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**Power and influences on the  
Board's agenda: Who  
determines what  
corporate directors  
discuss?**

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## **ABSTRACT**

Little is known about who controls the board agenda. The aim of this research is to learn how the board's agenda is set and who dictates what directors discuss. It seeks to understand if the agenda is controlled by those company directors who are charged with responsibility for the firm's governance, or, left to others (either inside or outside the corporate organisation) to shape the content, formally or informally, of what gets discussed in the boardroom. This research is designed to open the black box of board process described by Leighton and Thain (1997). It also continues to close the knowledge gap of in-depth understanding of boards as suggested by Le Blanc and Gillies (2001). The research focuses on the internal workings of the corporate board this time directed at board agenda-setting, examined through the contributions of the directors themselves. Adopting the concept of middle range theorising (Merton, 1968) it draws on the paradigm of agenda-setting developed in the field of communication studies by McCombs and Shaw (1972). It examines the power and influence on content and issues of inclusion or exclusion in the agenda. The study proposes a theory that directors have ignored this critical area of agenda process and, therefore, perhaps by abdication or omission, have allowed others to dominate this space and control the issues being debated and, as a consequence their influence over the corporate decisions being made. The study utilises a mixed methodology through a survey questionnaire of directors (specifically focussed at New Zealand publicly listed boards) and, from that same population, focus groups of directors drawing on representatives of each director category of chairman, executive director and non-executive director using a Delphi technique. The work attempts to provide information on the important first step of how boards actually work in practice. It utilised a unique opportunity provided by the researcher to access, first hand, publicly listed company directors.

The results showed that directors have a passive acceptance of established systems of agenda-setting and no formal accepted methodology on how this duty should be addressed. This passivity is discussed in terms of power cliques within the board under the concept of "the Olds' passive parsley syndrome" (Kristie, 2009). While there is generally a belief among directors that the agenda is not subverted or hijacked there was no trace of proactive audit to ensure against that outcome. Two of the most

interesting questions raised by the research for further thought are, firstly, how does the board select its chairman when so much seems to pivot around that role; and, secondly, what is the extent of director knowledge of the corporate (actual versus perceived), that is, what directors really know about the companies for which they are responsible. The study suggests that director independence and other factors such as age, experience, ability, ethnicity and gender all take second place to the most important feature of competent and transparent boardroom process.

Most studies on board process, including this, are limited in scope (Zahra & Pearce, 1989) so this research has a very specific focus aimed at a finite area of decision making to assist the process of future inquiry into corporate boards. The results identify who should take ultimate responsibility for a corporate's failure to perform and suggest these findings can be applied in other contexts such as among Crown companies, State Owned Enterprises and Crown Research Institutes in New Zealand as well as publicly listed companies offshore.

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# CHAPTER ONE: INTRODUCTION

## 1.1 THE STUDY

This research continues the search to view the internal workings of the corporate board - the black box or black hole (Leblanc & Gillies, 2001) of board process. However, unlike other studies of boards it focuses on the first decision-making process of an extant board, namely, governance agenda-setting. It follows the concept of “thorough examination” being necessary to solve the many mysteries of corporate governance as suggested by Gillies and Morra (1997, p. 71). The research attempts to fill a gap in governance knowledge and clarify who, through their power and influence on that agenda, controls the parameters of director discussions (what is it that directors talk about). The aim of this research is to lift the curtain of secrecy and learn who drives the board’s agenda; directors, management, or, other forces unseen and/or unforeseen and how those with power and influence determine what issues directors include or exclude in their various forums.

It is important to understand governance agenda-setting as part of the inner workings of the board as a decision-making body and, as Leblanc (2004) points out, getting data on board processes is not easy and much more research is needed. In knowledge terms Leblanc commented that this was the beginning of a very important journey. That was reinforced by Daily, Dalton and Rajagopalan (2003, p. 371) who stated that “our knowledge of what we know about the efficacy of corporate governance mechanisms is rivalled by what we do not know.” Stevenson and Radin (2009) added weight to this view and commented:

Further research is needed on the process of decision-making on boards. As others have advocated (Daily et al., Letendre, 2004), there is a need for more process studies of board decision-making to make the social dynamics of boards more transparent. If a researcher could get access, there are interesting questions raised here about the effects of cliques and ties on influence. (p. 40)

Pettigrew and McNulty (1999) went further and commented that more was known about who sat in boardrooms of the United Kingdom, who they sat next to and how

much they were paid, than what the directors actually did. This all meant, according to Pye (2001), a need to focus on the back-stage activity to understand what appeared front of stage. In other words, what the public see of boards in action (that is, the front of stage) needs to be seen in the context of an understanding and knowledge of how boards actually work behind the scenes. This traditional aspect of board secrecy will be discussed further in Chapter Two but, as Zahra and Pearce (1989) point out, in the absence of this information it is difficult to prescribe changes in board process.

The present research aims at answering some of those effects as they apply in terms of the Leighton and Thain (1997) “black hole” of agenda-setting process. Useem and Zelleke (2006), in their study of American boards, commented that chief executives still drive the issues that come before a board but they considered non-executive directors likely to exercise more control of this in future. There are no similar studies of New Zealand boards with a specific agenda focus. Other studies, such as Felton (2004), cover agenda-setting as a small part of a broader study but not as a prime objective. The importance of covering this gap in governance knowledge is articulated by Lewis and Considine (1999, p. 393) who consider agenda-setting as “a critical vantage point from which to observe and explain some important aspects of the nature of power and influence.” It is, therefore, critical in understanding corporate governance decision making that those who influence what is discussed by directors are identified.

This present research draws on the premise of Dearing and Rogers (1992) who considered that every social system needed an agenda to prioritise its problems so that it could decide where to start. Important also in this starting point for the research is the paradigm drawn from the work of McCombs and Shaw (1972) in determining who sets the space and subject of the directors’ debate, that is, who tells them what to think and talk about.

The study adopts a concept of middle range theorising (Merton, 1968) and draws on the paradigm of agenda setting from the field of communication studies in a review of the practice of New Zealand publicly listed boards. Therefore, who are the people involved; what factors of power or influence are exerted on the agenda; and, the identification of any specific focus of board members by director category are other key objectives of this study. While proper agenda process is relevant and important the

real demonstration of power and influence, it is argued, is shown by who determines what issues are discussed, which ones dominate (or get significant space), and, in what manner these issues are presented.

Those with power and influence may or may not be those to whom that authority has been assigned. This study uses those with assigned power or influence, that is, the directors, to view how they use their authority or abdicate that authority leaving the agenda-setting process to others who may not be obvious from the external view. In tabular form the proposition is illustrated below in Figure 1.1.

|                   | <u>Power</u>   | <u>Influence</u>                                    |
|-------------------|--|---|
| <u>Assigned</u>   | Chair, CEO,<br>Directors                               | Credibility of Chair, CEO,<br>Directors             |
| <u>Unassigned</u> | Shareholders,<br>Stakeholders,<br>Employees,<br>Others | Other unseen and/or voices<br>and forces unforeseen |

**Figure 1.1 A matrix depicting the potential relationship between the source of power and/or influence and the formality of position held in a corporate board.**

Determining who are the influencers and powers in the agenda-setting process provides a first step that assists in the exploration of subsequent director decision-making. With this process understood, decision-making in action during board meetings can be more constructively considered. This project is a small step in explaining how boards actually work which, in the opinion of Leblanc (2004, p. 440), has “tremendous practical significance. [As] we are just beginning a very important journey.” As Leblanc and Schwartz (2007, p. 845) also point out, this study of board process is a critical element for future corporate governance research, as the “what” and “how” of

a board of directors, “its work and its process - is clearly one direction towards which new research efforts on boards of directors ought to be directed.”

Excluded from the study are privately owned companies, co-operatives, not-for-profit organisations and state owned enterprises. The latter are those commercially driven Government owned businesses run for profit by an appointed board reporting to a government minister, tabling annual reports to government, and, subject to performance review by parliamentary committees. In considering the black-box board of board process and the lack of empirical research as noted by Leblanc and Schwartz (2007), the opening question must be one of where to start? And the answer, as even Alice found out, is to “begin at the beginning” (Carroll, 1865, p. 110). Observation and experience of board processes over many years and examples – and reinforced by the research focus group directors - clearly demonstrates that the beginning of governance in the corporate form of business enterprise is with the board agenda – the starting point of all director deliberations: the method by which issues get to be addressed by the board in formal and informal session. Virtually all organisations use a written form of agenda (there were no exceptions in the publicly listed companies that were studied) and these are accepted content and subject guides. The agenda not only lays out the order of discussion but it also directs priorities and acts as the subject, or content filter, (as noted by Lewis and Considine, 1999). Moreover, as some focus group directors pointed out, it can determine the time allowed for discussion on items. It is, therefore, a debate control mechanism that defines the issues for director discussion, frames the way in which those issues are addressed and, if managed appropriately, may be used to prioritise issues. That this is a very important step in the governance process is based on the concept outlined by Dearing and Rogers (1992, p. 1) who pointed out that “every social system must have an agenda if it is to prioritise the problems facing it, so that it can decide where to start work.” The present research seeks to clarify who sets the boundaries and ground rules for those agenda features and, therefore, who exerts power, influence or even control over the direction of director discussions - what is it that directors talk about.

Directors accept when joining a board that at the beginning of the board process there are established protocols (written or unwritten) that are common practice for any listed board. Therefore, a form of governance structure is in place. That process, for most

boards, is a routine that directs the meetings and processes and has been developed over time and through experience. It sets procedures or approaches boards have embraced to give form to their deliberations. Universally, it requires that directors set their regular meetings (and determine the frequency) and establish their own board committees for special purposes such as audit reviews, finance, remuneration and appointments and, on occasions, strategy. Their agendas review their previous meeting deliberations (the minutes), the regulatory demands of law, and cover reports on financial, business performance, capital expenditure and risk.

An important piece of research in this area - as it applies in *government* agenda decision-making – is the work of Lewis and Considine (1999). Lewis and Considine examined how government policy-making in the health sector in Victoria, Australia, shaped issues and preferences into a prioritised policy agenda. This policy-making aspect of government in New Zealand emerges from cabinet, a board composed of government ministers. Therefore, it is contended, that the omission of the word *government* (shown here in italics for the purposes of this project) does not appear to alter the context or sense of the statement. The present research should also have application to organisations outside the field of government such as a publicly listed corporation or other privately owned business entity. Those boards are similarly decision-making bodies of which some appear to be representative of their constituencies.<sup>1</sup>

Lewis and Considine (1999) observe that the early stage of what they term pre-decision-making occurs prior to the actual processes of decision-making. They contend that the observation of this early stage provides a window through which to observe the organisation of power. However, it is far more than a simple story of priority setting. Rather it is, they state:

a critical vantage point from which to observe and explain some important aspects of the nature of power and influence ... by contemplating the movement from a large array of issues to the 'short-list' of a [*government's*] decision agenda. Studying pre-decision policy processes

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<sup>1</sup> A neutral stance is being offered here as major shareholders appear to have disproportionate influence over the appointment process. While directors must act in good faith a degree of representation appears to remain.

indicates why some subjects and proposals emerge in the first place, while others are never seriously considered. (p. 2)

The present research picks up this observation of a critical vantage point and seeks to determine the who and how of power and influence on the corporate agenda so that those who set the space for board/director discussion and decision-making can be seen.

## 1.2 CONTRIBUTING PERSPECTIVES

Regrettably there appears to be little if any current contextual research of immediate relevance to this study. The work of Useem and Zelleke (2006) focussed on agenda control across a broad spectrum of companies in the United States of America. The common structure of boards in the United States appears to be significantly different to that of New Zealand with many chairs in the United States holding an executive role. By contrast, reviewing the chair roles in New Zealand publicly listed companies shows that they are predominantly both independent and non-executive. However, change in the United States is gradually occurring. Valenti (2008, p. 409) states that “the number of large US companies whose CEO was not also the Chairman had increased from 10.6% in 2001 to 29.3% in 2005.” Useem and Zelleke (2006, p. 1) also noted that the directors they surveyed appeared to be just flexing their muscles and “retrieving some of their long-lost sovereignty” although they had never behaved as controllers of their realms. They observed that “executives in effect still set much of the American board’s decision-making agenda.”

Corporates have evolved into their present form of director participation and expectation over a relatively short period of time, arguably since the 1920s, but more recently since the 1990s. This can be seen by the upsurge in director training, a high level of public interest in the media and journals and the formation of organisations such as the Institute of Directors. These moves also show that the director role is evolving and still in a learning phase in terms of understanding, action and training. This, indeed, could be one of the factors in board agenda setting and control. In New Zealand this development of interest is well illustrated by the plethora of director forums and training programmes (convened by the Institute of Directors; law firms, such as, Minter Ellison; and, universities), the rise of board consultancy and the growth



of advisory groups. Crown companies and organisations preparing potential and existing directors are served by training through Massey University external courses, pre- and post - appointment. The fundamental gaps in director knowledge can be quickly illustrated by the reported commentary of prominent New Zealand director Jack Hobbs (Bond, 2010, p. 7) who expressed his surprise at still being a director of Strategic Finance when it fell into the hands of the receivers, “I thought when we went into receivership your directorship finished, but that’s not the case.”

The increasingly strong public interest in how these privately funded organisations think and act, and the decision processes they use, may also impact on agenda preparation. That public interest is readily discernible by separate business sections in all major newspapers; by the specialist financial papers (e.g., the weekly National Business Review in New Zealand and the daily Financial Review in Australia); and, by the many specialist magazines on management and finance. The actions of directors and management in corporate failures and defaults in New Zealand and offshore have been, and continue to be, widely addressed in the general media and debated by management writers (e.g., Brian Gaynor, an executive director of Milford Asset Management, who features as a regular weekly contributor to the business pages of the N.Z. Herald and is constantly addressing issues of corporate governance). Concern over effective corporate governance and the failures of the past two decades has seen the rise of almost universal regulatory moves by governments to enforce board/director procedures and controls. The history of these reforms (beginning with the Cadbury Report in 1992 in the United Kingdom, moving to the Greenbury Committee Report, the Hampel Report, the Combined Code of the London Stock Exchange, the Turnbull and Myners’ Reports, the Higgs Review and many others such as the Dey Report in Canada, the Sarbanes-Oxley Act in the United States, the OECD Principles of Corporate Governance and even the work of the Securities Commission in New Zealand) is comprehensively outlined by Ingley and van der Walt (2005). The global spread and extent of media reports alone reflect that public interest and concern and this interest has also extended comprehensively into the academic world. Describing the subject of corporate governance as in a state of flux, Hambrick, Werder and Zajac (2008, p. 381) point out that the topic has attracted broad interest from academics “in departments of accounting, finance, management, organizational behaviour, and strategy, as well as departments of economics, sociology, psychology, and law.”

Some of this work is seen as providing fundamental building blocks in the study of corporate governance. For example, Higgs (2003) pays tribute to the work of Sir Adrian Cadbury and those who built on the foundations of his report. Higgs commented that this meant the fundamentals of corporate governance in the United Kingdom were sound.

Interest in agenda-setting also springs from the rise of the small shareholder either acting on their own behalf or collectively through investment funds. These groups have provided a clear expression of concern at company failures and misdemeanours and “predictably, in the light of the scandals which had occurred” (Dulewicz, Gay & Taylor, 2007, p. 1056). MacAvoy and Millstein (2003, p. 7) note that “we (and others) believe there is a governance mechanism in the engine of the corporation that is broken and has allowed an excessive number of company collapses.” The authors quote Plender (2003) as illustrating their point by citing the huge downturns in the asset value of American corporates at the beginning of this century including the “spectacular declines” of investor share value of US\$1.5 trillion inside the technology equipment companies alone in just two years. They also add that media stories on recent collapses sooner or later turn to Enron, once the fifth largest US listed corporation, with more than US\$100 billion in revenues, that collapsed in the last quarter of 2001 “along with 99 per cent of its stock value” (pp. 7-8). These stunning reversals of fortune have caused the whole corporate governance process to come under scrutiny worldwide. The situation is best summarised by Leighton and Thain (1997) who point out that:

Boards are in trouble. Both in management theory and law, boards of directors are at the apex of the control system. Their legal duties are clear: to ‘manage or supervise the management of the business and affairs of a corporation.’ If in reality they have been largely irrelevant there has been a void of direction and accountability at the top. (p. 1)

Leighton and Thain (1997, p. 3) also point out “that there is now overwhelming evidence that the board system is falling well short of adequately performing its assigned duties. Without fundamental improvement ... the entire board system will continue to be attacked as impotent and irrelevant.”

Corporate losses and scandals are not confined to the United States of America. There are many similar examples in New Zealand over the last decade. The debate on director responsibility has continued to find fuel in the recent collapses of over 60 New Zealand based finance companies owing more than \$848.2 million to investors, with eight further frozen finance companies and eight frozen property/mortgage funds owing \$1.3 billion (Dann, N.Z. Herald, 2010, C1). It is likely to be years before the true total of these losses will be accurately known but they will be measured in billions (e.g., Bridgecorp, which collapsed in July 2007, owes 14,000 debenture holders \$459 million.) Even the small finance company losses are significant. For example, Five Star Consumer Finance failed in August 2007 owing debenture holders \$54.3 million (N.Z. Herald, 2009). The losses include fund value destruction in investments that had been widely promoted to individuals and institutional investors including ING which locally had one of Australasia's largest banks, the ANZ, as a major shareholder. The funds under management fell in value from nine to under four billion dollars. While some funds and finance groups were simply caught up in the events of 2008, others were apparently running high risk strategies and collapsed through improper governance practices. The plight of Blue Chip Finance in the *Sunday Star Times* article of March 8, 2008, is a case in point (McGregor, 2008, p.D1). The business section of the paper records that the income raised from investors of Blue Chip (\$28 million in May and October of one year) resulted in the immediate outflow of \$17.5 million of those same funds to the existing managing director and other closely related parties.

The causes of these collapses are only beginning to emerge as investigations by Commerce Commission and Serious Fraud Office will take years to reach the courts and provide full disclosure and consideration. Early charges against the directors of one listed concern failed on the basis the directors accepted and followed appropriate professional advice while one other case in late 2010 has seen finance company directors jailed for clearly misleading investors. The Companies Act 1993 provided clear guidelines for the directors of these companies (specifically, Section 135, reckless trading, and Section 137, referring to proper care, diligence and skill) and in hindsight, once all the verdicts are in, collective review may lead to further regulatory change.

Governance failures and malfeasance have brought pressure on governments and regulatory bodies to view and rule on change for better processes. The scrutiny is ongoing and the very nature of publicly listed companies - who raise and use capital from the investing public - suggests it will continue. As Hambrick, Werder and Zajac (2008, p. 384) state, “the topic of corporate governance is of substantial interest to corporate executives, labour leaders, investors, politicians and regulatory bodies.” The questions raised are being answered by board responses (for example, director responsibilities are now outlined in almost all of the annual reports of publicly listed companies in New Zealand) and in the willingness of directors - existing and new - to undertake director training for their governance role.

### 1.3 THE RESEARCH OBJECTIVE

Research into corporate boards and their processes has remained mostly externally focussed (that is, viewed from the outside) in nature and is, at best, limited. The work to 1969 had been largely theoretical (Zald, 1969). Leblanc and Gillies (2001) and Useem and Zelleke (2006) reinforced this view three decades later observing that the position had not changed. Studies of the internal processes of board decision-making that allow regulation and prescriptions to be based on accurate and certain knowledge are therefore required. This will also permit investors, shareholders and stakeholders to make an accurate assessment of their directors’ actions and abilities. A good starting point for this, as noted earlier, is the recent addition of the director statement in the annual general report outlining the code of governance the directors observe.

The research aim of this project is to learn what power and influences impact the board’s agenda and who determines what directors discuss – themselves or others.

It attempts to lift the curtain of secrecy and proposes a theory of mapping board agenda processes to determine the impact this has on board function. It opens to view the faces of power and influence in this agenda setting process. It attempts to define our understanding of the process, the way it operates and the ideal to which directors should aspire in preparing the agenda. With that process defined, further studies into

actual board decision-making processes can follow with a focus on how decisions are arrived at around the board table.

## 1.4 THESIS OUTLINE

This research can be described as exploratory theory building in corporate governance following the principles of Merton (1968) and adopting a format similar to that suggested by Bourgeois (1979).

Following this introduction to the research study (Chapter 1) the first concept explored in Chapter Two is a brief history of the corporate form. An overview of the emerging investor and government scrutiny of the modern corporate is then presented. Chapter Two then outlines the issues and the place of the agenda in governance followed by the paradigm of agenda setting and its background and application in this governance study. In the same chapter power and influence on the corporate agenda are considered along with a proposed theory statement of abdication or omission of agenda control by corporate directors. The discussion then asks what we should look for in a good board if we expect strong and effective corporate governance process.

The research concept and mixed methodology used in this study are outlined and developed in Chapter Three. There is also an overview of the focus group procedure using the Delphi theory of experts in their field, that is, New Zealand publicly listed company directors, who were asked to review the questionnaire results, provide commentary and give practice points from their actual experience.

The research results are presented in full in Chapter Four. These include results from the questionnaire with both overall director response provided as well as responses by each director category (that is, chair, executive director and non-executive director views). Practice points on each issue, as suggested by the focus groups, follow each question where there is relevant or valuable additional information.

Chapter Five develops a discussion on the key findings of the study, that is, who sets the agenda and dictates director discussion, draws in the relevant literature and adds to

that the focus group observations that relate to actual board/director practice.

The conclusions are presented in Chapter Six. The key findings are summarised and comments on the implications of these are included. Recommendations to practitioners from the focus group participants are included outlining their views on good process principles for dealing with the board agenda. (A brief abstract of learnings for corporate practitioners is also attached in summary form in the appendices.) Further topics for research, to enhance and develop new lines of board governance inquiry, conclude the research.

An issue that arose early in the preparation of this study involved potential ethical conflicts and considerations. The difficulty of access was annulled by personal trust in the researcher. For example, in the initial trial focus group all nine participants were former or current clients of the researcher. This placed an additional burden on the researcher to ensure neither University or professional ethical standards were compromised. The focus of the study was, therefore, solely on process and did not enter into areas that may be considered to be commercially sensitive nor did it include matters regarding corporate decision-making.

The participants in the focus groups who had experienced professional contact with the researcher had an understanding of the ethical principles that guided his professional practice and had seen or signed with him a confidentiality agreement in that professional role (see attached, professional, Code of Ethics p. 198 & Confidentiality Agreement p. 199).

The trust relationship was further boosted by clear research instructions on purpose and security with written reference to the requirements of Massey University in terms of confidentiality, security and ultimate document disposal.

In terms of the information requested in the questionnaire (that is, individual shareholding of a Director in a publicly listed concern) nothing was requested beyond the statutory requirements demanded of Directors and published in the annual general report to shareholders. That information is, therefore, in the public arena.

In the process of running and analysing questionnaire and focus groups the researcher can not recall one case of commercial sensitivity that breached the ethical requirements. The simple passage of time - from survey to publication - is another factor that negates any such issue. The need to ensure ethical considerations were observed was particularly important to the researcher from both University / researcher point of view and also professional standard of care and duty.

## **CHAPTER TWO: THE LITERATURE**

### **2.1 A BRIEF HISTORY OF THE CORPORATE FORM**

To understand the manner in which directors and boards focus on their work it is necessary to track the development of the public corporate entity. In doing so an appreciation of how director thinking has been influenced and, more recently, modified will emerge. This development starts with the inception of the corporate as an identity although, as Lockhart (2006, p. 29) points out “the concept of organisational governance predates the corporation.”

The corporate began in its earliest Anglo-Saxon form around the 16<sup>th</sup> Century when municipal and educational corporations were granted perpetual existence and control over their own functions as a way of ensuring independence from the “otherwise all-encompassing power of the king” (Monks & Minow, 2004, pp. 9-10). There followed quasi-public organisations built up by the merchant empires of England and the Netherlands that date from the joint stock trading companies of the 17<sup>th</sup> Century (Berle & Means, 2005). Corporations were created by the state for specific purposes, such as the settlement of India and the American colonies. Limiting investor liability to the amount those people actually invested was a critical factor in attracting the capital that was required to fund these ventures.

The corporate form in industry dates from the 19<sup>th</sup> Century where it was widely used in the United States of America in major undertakings of direct public interest. By 1800, 335 profit-seeking corporations had been established, most of them in the preceding decade. Berle and Means (2005) list most of these as turnpike, bridge and canal companies with others in water, fire protection and dock facilities. There were, they say, 67 banks at that time but only six manufacturing corporations.

The first important American manufacturing enterprise to be organised in this way in the United States was a major textile business in 1813. The prototype evolved rapidly and within 10 years its stock - originally held by 11 people - had become dispersed (Berle & Means, 1932/1968, p. 12) so that “by 1830 the stockholders numbered 76 and



no individual owned more than eight and a half per cent of the stock.” Berle and Means suggest the most significant development of the corporate model from these early examples occurred in the years following the American Civil War with the introduction of corporate form to railroads.

