

A Balancing Act – Issues Surrounding Board Diversity & Mandatory Gender Quota Legislation

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1. Introduction

I think it's really instructive to have some background about the person who is making the presentation. In my case, my mother was a lawyer, my wife is a Judge, my father was Polish, my mother was Austrian, my grandparents were Belgian, I grew up in England and I live in Australia.

Basically, I grew up believing that diversity was a way of life. Also, I have this absolutely, totally bizarre thought that fifty percent of the population might be as smart, bright and capable as the other 50%!

Because I think diversity is so important, I wanted to make sure that you were not just going to hear my opinions. So what I have done is to talk to more than 25 of the most senior women and men on Boards in Australia (1). Included amongst those are Catherine Livingstone (Chair at Telstra); Diane Smith-Gander (Chair at Chief Executive Women and Transfield Services); Catherine Tanna (CEO of Energy Australia, Member at the Reserve Bank Board and former Chair at British Gas in Australia); Sarah Ryan (Director at Woodside Petroleum and Earnest Partners) who tells me she is the only Australian on a top 20 Norwegian Board (Akastor); and Dawn Robinson, the former CEO at Myer Group. Dawn is now back in the United States, has been on a number of boards there and has some interesting perspectives on diversity. Finally, I should mention Jason Yeap. Jason is one of the most successful members of the Asian community including membership of a number of high profile Boards, including the National Gallery of Australia. I also thought it was important to talk to some of the senior members of the Executive Search community. They act as a gatekeeper for nominations to Boards, so it is important to understand how they think and operate as well as gathering their views and insights.

I would like to focus on five key issues – “Total Diversity versus Gender Diversity”; “Criteria for Selecting Boards”; “Focus for Action - ASX 200 or Wider?”; “The Cultural Challenge of Diversity”; and, to conclude, “Quotas, no Quotas or What?”

2. Total Diversity vs Gender Diversity?

It is interesting, in this context, to compare Norway and Australia. In Norway, eighty six percent of people are ethnic Norwegians ⁽²⁾. By comparison in Australia, twenty seven percent of us were born overseas, and more than fifty percent were born overseas or had one or more parents born overseas ⁽³⁾. What this means is, in the case of Norway, gender is a very obvious priority to pursue in terms of diversity. In Australia, it is more complex because we have what I call the forgotten fifty percent. So yes, we have fifty percent women but we also have fifty percent who are connected to other ethnic groups, other religious groups and other geographies. Personally, I think this is a great competitive advantage for Australia. We have a level of diversity and hence diversity of thought, which is very unusual, globally.

There are many types of diversity, all of which are very familiar: gender, race, country of origin and so on. I think, from a Board point of view, the most important concept is diversity of thought and that is why it is so important to have diversity on a Board. If you think about it, what are organisations primarily about? They are about being successful. If you are going to be successful, you need to have competitive advantage. You secure competitive advantage out of innovation, new ideas, new ways of thinking and you will get that from diversity of thinking. It is interesting, talking to different people about total diversity versus gender diversity – which should we focus on first, gender or total diversity? I was given different points of view. For example, Melinda Cilento who is on the Woodside Petroleum Board, said to me “Peter I’m not sure that we haven’t done ourselves a disservice by focusing on gender diversity, because the real story is about diversity of thought. So we should be looking at total diversity.” Dawn Robinson said that in the United States there has been a whole range of quotas aimed at ensuring the representation of the various minorities in organisations. She said to me that, “Whether it is Hispanics, whether it is black people or whether its women, it is really, really critical that we focus on all types of diversity.” Jason Yeap, representing the Asian community, had some really interesting insights. He said to me, “Diversity is so important that I could not care less which element of diversity receives first priority. I actually like the idea of gender going first. It is easy for people to understand, it is so straightforward. When you start looking into racial diversity in Australia, we talk about Asia. However, for those who have worked in Asia or visited there, they know that it is like saying ‘Europe’. So the Thais are very different from the Malays and both are different from the Singaporeans. Then you start considering the various regions of China. So women, as a group, are the most straightforward way to start on the road to diversity.”

I think the key learnings are that we need to understand what diversity means in Australia. It is not just about gender, it is about where you come from, it is about religion, it is about sexual orientation, it is about a whole lot of factors. We need to understand this first. We need to have a holistic view towards diversity but, and to quote Jason, “Any diversity is better than no diversity”. So let us pick the low hanging

fruit and go for gender diversity. An important theme is that diversity is a journey but we really need to accelerate, don't we!

