

## **The lack of cultural diversity in Australian business leadership: Lessons from AMP and the consequences for corporate governance and business performance**

***Gisela Nip***

The hearings of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Royal Commission**) have revealed evidence of significant wrongdoing by Australia's major banks and financial services providers over the past decade, including alleged bribery, forged documents, improper charging of fees, and failure to comply with due processes for loans and insurances. The Royal Commission hearings have also revealed that we still have a problem with women in leadership, which reared its ugly head in the wake of AMP's admissions of serious misconduct and the subsequent disintegration of AMP's senior leadership, including the resignation of all of AMP's female directors. However, while issues of gender diversity are topical, and most organisations have committed to achieving gender diversity, there remains little serious public debate regarding the lack of cultural diversity in Australian business.

Cultural homogeneity on Australian company boards and in senior leadership roles within organisations has a number of effects, two of which will be examined in this essay. Firstly, it is questionable whether directors and other officers can properly and fully discharge their duty to act in the best interests of the company without a diverse range of viewpoints contributing to corporate decision-making. This leads to inferior corporate governance outcomes and corporate cultural failings. Secondly, a lack of cultural diversity results in inferior business performance, decreasing the profitability of companies and creating a sub-optimal management team.

The lack of cultural diversity among senior management and boards of Australian public companies may stem from unconscious bias or prejudice that Anglo-Celtic Australians may have towards other ethnic backgrounds. A solution that has been proposed by some commentators is one used by many organisations to achieve and promote gender equality: the introduction of quotas or targets. This essay argues that, despite the criticism of quotas and targets that has arisen from the corporate governance failures at AMP, improved decision-making and business performance are likely to result from a renewed focus on cultural diversity by Australian business.

### **1. The AMP experience**

The issue of equal gender representation in business leadership has become contentious again in 2018. The merits of gender targets have been fiercely debated following the resignation of former AMP Chair Catherine Brenner in the wake of the Royal Commission.

Ms Brenner, a former investment banker who was appointed as a non-executive director of prominent ASX-listed companies Coca-Cola Amatil in 2008 and Boral and AMP in 2010, was elected as Chair of AMP in June 2016. By the end of April 2018, Ms Brenner had resigned from the Board of AMP following the Royal Commission hearings.<sup>1</sup> AMP's two other female directors also subsequently resigned.

In the wake of Ms Brenner's resignation, there has been significant commentary regarding the role that gender played in her appointment and conduct as a director and then as Chair of AMP, and ultimately in her resignation. A prominent (male) director of various ASX listed companies was quoted in the *Australian Financial*

Asian Australian Lawyers Association William Ah Ket Scholarship 2018 – Gisela Nip  
*Review* as saying that “*the AMP board got caught up in the gender argument*” in appointing Ms Brenner as Chair.<sup>2</sup>

This comment neatly draws out the gender debate at play – that Ms Brenner had been promoted “above her station”, that she only occupied her position by virtue of being a woman, and that she was the product of the gender diversity guidelines published by the Australian Securities Exchange (**ASX**) in its Corporate Governance Principles and the targets adopted by many ASX company boards to appoint a certain number of women. One director commented that:<sup>3</sup>

[Ms Brenner] really has had a gold-plated ride, and although a nice person, is a good example of intentional gender bias getting the wrong result.

Rather than focus on Ms Brenner’s lack of prior business experience, her reputed preference for networking over immersing herself in the detail of the companies of which she was a director, her career trajectory as an investment banker, and the myriad of management and cultural problems that plagued AMP (all of which have been reported),<sup>4</sup> much of the criticism levelled at Ms Brenner conflates her performance with her gender.

Joe Aston identifies the source of this criticism as follows:<sup>5</sup>

[M]embers of the stale, Collins Street mafia – albeit Anglican and violent only in the extremity of its self-regard – can no longer divide the public market’s plum gigs among each other as their daddies did. But how is constructing a club of gender to usurp one of class the answer to any question of talent?