The vast scale and the geographical barriers of the North American continent necessitated rapid growth of a different organisational form to cope with the drive to forge rail networks huge distances over major geographic obstacles from desert to mountain in areas that were almost devoid of population. The enterprise structure, therefore, differed significantly from that observed in similar European and British industries.

The concept of public shareholding was initially aimed at attracting capital from many different investors ranked by both size and class. It was a process that allowed people - who could not by themselves undertake the funding of a major project but had the concept or the contract - to invite others to participate with them and to share the risk and reward. The corporate form also enabled consolidation into larger systems. It was up to the individual investor to consider the risk and the potential return and decide for himself/herself if it was a good bet or what may otherwise be regarded as a scam. The initial concept of investment in another’s company or enterprise was not new but with the development of shares there was implied a position of investment for ownership as opposed to a contractual lending/borrowing relationship. The rewards, in potential earnings and value gain, were higher in an ownership category as investors earned profits and also stood to benefit from the capital gain of their investment in the event of “selling out to the public” (Berle & Means, 2005, p. 12).

Initially there was no share market in which to trade, exchange or buy and sell shares; no analysts to speculate on potential earnings; no media with daily commentary; and no statutory reporting on a three, six monthly or yearly basis. In short, there were few of the modern instruments of assurance or reporting to give the comfort enjoyed by the modern-day investor. Most investments were a decided gamble and relied entirely on the credibility and level of comfort in the original promoter. Directors, for the large part, were the substantial investors, in a system based largely on trust. In short, these features of the early corporations appear, in many respects, to resemble the virtues of

the modern equity partnerships (EPs). The foundation of the New Zealand economy is small/medium enterprises (SMEs) and, often, larger enterprises that result from multiple sources of capital without being listed publicly (sometimes referred to as public unlisted companies). These entities suffer the common problem of restricted mobility of capital as they do not have the flexibility of an open sharemarket in setting the corporate value (through establishing a value for the shares) and allowing free trade in those shares as in a publicly listed vehicle. Thereafter, their *modus operandi* - trust and integrity - mirrors that of the early corporation.

New Zealand corporate law has followed Westminster lines, not surprisingly in light of the country's development from its status as a former British colony, with British precedents the precursor to legislation and practice developed in New Zealand. In the early part of the 20<sup>th</sup> century UK courts provided for the division of powers between the board and shareholders in a decision on the sale of assets in the case of the *Automatic Self-Cleansing Filter Syndicate Co Ltd v Cuninghame* [1906] 2 Ch 34. This case concerned the enforceability of provisions in a company constitution and was taken through the High Court to the Court of Appeal which affirmed that directors were not agents of the shareholders and not bound to implement shareholder resolutions where special rules already provided for a different procedure.

Harking back to the Companies Act, 1862, Cozens Hardy LJ commented that shareholders had, by their express contract, mutually stipulated that their common affairs should be managed by directors appointed by the shareholders through other articles and liable for removal only by special resolution. This was later affirmed in *Quinn and Axtens v Salmon* [1909] AC 442 and later provided for in Table A in the Companies Act. Precedence of duty to the entity over shareholder interests still appears as a subject of debate, and even confusion, with today's directors and shareholders in spite of the clarity provided by Section 131 of the Companies Act.

As business became more sophisticated so did the investment community and the concept of tradable shares became a reality. With the demand from entrepreneurs for more capital came reciprocal demands from investors. These included the need for regular financial reports and security and acknowledgement of responsibility to shareholders who in turn became increasingly vocal "about whether boards are doing

all they can to protect their investments” (Carter & Lorsch, 2004, p. 28). Collapses over the years and the destruction of shareholder investment came from accidents, poor management, bad concepts, wars, trade embargos, poor product performance, new technology, and a host of other causes including, on occasions, dishonesty (Associated Press, 2009).

The collapses or frauds of the last decade are not a new phenomenon and the commercial world is still within living memory of the wealth destruction of the Great Depression in the late 1920s to early 1930s. The events of 2008-2009 with finance company and bank failures provoking a major credit crisis on a global scale is a reminder that the failings of the 1920s and 1930s are all too easy to repeat. It also shows how influential major corporations are in national economies and provides examples of how governments choose to intervene if they perceive stability is at risk. In spite of the corporate failures and difficulties - which are in reality small compared to the total number of publicly listed vehicles in the United States, or, for that matter, in any other geography - and the inherent risk for investors, there have been sufficient successes and opportunities in the corporate market system that realise capital growth and profit so investors keep coming back for more.

## 2.2 GOOD GOVERNANCE IS IMPORTANT

The importance of good board governance was articulated by Picou and Rubach (2006, p. 64) who asked if good governance matters to institutional investors stated that “it appears that it does.” Barton and Young (2006) hold a similar view:

The issue of sound boards is also well to the fore because of their clear link to the cost of capital. In 2002 McKinsey’s global investor opinion survey showed that equity investors would pay a premium of 20 to 40 percent for emerging market companies with strong boards of directors. More recently, a study by the Asian Development Bank Institute found that South Korean and Indonesian companies whose board-effectiveness ranking rose from the median to the top quartile saw their market value increase by 13 to 15 percent. In South Africa Mervyn King, the judge who headed the drafting of that country’s corporate governance code, observed that foreign capital flows to places that exude a perception of good governance. (p. 75)

In these matters it is difficult to hold up individual boards as exemplars - eliminating key individuals (stars) the board may possess among its members – and say with clear authority why they are different and why they work effectively and achieve good process. Until that can be understood the study of board governance at its most effective cannot be defined. It is quite possible that good boards simply produce the results by focussing on the right things to talk about. As Hendry (2005, p. S62) puts it: “The work of boards is not just about ensuring accountability for performance, important though that is. It is also, and primarily, about ensuring good performance.”

A view expressed by Campbell and Sinclair (2009) suggests that to meet today’s challenges boards need open discussion and stronger follow-through to bring fresh thinking to plans and budgets. And they warned that was not an easy task as board procedures were anchored and meetings, agendas and timetables typically followed a preset annual plan while attempts to make change were resisted because of habit and established patterns of behaviour.

Grady (1999) commented that traditional boards put their focus on reviewing history, not creating the future while Charan (1998, p. 23), under the heading “What good boards do” notes that “no board is perfect” but offers “snapshots of a board that works.”

Dulewicz, Gay and Taylor (2007, p. 1058) comment that in his review of the role non-executive directors played on boards in the United Kingdom, Sir Derek Higgs listed the key areas of the board director role as strategy (to challenge and contribute to strategy development), performance (to scrutinise management performance and monitor the performance reporting), risk (to ensure financial information is accurate and control systems are robust and defensible) and people (in areas of remuneration, appointment and succession planning). They point out that the difficulties researchers have in working with boards makes it difficult to challenge conventional wisdom such as this. But the research in this project, where there was good access to top directors both through the questionnaire and the focus groups, brought up almost identical issues of what constitutes the focus of a good board in governance.

Useem (2006) said it had become clear that directors needed to be decision makers in their own right, there to help a company choose the correct path when approaching major forks in the road. This speaks simply of good process and business competence and that is questioned in the February 2008 McKinsey Quarterly survey on governance which notes that only 46 percent of corporate directors considered that board meetings were conducted with a focus on value creation, a clear agenda and a focus on key issues ... in the presence of board members and executives with relevant expertise. Further that:

Although most corporate directors say they have good access to the CEO, CFO and COO, only about a quarter say that's true of their access to most other senior executives, many of whom are likely to have relevant expertise in areas such as talent management or the customer experience. (p. 7)

The competencies needed as a director (as opposed to the hefty list of director competencies published by the New Zealand Institute of Directors, 1998) are best articulated in very simple terms by one senior chair when he claimed at a 2003 Minter Ellison seminar; "good governance is like good toilet training - you bring it through the door with you." This comment suggests the strength of good governance process lies with individuals and that view is reinforced by Gillies and Morra (1997, p. 73) who state "as many active directors have pointed out, it is individuals, not corporations who make decisions."

## 2.3 THE RISE OF THE INVESTOR PUBLIC AND GOVERNMENT SCRUTINY

The rise of the investor public and the diverse breadth of that group came about as more people developed wealth and the ability to generate surplus capital over and above their living needs. Small shareholders who wish to link with major investors, and share some of the corporate profit and financial gain from the success of big companies, have become much more vocal as they argue they are disenfranchised or take second place to larger shareholder interests. This has been a common theme in the news media and has led to the rise of small shareholder groups such as the New Zealand Shareholders Association (New Zealand Shareholders' Association, 2009).

The Association membership numbers in the hundreds rather than the thousands and figures on the percentages of minority shareholders in publicly listed companies, that is the small investor, (as opposed to institutional investors) are difficult to calculate or find. Obviously these vary from company to company. Where these small groups are represented they have a voice at the annual general meeting but decisions in those meetings are inevitably dominated by major shareholder groupings, indicating they do not basically alter major resolutions. (However, in some cases, such as the director election process of Lyndsay Pyne to the board of Telecom NZ in 2004, these groups can force directors to rethink.)

Small investors today are often represented by the professional managers of large collective superannuation funds or investment funds which risk manage employee or individual savings. In New Zealand they can also be represented by associations that act as collective focal points, for example, the New Zealand Shareholders' Association Inc. (NZSA) formed in 2001 "to clean up poor board and company performance." (NZSA, 2009, About NZSA, History). The target in addressing these concerns in open forum is the directorate of the investment company at its annual general meeting. The onus is on the directors to show those investors a record of good governance, value growth, and dividend returns.

The voice of these shareholders is just one factor that could be considered to promote or encourage greater government regulation or prescriptions on governance. Increased regulation and/or influence can also be partly attributed to pressure groups from national to industry to social groupings (including non-owners and regulatory bodies) which have specific agendas (e.g., in New Zealand politics the Green Party has its focus on environmental impact) well removed from the profit and risk of the corporate shareholder. But they are important to various sections of society within which the business operates. Such pressure groups may influence or change the way directors think about an issue in terms of corporate social responsibility. Monks (2002, p. 117) explains this stance: "we live in times of substantial public protest over the power and influence of large corporations."

Governments also promote regulation and legislation for reasons that include tax revenue and the related positive impact a corporate has on economic well-being.

Lorsch and Clark (2008, p. 106) point out that this is a director concern as, “major public companies are important engines of economic prosperity and boards have a paramount obligation to see that these national assets thrive.” This suggests an intrinsic requirement today for directors to consider the national interest. The government concern can be illustrated by two of New Zealand’s high profile concerns, Air New Zealand and Fonterra. In examining shareholder-stakeholder governance tension in the collapses of Ansett Holdings and publicly listed Air New Zealand, and the subsequent government bailout of the latter, Lockhart and Taitoko (2005) comment that Air New Zealand had traditionally been led by people who knew what their airline meant to New Zealand, socially and economically. The government was also a significant factor in signing off on the reorganisation of the New Zealand dairy industry into one corporate giant when Fonterra, now New Zealand’s largest company, emerged from the three entities of the New Zealand Dairy Board, the New Zealand Dairy Group and Kiwi Dairy, companies that themselves had been created from the amalgamation of 147 independent dairy co-operatives. Government’s concern revolved around the issue that this new group, one of the world’s biggest single dairy companies, was responsible for over 20 per cent of the country’s foreign exchange earnings, a figure now estimated by Fonterra to be 25% in 2008 (Hembry, 2009).

Increasing public interest has been fuelled by the publicity surrounding the company collapses and defaults that have dominated business headlines in the last decade. Companies such as Enron, Sunbeam, Tyco, HIH, One Tel, ABB, Harris Scarfe and Marconi have brought sharp international focus on demands for regulations to tighten financial reporting and disclosure and thus provide for greater shareholder/investor protection and stronger independent board representation (Dulewicz, Gay & Taylor, 2007). These demands are not confined to the United States and Australia as New Zealand has witnessed in the crisis at Air New Zealand, the collapse of Ansett Airlines, New Zealand and Australia’s largest corporate collapse until HIH in Australia (Lockhart & Taitoko, 2005), the demise of Brierley Investments (BIL) and Fletcher Challenge (FCL) (Healey, 2003), the collapse of debt laden Feltex and aspects of the takeover of Carter Holt Harvey in 2005 (Gaynor, 2005).

India’s Enron was the Satyam Computer’s billion dollar corporate fraud according to Rajagopalan and Zhang (2009). This was a \$1.7 billion fraud but even before this hit

the headlines Indian shareholders had already lost more than \$2 billion from corporate frauds and bad governance since 2003, say the authors. Their review is of particular significance to New Zealand in that it points to the milk powder problems of Sanlu in China (43% owned by New Zealand's Fonterra) which affected thousands of Chinese infants, killed six, and resulted in prison sentences for four senior executives. In tracing these corporate governance breakdowns, and including commentary on the United States, Rajagopalan and Zhang focus on executive payouts, the separation of ownership and control and a decentralised and porous regulatory system.

The shockwaves of these high-profile failures and debacles elicited strong response from governments, stock exchanges, shareholders, stakeholders and bodies monitoring public entities worldwide. These responses have been articulated in moves such as The Sarbanes-Oxley Act of 2002 in the United States, a Government White Paper in the United Kingdom, followed by the Higgs Report and the Smith Report of 2003 after the scandals in corporate entities such as Polly Peck, Maxwell, BCCI and Shell (Dulewicz, Gay & Taylor, 2007). In Australia this brought change and policy rationales such as the CLERP process. A comparison between the New Zealand and Australian codes suggests the Australian process has developed more comprehensively than that of New Zealand. This may be a factor of size (both corporate and national) and, therefore, position in global markets or possibly the scale of some of the issues faced (such as, HIH) or even debate about the separation of government and regulatory controls. Over and above the statutory obligations imposed by The Companies Act, 1993, the New Zealand Stock Exchange Board made a decision to increase the corporate governance obligations of listed companies and released a Corporate Governance Best Practice Code. New Zealand authorities also issued warnings of a harder line, for example, the Securities Commission threatened to take a much tougher view of what it described as errant boards and directors (Davies, 2004).

The Institute of Chartered Accountants delivered a paper on corporate transparency, individual members (e.g., PricewaterhouseCoopers, 1998) produced their own versions of corporate governance responsibility in book or manual format and the term governance has found its way into general usage in numerous reports and media articles. The problems that have arisen in governance and are the focus of all this



attention did not occur overnight. As MacAvoy and Millstein (2004) observed:

With fits and starts the current governance crisis has been 30 years in the making. The decline in performance of the over-diversified, over-staffed corporation in the 1980s was marked and blamed on management that was essentially ungoverned ... governance reform was thought to be evolving in the late 1990s ... while we thought governance had reached an enviable pinnacle of excellence, at least in some form, we came to realise that it had not in substance. (p. 1)

In New Zealand directors must work under the legal requirements of the Companies and Securities legislation which, in Volumes A and B of CCH 18<sup>th</sup> Edition (New Zealand Companies and Securities Legislation, 2001), totals over 1000 pages. Our publicly listed company directors are expected to be knowledgeable in all this and yet not lose the focus of the essentials of business. There are expressed fears that statutory demands are over-riding the job of directors (Roberts, 2004) and that the term corporate governance is often used to imply a total activity focussed on control. Even directors show confusion in the ultimate reason for their existence (that is, for the benefit of the corporate entity). This was clearly demonstrated to the researcher at director forums when sitting directors were unable to articulate their prime responsibility.

Some directors are in no doubt that increased scrutiny, regulatory and otherwise, has enhanced performance and promoted change e.g., Barton, Coombes & Wong (2004) and Charan (1998) claims that:

The standards of good governance are rising. The search is on for boards that govern more actively and in ways that add value to the corporation. Boards are expected to play a broader role than that of watchdog and to make an on-going contribution to the business. The quest has begun to release the competitive power of the board and to put the board to work. (p. 5)

If this claim is valid, changes to the agenda, that is, variation in the discussion parameters should be identified in this study through the director comments on agenda content changes and priorities.

There are unique problems in small economies such as New Zealand market that are dominated by small to medium sized companies. Market value added (MVA) research

shows that investors believe those companies suffer from the “triple U-virus” that is, are “unloved, unwanted and undervalued” (Healy 2003, p. 39). Healy suggests the three big differences between New Zealand and other markets are that the Economic Value Added (EVA) ratio is materially lower in New Zealand than in the USA, UK and Australia for firms in the same industry; the quantum of losses relative to the capital employed in the economy is much higher in New Zealand; and, these losses in New Zealand have continued over a decade. Healey does, however, offer a note of caution in his assessment of his data drawn from sources such as Stern Stewart & Co, The Economist Intelligence Unit, OECD and the Reserve Bank. His reasoning on these statistics (pp. 27-46) is worthy of review. He prefaces the section on corporate performance with the comment that while the aggregate EVA loss of the NZSE40 companies from 1991 – 2001 was around \$21 billion, approximately 85% of this loss was concentrated in four companies – Air New Zealand, Brierley Investments, Carter Holt Harvey and Fletcher Challenge.

Just what New Zealand directors are doing to address the underperformance of companies should be revealed, to some extent, in a study of the corporate agenda. The processes used to address performance related strategic issues may well be identified by place and space on the corporate board agenda. Therefore, it is contended that research is needed to review this critical starting point and the power or lack thereof that directors exert over their responsibilities for controlling the direction of board discussions and, ultimately, their collective decisions. Is there, in the end, as Paul Light (1999) warns, no ordered common process recognised by directors in this part of their duties? Perhaps in reality the best that can be hoped for is that directors will recognise and consider good process and ensure that is followed with integrity and transparency.

On the other hand the difficulty that governments pose for corporate boards and their directors is that an increasing compliance regime is subtle rather than the result of major shifts in policy. Of course, those major shifts do come from time to time and their impact is very significant (for example, the Sarbanes-Oxley Act of 2002). Governments do from time to time acknowledge this and occasionally take appealing steps to ease or simplify compliance and reporting (e.g., New Zealand’s tax compliance regime simplification).

Regulations add to complexity and make the director's role more demanding in compliance knowledge and obligations. However, this cannot dictate process as Derek Higgs in his two-page covering letter to the Higgs Report (Higgs, 2003, pp. 3-4) observed. The Combined Code and its philosophy of comply or explain was "being increasingly emulated outside the UK." It offered, he wrote:

flexibility and intelligent discretion ... (and allowed) ... for valid exception to the sound rule. The brittleness and rigidity of legislation cannot dictate the behaviour, or foster the trust I believe is fundamental to the effective unitary board and to superior corporate performance. (p. 3)

While governments, regulators, and directors themselves attempt to enhance governance processes, there has been rising disquiet broadly expressed in the media about aspects of corporate misbehaviour, greed, and irrational executive incentive and remuneration schemes. These are all aspects of governance that fall under the control of board directors. Misbehaviour, state James and Ross (2006, p. 70), "crosses all national boundaries, and after Worldcom, Enron, HIH and other collapses there would have been few who disagreed that directors' responsibilities needed some reinforcement."

The case of greed is well illustrated in the widely reported Tyco dismissal and ultimate conviction of its chief executive officer. The CEO was convicted for the theft of US\$600 million (his base salary was US\$33 million). Greed is also identifiable in the irrational remuneration and incentive schemes by the pre-credit crunch annual earnings of the top 50 fund and equity managers in the United States as reported by Executive Recruiter News (November 2008, p. 1). These fund managers, the paper reported, received an average reward of US\$588 million each ("19,000 times as much as the average worker") with the chief executives of "large US companies" averaging US\$10.5 million ("344 times the pay of the average worker").

Increasingly rapid change in global business markets through faster communications has produced a step up in both the competence required of directors and in the level of risk they face in the process of board governance. Carter and Lorsch (2004, p. 1) ask in opening their book *Back to the Drawing Board* "consider a board of directors you

know well” and then pose questions about your views on that board’s performance and effectiveness. The chances are, they say, the answers will be in the negative in spite of the board having made an effort to improve itself in the past ten years.

Indeed, no board we know of has been immune to recent reform initiatives ... most boards continue to struggle in spite of increased scrutiny and regulatory reforms imposed from the outside and the efforts many boards have pursued on their own. Directors continue to be overwhelmed by a slate of responsibilities that is only going to become more complex and difficult as time goes on. (p. 1)

The agency theory has become the dominant framework in the study of corporate governance (Lockhart & Taitoko, 2005) and under that premise shareholders, investors (and even the linked stakeholders) rely upon their agents, an elected board of directors, to hold and execute the powers of governance on their behalf. It could be argued that the board is not comprised of directors who are genuinely elected in an open forum by the shareholders but are simply appointed by a board under a system of self-perpetuation. This means the directors while nominated by the existing board are merely ratified by shareholders at an annual general meeting. Rarely are those board recommendations overturned at shareholder meetings in New Zealand. One recent notable exception to this was shareholder rejection of a board recommendation by the directors of Telecom NZ Ltd who moved to appoint Lyndsay Pyne to that board in September 2004 at their annual general meeting.

The publicly listed board may also attract criticism if its decisions, in the view of the public or minority shareholders, reflect the power and influence of a majority or significant shareholder. This produces the potential for conflict with independent directors who may take the view that they have a primary duty of overriding responsibility to the company entity itself, or to minority shareholders, and that other calls on them are secondary. An example of such conflict occurred with the takeover of the New Zealand based publicly listed company Carter Holt Harvey by Graeme Hart’s Rank Group. Hart was accused by business commentator Brian Gaynor in 2005 as “using every trick in the book to get 100 per cent of CHH” (N.Z. Herald, 2005, p. C2). The independent directors took up the interests of minority shareholders in opposition to the views of Rank as it moved into a majority position in the final stages of total acquisition. These processes are hard to follow as, when elected, the shareholders’

board retreats to a confidential enclave to deliberate on matters, purportedly of concern to the company. It is a process that is never seen in action and is mysterious in process, note many researchers and commentators including Carter and Lorsch (2004), LeBlanc and Gillies (2001), Lockhart (2010), Zahra and Pearce (1989), Zald (1969) and Useem and Zelleke (2006). Carter and Lorsch (2004) commented that:

most of the work done by the board takes place in the privacy of the boardroom ... rarely if ever does any information on how the members contribute as individuals or work together as a group escape to the world outside. (p. 163)

Academic observation and subsequent analysis of their processes is, at best, limited and as Leblanc (2004, p. 440) notes “we are just beginning a very important journey.” Shareholders only have the gauge of the half-yearly or annual reports to give a glimpse of the workings of their agents, the directors and their appointed senior management, and then only to view the results of their actions in relatively narrow terms. Certainly there is little to show how directors prepare for and set the parameters of their discussions through the agenda process. These views are clearly articulated by Useem and Zelleke (2006).

McNulty and Pettigrew (1999, p. 47) observe in their study of British boards that “behaviour in UK boardrooms is not nearly as transparent as the structure and composition” these boards, much the same can be said of boardrooms in the United States and those elsewhere. (See Lockhart 2010) The front-stage performance of governing boards, observed Pye (2001), was totally dependent on significant levels of understanding of the back-stage activity.

Dealings in monthly meetings (but often on a less regular basis for board subcommittees) are seldom detailed and circulated to shareholders. These deliberations are largely hidden for actual board/director discussion is seldom, if ever, recorded verbatim and is simply minuted in summary. In essence this means only the final board resolutions are documented and informal discussions are unlikely to ever be recorded. This means that issues and the process of debate may go unchallenged by shareholder forums unless circumstances demand a special general meeting or arise for general consideration at an annual general meeting (which for New Zealand publicly listed

companies is a required 12 monthly event, with the publication of half yearly report updates). While this differs from the United States requirements of quarterly updates it should be noted that it is mandatory for its publicly listed companies to advise the New Zealand Stock Exchange of any one of a number of special events that could affect business performance. (For example, the resignation of a board member, or a breach of a banking covenant does require notification.) However, secrecy is largely enjoyed by directors because of the difficult of access and, therefore, little is really known of board decision-making processes as Leblanc and Schwatz (2007) observed.

## 2.4 THE SIGNIFICANCE OF THE TOPIC

“Uncovering ‘how boards work’ has tremendous practical significance” wrote LeBlanc and Gillies (2003, p. 10). Gillies and Morra (1997) also wrote that:

Common sense tells us that there is a relationship between corporate governance and firm performance. The fact that various empirical macro studies in corporate governance have been unable to identify it does not mean that this relationship does not exist. Through thorough examination of successes and failures of various firms, many mysteries of corporate governance have a good chance of being solved. When they are, shareholders will find that their resources are managed more wisely. (p. 76)

Besides government, and within society, there are numerous diverse shareholder and stakeholder groups with a real interest in the success of publicly listed businesses, or other business entities not have third party equity involved including that of the tax on rate payers.. The issue for directors is how to balance decisions with all these parties in mind and to determine where the priorities lie. As Leblanc and Gillies (2003) confirm, research observation of board decision-making processes is of importance and the impact of these organisations in a modern community cannot be underestimated. Boards warrant close study as Leblanc (2001) suggests:

This dearth of these studies on boards comes at a crucial time when boards of directors are now the focus of shareholders, regulators, practitioners and the public ... unfortunately, this increase in responsibilities of and reliance on boards has not been accompanied by a discernible increase in the in-depth understanding of boards by academic researchers. (pp. 6-7)

Agenda study is a small part of the process of that understanding of board decision-

making but none-the-less worthy of scrutiny for, as Zahra and Peace (1989, pp. 325-326) suggest, “there is a pressing need to document what boards actually do.”