3. Criteria for Selecting Boards

When I think about Boards and Board members, it reminds me of a story my father told me. My father was a doctor and he said to me, "Peter when you go to a doctor and the doctor tells you that you are ill, do not rely on him or her." The message was that we go to a doctor and we think they know everything! He said to me, "Just remember, doctors are like mechanics. Some doctors are good, some doctors are really awful and the majority of them are pretty average." That surely applies to Boards. Some Boards and Board members are good, some are bad and most are average. I have been on over twenty Boards and I have worked with some good directors and some really bad ones but most have been pretty average. That is why I think it is good to go for a structured approach. Can I give credit here to the Australian Institute of Company Directors (AICD) because its model of having a clear set of selection criteria gives a focus to Board structure and Board selection (4).

By the way, whilst I have been a CEO for a long time, I actually do not think it is a good idea to have a lot of CEOs on Boards. This is because my experience has been that many CEOs actually do not understand the separation of duties between the executive and the non-executive – they think they are still running the company and it is not a pleasant or effective experience for the CEO. Having said that, yes they need to be represented. However, there are a whole list of other skills, competencies and qualifications that are equally important and need to be included in the list. My main point is that we should add elements of diversity to this list. In this way, we can make sure that every time we are selecting a director we are considering the full range of skills and competencies that the Board needs. Also, that elements of diversity are among the key boxes that we need to tick to ensure that we get proper coverage.

Each Board has a different set of skills and competencies that it requires. There are two things that I think are absolutely mission critical in this context. Firstly, it is important to understand the stakeholders and their characteristics. This will include clients, staff, suppliers, shareholders, Government and the general public and it is necessary to model the skills and competencies around them. The same applies to strategy. If all Board members do not understand the corporate strategy, where it is taking the organisation and the people, skills and competencies that are needed, then the organisation will not be successful. These two critical elements are instructive to the key elements of diversity that a particular Board will require.

So, can diversity cause problems on Boards? Of course it can. It can be a really interesting dimension to be on Boards when there are lots of different points of view. To my mind, this really emphasises the importance of the role of the Chair. The Chair has to make sure that everybody has his or her opportunity to contribute and

their view to be understood. On this topic, it is worth considering the issue of “unconscious bias”. A number of the women that I talked to said to me “Peter, I think it is something about a women’s voice. You sit at a Board meeting, you say something and it is as if you have not been heard. Then, fifteen or twenty minutes later, one of the men says the same thing and everybody says “Oh! What a great idea, we must do that!”“ A lot of the women said to me that it is very difficult being the only woman on a Board. What is interesting is that a lot of strong personalities, people you would have thought would not have cared, were amongst those who mentioned this point. They told me that it is very important to have at least two or three women on a Board. On this subject, I must quote Cathy Walter who is Chair at Federation Square and Director at AFIC, Payment Systems Board, VFMC, Vic Opera, Vic Forests and WEHI. She said, “Peter, you have to be careful with this issue of unconscious bias. Everybody exhibits unconscious bias, no matter what their background”. I must say, I recently noticed that I am susceptible to it myself. You will be familiar with the company, Monadelphous. Monadelphous announced recently that they were going to promote their CFO to head up one of their major operations and they were going to promote their HR director to be CFO (5). If you think about this in the context of unconscious bias, how many people would say to yourselves “This is a bit strange. A HR person who is good at finance!” or perhaps even more strange would be thinking of a finance person who is good at HR!

Being a Chair has been described to me as being like conducting a symphony. It is being able to work with the people on your Board and make sure that the views of everybody are heard. If it is a woman on your board and she says something and people are not listening, then the Chair, male or female, has to make sure that person is heard. It is their responsibility. Mind you, I was talking to Andrea Hull who is Chair/Convenor of the Advisory Council at the ABC, and Deputy Chair of the National Museum of Australia and the Breast Cancer Network of Australia. She said to me, “Peter, it is easy. You just have to speak loudly. If you do not think they have heard you, then you just say it again. If you do not think they have heard you a second time, you say it a third time. I do that two or three times on my Boards and they hear me first time, every time, after that!”

Here are the learnings. You have to have a structured approach to Board selection, you must incorporate diversity into Board selection and you must recognise the importance of the Chair and the membership of the Nominations Committee. Make sure that there is at least one woman on the nomination committee to ensure that the selection procedure is appropriate. Make sure that you have the right Executive Search Consultant because they deliver what they think you want. If they think that the Board does not want women, they will not give you women and, of course, vice-versa. Your preferences and priorities need to be made very clear. Be vigilant for unconscious bias and, in my view, I do not think that a Board member deserves to be on the Board if they do not understand their stakeholders and the corporate strategy and markets.