This misapprehension that Ms Brenner’s failures are a consequence of gender targets – rather than her lack of appropriate skills and experience for the role she occupied – illustrates one of the risks involved in introducing diversity targets (gender or cultural) for ASX-listed company boards. Despite directors of all gender and cultural backgrounds failing to discharge their role successfully for a variety of legitimate reasons, anyone who appears to have been appointed as a result of targets or quotas faces substantial additional media scrutiny. In these circumstances, failures are magnified and used to justify maintaining the status quo.<sup>6</sup>

## 2. The gender debate

The issue of gender diversity and the recognition of female talent are currently in the public spotlight, not just as a result of the events associated with AMP. Indeed, the

---

<sup>1</sup> Deborah Snow, 'The Rise and Fall of AMP's Catherine Brenner', *The Sydney Morning Herald* (Sydney), 1 June 2018.

<sup>2</sup> Karen Maley, 'The AMP Board Picked Catherine Brenner over Andrew Mohl', *The Australian Financial Review* (Melbourne), 3 May 2018.

<sup>3</sup> Karen Maley, 'Catherine Brenner's Formula for Climbing the Corporate Ladder', *The Australian Financial Review* (Melbourne), 30 April 2018.

<sup>4</sup> *Ibid.*

<sup>5</sup> Joe Aston, 'Catherine Brenner the Least of AMP's (and Corporate Australia's) Gender Problems' (Melbourne), *The Australian Financial Review*, 2 May 2018.

<sup>6</sup> Aston, above n 1.

current debate stems largely from high profile, international movements such as Time's Up and #metoo. These events (and those associated with AMP and the Royal Commission) shine a light on the sexism that still prevails in contemporary society. Women continue to struggle to reach positions of senior leadership and when they do become senior leaders, they are placed on a pedestal and are constantly being asked to prove their worth in the role, as we saw with the demise of Ms Brenner at AMP.

It is therefore unsurprising that research indicates a limited level of female participation or representation on boards of larger Australian listed public companies.<sup>7</sup> The low proportion of female directors in Australia may be explained by the reluctance of publicly listed companies to consider the possible benefits of greater gender diversity in board composition or an unwillingness to adjust their practices to encourage diversity.<sup>8</sup> This reluctance is baffling in light of the relevant research, which shows that there is a positive correlation between greater levels of gender diversity at executive level in organisations and higher likelihood of financial outperformance.<sup>9</sup>

With slow progress and debate enduring about the merits of gender diversity, it raises the question for Australian business as to whether it is worthwhile to pursue deliberate strategies to improve cultural diversity.

### 3. What about cultural diversity?

Concerns about cultural diversity are still commonly integrated into discussions about gender diversity. While there are undoubtedly similarities in the challenges for increased gender and cultural diversity in leadership, the issues are not identical.<sup>10</sup> The subject of cultural diversity in leadership deserves to be explored in its own right. Doing so is a necessary step given Australia's multicultural landscape.

Gender is only one aspect of board diversity, but it is an obvious one and has received the most attention in studies on Australian companies.<sup>11</sup> The available data on other aspects of diversity – for example, cultural diversity – is limited.<sup>12</sup> While federal legislation requires companies with 100 or more staff to collect and report on gender equality data,<sup>13</sup> organisations do not have an obligation to collect cultural diversity data. Measuring cultural diversity is also more complicated than measuring gender diversity, as there is often multiplicity to one's cultural background.

Cultural background refers primarily to a person's ethnicity and ancestry.<sup>14</sup> This year, the Australian Human Rights Commission (**AHRC**) revisited its previous research from 2016 regarding cultural diversity and inclusive leadership, and published a report of its findings (**AHRC Report**). The AHRC Report adopts a classification that divides people into four wide groups of cultural backgrounds: Indigenous, Anglo-Celtic, European and non-European:<sup>15</sup>

- (a) Indigenous: Aboriginal or Torres Strait Islander cultural background;
- (b) Anglo-Celtic: English, Scottish, Welsh and Irish cultural backgrounds;

<sup>7</sup> Richard St John et al, 'Diversity on Boards of Directors' (Report, Corporations and Markets Advisory Committee, 2009) 26.