Leblanc (2001), in his background paper prepared for the Joint Committee on Corporate Governance (*Getting Inside the Black Box: Problems in Corporate Governance Research*) writes that the lack of empirical research on boards is not a recent phenomenon. Leblanc quotes Zald (1969) on the difficulties:

The work has been largely theoretical ... Boards of directors are hard to study. Often they conduct their business in secret; their members are busy people; the processes themselves are sometimes most effectively described by novelists ... (but, the value of such studies) ... is more than compensated for by the theoretical and practical importance of the problem. (p. 7)

Zahra and Pearce (1989) underscored Zald’s observation of the difficulty in accessing boards in action over time:

Without such information, it will continue to be difficult to prescribe changes in the process by which boards should perform their roles. This is, in fact, one of the most challenging areas for future research in the contribution of boards. (p. 324)

This makes any aspect of contribution into the study of boards worthwhile. Leblanc (2001) asks:

Does effective corporate governance lead to superior corporate financial performance? The answer is “Probably.”... “Quite likely, in the opinion of many/most directors.” Have scholars to date been able to demonstrate/prove such a relationship convincingly? The answer is “No, unfortunately.” (p. 9)

He argues (pp. 9-10) that the studies that have been focussed on boards of directors by researchers tend to concentrate largely on external aspects of board structure, size, composition (e.g., the number and percentage of outside directors vs. inside directors; and the argument of having the same person occupy the post of Chair and CEO). Leblanc points out that studies to date that attempt to relate board structure to corporate financial performance have been mixed or inconclusive.

Leblanc and Gillies (2003) in considering the question of the relationship between corporate governance and corporate financial performance said it seemed to them entirely reasonable that such a relationship existed - even if quantitative studies had been unable to establish such a relationship. The significant disconnect between what directors thought, researchers could prove, and, regulators regulated, they interpreted as meaning that the proper type of research on corporate governance had probably not been done. Of greater consequence was the fact that all of these people - who were searching for methods to improve corporate governance - were doing so in a knowledge vacuum without understanding what was going on in the boardroom. The importance of that knowledge appears to start with the first step of coming to terms with how items get on the board agenda.

Leblanc and Gillies (2003) point out that in spite of all the discussion, writing, and analysis there has not been a great deal of research on how boards actually work, make decisions, or how directors interact with each other. Even after all the commissions and reports, there is not much more known now about how boards actually operate than there was half a century ago. To tackle this in a satisfactory manner they felt it was necessary to understand the factors that assured substantive corporate governance and this meant the inner workings of boards must be assessed to find the link between governance and performance through board process. If, as Leblanc (2001, p. 14) states, this process is the “black hole”<sup>2</sup> of board research (as Professors Leighton and Thain believed) then there is a significant contribution to be made locally and internationally by studying the processes of directors, particularly in examining how boards are first brought issues where there are difficult or important decisions; how those issues are framed for discussion; and whether or not some subjects even make it to the agenda. Such a study will assist both the academic and business community by exposing, analysing and reviewing process for better understanding and future improvement. It is also important that these studies embrace a much wider international view. For, as Cravens and Wallace (2001, p. 20) point out, “unfortunately research in the area of corporate governance suffers from a singular focus on US -based firms”. They consider

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<sup>2</sup> The term “black box” was used by Leblanc when he talked of “penetrating board process.” His paper of 2001 also refers to the knowledge gap as a “black hole” a term drawn from Professors Leighton and Thain (1997).



those United States based findings may need to be modified when generalising to more complex international systems of corporate governance.

Serious attempts to cover the gaps in knowledge have led to important contributions in multiple studies from people such as Gillies and Morra (1997), Leblanc (2001, 2003, 2004), Leblanc and Gillies (2003), Lorsch and Clark (2008), Monks (2002), Pettigrew and McNulty (1995, 1999), Useem (2006) and Useem and Zelleke (2006). While they have begun to answer some of the questions, in depth studies of board dynamics and decision processes are still missing and exceptions, such as Lockhart and Taitoko (2005) and Williams (2005) have been published only with considerable difficulty. That gap may only be addressed when multiple boards in action have been studied over long time frames by academics who become so much a part of the process that they are allowed to hear and observe first hand the inner workings of the board and its directors and their interaction with top management. This proposed type of longitudinal study - similar to the 30-plus year study started in 1972 by the Dunedin Multidisciplinary Health and Development Research Unit at Otago University, which still observes the adults enrolled as babies in the study in 1972 and is recognised a rich archive of human development (Otago University, 2009) – could cover the fortunes of companies over a lengthy timeframe and provide invaluable insight to their board's decision-making. This will mean the absorption of researchers into inner sanctum of the boards of multiple publicly listed corporates for in-depth decision-making studies similar to the single case study of Edlin (2007) – but with a commitment to long time frames.

With the benefit of hindsight the most important contribution from the recognisable group of governance academics identified above has been to raise awareness of the significant deficit of knowledge on board process and to emphasise how much still needs to be done, and, why it is so important. It is interesting to note that in New Zealand professional board appointments of university faculty these are typically seen as conflicts of commitment to be conducted solely out of office hours, supposedly, with no value being accrued to the institution. This stance by university authorities may well add to the difficulty faculty members have in gaining the confidence of directors and business and, subsequently, access to corporate boards.

Access to study boards in action is widely acknowledged by researchers as being

difficult. It has become more difficult to breach the inner sanctum of the boardroom in recent years as Finegold, Benson and Hecht (2007) suggest:

The new regulatory demands being placed on boards, the surfeit of consulting company surveys, and growing concern regarding disclosure of any information related to board activities that might be used in shareholder lawsuits have combined to make it even more difficult to gain access to boards for primary research. (p. 874)

Leblanc and Schwatz (2007, p. 843) pick up this access theme and note that “gaining access to corporate boardrooms is extremely difficult if not virtually impossible for most researchers.” They add that the study of corporate governance has been limited by an inability to actually watch boards in action. Stevenson and Radin (2009) point out that this does not lessen the need for more process studies of board decision-making: to make the social dynamics of boards more transparent. If a researcher could get access, there are [may be] interesting questions ... about the effects of cliques and ties on influence. (p. 40) In New Zealand the best recent example of this type of research was by Edlin (2007) who achieved that access to study board dynamics in a single case study of a state owned enterprise.

In the past decade there has been some interesting research on boards and how they function. A number of academics have made significant contributions to the field and studies include those of Huse (2005, 2007), Huse, Minichelli and Schnoning (2005), Letendre (2004), Daily, Dalton and Cannella (2003), Gabrielsson and Huse (2004), Finkelstein and Mooney (2003), McNulty, Roberts and Stiles (2003) and Samdra-Fredericks (2000).

The study by McNulty, Roberts and Stiles (2003) was commissioned by Derek Higgs as one of three such studies to use in his final report to the British Government (2003). This particular study involved in-depth interviews with 40 board chairs and non-executive directors and focused on the behavioural dynamics of board members. It included recommendations about behaviours to strengthen board effectiveness by creating ‘intelligent accountability.’ Corley (2005) in examining the implications of the Higgs Report comments:

As McNulty, Roberts and Stiles summarized, ‘Board structure and composition condition but

cannot determine board effectiveness. Instead board effectiveness depends upon the experience, skill and judgement of individual and non-executive directors and the ways in which they combine to shape board conduct and relationships' (2003, p.2).

And Letendre (2004), while acknowledging “we know very little about boardroom dynamics” pointed out that directors and officers inside board meetings “would generally agree” that those dynamics were “a crucial variable in effective decision-making” and achieving meeting outcomes. Letendre commented that boardroom dynamics had rarely been studied using social science research methods. In other words, regulation is important but it is the dynamics of the board in action and the power individuals or cliques within the board exert that determine effectiveness and process. Some of the most recent studies in governance focus their attention on the effects of the regulatory safeguards and changes made by governments and regulatory bodies since the large corporate failures experienced in recent times. An element coming through this research is the role governance played in those failures during the current global recession. As Yale School of Management commented in their Policy Briefing No.4 (2009), Chairing the Board:

The current financial crisis is generating significant momentum for regulatory and corporate governance change. Now, as before, the debacle of major corporations has brought into question the role of the board in overseeing company performance, compliance and, most importantly in this case, risk. This crisis has exposed a board failure in fulfilling its duties and ensuring the existence of an adequate risk management system. As a result, boards are once again a popular target for reform efforts (p. 21).

The report commented that the boards of major corporations had come a long way in the United States of America and Canada and today were “more independent, professional and active than ever before” (p.21). That development could be expected to be shown globally.

The report covered the findings of a forum of chairmen who gathered twice for roundtable discussions in New York in 2008. One of the four themes developed by that forum covered the responsibilities of the chairman in running the board and cited particularly features such as the need to establish the processes the board uses in

managing the responsibilities of the board and committees; to organise and establish board agendas with assistance from the CEO, board committee chairs and the corporate secretary; to plan the agenda and provide sufficient time for discussion of agenda items and, to focus the board's attention on relevant matters, limit distraction and discord, and work towards consensus (p. 6 – 7).

Reinforcing the view on the importance of board dynamics, particularly as it applies in the banking sector, is the report on Boardroom Behaviours by the Institute of Chartered Secretaries and Administrators to Sir David Walker (2009).<sup>3</sup> The report concluded that “appropriate boardroom behaviours are an essential component of best practice” (p. 3). The European Commission put forward its green paper in June 2010, again with specific focus on financial institutions. The paper concluded that the financial crisis had “revealed serious flaws and shortcomings in board performance” and that many non-executive directors were not in a position to form objective and independent judgements on management decisions. “In many instances they failed to act as an effective check on, and challenge to, executive managers” (p. 6).

Although the final verdicts on the New Zealand finance company failures are decades away, if they ever emerge, it is tempting to assume the same observations will be made of them. As the report suggests many non-executive board members lacked “the relevant financial expertise and skills to challenge dominant chief executives pursuing aggressive growth strategies” (p. 7). In the case of non-listed New Zealand finance companies these are additional complications because shareholders, directors and managers were often the same small group of people.

That same weakness in corporate governance, particularly in the areas of remuneration, risk management, board practices and the exercise of shareholder rights had played “an important role in the development of the financial crisis” and those weaknesses extended to companies more generally was the summary of the OECD Steering Group on Corporate Governance in a review of governance and the financial crisis (2010). It is important, the paper states, for:

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<sup>3</sup> Sir David Walker was asked to review the governance of banks and other financial institutions in the United Kingdom when the global financial crisis came to a head in 2008-9. Subsequently, The Financial Reporting Council issued the UK Corporate Governance Code in June, 2010.

the Chair of the Board to play a key role in ensuring an effective board by setting the agenda and ensuring that the board tackles the most important issues, whether it is on strategy, risk, management succession, ethics or relations with shareholders. (p. 19).

The UK Corporate Governance Code (2010), which follows previous codes of 2005 and 2007, applied after June of 2010. The Code acknowledges it is not “a rigid set of rules” but consists mainly of principles and provisions. It also highlights the “comply or explain” regime which is the trademark of corporate governance in the United Kingdom. While acknowledging the boards’ actions are subject to laws and regulations it concludes that corporate governance is about “what the board of a company does and how it sets the values of the company” (p. 1).

## 2.5 THE ISSUES AND THE PLACE OF THE AGENDA IN GOVERNANCE

Transparency of process in setting the agenda allows one opportunity of analysis for future board improvement. Because “the board must identify and take control of its own agenda and information needs” (MacAvoy & Millstein, 2004, p. 116) the content and presentation of the agenda will vary from company to company. But the quality of stewardship obligations do not. Boards should therefore ensure their focus is not just on issue inclusion or presentation or an overwhelmingly comprehensive coverage of issues but rather on the quality of their process and analysis in a rigorous and challenging environment.

Good process in the first stages of board decision-making, that is in preparing the agenda, is likely to be the forerunner of the quality stewardship obligations that follow. This emphasis on the right process is described by Van den Berghe and Levrau (2004) as an essential part of the working of a good corporate board:

An effective board presumes some procedural aspects. This component refers to the format of board and committee meetings. For instance, frequency and duration of board and committee meetings, the degree of attendance of board members, their role in setting the agenda, voting procedures, minutes of the board etc. Attention was also paid to the existence of a code of conduct, committee charters or similar written proceedings. (pp. 468-469)

The procedural aspects in New Zealand start with the requirements of the Companies Act 1993 and the directors’ duty of care to the company. That determines the minimum requirement. However, whether or not this is well understood and those subsequently translated into business behaviour remains largely unknown.

The view of Van den Berghe and Levrau (2004) is reinforced by Cravens and Wallace (2001, p. 11) who quoted one CEO on the primary contribution of the board as “a constant pursuit of what I like to call focus – are we still focused on our business?” The first step to reviewing board process in action is to consider how directors set their own agenda and what power or influences play on that process.

In examining the governance issues discussed in the literature, the recurrent crisis in corporate governance, (MacAvoy & Millstein, 2004) governance of our New Zealand publicly-listed business organisations often appears to have fallen short of the ideal and has not always met the expectations of all the stakeholders (including shareholders). Healey (2003, pp. 24-26) commenting on why our top 40 companies had failed to grow in any significant way in the 1990s posed two questions; “why had corporate New Zealand failed to grow more large companies;” and, “why had so many large companies failed to build a business capable of creating sustainable shareholder wealth?” The problem was, he observed, that over a prolonged period of time the negative contribution of the *destroyers* had significantly exceeded the value generated by the *creators*.

Without exception the public, the media, the shareholders and the regulators have expressed their views to corporate boards on how to fix these problems of governance and what processes they should adopt to do this. However, whether or not many of these views are especially well informed is open to chance. While Lorsch and Clark (2008, p. 105) note that “it is no exaggeration to say that the governance of companies has moved from the inner sanctum of the board room to the white-hot spotlight of public discourse” such a public discourse may ultimately be counterproductive.

In accepting a directorship an individual accepts that there is first and foremost a clear duty to the entity – to the company itself. There are clear principles of law set out in New Zealand under the New Zealand Companies Act (although good governance is not defined by the Act). But management theorists (e.g., Leighton & Thain, 1997; Charan, 1998; and Healy, 2003) give a clear guide to that duty. Charan (1998, p. 3) sums up the role as follows: “the board not only protects shareholder value but actually helps create it.” This view is reinforced by Carver (2000, p. 79) who says directors “do not occupy their seats to help management manage, but to own the business on behalf

of the shareholders.” While these authorities focus on the shareholder, the role of protection and value creation ensures the continuity and success of the entity. Therefore, there should be little confusion for directors in setting a starting point for their deliberations. For a comprehensive review of the corporate governance literature (with a focus on the role of the board director and director contribution to board effectiveness) directors could consider Petrovic (2008) and Ingley and van der Walt (2005). These authors provide a comprehensive review of regulatory codes and reports with both a regional and international flavour.

Individual boards are expected to find their own formula for agenda setting. Their key processes ought to develop with both experience and greater industry focus. There are, however, likely to be common lines of important principles of duty established by every board and the purpose of the board’s existence will be clearly stated so this purpose flows into key specific duties, work plans, and performance criteria. The recent events of board failure (discussed earlier) and the subsequent scrutiny of board performance may well have been behind the decision of many publicly listed boards (and others) to develop and publish a statement of purpose and corporate governance responsibility in the annual report. An example of this - the Corporate Governance statement provided by the directors of the publicly listed insurance company Tower Ltd in 2009 - is provided in the Appendices. This articulates their role, and provides the way in which they should be measured, for shareholders, stakeholders, analysts and institutions to consider and challenge. However, these public displays of awareness should only be regarded as a useful starting point rather than a binding obligation for transparency, responsibility and integrity. For little is known about the commitment to which directors hold their guidance.

While directors may not have done this as a conscious part of agenda setting, it is exactly that and lays down the ground rules by which the board must operate and the duties they owe as directors. It could be viewed as the preliminary act in agenda setting. Directors must ensure that all aspects of the stated governance obligations are fully covered, monitored and delivered. A process for setting the board meeting agenda, not just for the next meeting but for the year, must be established. “Boards can and must do better at balancing their function as compliance officers with their function as shapers of the future” (Lorsch & Clark, 2008, pp. 106-107). Lorsch and



Clark (p. 107) also comment that the heavy focus on compliance has increased director workloads and board agendas now “overflowing with governance matters ... all of them important, all clearly of concern at the board level, but none of them germane to leadership or strategy.” While many recommendations have been put forward on structure and board characteristics the recent corporate failures have highlighted (Van den Berghe & Levrau, 2004, p. 462), the point that living up to “formal” standards is not enough. “In fact, corporate governance is about ‘doing the right things’ and ‘doing the things right’: a twofold condition often neglected.” In short it is about good process.

In the absence of such research on decision making processes (Leblanc, 2001) it is appropriate to develop and propose a theory of agenda control. The present research ought to contribute to the knowledge on directors as the influencers and controllers of board debate (and thereby assign responsibility for the health of the corporate).

Accepting that the directors’ prime role is to ensure enduring value creation for the company then the board agenda should be expected to reflect that focus. But if the directors themselves do not control the focus of their debate how can they be expected to add value? It is appropriate to ask whether directors are proactive or passive in this first step of board process. Perhaps this was the reason that led Chairman Irving S. Olds of U.S. Steel (1940-1952) to his comment that directors were like “parsley on fish - decorative but useless” (Kristie, 2009). It could also explain why so many people ask, when a problem surfaces, where was the board while this was going on? As MacAvoy and Millstein (2004, p. 7) said of the Enron crisis; “but many, including the Congress, still ask, ‘Where was the board of directors, and why didn’t it restrain management before it brought Enron down?’”

James Kristie (2009), editor and associate publisher of *Directors and Boards*, sat in on a Wharton MBA class in March 2009 where the discussion was directed at corporate leadership through CEOs and boards and led by Stan Silverman. He quoted Olds’ “brutal accusation” of parsley and boards. To his surprise Silverman then brought up a full screen Power point by John Schnatter, Chairman of Papa John’s International Inc, taken from the Wall St Journal which read:

Behind every Freddie Mac, Bear Stearns or Lehman Brothers who led their company down the path toward financial ruin, there was a board of directors that sat by silently and let it happen.

As Kristie observed on his blog archive of March 31, 2009: “In other words, parsley on fish. Ouch.” He went on to say, double ouch, as this lecture came the day after the United States government ousted GM Chair and CEO Rick Wagoner - “a company on the brink of annihilation, accompanied by a government takedown of the CEO, looks suspiciously like more parsley on fish.”

The contention here is that directors must set their own agenda or they cannot control the focus of their discussions and add value to the company. If they leave the direction of their deliberations in the hands of others such as a chief executive or company secretary then they lose control of the agenda through abdication. The framework of their discussions and decisions are then determined elsewhere (to be discussed in Chapter Five, under the heading of the Olds’ passive parsley syndrome). If, on the other hand, directors are in total control of their agenda and exercise that control, they must surely accept responsibility for the success or failure of the corporate.

## 2.6 THE AGENDA SETTING PARADIGM

In 1972 Maxwell McCombs and Donald Shaw, working in the field of media and communications, put forward their theory of agenda setting (Griffin, 2003). They concluded that the media set the parameters, within which public debate occurred, by bringing to the attention of the public and policy makers specific issues or spaces in which to debate. Their work originated from a 1968 study of the United States presidential campaign. They developed the premise that agenda setting tells its public not what to think, but what to think about. While much of the agenda setting research since has been in their field of communications and media its application has broadened into other spheres. As Dearing and Rogers (1992, p. 1) state, “every social system must have an agenda if it is to prioritise the problems facing it, so that it can decide where to start work.”

The importance of the agenda setting process in the political environment is contrasted

with the agenda setting in the corporate arena. It is underpinned by McCombs and Shaw's 1972 seminal work in which they defined the agenda as something controlling the space of debate. If agenda setting is, as Tepper (2004, p. 1) suggests, about "getting alternatives before decision makers" and if setting the agenda of boards does indeed control the parameters of decision making debate then the agenda should become a prime document of focus for boards and directors in their control and oversight of corporate activity (that is, the agenda in action). It is arguably of major importance in ensuring that board process is thorough and disciplined and that all relevant matters are addressed.

Dearing and Rogers (1992, pp. 1-2) define agenda setting as a process of "ongoing competition among issue proponents to gain the attention of media, the public and policy elites". This process, they state, explains why information on some issues (and not others) is available to the public or is addressed through policy actions. The agenda itself is "a set of issues ... communicated in a hierarchy of importance at a point of time."

After the original McCombs and Shaw (1972) Chapel Hill study the authors subsequently suggested that agenda setting was not limited to communications studies. Carroll and McCombs (2003) later created a theoretical framework for applying the concept to the world of business. McCombs (1992, p. 813) commented that "the agenda of agenda setting research is expanding ... Some scholars are moving beyond the original domain ..." and Rogers (1993, p. 69) added that, "ultimately, research on the agenda setting process seeks to offer one explanation of how social change occurs in modern society."

McCombs (1992) himself reinforced this view of the broad extension of the agenda setting paradigm when he spoke to a New Zealand communications conference in Wellington enlarging on thoughts he expressed in *Setting the Agenda* (2004):

Creative scholars have also opened another stage of agenda setting theory that is vastly different from the traditional concern with public affairs. At present, this stage is a loose confederation of explorations in domains as diverse as business and finance, cultural norms, professional sports and the college classroom. With the tremendous expansion of business and

financial news in recent years, especially in daily newspapers and on cable television, this area may come to centre stage as a companion of public affairs. Regardless, in all of these domains, whether established or exploratory, the theoretical core remains constant: the transfer of salience from one agenda to another. (p. 144).

McComb, Shaw & Weaver (1997) also pointed out that:

The challenge before us in this new era is to systematically push open new frontiers of communication research. We must sort out the direct and indirect influences of these fiercely competitive entities at the individual level, the aggregate or public level, the intermediate and intramedia levels, and the various levels of public policy formation to better assess, whether individually or collectively, their mediated efforts are beneficial, harmful or harmless to democratic societies.....compressed time frames will forge new streams of agenda setting research. (p. 95).

It is argued that this project follows the same theoretical reasoning outlined by the academic community and followed by other analysts, such as Mazarr (2007, p. 2). Mazarr also extended the context of this perspective by considering the agenda setting approach in a study of the Iraq War, to be “among a number of insightful approaches that can aid analysis.” The proposition in the present research uses the parallels between media and the public and those of corporate agenda setters (whoever they may be) and the directors working as a board. Both public and directors receive written, vocal or visual input on a regular basis outlining content and issues in a format that invites discussion. The subsequent results and the impact (or decisions) are also available to review by media follow-up or minutes in the case of directors.

There is obviously a fine line between suggesting the space in which to think and avoiding the pitfall of telling people how to think inside that defined space. Of course, that may occur in a corporate through power and influence on the agenda or the debate that follows.

If board discussion is driven by a pre-determined agenda then ownership of the agenda; its formulation or framing; and, the forces or levels of power behind the process of agenda preparation must play a major part in the decision making processes of directors and corporate boards. The agenda, by implication and format, tells the directors what to think about. More importantly if that agenda is not controlled by the

board itself it could be speculated that framing by stakeholders such as the CEO, management and/or other unseen forces or powers means the board is told not only *what to think about* but importantly *how to think about it*. The board agenda is selective - so what goes on (or is left off) - is crucial when the board is only available collectively for a limited time in the total year of the organisation's life. For example, the Korn Ferry annual director survey for New Zealand and Australia 1997 showed that the New Zealand non-executive director had a total time commitment on board matters of 19 days in a year. The non-executive chair was reported as committing 52 days. A later survey, from the same consultants Korn Ferry, in the year ending 2006, indicated that 82% of directors spent less than 25 hours a month, that is, less than 37.5 days a year on the affairs of the company for which they were a director. In 2007 it commented that few directors exceeded 40 days a year. All these surveys covered publicly listed companies only.

Borrowing the agenda setting paradigm from communication studies for the purposes of corporate governance research is justified firstly because of parallels that can be drawn with agenda writers working to boards and the media addressing its public; and, secondly, agendas drive board work in a pre-determined communication regime. That regime is virtually always reliant in structure on the written word pre-delivered to directors who then meet in formal process to discuss the issues contained in the agenda. These factors are very much within the framework of Tankard (1990) and his theory of selection, emphasis, exclusion and elaboration.