4. Focus of Action – Australian Stock Exchange (ASX) 200 or Wider?

This is an easy question to answer, as it undoubtedly has to be wider. Reporting requirements by the ASX ⁽⁶⁾ and Workplace Gender Equality Agency (WGEA) ⁽⁷⁾ mean that we have knowledge and statistics for most organisations, albeit that they may be imperfect. The pressure coming from ASX reporting is clearly linked to the growth of the number of women on Boards. This has increased for the ASX 200 from 9% in 2010 to 18 % in 2014 ⁽⁶⁾. Granted this is not high enough but it has had an impact. But what about the other Boards? If you look at the statistics, the percentage of women on Boards decreases as you go from the ASX 50 to 100 to 200 to 500. When you go beyond the ASX 500, these companies are below the radar and, well, why do they need to care?

Many people are familiar with Stephen Mayne. He is a shareholder activist who goes to AGMs and really holds Boards to account. This is what we need to do – hold Boards to account. We should relate to the statement in the film *Network*, “I’m mad as hell and I ‘m not going to take this anymore!” ⁽⁸⁾. We, collectively, need to bring listed companies to account and tell them if they are not delivering. Tell them that it is not good enough and demand a better performance. Equally, the ASX and WGEA need to ensure that organisations report what they are required to do and report it in a thorough and adequate fashion. It is not acceptable for companies not to deliver what is required of them.

Let us now discuss Not for Profits (NFPs). Why do I think there are more women on NFP Boards than on other Boards? To be blunt, it may well be because many men are not as keen to go on them. Also, from the Board viewpoint, there may well be the perception that these Boards and thus the selection outcome is lower risk than for listed companies, hence greater preparedness to have female Board members. However, the other side of this argument is that NFP Boards are really good experience. I think it is very important to go on a Board, gain the experience, learn about corporate governance and be like my favourite Board members who actually understand a P&L! I think that NFPs are an excellent way to enable people to be involved with Boards – whether they are men or women. Government Boards are progressing well. I was at a “Women on Boards” function held by the State Government of Victoria recently. They have just exceeded their 40% target for women on State Government Boards. It is similar at the Federal level.

So what are the learnings? All organisations need to recognise and implement the benefits of diversity – it does not matter what size or type of organisation. Yes, focus on the ASX 200 – they have the exposure and give leadership by example. The data shows that particularly when we get to the ASX 50, a lot of companies are really delivering good diversity outcomes. However, with the lower listed (below the ASX 50) and the public unlisted, we need to measure, monitor, report and challenge – do not let them get away with non or poor performance. We should remember that any company with over 100 people has to report on diversity issues and so can be held

accountable (6)(7). We should focus on NFPs because they give us the entrée and education and, finally, we need to keep focusing on governments because we should and they should.

5. Resolving the Challenge of Diversity

This is a really good question. Why do so many people not get it? Why do they not understand that diversity makes sense? Why do we need to have all this research that tells us what is really blindingly obvious? As I said, a really good question! Let me tell a story that Dianne Smith-Gander, Chair of Chief Executive Women and Transfield Services, told me. She was a partner for McKinsey in the United States and she was working in their New York office. She received a call from the chief partner in their New Jersey office who said, "I want you to come and work for me". She said, "Why would I? New Jersey? Nothing ever happens there!" I apologise if this offends anyone from New Jersey! He said, "I want to build a really good team, I really value women in a way I do not think any of the other partners do". It was true, he really did. He saw a competitive advantage from bringing women in to his group. The proof of this is that he became one of the most senior partners in McKinsey and is now one of the most successful businessmen in the United States with a net worth of hundreds of millions of dollars. I am not worth hundreds of millions of dollars but I have seen the same thing. There is a competitive advantage that I have always played on right through my whole career. That is, if you recognise the value of women whether it is as executives or on Boards and include them in your teams, you will benefit, be more successful and secure a competitive advantage.