<sup>8</sup> Ibid 28.

<sup>9</sup> Vivian Hunt et al, 'Delivering through Diversity' (Report, McKinsey & Company, 2018) 10.

<sup>10</sup> Tim Soutphommasane et al, 'Leading for Change: A Blueprint for Cultural Diversity and Inclusive Leadership Revisited' (Report, Australian Human Rights Commission, 2018) 3.

<sup>11</sup> St John et al, above n 7, 23.

<sup>12</sup> Ibid.

<sup>13</sup> *Workplace Gender Equality Act 2012* (Cth) s 13.

<sup>14</sup> Soutphommasane et al, above n 10, 4.

<sup>15</sup> Ibid.

- (c) European: all European backgrounds other than Anglo-Celtic, including North-West European (e.g. German, French, Dutch), and Southern and Eastern European (e.g. Italian, Greek and Polish); and
- (d) Non-European: all other cultural backgrounds, including South-East Asian (e.g. Vietnamese, Malaysian), North-East Asian (e.g. Chinese Japanese, Korean), Southern and Central Asian (e.g. Indian, Sri-Lankan, Afghani), Latin American (e.g. Mexican, Colombian), Middle Eastern and North African (e.g. Egyptian, Turkish), Sub-Saharan African (e.g. Nigerian, Zimbabwean), and Oceanic and Pacific Islander (e.g. Maori, Tongan).

The AHRC Report examined senior leaders in Australian organisations, including business, politics, government and higher education. The study found that the cultural diversity of Australia is drastically under-represented within Australia's senior leadership.<sup>16</sup> Of those who occupy 2,490 of the most senior positions in Australia, 75.9 per cent are Anglo-Celtic, 19 per cent are European, 4.7 per cent are non-European and 0.4 per cent are Indigenous.<sup>17</sup> In other words, about 95 per cent of senior leaders in Australia are of Anglo-Celtic and European background.

Of the 372 chief executives in the Leading for Change study, 76.9 per cent of chief executives are Anglo-Celtic, 20.1 per cent are European and 2.7 per cent are non-European.<sup>18</sup> Only one chief executive has an Indigenous background (comprising 0.3 per cent of the sample group).<sup>19</sup> This means that 97 per cent of chief executives in Australia have an Anglo-Celtic or European background. Further, of the 2,118 senior executives sampled in the AHRC Report, 75.7 per cent have an Anglo-Celtic background, 18.9 per cent have a European background, 5 per cent have a non-European background and 0.4 per cent have an Indigenous background.<sup>20</sup> The AHRC described these statistics as "*dismal...for a society that prides itself on its multiculturalism and egalitarianism*".<sup>21</sup>

Taking a more specific example, cultural diversity is almost non-existent in the higher echelons of the legal profession.<sup>22</sup> In 2015, the Asian Australian Lawyers Association found that although those with Asian cultural backgrounds make up about 10 per cent of the general population, they only comprise 3.1 per cent of partners at law firms, 1.6 per cent of barristers and a mere 0.8 per cent of the judiciary.<sup>23</sup>

The statistics are likely to be indicative of issues of discrimination in employment. For example, research indicates that those from non-European backgrounds experience more significant discrimination in employment. One study found that having a Chinese or Middle Eastern name can mean a job seeker may need to apply 68 or 64 per cent more times, respectively, than someone with an Anglo-Celtic name before being invited for an interview.<sup>24</sup> Another study has found that those with an Anglo-Celtic or European name are three more times more likely to be invited for an interview.<sup>25</sup> More generally, discrimination and racial prejudice are still prevalent in Australia. In the last

<sup>16</sup> Soutphommasane et al, above n 10, 7.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid 9.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid 11.

<sup>21</sup> Ibid 9.