Therefore, the agenda setting processes appear to drive or capture boards by formulating issues and thus determining the space in which the directors debate; determining the salience of issues; presenting or framing issues in specific ways; the repetitive presentation of issues; and, ignoring issues that should be addressed.

## 2.7 POWER AND INFLUENCE ON THE CORPORATE AGENDA

In advancing the view that agenda setting takes a critical role in board matters it is appropriate to turn to what we know of the process and examine who and what powers impact on the process. According to Stiles (2001, p. 630) “power plays a major role in strategic decision-making” and he goes on to point out that for directors the sources of power were assumed to be limited while the CEO “has high structural power because of his/her position.” This view is reinforced by Lorsch (1995) who comments:

superior knowledge ... provides even the most well-intentioned CEO with a real power advantage over the outside directors. If we add to this advantage the fact that the CEO usually determines the board’s agenda and leads its meetings, it is clear why CEOs must be convinced of the value of empowered directors. If they resist the idea they can easily inhibit progress. Directors, however, have a critical source of power that they can use to their advantage: their solidarity as a group. (p. 111)

This suggests that the chief executive, the dominant force on the agenda according to Useem and Zelleke (2006), must recognise the role of the directors and the right directors have to dictate the shape of their own agenda. It also suggests that the lead role of the chief executive in determining the agenda is a format that has been established over time by a superior knowledge of the business and a passive approach to agenda-setting by directors.

Lorsch (1995) went on to remark that a primary purpose of board meetings may be, sadly, to learn about the organisation from the CEO. Stiles (2001) comments on this CEO gatekeeper role which he says tends to encourage conformity and discourage new or radical ideas and is replicated throughout the organisational hierarchy:

If it reaches executive committee stage, the proposal may have been through several iterations. Once the proposal has the blessing of the chief executive and his/her team, it is very difficult for the board to turn it down. Only two directors (of 51) in the first sample could remember the board *turning down* a proposal approved by the management team ... Nevertheless, the board’s *potential* for refusing to sanction management’s proposals, affords it strong latent power. (p. 639)

The CEO's power, which comes from the position he or she holds, is obviously further enhanced if that person is also chair of the board (Valenti, 2008). Although, and to be fair, this occurs more in the United States of America than in Australia and New Zealand where the reverse is the norm as noted by Korn Ferry, (1997):

Separating the roles of CEO and chairman has been widely debated as a means of giving greater independence to the board ... in the UK 84 percent had separated the roles with a further four percent considering it ... Australasia has a clear best practice leadership position where 92 percent of respondents had a non-executive chairman rising to 98 percent in the largest publicly listed companies ... in the US where the desirability of splitting the roles is far from accepted, 19 percent of companies had a non-executive chair with a further three percent considering splitting the roles. (p. 7)

The relative control of corporate boards over management has "long been a subject of theoretical analysis and debate in the organisation theory, economics and management literatures" (Westphal & Zajac, 1995, p. 60). The debate on agenda influence problems in corporate governance has also been the subject of comment - and research - as a small part of that focus on board process for, as Felton (2004) observed in the McKinsey Quarterly, changes in board practices and behaviour will be essential if directors are to provide independent oversight of executives:

Most of the directors we surveyed said that they still depended on management to set the agenda of board meetings. Few respondents felt that they really knew what was going on in their companies, and most believed that this state of affairs would become increasingly unacceptable. The overwhelming amount of material that directors must master before board meetings, coupled with a lack of time and a culture that precludes open and unstructured discussion, has left many board members feeling that they could offer little more than marginal pro forma counsel. (p. 34)

This suggests that directors have become increasingly uncomfortable being fed information filtered by the chief executive and managed by that individual and/or some other forces of influence. Felton (2004) noted that some directors wanted real-time performance information unfiltered by management, new meeting formats that fostered more open discussion, and the freedom to interact, unfettered by management, with the leaders of business units.

Felton (2004) also commented that there was resistance to this change by chief executives (p. 32) who “strongly oppose giving up the power and influence they have worked so hard to accumulate.” Useem and Zelleke (2006, p. 2) also wrote that for American boards “executives still set much of the board’s decision-making agenda, and ... directors remain substantially dependent upon the executives’ judgement on what should come to the board.” They commented that:

Annual calendars and decision protocols provide varying degrees of guidance for deciding what the board should decide, but they are only a foundation. Executive decisions on what issues should go to the board are thus themselves still critical ... the agenda of which special issues come before the board is still largely driven by the chief executive. Executives in effect still set much of the board’s decision-making agenda. (p. 11)

The relationship between the CEO and the board is of central importance in governance and is one that is complicated (Shen, 2003). Shen adds that power for the CEO comes from a variety of sources including prestige, status, stock, the role of chair and persuasive behaviour toward directors and, over a period of time, gains in strength through director confidence in the CEO performance (p. 469). This makes it important for future research to pay more attention to the role of the CEO in the CEO-board relationship. As Kleiner (2002, p. 674) also highlights, core groups are the repositories of knowledge, influence and power in organisations and “power is derived not from authority but from legitimacy.” People, he says, agree to the rules when they come to work for a corporate and those people delegate authority and power upward every time they make a decision and decide whom to listen to. That core group “generally” includes the chief executive.

So in the CEO-board relationship the CEO should be a key influencer by exploiting key relationships, managing impressions, managing information, and protecting formal authority (Maitlis, 2004). The aspects of this research suggest that the CEO is or should be one of the major factors in power and influence on the board. While there is no literature to show that New Zealand boards are the same, it is reasonable to expect that they are not different.



Useem and Zelleke (2006, p. 11) observe that “a central thrust in the new governance culture is an emphasis on restoring director dominion over major company decisions.” This view is reinforced by a McKinsey survey which (Felton, 2004) identified American director dissatisfaction with the lack of control over the board’s agenda and the desire for more open discussion at meetings. The views are shown in Figure 2.1 below (Felton, 2004, p. 34, Figure 2).

*To what degree does the CEO control and shape what directors learn about the company?*

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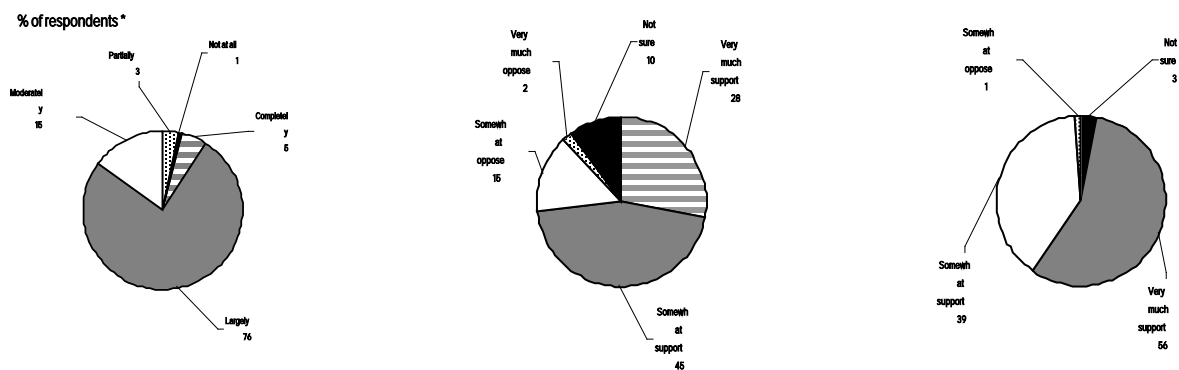
*Do you support or oppose more director control over the agenda?*

---

*Do you support or oppose more time for open discussion?*

---

#### Directors



\*Figures do not sum to 100%, because of rounding. Felton (2004, p. 34).

**Figure 2.1 Director dissatisfaction in their lack of agenda control**

This survey also suggests that American directors exert little control over their chief executives, managing directors and/or their fulltime executive chairs whose views largely shape what directors learn about a company. More than two-thirds of the directors surveyed by McKinsey supported more director control over the agenda and a staggering 95 per cent supported a concept of more time for open discussion. If they recognise this as a problem the question must be why do they not fix it? Is there also a passive acceptance of the agenda and the content that is served to the directors by management and is lack of challenge to an established agenda process something to do with the selection of directors, picked by the group already in power, joining a team that has already signalled its acceptance of the established process? Or, do directors simply prefer the predictability of an agenda that offers no real change and little unstructured time to think? Do they indeed have the time to consider these questions inside the 25 hour constraint of their total time commitment a month (Korn Ferry, 2006); is the agenda just something assumed or ignored by directors as they focus on the macro issues or is it a question of conformity?

There was no discoverable literature on New Zealand boards to show if they faced a similar issue to the American companies in agenda setting, that is, a process left to the senior executives, as outlined by Useem and Zelleke (2006). It is suggested by the proposition in the present project that the process is much more complex than that and is a key link in a total, virtuous control circle that should be very much the domain of the directors themselves.

When the board minutes and papers of publicly listed companies are reviewed (the researcher is very familiar with these as both categories are included in briefing papers for the appointment of new directors) it is noticeable that much director focus and effort goes into looking backwards rather than planning for the future. Indeed, companies generally set special annual strategic forums of one or two days a year as opposed to future planning being an integral part of every board meeting. This view was noted by Grady (1999, 3, 1) when he said “reviewing history - not creating the future - is the focus of traditional board processes.”

Although there must be an atmosphere of trust and openness between board and top

management the theory of agenda control advanced here proposes that there is an absolute need for directors to act independently when they set their own agenda.

Otherwise in discussions around the board table it must be questioned how the organisation and its various faces of power have influenced the discussion space *before* the meeting was convened. Understanding the power of various groups within an organisation is crucial to understanding what happens in everyday affairs, according to Burrell and Morgan (1979) who note:

Organisational life, from a pluralist standpoint, is a power-play between individuals and groups who draw upon their various sources of power in order to control their work situations and to achieve whatever objectives they value. (p. 203)

It appears logical that various dimensions of power, working individually or in collusion will influence, or attempt to influence, the corporate board agenda if permitted to do so. Those influences will reflect various power plays within the organisation as Edmondson, Roberto and Watkins (2003) state:

TMT (Top Management Team) members, as representatives of powerful constituencies within the organisation, may have closely aligned interests on some situations and divergent or competing interests on others. Situation specific interests comprise goals and objectives that individual team members wish to achieve, sometimes at the expense of other team members. The nature and distribution of interests within the TMT thus differs from one situation to another. (p. 302)

The possibility that this type of power or influence is fluid makes it even more difficult for board members to cope with. The power surges from this management contest may not necessarily come from a constant, predictable or clearly identifiable group and in dealing with this directors should note Kosicki (1993), who quotes political scientist E.E. Schattschneider (1961):

As a matter of fact, the definition of alternatives is the supreme instrument of power the definition of alternatives is the choice of conflicts and the choice of conflicts allocates power. (p. 68)

This view is supported by Lewis and Considine (1999, p. 2) in their description of the way in which policy agendas are developed as more than simply a story of priority

setting and rather a critical vantage point from which to observe and explain some important aspects of the nature of power and influence. All of this reinforces the contention that the process of setting the agenda for the board is of vital importance and one that should be owned by the board itself.

A perfect process should, however, be impartial and not subject to varying power surges and influences. But, of course, the filter to the board itself creates a serious platform of power and fits within the contention of Kim, Pinkley, and Fragale (2005, p.799) that “the greater one’s power relative to the power of others, the more resources one should be able to claim.” If the board demands a level playing field and an unbiased base for its own deliberations does it set the scene by writing and controlling its own agenda? Does it always do so and how often does it review this process in formal session? Or is the process left to others who, therefore, expose the board to internal or external influences that may predetermine how it will think and act?

The contention is that if boards drive their own agenda process, and thereby define the space they occupy, they can plan to meet the value add focus that is supposedly their prime purpose. Of course, this assumes the directors understand and accept this is their role.

Collaboration on the importance of agenda-setting power and the manner it is exploited is outlined by Lewis and Considine (1999). Lewis and Considine investigated power and influence in a health policy agenda setting in Victoria, Australia. They commented on the few systematic investigations of the role of agenda setting in policy systems at the time - most of which were conducted in the United States of America. Lewis and Considine use Cobb and Elder (1971) - who researched the politics of agenda building - to explain how issues may reach the agenda from outside government (that is, the shareholder body). Taking this concept further they quote Walker (1977) and a concept of a closed shop that sets the agenda through the diffusion of ideas among professional and policy elites - the level equating to the chief executive and senior management team that advise and report to the board.

“The second face of power” (Bachrach & Baratz, 1962, p. 2) adds the “the invisible

protagonists behind the scenes, struggling over preferences and stopping issues from making it on to the visible agenda.” These may well be people unseen or unknown by the board who, for reasons of position, skill or power, hold sway over the senior management executive or chief executive officer. Lukes (1974) further modified this observation, adding a third dimension of power, by which issues are stopped from making it even to the preliminary stage of agenda consideration. With all these factors present it may explain the different forces of power directors experience as outlined by Edmondson, Roberto and Watkins (2003).

As Lewis and Considine (1999) point out:

Those with enough power, then, are capable of not only stopping items reaching the agenda but also of manipulating people’s very desires. These second and third dimensions of power point to a limiting of the policy agenda to consideration only of those issues that are deemed acceptable, and to an exercise of power by certain elites to get others to hold the preferences deemed appropriate. (p. 3)

Steinberg (2002) similarly adds that:

Many have argued that in legislative settings where authority to set the agenda (that is, formulate proposals that are difficult to amend) rests with a formally specified agent, the process of agenda setting explains outcomes better than plenary voting power. (p. 354)

This commentary suggests that the process of agenda setting is the exercise of power in its own way - subtle but nonetheless real. An excellent example of this process in action occurred when Australia voted in a referendum on the issue of moving to a republic or retaining the monarchy in 1999. It was openly suggested by many, including Janet Holmes A’ Court, that a republic vote was never possible because of the manner in which Prime Minister Howard, a monarchist, framed the referendum question. In the context of this statement by Steinberg (2002), that is, the political environment, there are policy statements articulated to the voting public which must then feature on a government decision agenda.

In the news media there are “gatekeepers” (Goode & Zuberi, 2004). Those who, “by being in a position of either letting information pass through the system or stopping its progress, play a part in the selection and construction of news” (p. 192). This same

process may occur with agenda guardians exercising that role within corporates. If so, where in the policy elite does this reach? After all, the agendas are prepared in-house by an agent of the board and they are generally presented, unchallenged, in final format to the members, probably after review by either a chief executive and/or a chairman.

A strong influence or force, as Lewis and Considine (1999) suggest, may lie in the underlying assumption that agendas have limited space and groups must compete to have a place in that space. An assumption of limited space is central and underlines the question: Why do people pay attention to one thing rather than another? (Kingdon, 1984, p. 3).

“Institutions are often the children of agenda access and the means through which short periods of attention affect outcomes and government policies for decades” (Baumgartner & Jones, 1993, p. 84). This ideally describes the board situation with its short periods of meeting activity; so if this is the case, control by the corporate board of its decision making processes must start with control of the agenda processes, that is, it must take ownership of its own agenda and not leave that in the hands of others. Without that ownership there cannot be effective control and input by the board. Certainly that power will be assumed by others if the directors leave a void. Governance is all about power and authority and its distribution and use in a system that requires a balance of power (Leighton & Thain, 1997). The system is based on checks and balances where directors need to achieve a good balance and maintain that stability of balance over a period of time.

This discussion of power and influence as it affects corporates is not new as can be seen in the academic exchange over corporate social responsibilities between Professor E. Merrick Dodd and A.A. Berle, Jr in the *Harvard Law Review* in 1931 and 1932. Their issue of shareholder ownership rights and power drew a sharp divide not dissimilar to the current debate. The use of power, according to Berle (1931, p. 1049), was “subject to equitable limitation” and, brought with it through the very nature of the corporate entity, responsibility in the use of power. Dodd was an early voice in outlining and identifying responsibilities broader than those just to shareholders.

Since then the debate has been largely on-going and even encompasses views some may regard as extreme. For example, Bebchuk (2005, p. 835) suggested shareholders should adopt governance provisions “that would allow shareholders, down the road, to initiate and vote on proposals regarding specific corporate decisions,” giving the shareholders power to intervene and “enhance shareholder value.” Bebchuk (2005) is assuming here that the shareholder body is better informed than those assigned responsibility for the organisation’s performance. While this view may be extreme it is indicative of the momentum being created in the governance debate.

In that debate Freeman (1984) brought the stakeholders’ role (and stakeholder theory) into the decision-making influence equation when writing of external controls on an organisation. (However, in legal terms, shareholders are the only sector of this stakeholder group whose rights are definitively provided for by statute.) Golden and Zajac (2001) examined how boards influenced organisational strategy and change, and importantly, Stevenson and Radin (2009) looked at social influences and power on the board from outside networks in a survey of those networks. Obviously, the use of power is more fully covered in the concerns of political scientists such as Murray Edelman, *The symbolic Uses of Politics* (1964), by political philosophers such as Steven Lukes, *Power, A Radical View* (1974), in the writing of Neil Flegstein, *The Architecture of Markets* (2001) And Lauren Edelman, *Overlapping Fields and Constructed Legalities: The Endogeneity of Law* (2007). These authors link the impact of those in authority – such as a chair or CEO – as substantial influencers in the effective use of power.

The Stevenson and Radin (2009) study is particularly interesting as it contested the regulators’ view that outside and independent directors were able to influence the board. In particular they suggest from their observations that real business and board decisions are not conducted in the boardroom.

Pettigrew and McNulty (1995, p. 871) studied the power and influence of part-time board members and concluded that traditional governance discussions were pre-occupied with rules, regulations, institutional practices and frameworks that “do not always take place informed by the realities of board room power and influence.” They cite Pettigrew (1992) who believed the study of managerial elites was very important,

that is, those who occupy formally defined positions of authority such as chairman or chief executive. They agreed with Pettigrew that data on the close operation of boards is sparse and that “the use of power to achieve outcomes in line with perceived interests remain largely unobserved and unanalysed” (p. 868). Pettigrew and McNulty (1995) went on to say not a great deal was known about power and influence in and around the boardroom. They quoted Tricker’s (1978) observation that the work of the director, in and out of the boardroom, still rated in 1995 as the most under researched management topic. They concurred with Pettigrew (1992, pp. 848-849) who stated that a good deal of literature on boards was non-academic, even non-analytical, and relied heavily “on unquestioned assumptions as a basis of prescription.” It is contended that the board should monitor and carefully control the formulation of its agenda-setting programme and, if it does not, it has therefore, by abdication or omission forfeited an important part of its board decision-making processes.



## 2.8 REGULATIONS AND PROCESSES AFFECTING OUTCOMES

In the wake of these governance issues (that is, the failures of the Enron, Sunbeam, Tyco and other corporates mentioned earlier in this Chapter) Sonnenfield (2002) asks whether the directors were asleep at the wheel or if there was gross or criminal negligence on the part of board members. The facts, Sonnenfield says, were that the boards followed most of the accepted standards in attendance, equity involvement and financial skills and passed the tests that would normally be applied to ascertain whether a board of directors was likely to do a good job:

And that's precisely what's so scary about these events. Viewing the breakdowns through my lens of 25 years of experience studying board performance and CEO leadership leads me to one conclusion: It's time for some fundamentally new thinking about how corporate boards should operate and be evaluated. (p. 106)

This raises the question of the standard of board process - something, it is contended, that starts with an effective agenda system. Sonnenfield suggests that to build an effective board - something he believes cannot be legislated for but can only be built over time - it is necessary to create a climate of trust and candour, foster a culture of open dissent, utilize a fluid portfolio of roles, ensure individual accountability and evaluate the board's performance:

I can't think of a single group whose performance gets assessed less rigorously than corporate boards. In 2001, the NACD surveyed 200 CEOs serving as outside directors of public firms. Sixty-three percent said those boards had never been subjected to a performance evaluation. Forty-two percent acknowledged that their own companies had never done a board evaluation. A 2001 Korn/Ferry study of board directors found that only 42% regularly assess board performance. (p. 113)

A more recent survey by Korn Ferry (the 33<sup>rd</sup> for the year 2006, p. 16) showed that regular director evaluation was more common in the Asia-Pacific region where a majority (60%) state they have these on a regular basis compared with 48% in Europe and 38% in the Americas.

Leighton and Thain (p. 3) point out that “without fundamental change the entire board system will continue to be attacked as impotent and irrelevant” by shareholders, stakeholders and the public. The board’s central role (p. 279) is to “focus management on the rational pursuit of increasing shareholder value.” Sonnenfield (2002) adds:

We all owe the shareholder activists, accountants, lawyers and analysts who study corporate governance a debt: in the 1980s and 1990s, they alerted us to the importance of independent directors; audit committees, ethical guidelines, and other structural elements that can help ensure a corporate board does its job. Without a doubt, these good governance guidelines have helped companies avoid problems ... but they are not the whole story ... if a board is to truly fulfil its mission ... it must become a robust team - one whose members know how to ferret out the truth, challenge one another, and even have a good fight now and then. (p. 113)

What boards should do seems obvious. However, whether or not that be achieved by regulation (that is, externally) or is subject to good process (that is, internally driven) is open to debate. If good boards are about good process then directors and board chairmen should be looking for high performance models. They should be pursuing good process, duplicating and establishing their own models and demanding high standards of them. There is still much to measure and research if boards of the future are to structure and operate effectively and if stand out organisational performance results then improving board process has sound commercial foundations.

The minimum starting point of this process is the regime imposed by current New Zealand law. In this the statutory duties are dictated by The Companies Act 1993. This requires that directors have a duty to act in good faith and in the best interests of the company (Section 131); that they exercise their powers for the proper purpose (Section 133); that they comply with the Act and constitution (Section 134); that they avoid reckless trading (Section 135); that they avoid obligations which they know the company will be unable to perform (Section 136); that they ensure a duty of care, diligence and skill (Section 137) and that they observe the self-interest transaction rules outlined in Section 139 to 149. These basic legal obligations are shown clearly illustrated in the diagram attached in the Appendices.

Schedule 3 of the Companies Act sets out the proceedings of the board. This schedule covers the requirements of electing a chair, giving notice of meetings along with requirements for a quorum, voting and resolutions. But other proceedings of the board it leaves for the directors to regulate. While providing a base starting point the Act is not a guide to perfect process as Farrar (2001) points out. In providing a comparison of directors duties in troubled New Zealand and Australian companies he points out that the New Zealand law is “incoherent and strangely incomplete” (p. 112) even if the legal systems in both New Zealand and Australia are more rigorous for directors than those faced in the United States.

To go beyond these statutory duties directors may consider various principles of good governance and best practice such as those outlined by the Australian Stock Exchange Governance Council (2003) or the OECD Principles of Corporate Governance (2004). Both provide competent starting points to lift process beyond the regulatory requirements. For example, the Australian Stock Exchange (ASX) defines (p. 11) the essential principles for directors as being: to lay solid foundations for management and oversight; structure the board to add value; promote ethical and responsible decision-making; safeguard integrity in financial reporting; to make timely and balanced disclosure; to respect the right of shareholders; to recognize and manage risk; encourage enhanced performance; to remunerate fairly and responsibly; recognize the legitimate interests of stakeholders. Following principles such as these may provide a sound roadmap for subsequent agenda and board process.

Further guides on good process can be found in the *OECD Principles of Corporate Governance* (2004) where there is a full section on Responsibilities of the Board (p. 58). More recently, and particularly in the light of the problems of the last five years, there have been numerous articles published by authorities such as *PricewaterhouseCoopers* (Point of View, the SEC’s new requirement, May 2010), by Harvard (Risk management and the Board of Directors, *The Harvard Law School Forum on Corporate Governance and Financial Regulation*, Lipton, Wachtell, Lipton, Rosen & Katz, December 2009) and the Audit Committee’s New Agenda (*Harvard Business Review*, Sherman, Carey and Brust, 2009). Like the Second Statement on the Global Financial Crisis from the International Corporate Governance

Network (March, 2009) these focus on post regulation effect and market reform in the light of both corporate failures and international financial breakdowns. As the latter states:

It is now widely agreed that corporate governance failures were not the only cause of the crisis but they were highly significant, above all because boards failed to understand and manage risk and tolerated perverse incentives (Introduction, 1.2).

A detailed list of recommended readings for the Corporate Governance and Financial Accountability Course at York University (Winter 2011) proposed by Professor Richard W. Leblanc demonstrates a new lead in the focus and attention being attributed to the subject of risk in the wake of the crisis.

## 2.9 SUMMARY

This chapter followed the development of the corporate form into the structure we recognise today. It traced the rise of the external investor and shows the implications for corporates who follow good governance process, for example, ease of funding. It also looked at the failures internationally of named companies and the subsequent development of interest by governments on the impact of significant companies on economies and the increasing scrutiny imposed on those companies by regulators, shareholders and other stakeholder groups. With the work of the board under increased pressure from all these factions it highlights the dearth of studies into board process and questions power and influence in decision-making. That leads into the area of this study in agenda setting and looks at who is seen to set and control the parameters of board discussion. It recognises that agenda setting is the exercise of power itself, the controller of board deliberations and the first act in governance of the corporate or, for that matter, any other organisation.