Going for meritocracy in Board selection is being given a bad name. Some people say that there is a shortage of adequately qualified women. My thinking is that in the ASX 200 there are just under 1500 board members. So if we want 50% women on ASX 200 Boards that is 750 women. How difficult is it to find 750 women out of the 11 million women who live in Australia? Or even the nearly 2000 women for the ASX 500? Yes, all the makings of a real shortage! Another interesting comment was from Siobhan McKenna who is Director at Ten Network Holdings and The Australian Ballet, Managing Partner at Illyria and former Chairman at NBN Co. She said to me, "Peter I do not understand any of this, I just treat people as people". That is a really strange and rather novel concept is it not, to treat people as people? In my view, this whole discussion on diversity is about valuing people for what they have and what they are. Indeed, meritocracy works if you value people for what they have and what they are. However, you also have to be prepared to take risks.

It is people's embedded culture and its consequences that essentially drive the issue of diversity. I think that people focusing on Boards and the Executive are missing a major part of the issue. Attitudes to diversity are driven by culture. It starts in the home, at schools, at tertiary institutions, at business schools, at law schools. If we do not influence people before they join organisations, then it is too late. There is a cultural factor built into the Australia psyche, which generates a resistance to gender

and other forms of diversity. At all levels, we need to educate and we need to have activism. We must have a thorough approach to cultural education and transformation.

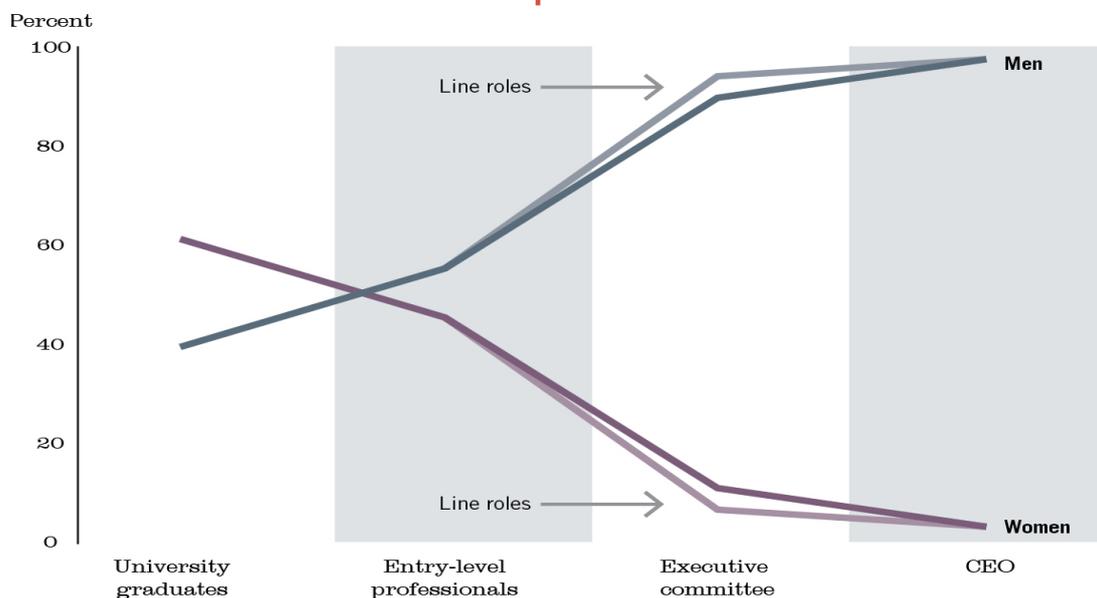
In some ways I think, “Who the hell cares about Boards! What impact do Boards have on the executives and general employees within a company? Do the majority of employees even know the names of Board members and who they are?” Being serious, of course Boards are important but executives are the ones that actually run and organise the company. We may be making some progress with women on Boards but this is not the case in the C Suite. Take the example of Norway, which is often seen as one of the global champions of Board Gender Diversity. According to a recent McKinsey study, latest comparable data showed that Norway had 34% of Board positions occupied by women but only 14% of senior executive roles ⁽⁹⁾. Whilst there had been significant improvement in the former there had been little change in the latter. Australia has not been any better. In 2013, the comparable numbers for the ASX 200 were 17% ⁽¹⁰⁾ and 10% (latest data 2012) ⁽¹¹⁾ correspondingly. Again, whilst there had been improvement in Board representation this was not the case with the C Suite. We must therefore ensure that there is diversity at all levels in organisations so that we can create the Board and Executive pools of the future.

One point in passing is that you have to look really closely at the data. Sarah Ryan, who is on the Woodside Petroleum Board and on the Accorsor Board (a top 20 Norwegian company), said to me, “You have to be careful in interpreting the data. Typically three out of say nine Board members on Norwegian Boards are workplace representatives. In many cases, all three are now women with the aim of supporting the achievement of the 40% quota. Also, if you look at the Norwegian Top 20 companies, the majority of the women from a commercial background who have been brought on to Boards to help fulfil the quota are not Norwegians but Swedish, English, American and even Australian!” This is not necessarily an issue because they are securing gender diversity but probably, in the Australian context, the injection of such a high level of foreign nationals would not be seen as an acceptable compromise.