<sup>22</sup> Ibid 28.

<sup>23</sup> Asian Australian Lawyers Association, 'Cultural Diversity Report' (Report, Asian Australian Lawyers Association, 2015).

<sup>24</sup> Soutphommasane et al, above n 10,14.

<sup>25</sup> Ibid 14.

12 months, 20 per cent of Australians have experienced discrimination based on the colour of their skin, religion or ethnicity.<sup>26</sup>

#### 4. The effects of a lack of cultural diversity on corporate governance

The appalling statistics on cultural diversity in Australia (and particularly in business) raise important questions regarding corporate governance. For example, are the officers and leadership of an Australian public company actually capable of individually and collectively discharging their duties to shareholders and other stakeholders without input from people who are representative of those groups? Can a group of men, mostly aged in their 60's and 70's from an Anglo-Celtic background, properly consider the impact of their decisions on stakeholders (including shareholders, employees and the community) that have a vastly different cultural and gender composition?

It is beyond the scope of this essay to delve deeply into the content and case law regarding the duties owed by Australian company directors and other officers. Instead, this essay will focus on the duty that requires Australian directors to act in good faith in the best interests of the company,<sup>27</sup> and will examine whether consideration of a diverse range of views (reflective of the company's stakeholders) is either necessary or desirable in order for directors and other officers to discharge those duties.

Professor Ian Ramsay and Shelley Marshall neatly summarise the case law and commentary in Australia regarding the meaning of "acting in the best interests" of the company as follows:<sup>28</sup>

... as a general proposition, acting in the best interests of the company generally means acting in the interests of shareholders as a general body. The directors are able, but not required, to consider the interests of non-shareholder stakeholders, and where they do, such consideration needs to be done with a view to the benefit of the shareholders. However, in some circumstances, directors can consider the interests of non-shareholder stakeholders without there being any derivative benefit for shareholders. The only such situation that courts have clearly identified is where the company is insolvent or is close to insolvency or some contemplated transaction threatens the solvency of the company.

The authors then discuss the findings of empirical research which indicates that a majority of Australian company officers had a "stakeholder understanding" of their obligations and believed that acting in the best interests of the company meant they are required to balance the interests of *all* stakeholders.<sup>29</sup>

Although there is an ongoing debate among corporate law academics and practitioners about the extent to which company officers can take into account non-shareholder interests, it is clear that for senior leadership in Australian business, the community, creditors and the environment are all front of mind when making decisions.<sup>30</sup>

In this context, if business leadership involves weighing up the interests of a diverse range of stakeholders and that diversity is not reflected in the cultural and gender diversity of those leaders, it is not a stretch to assert that those interests will not be properly considered. Indeed, there have been many such examples from the Royal

---

<sup>26</sup> Ibid 23.

<sup>27</sup> *Corporations Act 2001* (Cth) ss 180-181.

<sup>28</sup> Ian Ramsay and Shelley Marshall, 'Stakeholders and Directors' Duties: Law, Theory and Evidence' (2012) 35(1) *University of New South Wales Law Journal* 291 – 316.

<sup>29</sup> Ibid 311.

<sup>30</sup> Ibid 292-293.

Commission, including the egregious behaviour of certain financial services corporations misleading Aboriginal and Torres Strait Islander people, without any representation by an Aboriginal or Torres Strait Islander person on the board of those corporations.<sup>31</sup>

Dr Simon Longstaff AO, writing for the Ethics Centre in 2016,<sup>32</sup> summarises his views regarding the intersection of directors' duties and the need for directors and other officers to come from a diverse range of backgrounds:<sup>33</sup>

... allowing for the principle that directors have general duties, under the *Corporations Act 2001*, to discharge their duties with the degree of care and diligence that a reasonable person would exercise... it is difficult to see how a company director could claim that they had acted with "care and diligence" while ignoring, or only partially engaging, with issues of corporate culture... a capacity to examine and shape corporate culture may not sit within the scope of expertise of most company directors – who will often be at more home considering issues of finance or performance of a kind that can be reduced to hard metrics. Given the central role that culture plays in managing risk and driving performance the observation about traditional areas of expertise is just one more argument in favour of increasing board diversity (not just in terms of gender – but also, background, experience and skills).