Also noted, was that the bulk of the sparse but current corporate governance literature of value originated in North America (Canada & the United States of America) and generally that research did not extend into international regimes where they are

smaller, or inherently different. Notable exceptions to this view are provided by Sir Adrian Cadbury (1995), a former chancellor of Aston University who showed strong interest in corporate governance, and Professor Morten Huse (2005) author of *Boards, Governance and Value Creation*. These are important contributions as shown, for example, by Higgs (2003) who considers Cadbury's work a foundation stone of governance study in the United Kingdom. The international work in this respect appears to have been left mainly to global strategic commercial consulting groups such as McKinsey as evidenced in the McKinsey Quarterly publications (although across academia much has been written about boards and their directors in various organisation formats as noted by van der Walt, Ingley, & Diack, (2002)).

The critical themes that flow through the literature and will be explored in this research pick up the concept of Leighton and Thain (1997) and ask why directors - the apex of the control system - appear largely irrelevant. That belief is backed by Druker (1992) - directors were the last to know things had gone wrong; by Olds (Kristie, 2009) - directors were parsley on fish; and, by Deakin and Konzelmann (2004) - directors had failed to assess the risk. It will review the aspects of power and where board decisions are made as outlined by Useem and Zelleke (2006), Stevenson and Radin (2009) and Lewis and Considine (1999) and consider the director role in terms of the individual's responsibility (Gillies & Morra, 1997) and how boards control (or should control) the agenda as suggested by MacAvoy and Millstein (2003) and Sonnenfeld (2002).

Finally, the process of agenda setting will be reviewed against the criteria laid down by Berghe and Levrán (2004) that agenda setting is about doing the right things right.

## **CHAPTER THREE: RESEARCH METHODOLOGY**

### **3.1 ORIGINS OF THE RESEARCH CONCEPT**

Corporate governance research seldom involves the internal workings of board processes, the proverbial black box referred to by Leblanc (2001). The reasons for lack of access to boards and directors in the boardroom is open to speculation. But the fact that there has been remarkably little observed and recorded from three decades of governance research suggests either a lack of interest by researchers (all evidence to the contrary); a lack of trust in researchers by directors; boards being not accustomed to, or accepting of, close scrutiny; arguments of commercial sensitivity and confidentiality; or, possibly even simple liability. These limitations, coupled with the constraints of a doctoral thesis - as opposed to a research programme - were again encountered in this study. However, they also provided motivation to examine precursors to board decision-making, namely, the examination of the forces that shape the agenda.

In studying this first part of board process there was an even more important consideration: To ensure that the study could be conducted in a manner that provided a platform for further in-depth empirical inquiry into subsequent board decision-making processes (that is, the agenda in action).

The body of literature about directors and corporate governance comprises mostly external views presented by those who have seldom penetrated the inner sanctum of the corporate boardroom. Therefore, little definitive and factual inside observation data on the methodology employed by directors in their decision-making is presented. There are some notable exceptions, such as the work of Edlin (2007) who covered the social dynamics of the board in action in a single case study of a major New Zealand state owned enterprise. Edlin researched the critical determinants of effective decision-making in a state owned enterprise and while picked by the researcher as a profit focused organisation there are acknowledged constraints of regulation, monopoly origin and a single owner that question whether it can be directly compared

with a publicly listed concern with multiple public shareholding and no government guarantee.

However, Edlin (2007), through observation and interview actually viewed the decision-making processes. This is critical as assumptions on processes cannot be made from written decisions, partial access to boards or board minutes (or even individual interviews or questionnaires) as these may not represent actual discussion or reasoning processes. As an example of this, the researcher sat through an international board meeting in New York in March 2008 where the directors had a lengthy discussion about a potential tax liability identified (and yet arguable) and the need of the board to provide for that liability. The board was unwilling to acknowledge the possible potential liability with a special provision or to minute its concerns. Instead there was verbal agreement by the directors to provision for the potential liability by increasing the size of the organisation's general cash reserves. Externally there was no evidence that the subject had been discussed by the directors and no specific minute or provision that would cause an alert in the case of a review or investigation by tax officials. Therefore, while the directors were prudent in the provision they made they were unwilling to allow the minutes to reflect their thinking and ultimate decision.

The research focus on who sets the board agenda and who dictates what directors discuss led to an examination of the agenda concept McCoombs and Shaw (1972) developed in media studies. It seemed perfectly feasible to consider extending their paradigm into the corporate governance arena, particularly considering that the written agenda process is universally adopted by publicly listed boards (indeed, by the boards of most organisations) and sets the space for director discussions and debate. Because the agenda sets the platform for all board processes it provides a logical starting point to the process of studying boards. In short the agenda may influence, or should influence, the directors' programme of deliberations for debate and decision. Obviously, what gets on (or is left off) the agenda and the manner of item presentation is of considerable importance. The present research was specifically designed to improve our understanding of the agenda process as it applies in publicly listed companies.

McCombs and Shaw (1972) attribute the power behind agenda setting in the field of communications to the media - the influencers who tell the public what to think about. So who tells corporate directors what to think about and, therefore, determines what subjects they discuss is the subject of this research.

### 3.2 HOW THE CONCEPT WAS SHAPED

General surveys, such as those from global consulting group McKinsey (Felton, 2004), suggest that directors recognise the agenda as an area where there is dissatisfaction to be addressed (see Chapter 2). The difficulty with such general surveys is the lack of clear definition of the actual concerns and the lack of a disciplined follow-up in reviewing those concerns to establish how real they may be. For example, asking: do you support or oppose more director control over the agenda? (as in the McKinsey survey quoted earlier) suggests other unspecified powers may have a controlling role in a function that many see as the domain of the board and its members. Yet that survey does not seek to define who are those controllers/influencers.

This research project was designed to clearly identify the nature of those concerns and to determine where agenda control really lies, with directors or with forces outside the board. It was also necessary to categorise the directors to consider their differing viewpoints, if any, by comparing the overall response to the individual category response from each chairs, executive directors and non-executive directors.

It became apparent early in planning the project that a qualitative focus on a small number of case studies with agenda and minutes content analysis supplemented by interviews with the chairs, directors, chief executives and visible agenda setters was too narrow a perspective for the initial concept of a theory building research project of this kind. Such a narrow approach might well fail to identify agenda power and influence. The research methodology was, therefore, designed to adopt a broader approach to a very specific and focussed subject with a clearly defined respondent group in New Zealand, that is, the directors of publicly listed companies.



Just studying power and influence on the agenda suggested a very narrow conceptual lens. It was, therefore, broadened so that *any* elements of power could also be seen in content inclusion/exclusion, in the process of preparing the agenda and in the review or critique of the agenda. The first three elements listed above were seen as being able to support/disprove or enhance commentary on the question of direct influence but were also considered likely to highlight indirect sources of influence or power, that is, the second or third faces of power.

There has been no attempt to survey state owned enterprises (SOEs) or other government organisations, trusts or entities which, in all, account for over 500 different governance boards that the Crown appoints to within New Zealand (CCMAU, 2009). Those people also have different objectives, often an Act of Parliament or statutory requirement, and their directors are selected in a different way to a publicly listed concern with the owner/shareholder, the government of the day, having control and the final sign-off on the appointment of all directors.

For all that, many of the people who participated in this survey also sit or have sat as chair or a director of a private company, an SOE or government body. This applied to at least half of the directors who formed the first focus group used in this process. Thus, while the results do not claim to be transferable to these other organisations they may not, in reality, prove too different.

In selecting the sample to survey the target was those directors whose residence was New Zealand and who were publicly listed company directors serving on New Zealand companies at the time (during the last two quarters of 2007). There are just over 1600 directors in publicly listed companies in New Zealand (NZX reported the number at 1633 in 2009). The difficulty with this number is that many of these people hold multiple directorships. That is clearly illustrated by the first focus group where the number of directorships held by the members of the group as individuals varied from three to 11. (One individual had, at one stage, held 15 directorships concurrently, several of these in publicly listed concerns.)<sup>4</sup> The complete director list, as compiled by a major executive search firm, was compared to a list of public company directors

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<sup>4</sup> The record for a New Zealand director must surely be Keith Smith who was reported as being on 97 boards including four listed companies in 2004 (NZ Herald, 2004).

supplied by Massey University (from previous research studies). Those from overseas (either by shareholder interest or company choice) or resident outside New Zealand were deliberately omitted. Where there was conflicting information or confusion names were confirmed or omitted. The total size of the potential population of directors to be surveyed under these criteria was 450. The response of 103, from a population of 450, provided the views of just over one fifth of all those directors (23%). An interesting feature of the research response was the number of calls from participants who hold several directorships asking if the researcher had a preference for the type of company they should consider in answering the questionnaire. Denscombe (1998) suggested it is not uncommon to get response rates as low as 15% while Sarantakos (1998) points out that a response rate of 75% is taken to be very good although some researchers are content with a rate of 10%. With busy directors the rate achieved was considered sound particularly as similar surveys carried out in New Zealand have shown much lower response rates.<sup>5</sup> The present research response was considered sufficient to provide useful results. The responses are also sufficiently large to allow a useful breakdown into sub-categories of chairman, non-executive director and executive director and bring those into the calculations.

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<sup>5</sup> For example, Ingley and van der Walt (2005) surveyed 2500 members of the Institute of Directors for 418 usable responses – approximately 17% of the potential field. At the same time they relied on a questionable “estimate” from the Institute that only 15% of the members (who they eliminated) were “not current directors”, they could not test the responses because of anonymity and the survey was assigned and conducted through the institute.

### 3.3 THEORY BUILDING PROCESSES ADOPTED FOR THIS STUDY

One aspect of the research is to consider a theory of abdication or omission by directors and boards under a concept of middle range theorising (Merton, 1968). A key feature of the research was to use the questionnaire results in focus group discussion as part of a dynamic process of participatory engagement. It is contended (for the purposes of this project) that if directors ignore, and by omission or abdication in the agenda process fail to set their own agenda, they desert their responsibility and so may allow others to dictate the space in which they debate and the issues they decide to address as a board. If that occurs, and the directors do not own the process of agenda setting, they may not fully control the destiny of the organisation, manage its risk, or its outputs.

The project is an exercise in theory construction (Bourgeois, 1979, p. 443), inside the category of theories of the middle range as defined by Merton (1968) as those “that lie between the minor but necessary working hypotheses that evolve ... in ... day-to-day research and the all inclusive systematic efforts to develop a unified theory.” Merton (1968, p. 39) states that middle range theory is principally used in sociology to guide empirical inquiry and, in particular, “middle-range theory involves abstractions, of course, but they are close enough to observed data to be incorporated in propositions that permit empirical testing”.

This is a topic that can be explored within middle range theory that “specifies a subset of relations that can be extracted and explored with relative independence from the rest” (Clegg & Hardy, 2003, p. 262). The construct can be represented in concrete and stable terms. It is suggested that agenda setting is a critical part of the board and director function and the project therefore examines who determines the issues for debate, how they do that and what powers and influences within the organisation impact on that process. The theory of abdication or omission identified in Chapter Two as the Olds’ passive parsley syndrome promotes a concept of passivity by directors in terms of agenda control.

### 3.4 RESEARCH ACCESS

Studying board decision-making processes has never been easy and the present research project was only made possible by the access available to the researcher whose company - a leading New Zealand executive search firm with an international reputation and listed by BusinessWeek US in the world's top 50 "most influential headhunters" (Kennedy, 2008, p. 44) - works for major boards and also appoints to boards around 25 non-executive board directors each year. That access, available on a personal, first name basis, made it possible to contact key people, obtain a strong response to the survey questionnaire and also allowed the researcher to compose focus groups of leading directors who were willing to participate and give freely of their time.

For example, the initial focus group alone was made up of: a former publicly listed company chief executive who sits on a number of boards of which he chairs two; the former chief executive of one of the country's high profile iconic brands who sits on a number of publicly listed boards and is an experienced chair; one of the country's highest profile women directors who sits on the boards of publicly listed companies, chairs a high profile retailing group and has also been chair of one of the country's leading state owned enterprises; a woman director who sits, or has served, on major boards from state owned enterprise to publicly listed companies and a major bank and has been involved in the selection of directors for government enterprises; an experienced chief executive who has also held executive director roles; a former chief executive of a major primary co-operative who now sits on the boards of several publicly listed companies, heads audit committees of boards and has chaired a major indigenous investment group; a former investment banker widely regarded as one of the country's top directors who has served on boards that range from banking to waste disposal (the latter a publicly listed concern he chaired); a woman who has run a major media group and served on the boards of publicly listed concerns from airports to retail; a former partner in a big four accounting concern who has served on publicly listed boards from insurance to mining. This gave a highly experienced panel and its experience was replicated in the other focus groups.

Thus the access problem was solved by a trust relationship beyond the reach of the

typical academic researcher. It provided an example of the concept discussed by Lockhart and Stablein (2002, p. 200) who wrote of spanning the academic-practitioner divide with the Doctorate of Business and Administration programmes where research was aimed at contributing to both theory and practice: such a programme, “grounded in research conducted by practitioners”, provided a means of “bridging the academic-practitioner divide without compromising the desired outcomes from either community.”

### 3.5 METHODOLOGY

#### 3.5.1 Mixed methodology

The research process utilises a mixed methods approach involving both quantitative and qualitative techniques. A mixed methods approach provides different kinds of complementary information (or views) on the same issues (Firestone, 1987). The approach also allows a form of triangulation and thereby a process of assessing the robustness and stability of the research findings (Jick, 1979) and this is reinforced by Firestone (1987) who considers that when different methods produce similar results the findings are not being influenced by the methodology. On the other hand divergence between results can point to the need for further research and can suggest new lines of inquiry.

The principle adopted in the mixed methods approach was similar to that noted in Patton (2002, p. 247). Patton suggested that, “the method must follow the question and Campbell (1974), many decades ago, promoted the concept of triangulation - that every method has its limitations, and multiple methods are usually needed.” The principles of mixed methods design, as advocated by Tashakkori & Teddlie (2003), were followed (that is, to recognise the theoretical drive of the project; to recognise the role of the imported component; to adhere to the methodological assumptions of the base method; and, to work with as few data sets as possible):

The objective in the mixed methodology process was to “allow the researcher to go beyond telling the story (i.e., the “what”) by making transparent the processes, negotiations and other

interactive facets that occur...” and “reflecting on what is said by the participants in relation to how, where and by whom...and to what end” (Onwuegbuzie et al., 2008, p. 14).

The methodological steps were designed to view the research question of power and influence on the board agenda from both qualitative and quantitative aspects with distinct points of view from all the respondents as a group as well as each of the director categories through the use of a questionnaire; then to explore the results of that process through the eyes of a broad base of practical director experience in focus groups utilising a Delphi concept following the principles outlined by Landeta (2006), that is, applied with methodological rigour and a good knowledge of the social medium.

Before adopting this mixed method process of using focus groups to consider the results of the questionnaire, a pilot study of the input value was initiated. The initial group was formed from known and experienced directors whose background collectively covered a broad range of publicly listed companies and each category of director, that is, chair, non-executive, and executive director.

In the first part of the process a questionnaire (Appendices, p 207) was distributed to the small sample of nine current publicly listed company directors (as noted above) who were individuals drawn from each of the director categories so as to provide a balance of the categories (as outlined earlier in this Chapter in 3.4). The responses to each of the questions in the original questionnaire from this group of nine were analysed and those results, and issues they raised, were then discussed by the respondents who were brought together in an initial focus group. The discussion was recorded and analysed and this resulted in the development of new questions, the variation of others and the discard of irrelevant questions. The commentary of the focus group was recorded and transcribed in full. This was analysed for appropriate qualitative commentary in each of the sub-categories of agenda content, process, review and influence that were the subject of inquiry. It was recognised that such a very small sample (N= 9) demanded that the results be viewed with great caution and although the information was compared to the final focus group commentary this information was not used in the final results chapter. The initial focus group was advised to treat the sample size (N=9) with caution and there was no attempt to break

that small sample into director category of chair, executive or non-executive director.

The pilot study involved an investment of several hours by each of the directors selected. When they met as a group this was, in some cases, the first time time they had met one another. Each had completed the questionnaire (which had then been analysed) and each had been given in advance a summary of the findings. A general introduction to the process, the ethics and confidentiality aspects led into a general discussion that revolved first of all around the key points each individuals had noted or felt needed to be addressed. After discussion and agreement on each of these points the researcher guided the group through each question in numeric order. The session lasted a little over three hours.

There was clear direction from the researcher to ensure the points and matters covered focused solely on process and did not descend into actual commercial decisions

### 3.5.2 Initial focus group

This initial focus group voiced objection to the random layout of the first questionnaire, which they considered disruptive, and this led to a revision in format so that the questions on the subject matters of content, review, process and influence were grouped collectively in their appropriate category and flowed more easily. The discussion by this initial group (Appendices, p. 204, control sheets, for the group composition) revolved then around key responses and rapidly moved to anecdotal discussion on the qualitative aspects of the questions.

Perhaps the important change provoked by the initial focus group discussion was the splitting of one question (Q. 30) that originally grouped regulatory/conformance issues (that is, statutory obligations) with performance measures. Separation was regarded as critical by the focus group and that view - a valid one - was followed by splitting the question in the revised questionnaire (questionnaire, final version, appendices, p. 219). As one director commented; “monitoring the business is different to regulation. We should separate the regulatory side and have control/performance in another question.”

The group then moved to consider the manner in which the questionnaire addressed agenda flexibility and structure. The good agenda “should have structure but a reasonable degree of flexibility” and they believed it was important to ensure the questionnaire reflected the views of the directors on how much flex there should be up to the time of the board meetings. The group believed the chairman and the chief executive needed to “test” the views of directors and be able to amend the agenda to get full value from the board meeting and to deal to any “sub-agendas” (control of these being very much the role of the chair). This aspect of the initial group discussion led to questions on the absence of a focus by the questionnaire on the role of the sub-committees and how those sub-committees could influence the agenda content and order of discussion. The group considered it important that the questionnaire address that.

In addressing the relevance of the questions there was considerable discussion on the external contact the board should have to balance its views and presentations on the business by people in the organisation other than the chief executive and the chair.<sup>6</sup>

Reverse questions (as shown in appendices, control sheets) were added in each section to measure consistency of response. The revised questionnaire (final version, Appendices, p. 219) developed from this initial work was then sent to all the New Zealand public company directors who had been identified and placed on the list of those qualified in the project criteria (as discussed earlier in this chapter). When the questionnaire was sent in final version each individual was identified and coded to protect confidentiality and to assign each with one of the three director categories for analysis, that is, chairman, non-executive director or executive director (a universal descriptive).

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<sup>6</sup> Brief commentary from this initial group is attached in the appendices (p. 235) to give some view of their discussions as these were not included in assessing the final results.



**Table 3.1 Director field and responses**

|                                 |           |          |        |
|---------------------------------|-----------|----------|--------|
| Total Field (N=450)             | Chairs 81 | NEDs 328 | EDs 41 |
| Questionnaire Responses (N=103) | 24        | 81       | 10     |
| Percentage Response             | 30%       | 25%      | 24%    |

The classification was checked against each company directorate and identified 81 chairmen (18% of the total field), 328 non-executive directors (73% of the total field) and 41 managing/executive directors (9% of the total field). The responses that were received (103) were verified as to category and were checked for goodness of fit with the total field of directors. The results showed responses from 24 chairmen (30% of the total chairs in the field), 81 non-executive directors (25% of the total directors in the field) and from 10 managing/executive directors (24% of total in the field) as shown in Table 3.1 (above).

(Note: Non-resident directors were excluded from this survey and multiple directorships held by individuals account for the higher total number of directors listed on New Zealand public companies.)

The results of the full response from the final questionnaire were then analysed by the same process as before on SPSS. The responses were considered firstly on an overall basis and secondly on their director category basis to discern any differing views (see Chapter 4, Results). Recalled focus groups then reviewed and commented on these final results and that commentary was again recorded, analysed and placed in the results chapter under the appropriate questions as Focus Group Commentary if it enlarged on response and enhanced explanation of the question. Not all questions drew focus group response or commentary that added value to the findings. On a number of questions the focus groups simply repeated comments already made or accepted the findings without comment. There is no additional comment added to questions where that occurred.

### 3.5.3 Data Analysis

Statistical analyses were selected on the basis of the best method to test each of the various hypotheses. Statistical analysis of the dataset was primarily performed on

SPSS. Excel files of raw data were imported to SPSS and a comparison was then performed between Excel and SPSS datasets to ensure accuracy. SPSS provides a series of statistical techniques which were applied for testing and interpretation.

In addition to the bar chart graphing of the individual categories (as shown in Chapter 4, Research questions and results), there was category comparison with the total sample and frequency tables with percentages and cumulative percentages considered along with measures of dispersion, standard deviation, mean and median.

Chi-Square Analyses were also run on all yes / no questions and all Likert Scale questions where the positive and negative ends were grouped together. The majority of these analyses were regarded as invalid because of the small sample size.

#### 3.5.4 The questionnaire

The questionnaire was constructed around four main themes or issues, namely, agenda content, process, review and influence (the predominant theme of interest being influence). Questions on each of these four themes were grouped together following the early research readings and, particularly, the initial focus group commentary (after that group had completed and discussed the original questionnaire (first version, p. 207). The statistics section in the questionnaire provided the information to check the research field coding of the respondent - pre-assigned by the researcher - by asking each respondent to state his/her status in one of the three optional fields, that is, chair, executive director or non-executive director. The respondents were also asked to provide details of equity ownership (if any), the industry grouping in which he/she held the directorship and the approximate revenue of the company of which he/she was a director. There were a small number of queries from respondents about this as a number of the directors surveyed held multiple directorships including roles in private, not-for-profit, government or state owned enterprises. In response, each was asked to complete the questionnaire from the viewpoint of the director role in one of their publicly listed entities.

The sequential placing of the questions in the four distinct subject areas, in response to the initial focus group recommendation, surveyed agenda content in questions 1 to

18, agenda process in questions 19 to 30, agenda review in questions 31 to 40 and, agenda influence in questions 41 to 65. Section five, questions 66 to 69, sought statistical information on each respondent that identified director category, any equity the director held, corporate/industry grouping and company revenue (final version questionnaire, p. 219). This permitted the original coding of each individual's director category to be verified and altered if necessary.

The questionnaire provided for some yes/no decisions with other information measured on the Likert Response Format (of one to five – see final questionnaire Appendices, p. 219) and allowed further commentary to be added and addressed as qualitative data in each of the four areas of content, process, review and influence.

The questionnaire sought both quantitative and qualitative responses from the directors. The initial questionnaire was developed and tested first on the small group of experienced public company directors outlined above and they met to give both their view of the questionnaire (as they experienced it) and consider the averaged results of their small sample group. They collectively discussed their experience of the questionnaire, reviewing first the questions, the content, and the structure of the questionnaire and then the results that were obtained. The results reported to them gave the first glimpse of the director views. The people in this initial focus group were instrumental in changing the structure of the final questionnaire (that is, grouping it in consistent themes) in some cases altering the nature and content of the questions and in one case adding a new question.

The questionnaire sought individual views on the definition of a director's responsibility in agenda setting and the key director activities in this area (as seen by experienced business people involved in governance) and it also explored all aspects of experience in agenda setting/preparation. From the questionnaire a total of 103 responses were received (23 percent of the identified field surveyed, see Table 3.1, p. 71).

The method of coding of the final individual questionnaires (an alpha plus numeric system) allowed the researcher to identify individual directors from the questionnaire distribution coding. This coding was kept confidential to the researcher to meet the

ethical undertaking given to respondents (see Appendices, p. 197). The information ensured the analysis could consider not only the overall sample but could also isolate for comparison the three distinct component category fields and verify their validity within the total field, namely as chairs, executive directors (that is, managing directors and employee directors), and, non-executive directors (that is, external/independent board members). The coding system used remained constant from the initial group to the final version and details are attached in the appendices, control sheets (p. 204).

The classification of the three categories recognised that each category may in itself have differing responsibilities, obligations, personal power bases and agendas. For example, is the managing director (or any other executive director) who is a senior executive in the organisation motivated by the same goals as the non-executive director representing the investor? Which is more important to such an individual, goals that drive his/her personal gain and incentive payments or long term value add and return to the investor? The issues that could arise from this potential divergence of interest may subject critical decisions to different outcomes because of those specific views and may influence agenda approach. The questionnaire therefore examined responses to the same question collectively, then from each of the different perspectives of the three director categories, and then compared all those responses.

### 3.5.5 Focus groups

The format of a questionnaire and those results for review and comment by focus groups was used to both review the results from a practitioner view and add opinion/commentary in a mixed methods formula deliberately aimed at adding colour and practical expertise to the quantitative findings. The expert focus groups used experienced board chairs and directors to review the findings of the survey while noting their collective judgement and commentary on both questionnaire results and actual board process. The final group was also asked to suggest views on best process for directors and boards (see 6.5, A format for good process, p. 190).