The issue of the lack of representation by women at senior levels in ASX 200 companies is well illustrated by the chart “Gender Jaws” which is contained in the 2013 paper by the Australian Human Rights Commission on Male Champions of Change, *Accelerating the advancement of women in leadership: Listening, Learning, Leading* (see below). It demonstrates that as we move from graduate intake, where women are in the majority, to entry-level professionals, to executive committees to CEOs, there is a dramatic fall off in the percentage representation of women. In approximate terms, the percentage of women decreases from 60% to 45% to 10% to 3% respectively. The picture is even worse if one focuses on line roles as distinct from corporate roles. There is no other word for this than shameful.

So where are we creating the director pools of the future? One solution that many people see is the use of mentors to help people from all backgrounds to progress through their careers. Most of the women I spoke to (Jason Yeap echoed this from the viewpoint of the Asian community) made the point that having mentors is one of the key competitive advantages that men have over women. They believe (and in my view, correctly) that we have got to do much, much more about making sure that women have mentors, people who can advise and guide them and help them to climb the organisational ladder.

‘Gender Jaws’ – Representation in ASX 200 companies



Reference: McKinsey, *Women Matter: An Asian Perspective* (June 2012); WGEA, *2012 Australian Census of Women in Leadership*; Graduate Careers Australia, *Australian Graduate Survey 2012*

Reference: Male Champions of Change, *Accelerating the advancement of women in leadership: Listening, Learning, Leading* (Australian Human Rights Commission, 2013), Fig 8 “Gender Jaws” – Representation in ASX 200 companies, p 22

The key learnings are that we must have a holistic approach to changing cultural attitudes to diversity. Education is essential at all levels from the home to primary, secondary and tertiary institutions and then in organisations. We must ensure that diversity occurs at all levels in organisations so that we can create the diverse executive and Board pools of the future. We must not underestimate the importance of mentors and leading by example. To paraphrase Bill Clinton, “it’s all about culture, stupid.”

6. Quotas, No Quotas or What?

In conclusion we should address the question of “Quotas, No Quotas or What?” Interestingly, most of the people that I talked to were not really in favour of quotas.

Although, one might well say “Well, they are already on Boards so why would they care?” For example, Dianne Smith-Gander said to me, “It is a tool of last resort”.

Before we consider this final question, it is worth talking about quotas and targets. To be frank, the definitions are not clear; indeed I read an excellent paper on precisely this topic by WGEA ⁽¹³⁾. I think Norway has a very genuine quota system, if you don't perform there is potential retribution. Spain, in contrast, claims to have quotas but if organisations do not perform, all they have to do is a “please explain”. Personally, I do not understand the difference between a quota with a “please explain” and a target. We need to be very careful with our definitions here. A quota is not a quota unless it has a punitive element attached to it, if you do not deliver.

I believe in “Targets with Teeth”. I believe that organisations should have diversity targets, which are transparent to their shareholders, to their employees and the general community. These targets should cover Boards, the C Suite, senior executives and middle executives all the way down through the organisation. If organisations do not perform, then they need to explain clearly the remedial action they propose to take. The same should apply within the organisations. Since delivering on KPIs is what most organisations understand best, their incentive systems should be linked to delivering on diversity targets, as should their performance appraisals. I cannot underline more, the importance of the Chairman, and even more so the CEO, in championing diversity and making sure that this all happens. By the way, I am actually quoting Ruth Medd, CEO of Women On Boards, who said to me, “Peter, it's all about quotas by stealth”. My conclusion therefore is that we need “Targets with Teeth and Quota by Stealth” with “Legislated Quotas being the Tool of Last Resort”.

What else could we do? We could review Board turnover. If Board members are there for nine years then you only turn over around 11 % of a Board every year. This makes Boards inherently conservative and risk averse, because if you have somebody as a fellow Board member for all those years you are inevitably going to be careful about whom you select. You are going to want them to fit in or, as Sir Humphrey of Yes Prime Minister would say, you want them to be “One of Us” ⁽¹⁴⁾.