Dr Longstaff's paper highlights the legal and governance need for cultural diversity in Australian business. Given the majority of directors currently take into account a diverse range of stakeholder interests in making decisions, it is imperative that those directors are able to accurately reflect the diversity of cultural and gender backgrounds in order to make decisions that are in the best interest of their shareholders. Directors and other officers necessarily require different skills, experiences and viewpoints to understand the interests of their stakeholders, and oversee the conduct and strategic direction of a diverse business.

## 5. The case for cultural diversity in business leadership

This is not just a legal and governance argument; there is also a compelling business case for organisations to embrace cultural diversity. Cultural diversity improves a company's ability to find and maintain talent, which then improves decision-making and performance. McKinsey & Company recently conducted an international study of gender and ethnic diversity with a sample of over 1,000 companies in 12 countries, and found that companies with the ethnically diverse executive teams were 33 per cent more likely to outperform their peers on profitability, while companies in the top-quartile for gender diversity on their executive teams were 21 per cent more likely to have better profits than the companies with less gender diversity.<sup>34</sup> Conversely, there appears to be a penalty for executive teams that are not ethnically diverse: those that are not ethnically diverse were 29 per cent more likely to underperform their peers on profitability.<sup>35</sup> It may be the case that the correlation between ethnic diversity and profitability is even higher than that between gender diversity and profitability.<sup>36</sup>

McKinsey & Company also found that companies with the most culturally diverse boards worldwide were 43 per cent more likely to achieve higher profits.<sup>37</sup> These

<sup>31</sup> Australian Broadcasting Corporation, *Banking Royal Commission Hears How Funeral Insurance Targets Indigenous Customers* <<http://www.abc.net.au/news/2018-07-03/banking-royal-commission-live-blog/9934454>>.

<sup>32</sup> Simon Longstaff, 'Corporate Culture and the Duties of Directors' (Report, The Ethics Centre, 2016).

<sup>33</sup> *Ibid* 14.

<sup>34</sup> Hunt et al, above n 9, 8, 12.

<sup>35</sup> *Ibid* 15.

<sup>36</sup> Soutphommasane et al, above n 10, 15.

<sup>37</sup> Hunt et al, above n 9, 13.

findings indicate that cultural diversity on executive teams correlates strongly with the financial performance of a company. Accordingly, an inclusive company culture is likely to increase the effectiveness in an organisation.<sup>38</sup> Further, cultural diversity at the highest echelons of an organisation could serve as a signal to employees and other stakeholders that the company understands and values the diverse customers they serve.<sup>39</sup>

## 6. Particular problems faced by culturally diverse women

Research shows how women of cultural diverse backgrounds suffer a "double whammy" when it comes to leadership.<sup>40</sup> As a result, there are few culturally diverse women in senior leadership.

For example, if ASX directors were reduced to a sample of 100 people, approximate two would be culturally diverse women, six would be Anglo-Celtic women, 28 would be culturally men and 64 would be Anglo-Celtic men.<sup>41</sup> These statistics indicate that Australian culturally diverse women face a "double jeopardy" in relation to leadership, which means that their gender and cultural background render it twice as difficult for them to access leadership roles as compared to non-culturally diverse women and culturally diverse men.<sup>42</sup> This double jeopardy creates organisational barriers exclude culturally diverse women from accessing leadership positions in their organisations.<sup>43</sup>

## 7. Practical steps

In light of the business case for cultural diversity on boards and in other senior leadership roles within organisations in Australia, what are the next steps in encouraging more cultural diversity in business?