Originally conceived in the early 1940s by Robert K. Merton as a way of evaluating wartime propaganda (Overlien, Aronsson & Hyden, 2005) focus groups have often been employed for market research. A sophisticated form of focus group, the Delphi

method or technique, was subsequently developed at the RAND Corporation (Dalkey, 1969) in the middle of the last century and, according to Gordon and Pease (2006) is an effective means for collecting and synthesizing expert judgements, used very often across a broad spectrum of topics. This focus group process, they point out, requires participants, carefully chosen for their expertise in the problem under study and promised anonymity. The studies themselves involve the feedback of information, including the average or median of responses and:

The process tends to move the group's responses toward consensus, although reaching consensus is not necessarily the central objective or a measure of success of such studies. It also produces a set of reasons behind the responses. The value of the Delphi method rests with the ideas it generates, both those studies that evoke consensus and those that do not. The arguments for the extreme positions also represent a useful product. (p. 322).

Gordon and Pease (2006) state that the method has had myriad applications even if it had drawn criticisms including the long time frames involved in such studies. Thus, in their various forms focus groups have been widely used in business.

The aim of the focus groups in this study is, as Wilkinson (1998, p. 187) states, “to elicit people's understandings, opinions and views, or to explore how these are advanced, elaborated and negotiated in a social context” (Hyden & Bulow, 2003, p. 306). In this study all 103 participants are linked by a common ground - they are all board directors of publicly listed companies – so it can be assumed they share the same focus and objectives in their duty to the company. The results of their discussions should be considered in that light when evaluating the material.

The questionnaires were answered before the members of the focus groups were selected and met and the members of the focus groups were not drawn from identical boards. Indeed, while most are regarded as high-profile directors they had, in many cases, not met one another before this encounter. The analysis of responses from the initial and final questionnaires was revealed to each focus group in summary form prior to the group session and the groups were then run as an open-ended discussion that attempted to explore issues and seek general consensus of the role directors should play in each part of the agenda-setting process. Also recorded were views on items not tested or included in the original questionnaire, for example, the role of

board committees in setting agenda items.

The focus groups were also asked to consider how items should be addressed on the agenda and what weight each aspect of activity should be given. The purpose was to consider an ideal model of procedure as the participants perceived it should work in the real world so that this model could be reviewed by other company directors against their actual practice. This allowed the development of conclusions and recommendations for corporate directors, investors and stakeholders to consider a best format model to follow in their own process. That model is addressed in the conclusions. Members of the final focus group included individuals who participated in the original group that critiqued the initial questionnaire and, again, this group was representative of all of the director categories.

These focus groups were brought together from an experienced and varied group of directors. The individuals who were invited to participate were carefully selected to represent breadth and depth of board experience and to cover aspects of gender and functional background (that is, accounting, law, human resources, engineering etc...). In advance of the focus group meetings a preliminary verbal briefing was given by the researcher to each individual and every member had full access to the data under discussion well before the meeting. Again confidentiality was stressed as was the need to focus on process and not on commercial issues. None of the invitees declined the invitation to participate and all have asked to be included in post-research feedback. The different backgrounds did not appear to inhibit open discussion and the groups generally ran for two and a half to three hours in each session. Chaired by the researcher the discussion focused on results and the process issues raised and where discussion sidetracked it was redirected back to the issues under study.

The groups were charged with commenting on the results and reaching a consensus view where possible. Those consensus views are noted in the Results, Chapter Four, as are the divergent views of relevance. All of the focus group participants were in the field of the 103 respondents to the survey. Their comments demonstrate the pragmatism of working directors. The parameters of the focus group discussions were set by the questionnaire and the survey results which were in front of the members of the groups. They are included to add additional information to the questionnaire

findings.

An interesting aspect of focus group attitude was expressed by a general recommendation, initiated by one experienced chair who also participated in pilot and final focus group study. He felt that this type of discussion addressing board process should be available to serving directors on a regular basis. It was, he said, an opportunity quite unlike other seminars where he could interact with experienced working practitioners who were also facing with the same issues. The general consensus from the groups was that the open ended nature of discussion and the ability to engage with respected peers (without breaching confidential issues) provided useful debate and information.

### 3.5.6 Summary of methodology

The focus of the research was primarily around the influence section in both formal questionnaire and in focus group. While there was other useful information that the research provided on agenda content, process and review the importance of agenda influence was the primary question and its relevance was highlighted by one focus group which discussed, and agreed unanimously, with an experienced chair and group member who stated: “Who controls the agenda controls the meeting.”

The final focus group considered the question of whether the agenda was a template on which the content of a meeting hangs or something more significant. Commentary on this is addressed in Chapter Five, Discussion.

In setting the parameters for the study around publicly listed companies a vast number of other organisations have been ignored, specifically those that can be categorised as public unlisted and closely held or the large number of privately owned firms that make up the bulk of the Zealand business world. While this may appear an omission the compelling reason for such a split is that private companies have only their owner/shareholders to answer to (and, perhaps their bankers) and their actions do not come into the public arena for scrutiny on a half-yearly or annual basis. They may also be focussed on different criteria and may demonstrate little interest in profitability being driven instead by a desire for capital growth or tax-effective

outcome. These concerns may or may not have meetings that are driven by agendas but they are not accountable to broader public shareholder inquiry.

There were two areas that provided concern and those concerns revolved around the small number of possible respondents in a specific sector. Those were identifiable and distinct so a weakness in the research must be acknowledged and noted for further reference.

The research determined what directors think theoretically and practically is important in the process of preparing the agenda, what should feature on the agenda, how that information should be presented and, most importantly, answers the question of who sets the agenda and dictates what directors discuss.



## **CHAPTER FOUR: RESEARCH QUESTIONS AND RESULTS**

The research in this study, as stated in the introduction (Chapter 1), is specific to New Zealand and its publicly listed companies. The aim of this research is to study the power and influences on the board's agenda to see who determines what corporate directors discuss. In examining the working of the corporate board it focuses on the first of the board's decision making processes - governance agenda setting - to clarify who, through their power and influence on that agenda, controls the parameters of director discussions (what directors talk about); who drives the agenda programme - directors, management or other forces unseen - and how those with power and influence determine what issues directors include or exclude in their forums. Specifically it looks at this through agenda content, process, review and influence.

The process has been examined through direct research into the views, experiences, and actions of New Zealand resident directors of publicly listed companies to highlight who sets the rules, exerts influence (or even controls) the process they adopt or accept in setting the corporate board agenda. The subject of the research is, therefore, those actors who can potentially influence the shape and content of the board agenda. In doing so they have power over the direction and affairs of the publicly listed corporate board by deciding what that board talks about in its various meeting forums (that is, full board, informal gathering or board committee). The research seeks to determine if the directors control their board agendas (and thus the governance functions) or if the agenda is impacted upon by other people and powers within or outside the corporate who influence or dictate to the directors what to think about, therefore shaping the space for debate.

The research examines agenda content, agenda process and agenda review, as well as the primary subject of agenda power and influence (as outlined in Chapter 2). In the section on agenda content the questionnaire elicits the individual director's views on agenda issues, the organisation of those issues in sequence, the perception of their importance, the director's wish to add, change or delete issues, the presentation of the issues, agenda size and content of key importance - in broad headings of compliance, performance and strategic - and whether or not all the issues required by the director are covered. This section also asks if the agenda coverage gives the director

confidence in overall management and assists individuals to add value to the organisation.

In the section on agenda process the questionnaire seeks information on how the director puts up an item for discussion, the time available to consider the agenda before a meeting, whether there is enough time for open discussion provided by the agenda and if the board prepares and works to an annual plan. It also seeks information on agenda flexibility, whether executives present personally to the board and if the directors, as a board, discuss the role they play.

In the next questionnaire section, agenda review, information is sought on whether the agenda has changed in content focus, when and how the agenda process is reviewed and if (and how) the director believes the agenda process could be improved.

The fourth section of the questionnaire looks at known influence on agenda preparation (including the role of the chair and chief executive), the presentation and order of items for discussion, the sponsors of agenda items, adherence to the agenda format, who (or what class of people) can impose change on the agenda and whether the individual director considers the board has full agenda control.

The first three sections are designed to draw out process issues, problems or director concerns with the agenda. The fourth section seeks to identify the forces of power and influence on the agenda, examining primary points of control, in particular, the chair and the chief executive.

The final section, section five, provides statistical data for analysis, for example, responses to director category (to confirm the original research category allocation), industry sector, corporate revenues, and individual director shareholding.

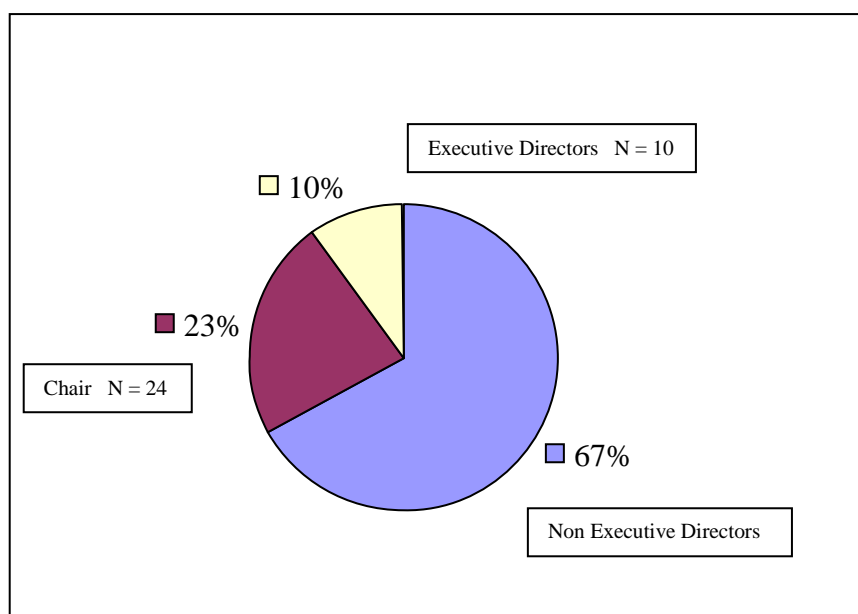
With all responses to hand the questionnaire was analysed on SPSS. Analysis was conducted on total responses to each question and then each question was examined further as to response by differing director category, that is, by chair, executive director and non-executive director. The results obtained are graphed and displayed numerically. The survey results were then discussed in each of three separate focus

group sessions, and those sessions were recorded.

Firstly, in the total field surveyed of 450 directors there was a relatively small response (7%) from those who serve on the boards of publicly listed companies with a turnover of more than \$1billion. That was anticipated as the total corporate field of companies in that category is relatively small in New Zealand (approximately 20). Of that total group, measured on turnover, there are those that are not publicly listed but are co-operatives, for example, our largest company Fonterra, our largest food retailer Foodstuffs, and meat company Alliance Group. The field in the publicly listed category in the \$1billion plus turnover is, therefore, very limited and the results produced here may vary from a similar survey conducted in a larger offshore environment. That lack of scale suggests caution in cross-border comparisons. Secondly, the number of chairmen surveyed from these large corporates is likewise small and their situation may differ from their counterparts who are chairmen/presidents of, say, a large United States publicly listed corporate. The chairmen surveyed here were without exception non-executive, a quite different picture to that encountered in the United States and commented on in Chapter Two.

The full results of the questionnaire (with both quantitative and qualitative information) are set out below in numeric order exactly as the questions appeared in the questionnaire (with figures and tables where appropriate). The total responses to each question are shown and where these are less than the total field this indicates a no response or omission by a respondent or respondents. In those cases the total responses are stated as less than 103.

While the overall response is important, comparison by sub-group is particularly relevant when considering issues of influence and agenda control, as will be discussed in the following chapter (Chapter 5). The maximum total response of 103 included 24 chairs, 10 managing directors (executive directors or ED) and 69 non-executive directors (NED) as shown below in Figure 4.1 (and as outlined in research methodology in Chapter 3).



**Figure 4.1. Sub groups of total survey respondents**

With total responses of 103, one response (count) equates approximately 1% of the total field of all respondents who participated. As stated in Chapter Three, Research Methodology, the total of responses to the questionnaire represented approximately 23% of the population of publicly listed company directors in New Zealand as identified in that role and resident in the country at the time of the survey. Responses on each group show either yes or no to specified values or use a Likert scale of 1-5 rounded to the nearest whole number. These are combined to show total positive, negative or neutral responses expressed as percentages.

Relevant focus group points that address the respondents' answers to individual questions are added at the end of each question where that provides useful insight and a director view of actual practice. Those points are included as simple key statements and the information is further expanded in the following chapter, Discussion.

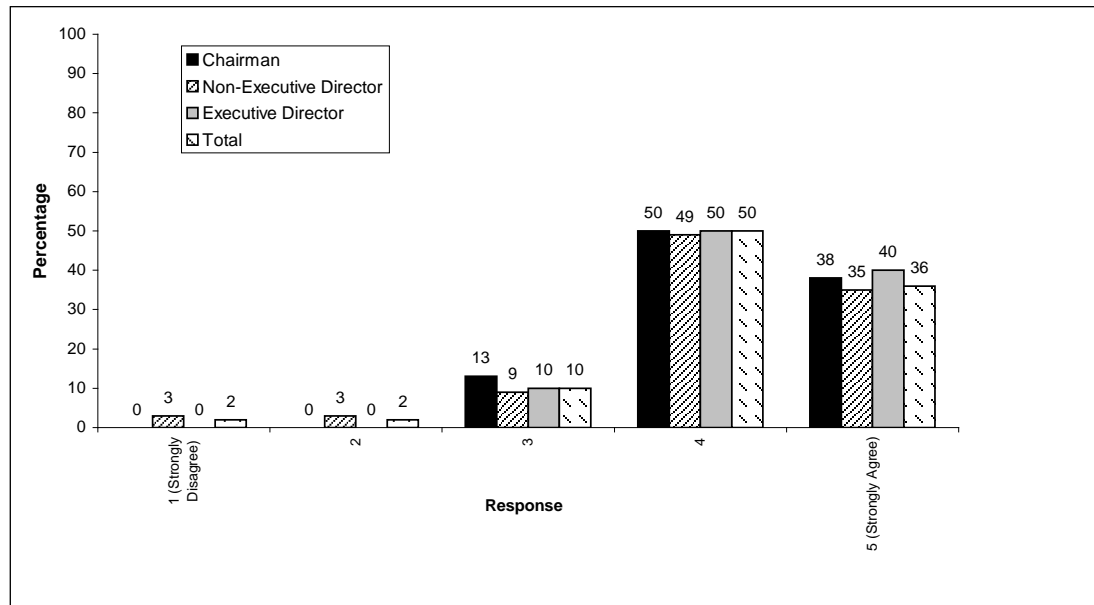
The responses presented in this chapter consist mainly of simple frequency and cross-tabulated data. Results at this descriptive level are necessary in this thesis, given that both in New Zealand and internationally, little has so far been discovered on the topic and descriptive level data is necessary to provide some answers to the most fundamental questions about these agenda issues. The results that follow are presented as a total and in separate modes of chair, executive director and non-executive

director. (Note that responses to the questions do not necessarily add up to 100% due to rounding errors.)

## SURVEY RESPONSES

### AGENDA CONTENT

**Question 1: Your board agenda normally covers all the appropriate issues for you to ensure competent corporate governance today.**



<sup>7</sup>N=102

**Figure 4.2. The agenda covers all appropriate issues for competent governance**

An overwhelming majority of respondents (88) either agreed or strongly agreed with this statement. Ten treated the statement with ambivalence while four either disagreed or strongly disagreed (see above). Cross-tabulations of responses against status field (that is, chairman, executive director or non-executive director) demonstrate that the survey respondents who disagreed with the statement were all in the same category, that is, non-executive directors. None of the board chairs (24 respondents, 100% of their status field) or the executive directors (10 respondents, 100% of their status field) responded negatively to the question. This is regarded as an interesting finding and its implications will be explored in the following chapter, Chapter Five.

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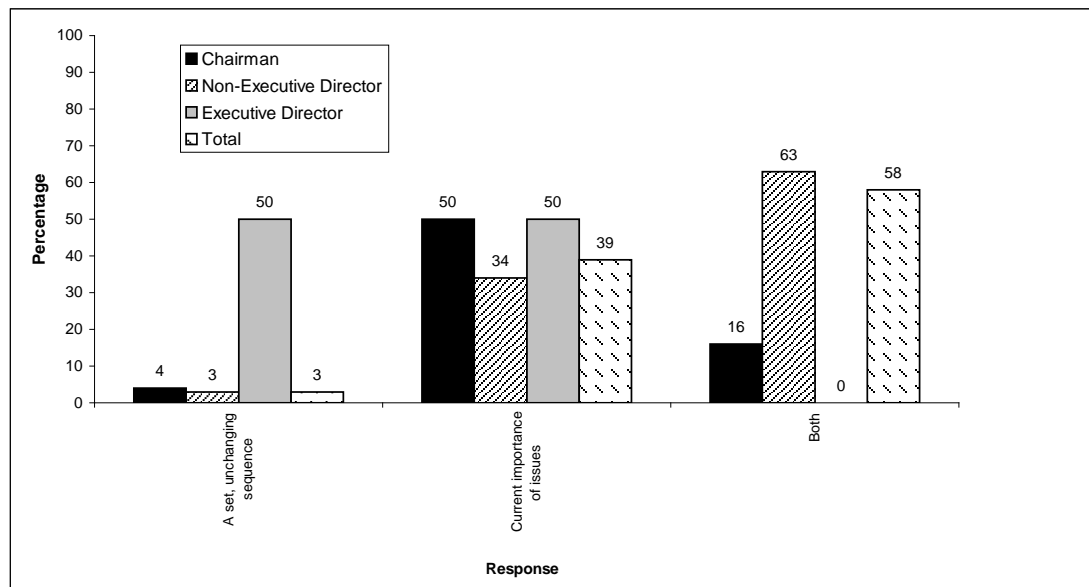
<sup>7</sup> There were 102 (out of 103) valid responses. Valid responses for each question are shown.

### Focus Group Commentary

The focus groups, in discussing this aspect, also discussed their views of the key measures of an effective board. Those measures they defined as: a passion for the business and process; a shared view of the opportunities; competent communications; a commitment of both board and management to work together; and, accountability.

They considered that the chair, board and CEO should operate as an integrated team in this process of governance. Where divisiveness occurred this could be through undue board interference or where the CEO was under stress. This placed the chair in an important role of managing the situation carefully to get the right outcome without splitting the board apart.

**Question 2: Are the items on your board agenda organised in a set, unchanging sequence or in order of current importance of issues? (See Figure 4.3).**



**N=102**

**Figure 4.3. Are agenda issues set or organised by current importance**

The question sought an either/or response. The majority of respondents (59) indicated that the items on their board agenda always appeared in a set, changing sequence. However, a large group of respondents (39) said that their agendas varied depending on the current importance of issues the board faced. Three respondents marked both categories, indicating they had a set agenda with variance for items of current importance. That response puts these respondents in the second category where agenda variance occurs so the figure for “current importance of issues” is adjusted to 42 for the overall group (see above).

In cross-tabulation with the non-executive director field the responses appear in line with the overall group showing 37% of agendas organised on the “current importance of issues” line and 63% following a “set unchanging sequence.” The executive directors were split equally (50%) in each category as were company chairs.



### Focus Group Commentary

The focus groups considered that in practice items on the agenda changed depending on the current importance of events and that these changes were driven not only by the directors and management and commercial imperatives but also by committee chairs of the board such as the audit committee. With board changes and the need for continuity and institutional memory much of the agenda remained unchanged in format and with change only occurring gradually, often over a period that was longer than a board member's term in office. There were also variances that appeared over time with industry needs and expectations.

#### **Question 3: Describe what content you would change or what items you would personally add or delete from your board agenda.**

The question sought individual written comment on suggestions for agenda content change. Of the total response of 91, 56% (51 respondents) did not feel any change was necessary. However, 40 respondents (44%) advocated some change to the agenda content. Cross-tabulation showed this overall pattern to be identical to the view of the executive directors where 44% believed some change necessary. Non-executive directors showed a slightly different view with a minority believing no change was necessary (48%) and a majority advocating some change (52%). The chairs held a radically different view with a strong majority believing there was no need for change (80%) and the remainder (20%) holding the view that some change was necessary. (refer to Table 4.1). The implications of this disparity of view will be discussed in the next chapter.

**Table 4.1 Should the agenda content be changed**

| Change         | Yes | No  | No Response | Total Field |
|----------------|-----|-----|-------------|-------------|
| Chairs         | 20% | 80% | 4           | 24          |
| Exec Directors | 44% | 56% | 1           | 10          |
| Non Exec Drs   | 52% | 48% | 7           | 69          |
|                |     |     |             |             |
| Total          | 44% | 56% | 12          | 103         |

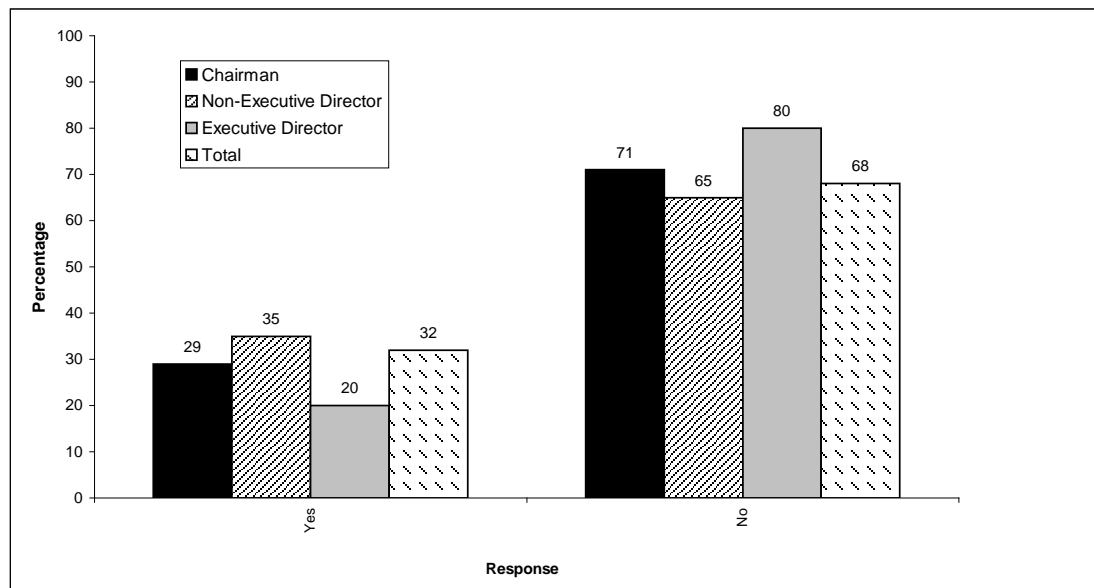
While comments on “what content” should be changed differed widely in subject matter - as could be expected with different boards and different directors - there was, among those who thought change necessary, one overall theme common to all “change” respondents irrespective of status category. Twenty-three percent of all those advocating change specifically mentioned the need for more strategic discussion or input from the board, a view voiced by 20% of chairs, 23% of non-executive directors and 33% of executive directors. Other suggestions for change included items such as health and safety, director interest areas, contract approvals, historical information, KPIs (Key Performance Indicators for executives), compensation and ethics. Few of these suggestions received more than one mention - with the exception of strategy.

**Question 4: Are there issues missing, treated inadequately, or given too little time and coverage? Specify.**

This question requested an expansion of the responses to the previous question and 93 of the total field responded. The majority of the total respondents (56%) did not feel there were agenda items missing or issues that were treated inadequately. The magnitude of that response was more marked when cross-tabulated to chairs (where 67% felt all items were covered) and executive directors (where 80% felt the treatment of issues was covered and adequate). The majority of non-executive directors (52%) held an opposite view. While that view is not held by a majority of the total or a majority of the chair or executive director categories, 33% of chairs and 20% of executive directors agreed that there were issues missing or poorly treated, a sizable enough figure to be taken seriously.

When asked to identify the nature of these items the respondents who signalled concern pointed to diverse areas such as risk management, business performance reporting and people issues. One issue drew repeated comment from all of the respondents - strategy - and that was mentioned by 25% of the concerned chairs, 19% of the concerned non-executive directors and 10% of the concerned executive directors. These aspects will be considered in Chapter Five.

**Question 5: Would you personally change anything about your board agenda presentation/layout? (See Figure 4.4)**



**N=102**

**Figure 4.4. Would change the board agenda presentation/layout**

This question sought a “yes/no” response. Over two thirds of the respondents (69) did not consider any change was required. However, one third (33) indicated that they would change some aspect of the agenda or its presentation or layout. Reviewing each of the three different categories, chairs reflect a similar, slightly stronger view to the overall group (71% for no change compared to 29% for change) in line with the non-executive directors (65% for no change compared to 35% for change) with managing directors stronger in the view that no change is needed (80%). Overall, and consistently across each category, the views are of uniform pattern although 20% to 35% of each group feel some change should occur.