Board and Board member performance needs to be regularly evaluated and non-performance needs to have consequences. It was so much fun for me being a turnaround CEO because CEOs get sacked every day. Board members rarely do. This needs to change. We need to manage the “M Effect”. The M Effect is when a woman joins a company. First of all she is successful, is promoted and progresses up the M incline. The woman then has a family and heads down the M decline. The shape of the rest of the M depends on how well the company manages the woman through this period. Maintaining contact is very easy electronically and managing a progressive re-entry can lead to a robust M. It is a mix of companies mitigating the M Effect and also Government. Government can really help, whether it's through more childcare spaces, tax deductions or other methods.

7. Conclusion

The final learnings are that we need to have deliverable, measurable and rewardable “Targets with Teeth” for all levels in an organisation. Effectively, we are after “Quotas by Stealth”. Legislated quotas should be a tool of last resort. We should facilitate, enable and cajole Boards to embrace diversity. Organisations should mitigate the M Effect and use Government led enablers. Leadership, mentoring and exemplars are crucial. One point that Jason Yeap made to me really resonated. He said, “Peter, Boards must be prepared to take risks. If you’ve got a choice between two people who fit the bill, just take the risk and make the selection based on diversity”.

Finally, just to prove that I practice what I preach! I have just gone on to the Advisory Board of a UK company called 8over8 Ltd. It is a global leader in contract risk management solutions for the oil and gas industry. A woman recommended me and the Chair is a woman!

References

A. Subjects Interviewed

1. The following kindly agreed to be interviewed by me for the purposes of this article:

Melinda Cilento, Director at Woodside Petroleum, Wesfarmer’s Insurance and Co
Chair of Reconciliation Australia

Rebecca Dee Bradbury, Director at GrainCorp, TOWER and Bluescope Steel

Jo Fisher, Managing Director at Jo Fisher Executive Group and Winner Telstra
Business Women’s Award

Kerry Gardner, Director of The Australian Institute of Art History, The Myer
Foundation Arts and Humanities Committee, Green Cross Australia

Debbie Goodin, Director at Senex Energy, oOh! and Deputy Chair at City West
Water

Andrea Hull AO, Chair/Convenor Advisory Council at ABC, Deputy Chair of National
Museum of Australia and Breast Cancer Network of Australia, Director at Florey
Neuroscience Institutes and Professor emeritus at the University of Melbourne

Kevin Jurd, Board and CEO Succession Practice Leader, Australasia at Spencer
Stuart

Janine Kirk, CEO at The Prince’s Charities Australia and former Chair of Tourism
Victoria

Catherine Livingstone AO, Chair at Telstra, Director at Worley Parsons, President at
the Business Council of Australia and at the Australian Museum Trust

Rebecca McGrath, Director at CSR, Goodman Group, Incitec Pivot and OZ Minerals

Siobahn McKenna, Director at Ten Network Holdings and The Australian Ballet,
Managing Partner at Illyria and former Chairman at NBN Co.

Ruth Medd, Chair at Women on Boards

Chloe Munro, Chair and CEO at Clean Energy Regulator and former Chair at Aquasure

Susan Oliver, Founding Chair at Scale Investors and Director at Simonds Homes, CNPR, Coffey International and The Melbourne Chamber Orchestra

David Pumphrey, Partner Emeritus at Heidrick & Struggles

Ruth Rentschler, Professor and Chair in Arts & Entertainment Management, Faculty of Business & Law, Deakin University

Dawn Roberston, CEO at Deb Shops and former MD at Myer Stores

Sarah Ryan, Director at Woodside Petroleum, Akastor and Earnest Partners

Nora Scheinkestel, Director at Telstra, Macquarie Atlas Roads and Orica

Carol Schwartz AM, Chair at Women's Leadership Institute Australia Director of Trawalla Group and Member of Advisory Board at Qualitas Property Partners

Diane Smith-Gander, Chair at Chief Executive Women and Transfield Services and Director oat Wesfarmers

Karen Spinley, Partner at Heidrick & Struggles

Catherine Tanna, CEO at EnergyAustralia, Member of Board at The Reserve Bank of Australia and former Chair at British Gas in Australia

Cathy Walter, Chair at Federation Square and Director at AFIC, Payment Systems Board, VFMC, Vic Opera, Vic Forests and WEHI

Jennifer Whelan, Managing Director at Psynapse Pschometrics and Research Fellow at Melbourne Business School

Jason Yeap OAM, Chairman of Mering Corporation and Herbaceous Holdings, Member of the Council of The National Gallery of Australia, Director of Murdoch Childrens Research Institute and Member of the Trade and Investment Policy Advisory Council

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