It is important to remember that while organisations may implement structural change, people must be prompted into genuine sympathy; they need to care. This may be achieved through people sharing their stories and lived experiences of discrimination in a way that challenges others to reflect on their own experiences.<sup>44</sup>

### *Setting targets, not quotas*

There is a persuasive case for including targets in cultural (and other) diversity measures in organisations. Targets for increased diversity are useful in helping companies satisfy indicative measures of diversity.<sup>45</sup>

A target is not the same as a quota: a target is a voluntary goal, while quotas are imposed on a company by an external body.<sup>46</sup> Targets are often embraced by an organisation; studies on quotas and targets show that "ownership" of goals by an organisation improves the likelihood of achieving them.<sup>47</sup> Imposing quotas on private sector companies is not desirable; given the principle that the board should represent

---

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Jane O'Leary et al, 'Cracking the Glass-Cultural Ceiling: Future Proofing Your Business in the 21st Century' (Report, Diversity Council Australia, 2017).

<sup>41</sup> Ibid 7.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Soutphommasane et al, above n 10, 23.

<sup>45</sup> St John et al, above n 7, 41.

<sup>46</sup> Soutphommasane et al, above n 10, 21.

<sup>47</sup> Ibid.

its shareholders, there would be obvious dangers in any initiative to limit their choice and dictate elements of board composition.<sup>48</sup>

As with the gender debate discussed above and illustrated by Catherine Brenner's demise at AMP, some consider cultural diversity targets as undermining merit. However, the notion of meritocracy presumes a level playing field.<sup>49</sup> The use of targets may help to achieve a more even playing field and allow less culturally skewed assumptions about leadership to prevail. While targets and quotas tend to incite fear of attack on meritocracy, it is helpful to remember that there are many contexts outside of gender and cultural diversity where informal quotas are already in play in appointments relating to senior leadership. For example, appointments to government cabinets in Australia are made with consideration to factors such as geographic representation or political parties.<sup>50</sup> Further, appointments to the boards of companies sometimes reflect factors such as ownership or shareholdings.<sup>51</sup> In these examples, merit is not the sole consideration. It seems inconsistent to insist that gender and cultural targets should be criticised as the antipathy to meritocracy.

While targets are necessary in effecting change, they are not enough to achieve more equal representation of cultural diversity in organisations. They should be implemented alongside policies that encourage the development of diverse talent because sustainable change will only occur if action is systemic and embedded in organisations.

#### *Amend the ASX Corporate Governance Principles*

Consistent with the current drive for gender balance within corporations, the ASX Corporate Governance Council has made some amendments to its principles, which require companies to establish policies for, and increase reporting on, board diversity. It has been suggested that a specific reference to cultural diversity should be included in the commentary of the ASX Corporate Governance Council to reinforce the desirability of adopting an open approach to the identification of board candidates.<sup>52</sup>

Notwithstanding the criticism of Ms Brenner in light of the systematic governance failures at AMP, the steady increase in gender diversity on listed company boards since the introduction of diversity guidance in the Corporate Governance Principles shows the valuable role that this type of approach can play in improving diversity outcomes.

## **8. Conclusion**

While gender diversity is important, it is just as crucial to make efforts to improve cultural diversity within leadership in organisations. There is a corporate governance need for boards to reflect the background of their shareholders and other stakeholders, and it is doubtful that directors can accurately deliberate on the needs of these groups while boardrooms remain culturally homogenous. The business case for cultural diversity is also compelling and extremely relevant; the statistics on improved business performance should incentivise companies to embrace diverse leadership. Despite the criticism of quotas that has arisen from the corporate governance failures at AMP, it is incorrect to attribute the use of measures such as quotas with business failures – the reality is that businesses may fail regardless of the gender or cultural background of its management. Fundamentally, there is a legal and business

---

<sup>48</sup> St John et al, above n 7, 9.

<sup>49</sup> Soutphommasane et al, above n 10, 22.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> St John et al, above n 7, 36-37.



performance need for greater cultural diversity in Australian business, and the gender debate arising from AMP's governance failures should not overshadow the importance of this need.