## Focus Group Commentary

One focus group member said that agendas by their nature in discussion format experienced a lot of “stretch” and while they were prepared to cover the issues of the day, matters from previous meetings and proactive issues, good clarity was needed around the items and the way in which they were presented. Directors sought continuity and issues had to remain in sight so directors could alter and supplement any items on the agenda and reorder it. It was necessary to remember that there were probably three challenging issues at any one time that needed priority. These would differ from company to company but “should not be allowed to overwhelm the agenda.” There should not be items missing from the agenda where the board “ran good process.” A key to this was “having a good CEO and board who are proactive to ensure the right items are featured on the agenda.” The agenda in itself should not be unduly restrictive and the chair could not abdicate responsibility for agenda flexibility, ensuring it remained open for discussion. One director commented that sometimes the problem with the agenda was simply that “board members are not totally attuned to what their roles are” and they could at times try to delve too deeply into management.

### **Question 6: If ‘yes’, specify what changes you would make.**

This question sought to expand the response to Question 5. The total response of 102 generally reflected consistency with the percentages recorded in the previous question. Of the total responses 26% suggested changes with 74% giving no response/no change answers. Cross-tabulating showed a need for change listed by 21% of the chairs and 30% of the non-executive directors but only one of the executive directors (10%).

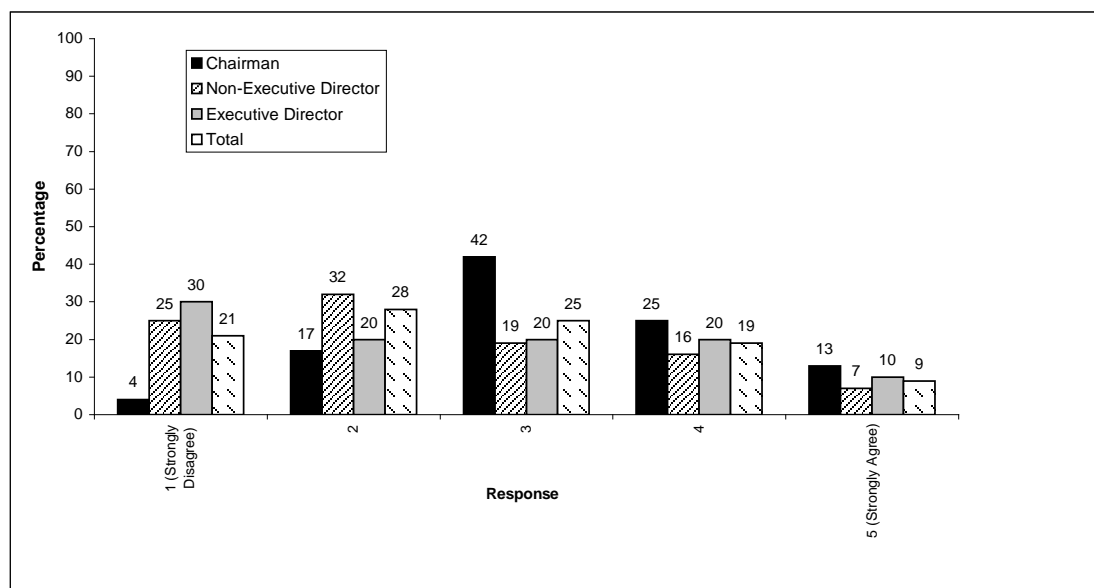
The non-executive director responses (21) provided repeated comments from over half of the group that pertained to structure of the agenda with most of these focussing on the order of agenda items and some (four) seeking more on strategy. The small numbers of responses from the chair and executive director categories suggests an issue that will be discussed in the next chapter.

## Focus Group Commentary

The focus groups did comment that agendas were “particular to the organisation.” A prominent chair and a member of one focus group added during this point of discussion: “I serve on 10 boards and they all vary in agenda approach.”

Another group indicated it was important for the board to get together to test points of view on an informal basis as this sort of discussion gave the chief executive and chair the opportunity to amend the agenda. The ability to flex the agenda meant the board meeting was one with “value around it.” One of the focus group members said that while they accepted the agenda as a norm in publicly listed companies (as surveyed here) a formal meeting agenda was not necessarily found in smaller private companies. His experience in those companies - even at turnovers of up to \$400 million - was that some had not even had a board meeting and “half of these guys haven’t even an agenda.” His point was that the difference between larger and smaller companies could produce a distinct difference in director practice and strategic governance.

**Question 7: As a director, agenda influence is not important in adding value to the business. (See Figure 4.5)**

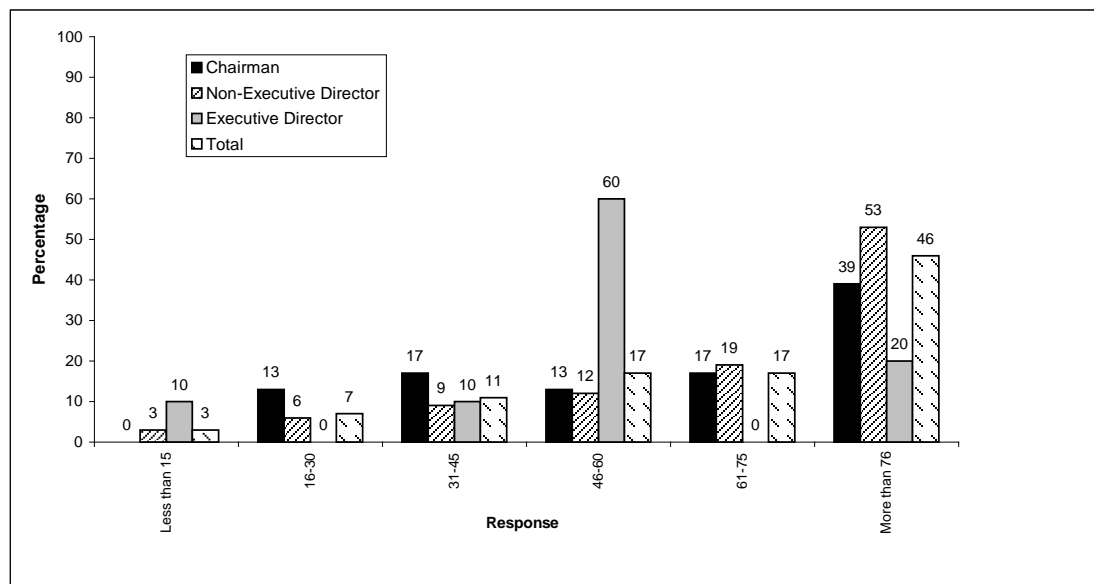


**Figure 4.5. Agenda influence is not important in adding value N=102**

Of the total group of respondents 49 strongly disagreed/disagreed while 28 strongly agreed/agreed with the statement and 25 were undecided. Cross-tabulated by director category, the pattern was similar for non-executive director (25% strongly disagreed, 32% disagreed, 20% were undecided, 16% agreed and 7% strongly agreed) and executive director (30% strongly disagreed, 20% disagreed, 20% undecided, 20% agreed and 10% strongly agreed) but markedly different for chairs. But only 4% of chairmen strongly disagreed, 17% disagreed, 25% agreed and 13% strongly agreed, while a very large number of chairs were undecided or neutral (42%). This figure was almost double the percentage recorded by the overall group and twice the percentage recorded in the other two categories.

Question 7 was a reverse question mirrored by Question 18. The results of both are consistent and will be considered together and discussed in the next chapter.

**Question 8: How many pages are there in total in your typical agenda and board papers (including appendices). (See Figure 4.6)**



**N=102**

**Figure 4.6 The agenda size (in pages)**

This question provided page count bands starting at “less than 15” and progressing in bands of 15 to the highest provided range of “more than 76.” The largest group of

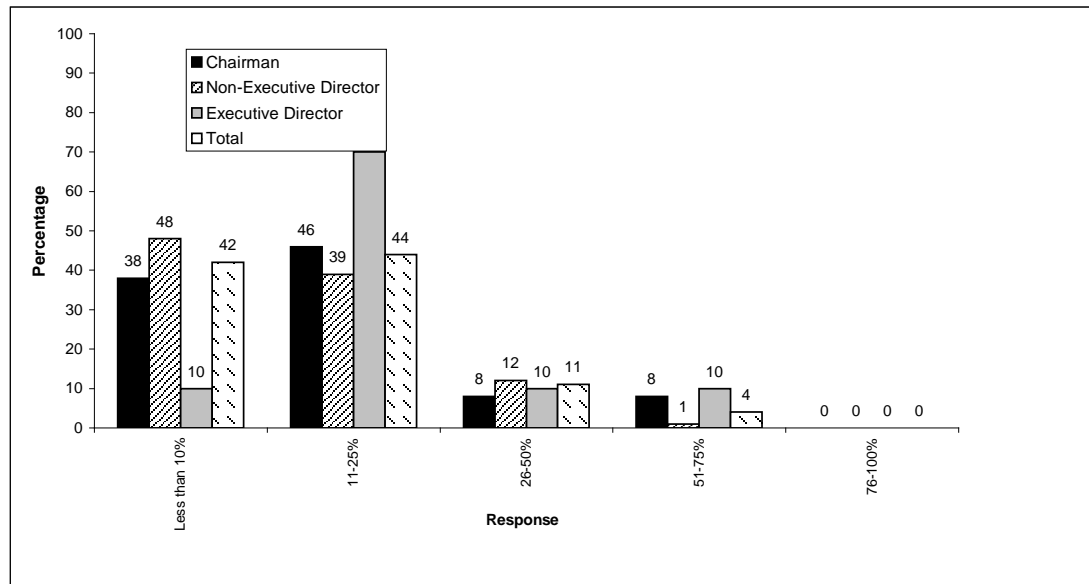
respondents (46%) reported that the typical size of their board papers was in excess of 76 pages, with the remainder receiving agenda and papers that typically ranged from less than 15 pages (3%) to 75 pages. One third of the directors typically received board papers of between 46 and 75 pages.

### Focus Group Commentary

There was considerable discussion in the focus groups on the size of the board papers and the essential features. While it was agreed there were certain key features directors wanted to look at they felt size related to key issues, or a depth of detail, depending on the stage the business was at, or special projects that may require extra information. The directors believed that they needed detail to understand trends properly and to give depth to form contextualisation.

One board director and focus group member commented that monthly board papers could vary from 30 to 300 pages and, where there were particularly difficult issues, could reach as high as 600 pages. In one multi-billion turnover company, where he was a director, an agenda had contained over 200 pages dealing to one audit issue alone. This type of “exaggerated” paper could be seen in American or international companies where there were “international regulatory matters to be dealt with, i.e. the New York Stock Exchange.” Another director commented that in one major acquisition the board he served on demanded to see all the due diligence papers - over 1000 pages - something he did not see as the role of a director but rather the responsibility of management.

**Question 9: Approximately how much of your board agenda is devoted to items that are compliance/regulatory issues? (Either count the pages in your last agenda and calculate these items as a proportion of the whole agenda or simply estimate this percentage on the basis of your experience).<sup>8</sup> (See Figure 4.7)**



**N103**

**Figure 4.7. The agenda focus on compliance/regulatory issues**

This question (as with questions 10 and 11) sought responses in five percentage bands. It was believed that this would be under half of the total focus in most boards so the two bands in the lower quartile reflect that proposition. Only 15% of the total respondent group indicated that compliance issues accounted for more than 26% of the board agenda on average and of this group only 4% marked the subject as accounting for more than 50% of the agenda, while no one saw it above 75% of the agenda. The majority of directors (85%) reported that compliance and regulatory issues accounted for less than 25% of the agenda, with these issues accounting for less than 10% of the agenda in 42% of the responses.

#### Focus Group Commentary

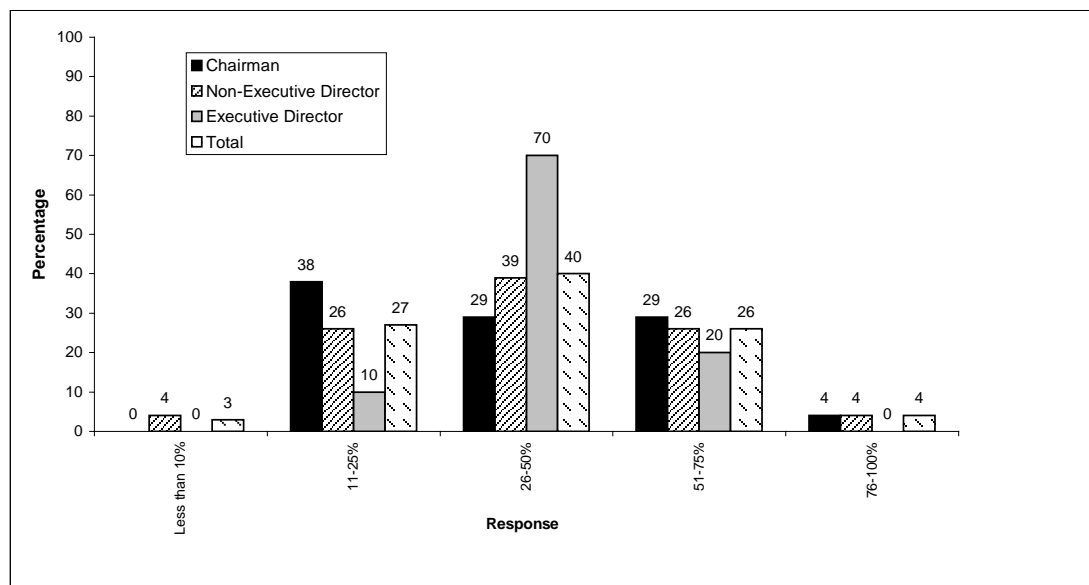
The focus group commentary spoke of an increasing demand for compliance and improved reporting both in New Zealand and internationally. The groups referred to

<sup>8</sup> The directors were also asked to use the same formula for calculation in Questions 10 and 11.



both domestic requirements and the international changes imposed on their companies by US regulations (i.e., Sarbanes-Oxley) and IFRS (International Financial Reporting Standards). The amount of time directors had spent on the latter was described by on director as “ridiculous.” However, it was forcing directors to look forward and make assumptions that impacted on the bottom line through “dramatic fluidity.” Another commented that the pressure on compliance had come from three sources - regulatory, international events and an increasing impact of insurance costs on business.

**Question 10: Approximately how much of your board agenda is devoted to items that are operational reports/performance issues? (See Figure 4.8)**



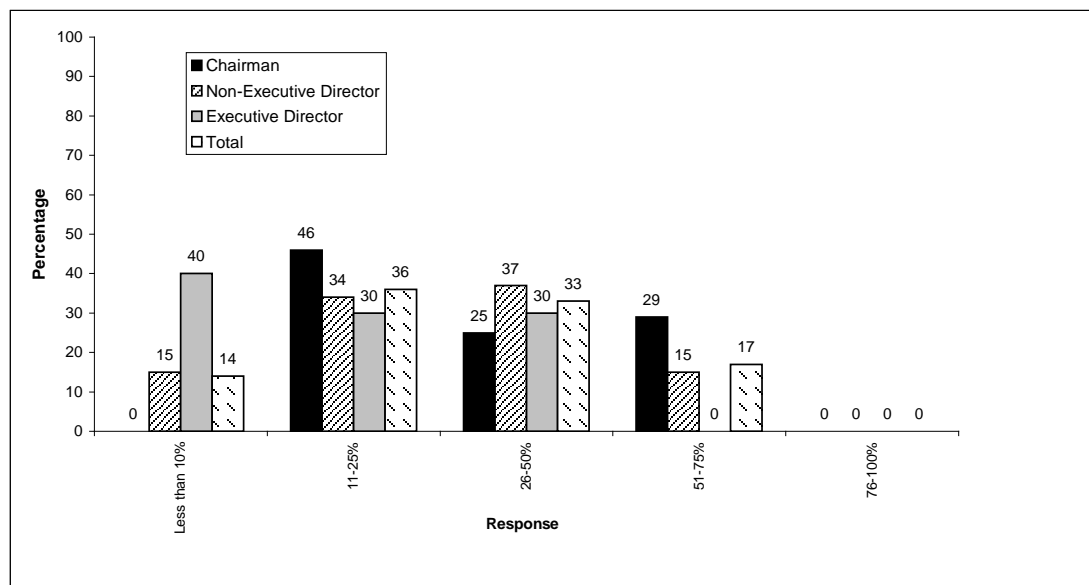
**N=103**

**Figure 4.8. The agenda focus on operational/performance issues**

The largest grouping of the total responses (40%) indicated that operational reports and performance issues took up 26-50% of their agenda. The next largest grouping (27%) reported these issues occupied 11-25% of the agenda with an almost similar group reporting they occupied 51-75% of the total agenda. Only four respondents suggested these issues consumed over 75% of the agenda. In the overall group 93% of the respondents saw performance and operational matters occupying 11 to 75% of their agenda space. (This considerable spread suggests very different reporting regimes. It is therefore seen as hardly meaningful.)

Cross-tabulated by category the views of the chairs and the non-executive directors were similar. But in the case of executive directors, they saw these issues occupying much greater time on the agenda (60% believed these issues accounted for 26 to 50% of the agenda and 20% ranked it higher at 51 to 75% of the agenda).

**Question 11: How much of your board agenda is devoted to strategic/value add issues? (See Figure 4.9)**



**N=103**

**Figure 4.9. The agenda focus on strategic/value add issues**

One third of the total respondents (33%) reported that 26 to 50% of the board agenda was devoted to strategic or value add issues. A further 36% said these issues accounted for 11 to 25% of the agenda. Only 14% reported strategic/value add issues at less than 10% of the agenda while 17% reported these issues occupied 51 to 75% of the agenda.

Cross-tabulated by category (see Table 4.2 below) there are different views from each group about the amount of strategic work the board agenda sets. While the overall group result was similar to that of the non-executive directors, the chairs' view of the proportion of strategic/value add issues featured on the agenda was higher than that of

any other group. No board chair reported that the agenda contained less than 10% of strategic/value add issues and in the chair view the agenda was stronger in that aspect than any other category perceived.

The executive director group - all managing directors - were strongly of the view that less than 10% of the agenda covered these strategic/value add issues.

**Table 4.2. How much of the agenda covers strategic/value-add issues**

| Percent coverage | <10% | 11-25% | 26-50% | 51-75% | Totals<br>Over 26% |
|------------------|------|--------|--------|--------|--------------------|
| Overall          | 14   | 36     | 33     | 17     | 50                 |
| Chair            | 0    | 46     | 25     | 29     | 54                 |
| NED              | 15   | 34     | 37     | 15     | 52                 |
| ED               | 40   | 30     | 30     | 0      | 30                 |

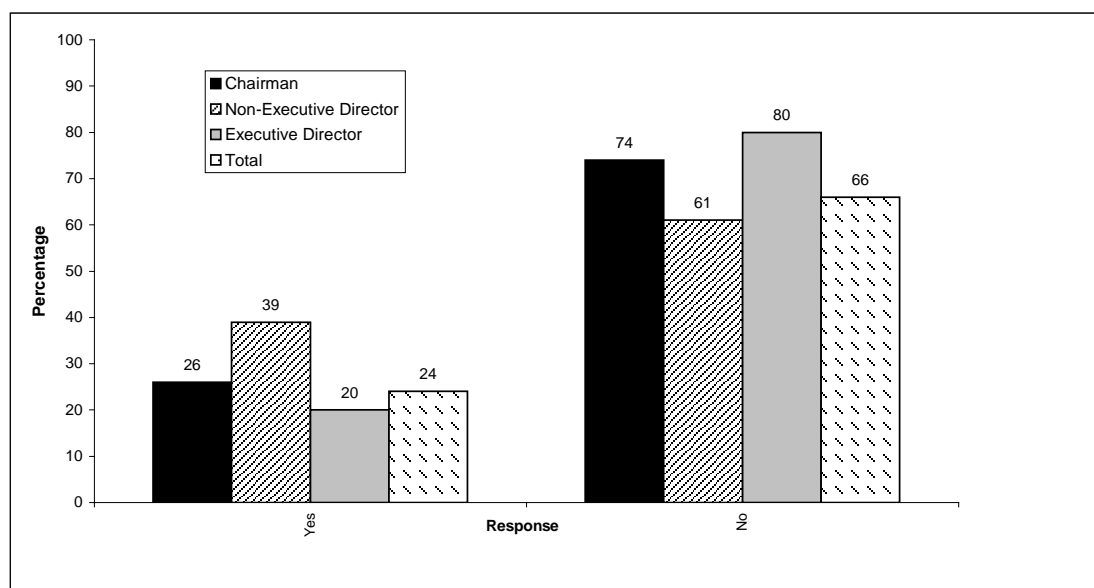
There is obviously a difference in view between the executive director category and the non-executive directors (including chairmen). This implies a difference in viewpoint or interpretation of strategic/value add in the agenda and board process. The executive directors appear to have a view that the board adds less strategic value than the non-executive directors themselves perceive. This will be discussed in Chapter Five.

#### Focus Group Commentary

In the initial sample to test the first questionnaire the small group of directors who formed that sample reported that they spent 50% or more of their time in board meetings on compliance and monitoring. That was discussed at length by the first focus group where it was agreed that there was a period two to three years ago where there had been a very heavy focus on compliance which had “bogged down” directors. That had moved on as process improved and the shift today, in a fast moving environment, was more into strategy. The emphasis on strategy also depended on having board directors who had “enough interest in the company, enough imagination and initiative to ensure that is the way the discussion goes.” However, the

directors also pointed out that the wording of this first trial questionnaire (changed in the final version) coupled compliance and monitoring. Their recommendation that the relevant question should be split to cover compliance and business performance monitoring as separate issues was followed. The overall view of how directors saw their priority in issues was summed up by one chair in a focus group who commented: “Performance will come up as number one and strategy as number two. Then I go down to key issues and opportunities, then compliance.” It was agreed that strategy was the dominant board domain with performance close behind. A number of directors expressed a worry about the low level of concern over “risk management” and felt that this came after strategy as an area to review. There was agreement that boards “are more demanding of information” from executives, wanted to understand more about what was going on in the business, where executives saw the issues and what the risks were.

**Question 12: Is there one single issue you would like to see on the agenda more regularly? (See Figure 4.10)**



**N=102**

**Figure 4.10. An agenda issue of which directors wished more**

This question sought a “yes/no” response with the opportunity to identify the issue individuals would like to see on the agenda more regularly. Just on two-thirds (65%) of all respondents said there was no single issue they would like to see on the agenda more regularly. One third (33%) however said there was. Cross-tabulated the results

showed a similar view in each category, that is, no single issue: chairs (71%), non-executive directors (61%) and executive directors (80%). However, that left a sizable group in each category that indicated they believed there was an issue they would like to see appear more regularly on the agenda: chairs (25%), non-executive directors (39%) and executive directors (20%).

Given the opportunity to identify the issue of concern there was overall, and in each category, a high proportion of no responses (chairs 66%, executive directors 80%, non-executive directors 63%). Where individuals responded, there was a clear view of the single most important issue - strategy. This was listed by 57% (of those who responded in all categories) ahead of performance issues (listed as the second most important issue by 17% of all respondents). The importance of this and its implications for agenda setting will be discussed in Chapter Five.

**Question 13: List what you consider, in your view, are the items on the board agenda that are especially important to the company.**

This question sought individual views on the important agenda items and drew 98 respondents. In analysing the response to this question all items were distilled into issue categories with the response reviewed overall and then by director category. The result was consistent throughout the director classes. The most referred to category was that of strategy listed by 72% of all respondents. It was seen as most important by chairs (79%), then non-executive directors (72%) and executive directors (60%). The next most mentioned category was performance of the business mentioned by 51% of all respondents. The third category, mentioned by 17% of all respondents, was risk management. This list highlights the key areas directors believe should be the focus for their discussion. The manner in which the agenda and the subsequent discussions for boards should be shaped around these features will be discussed in Chapter Five.

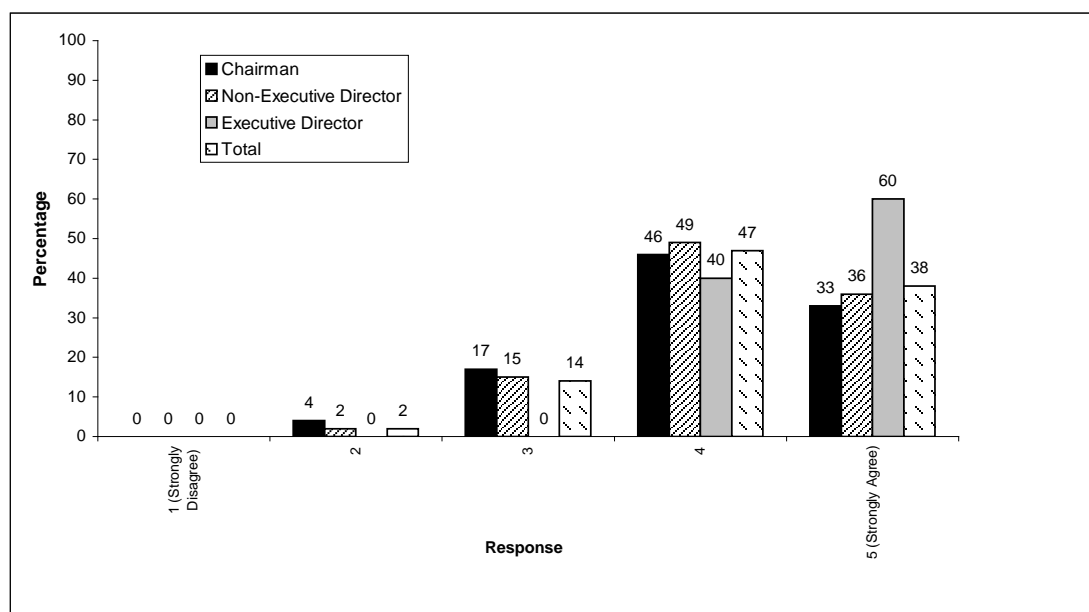
Focus Group Commentary

The focus groups felt it was “easy” for directors to spend time looking at compliance, but that the most satisfaction for a director was to talk about the “opportunities and issues” for the business.

**Question 14: List issues which have failed to appear on your agenda in the past 12 months and you believe should feature.**

Of the total of 65 responses 43 (66%) did not identify any issues of concern that should have featured on the agenda. Where issues were mentioned they were one-off items that could not be categorised into common specific groups. The failure of the majority of directors to respond to this and to nominate issues suggests that the agenda is comprehensive in topic coverage, but it does not confirm satisfaction with the completeness of issue discussion. The implications of this will also be discussed in Chapter Five.

**Question 15: The content of the board papers gives me confidence in management. (See Figure 4.11)**



**N=102**

**Figure 4.11. The board papers give me confidence in management**

Overall most of the respondents (84%) agreed with this statement, over one third agreeing strongly (37%). Only 2% disagreed with none disagreeing strongly. Cross-tabulation showed that all categories reported similar views - with the exception of the

executive directors (all managing directors) who all (100%) agreed (40%) or strongly agreed (60%). The views on this aspect of director satisfaction will be discussed in Chapter Five.

#### Focus Group Commentary

The confidence directors have in management can be a function of company size and sophistication with “larger companies having better structure, more of a strategic governance understanding and, often, stronger chief executives.” Smaller concerns often lack key support functionals and directors therefore need to insist on discipline and objectivity. It was considered that good reports to directors left few, if any, questions to be asked and directors should look for quality board papers that focus on issues with rigor.

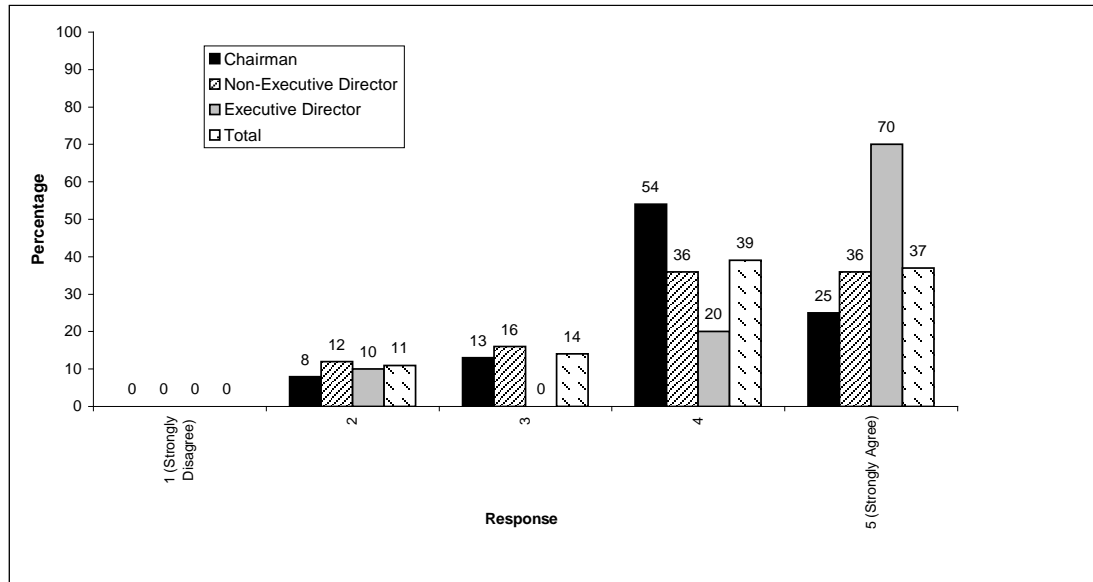
#### **Question 16: The directors were asked whether their board papers covered all the issues that “keep you awake at night.”**

Of the total respondents (102) 77% agreed/strongly agreed with this statement so the large majority believe the board papers cover all the necessary issues. Only 7% disagreed (1 respondent disagreeing strongly), while 16% were neutral (neither agree nor disagree). Cross-tabulated by category there was no disagree response from the executive director group with the large majority (90%) in agreement with the statement. Chairs and non-executive director responses were in line with each other with 8% of chairs and 7% of non-executive directors disagreeing (the only strongly disagree response coming from the non-executive director category).

#### Focus Group Commentary

There was a general view that, “if the CEO says nothing is keeping him awake at night, he is not working hard enough...is thinking about polo, the horses and whatever.”

**Question 17: The agenda reports on the key performance indicators the board had established for the CEO and management to track progress against strategy.(See Figure 4.12)**



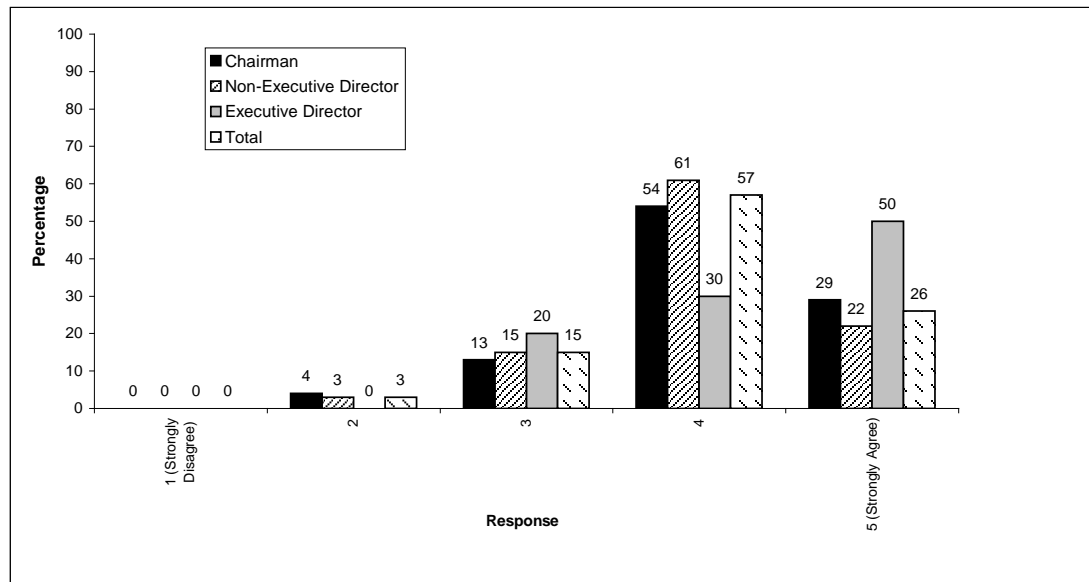
**N=103**

**Figure 4.12 The agenda tracks the key performance indicators**

Of the total respondents (103) 76% agreed/strongly agreed with this statement, while 14% were neutral or unsure and 11% disagreed (none strongly). Cross-tabulation showed that no one in any category disagreed strongly and those agreeing or undecided were consistent with the overall group results in percentage terms.



**Question 18: Overall, the agenda helps me, as a director, to add value to the organisation.<sup>9</sup> (See Figure 4.13)**



**N=103**

**Figure 4.13. Overall the agenda helps me add value**

In the total respondent group the large majority (85) agreed or strongly agreed with this statement. There were 15 uncertain or neutral and three who disagreed. Those results were consistent through each director category (agree or strongly agree: chairs 83%, non-executive directors 80%, executive directors 80%). No one, in any category, strongly disagreed and the disagree response was 3% and 4% with a zero reading in the executive director category. The results should be read in conjunction with Question Seven and will be discussed in Chapter Five.

#### Focus Group Commentary

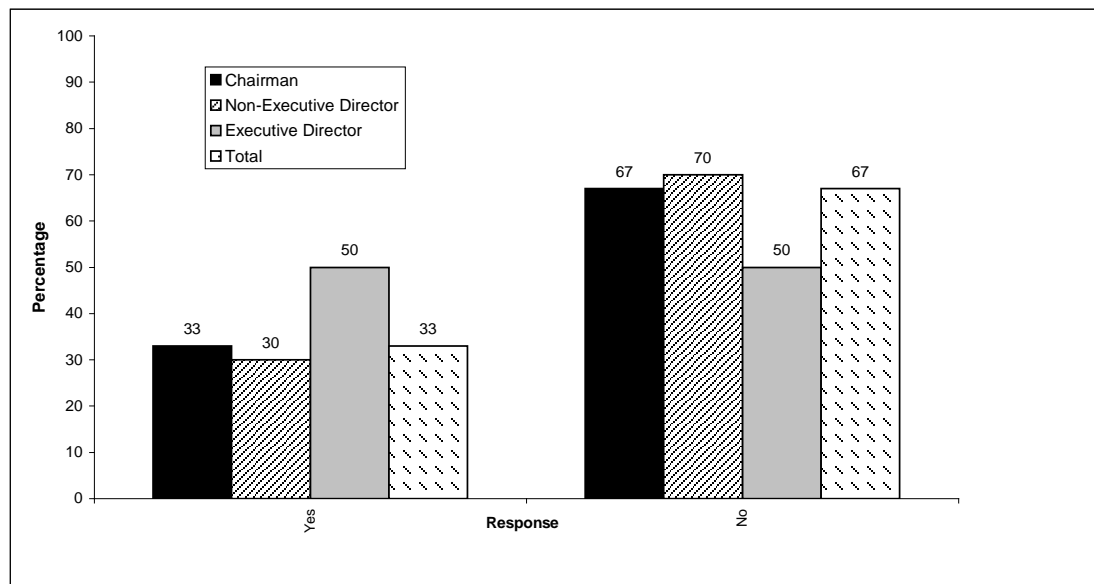
A question raised in one focus group asked: “Is the agenda a template on which the content of the meeting hangs or is it more significant than that?” It was decided, after discussion, that the format was more significant than that in that it provided a format to work through and gave flexibility for issues that needed to be dealt with. The chair

<sup>9</sup> The same question, phrased in the negative, was asked in Question 7.

had the role of “providing the meat” with the directors deciding how to think about it. There were three important aspects to consider: first, how much warning should be given to directors of an item for discussion; second, the important aspect of matters arising and its follow up list; and, finally, the need to always ask the directors the question “is there anything else?” One of the chairs commented that this was “not about how the agenda was set up but how it drove the outputs.”

## 4.2 AGENDA PROCESS

**Question 19: When appointed as a director you were given an explanation as to how your board agenda was prepared. (See Figure 4.14)**



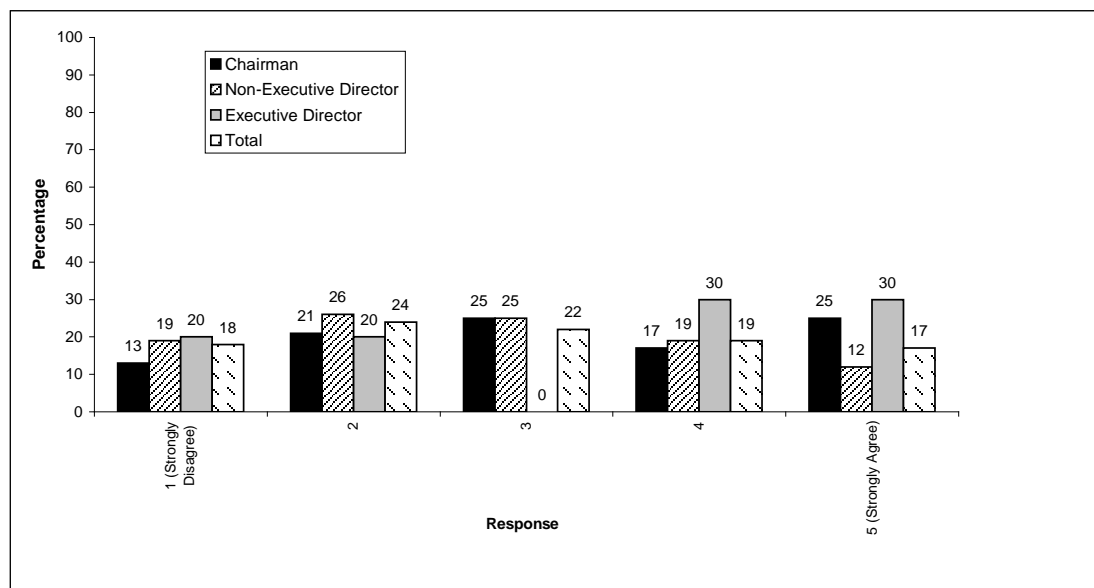
**N=103**

**Figure 4.14. Preparation of the board agenda was explained**

This question sought a “yes/no” response. The majority of all respondents (67%) were given no explanation of the process of board agenda preparation at the time of their appointment. One third were. On cross-tabulation the view of non-executive directors reflected a similar pattern (70% no explanation, 30% explanation) as did chairs (67% to 33%) but the executive director category provided a different response with 50% in each field of explanation/no-explanation. This is another of the questions that has produced a different response pattern according to the director category. The

emerging pattern of this difference suggests there is a divergent view of certain issues depending on whether the director is non-executive or involved in an executive role with the company. This concept will be discussed in Chapter Five.

**Question 20: In your appointment briefing for the director role you were given directions as to how you could place items for board discussion on your board agenda. (See Figure 4.15)**

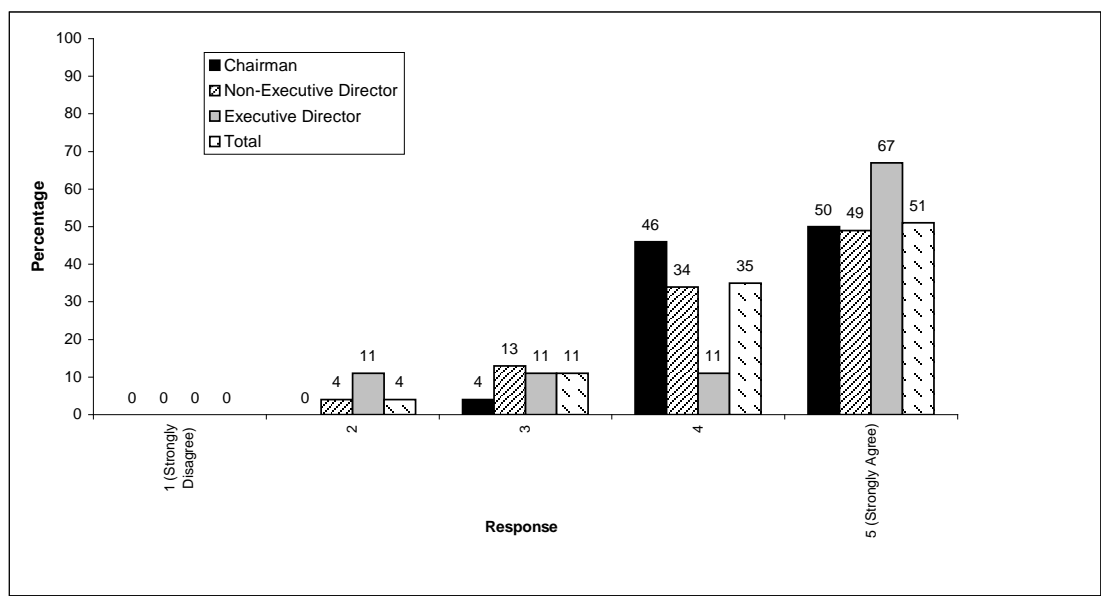


**N=103**

**Figure 4.15. Directions given on placing items on the agenda**

Of those surveyed 43 respondents (42%) had received no explanatory briefing. However, 36% - just over one third - were given directions on how they could place items on the agenda. The cross-tabulation showed that 60% of executive directors were briefed on this, 40% were not; 42% of chairs were briefed, 33% were not; 30% of the non-executive director group were briefed and 70% were not. It suggests a gap in the process or formality of director briefing for what chairs should be conscious.

**Question 21: As a director if you wish to have an agenda item put up for discussion you are clear about the proper procedure. (See Figure 4.16)**



**N=101**

**Figure 4.16. Understand the process to put forward an agenda item**

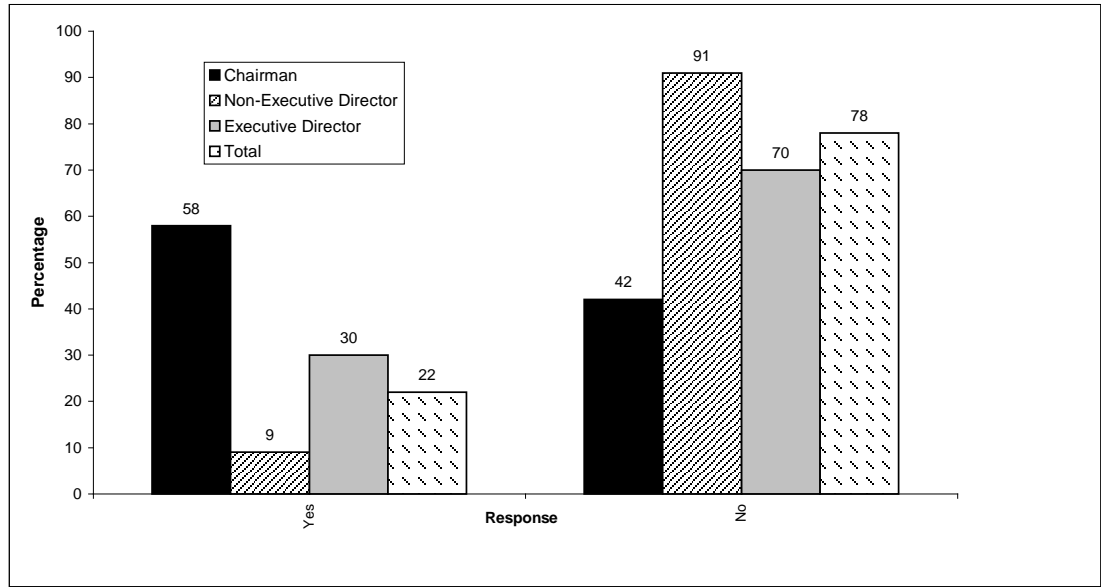
The large majority of all directors (86), across all categories, agreed they clearly understood the procedure for putting forward agenda items. Four did not and 11 recorded a neutral response. The individual director categories showed, on cross-tabulation, an almost identical response to the total group with a marked difference in the chair category where 96% clearly understood the process. There were four neutral responses and no-one disagreed with the statement. The results of this question should be read with those of the reverse question, Question 28.

Focus Group Commentary

The groups discussed process and felt it was useful for the chair, as he/she prepared the agenda, to invite other directors well in advance of the meeting, to put forward any agenda items that directors thought should be included. This, and the verbal report to the board of its authorised committees during a formal meeting listed items to discuss and gave management the opportunity to deal to these items adequately prior to the

next meeting. The directors saw this as a two-way communication where all parties brought forward “issues that were important to highlight.”

**Question 22: Do you receive a draft agenda separate and before the final version and the board papers? (See Figure 4.17)**

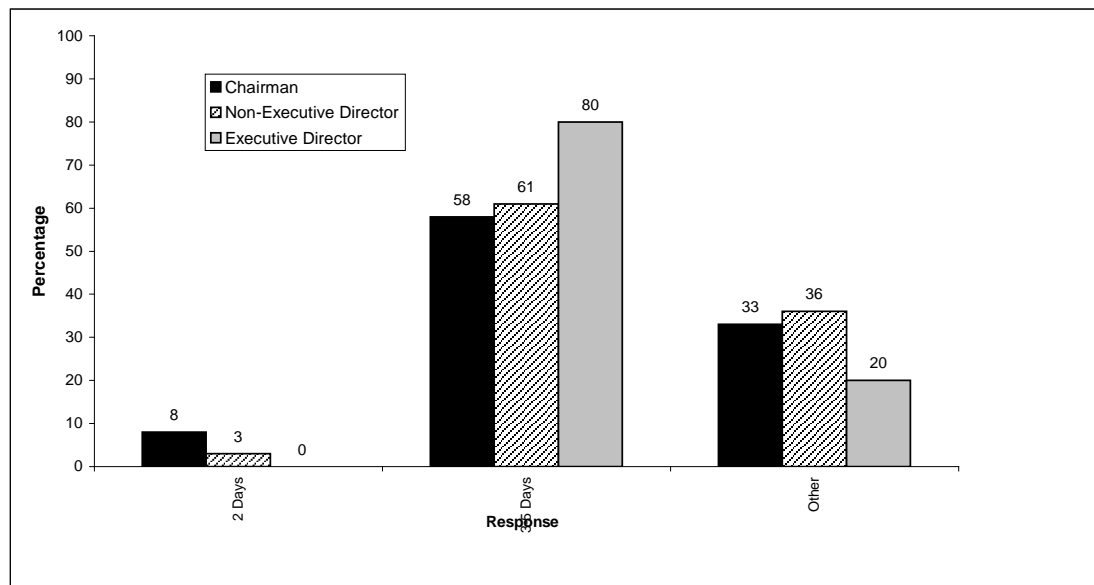


**N=103**

**Figure 4.17. Do directors receive a draft agenda**

This question sought a “yes/no” response and the result shows the majority of all directors (80%) do not receive a draft agenda separate and before the final version and the board papers. However, just over one fifth (22%) do. Cross-tabulation showed a difference with the different categories. The non-executive director category has 91% who only see the final agenda, the executive director category has 70% in the same situation with only 42% of chairs who do not see a draft agenda. The majority of chairs (58%) do see draft agendas.

**Question 23: How many days before your board meeting do you typically receive your agenda and papers? (See Figure 4.18)**



**N=103**

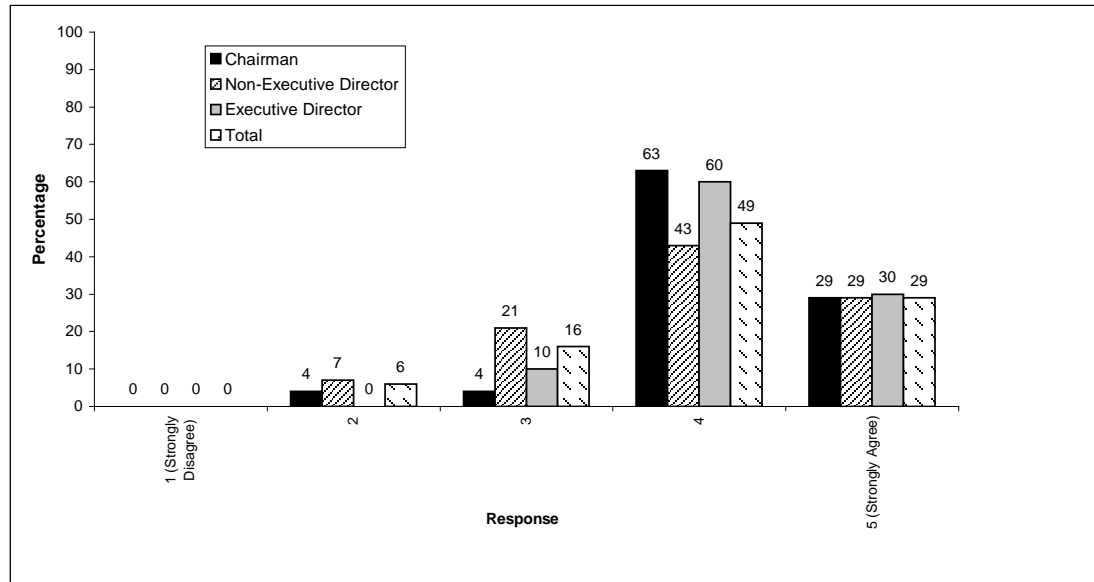
**Figure 4.18. How many days are papers received before board meeting**

This question provided three response options – two days, 3-5 days or other (for individual nomination). