are applied. It includes several prominent case studies, and directors’ duties and liabilities are illustrated by drawing on the most recent Australian court cases.

Although grounded in Australian corporate governance, the book will appeal to practitioners and students of law and business management internationally. Principles of corporate governance are explicated for readers in all jurisdictions, with specific reference to the global financial crisis and the implications for corporate governance developments in the future. The OECD Principles of Corporate Governance are addressed, and specific chapters on corporate governance debates in the United States, United Kingdom, Canada, Germany, Japan and China have been provided by expert contributors for this new edition.

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Preface

Corporate governance has increased in prominence over the past 30 years or so. It has long been an area of rapid development and, in some instances, following dramatic corporate collapses, drastic measures were required to ensure adherence to good practice in corporate governance. Since the appearance of the first edition of Principles of Contemporary Corporate Governance in 2005, developments have not only gained velocity, but the volume of materials on corporate governance has grown exponentially. This made the appearance of a second edition inevitable. In addition, the global financial crisis that emerged in 2008 and global financial uncertainties related to some worrying revelations in the first half of 2010 about the financial stability of several European Union member countries make it easy to predict that the discipline of corporate governance will retain its prominence in future.

In this second edition of Principles of Contemporary Corporate Governance, the basic approach was again to extract the fundamental and contemporary principles of corporate governance. The majority of authors have a legal background, which reflects an emphasis on legal aspects of corporate governance. However, care has been taken also to focus on managerial and accounting perspectives of corporate governance. It should be emphasised that this book deals primarily with corporate governance of large public corporations. It does not focus separately on small and medium-sized enterprises (SMEs), non-government organisations (NGOs) or public-sector corporate governance. It goes without saying that many of the good principles in corporate governance that are generally applicable to large public corporations are transplantable to other enterprises, organisations and governmental agencies.

Although grounded in Australian corporate governance, it will be apparent to the reader that international perspectives are interwoven throughout the book. In addition, there is a prominent multi-jurisdictional focus in Part Three, where the OECD Principles of Corporate Governance are discussed and where specific chapters address corporate governance debates in the USA, the UK, Canada, Germany, Japan and China. Readers familiar with the first edition will notice that separate parts on corporate governance in Canada, Japan and China have been added.

The second edition provides an extensive and comprehensive update, and expands the areas covered in the first edition. In the current Chapter 8 there is a broader focus on ‘accounting governance’, replacing the narrower focus on
CLERP 9 in the first edition. The chapter on business ethics (Chapter 14) has been expanded and greater attention devoted to the importance of business ethics. In Chapter 10 (Directors’ duties and liabilities), recent Australian cases (up to May 2010) in the area of corporate law and directors’ duties are included. We have also updated all references, including discussions of the most recent corporate governance reports and codes in Australia and in the other jurisdictions covered. The chapter on accounting and auditing (Chapter 9) has been expanded and updated to position the Australian jurisdictional characteristics in an international context.

There are five distinctive parts in *Principles of Contemporary Corporate Governance*, each carrying through a consistent theme: **Part One** introduces the reader to basic concepts on different types of board structures and company officers. **Part Two** focuses on corporate governance in Australia; **Part Three** adds an international perspective to corporate governance. Basic corporate governance principles in selected jurisdictions, including the USA, the UK, Canada, Germany, Japan and China are discussed, while the OECD Principles of Corporate Governance are also covered in some detail. **Part Four** deals with business ethics and possible future developments and trends in corporate governance.

We are confident that this edition will again broaden the perspectives and understanding of all people interested in corporate governance and corporate regulation and management, including company secretaries, compliance officers, judicial officer, lawyers, accountants, academics and students of law and business management.

We would like to thank James McConvill, second author of the first edition, for giving us permission to use the parts he prepared for the first edition, in this second edition of *Principles of Contemporary Corporate Governance*. Although several parts were changed extensively, there are still parts that we adopted in the second edition that we have not changed. We would also like to recognise James’ considerable input in the first edition. Circumstance beyond James’ control made it impossible for him to be an author of the second edition.

THE AUTHORS
May 2010
Preface to the first edition

Corporate governance concerns the manner in which corporations are regulated and managed. Corporations control a significant portion of the world’s wealth and other resources. The dominance of the corporation as the central agent in the market economy is increasing. Corporate behaviour impacts on every individual – often in very profound and significant ways. A fundamental tension in the corporate governance debate is balancing the profit making objective of corporations and company officers against broader social responsibilities owed to the wider community. This tension has not been adequately resolved. Thus, corporate governance is a very complex and controversial area of the law.

This book sets out to demystify corporate governance regulation. It explains the rules and principles that regulate corporate behaviour in Australia and a number of other jurisdictions, including the United States, the United Kingdom and Germany. As well as dealing with corporate governance regulation today, the book provides an extensive analysis of the wider moral and policy considerations underpinning corporate governance. It evaluates existing standards pertaining to corporate governance, makes proposals for change and suggests ways in which this area of law and practice can be made more coherent and principled. The book argues that corporate governance regulation and management is in need of fundamental reform and explains in detail the direction that these reforms should take.

The primary aim with Principles of Contemporary Corporate Governance is to extract and evaluate the core principles of this subject area. However, it also gives context to these principles by way of to-the-point discussions and explanations as well as through carefully selected diagrams, case studies and real-life examples of corporate governance practices.

The book is written for all people who have an interest in corporate regulation and management, including company officers, judicial officers, lawyers, accountants and students.

There are five distinct parts in Principles of Contemporary Corporate Governance, but they carry a consistent theme through the book. In Part One the reader is introduced to some of the most basic aspects regarding corporate governance, namely the meaning of the concept ‘corporate governance’; corporate stakeholders and participants; board structures (in particular the unitary and two-tier board structure); and types of company officers (executive and non-executive directors; alternate director; secretary, etc).
Part Two focuses on corporate governance in Australia, covering the ASX Corporate Governance Council's Principles of Good Corporate Governance and Best Practice Recommendations (applicable to listed companies), other corporate governance guidelines and recommendations, the main governance and accountability mechanisms under the Australian Corporations Act 2001 and the recent Corporate Law Economic Reform Program 9 (CLERP 9) reforms to the Act.

Part Three considers corporate governance in practice. Specific topics covered include board and committee structures and risk management policies; auditors and audits; and an overview of directors' duties and liabilities.

Part Four adds an international perspective to corporate governance. Basic corporate governance principles in selected jurisdictions such as the USA, UK and Germany are dealt with; the OECD Principles of Corporate Governance are also covered in some detail.

Part Five deals with some policy issues, and likely future developments and possible corporate governance trends.

We trust that our readers will find as much satisfaction in reading Principles of Contemporary Corporate Governance as we did in writing it.

Jean Jacques du Plessis, James McConvill and Mirko Bagaric
May 2005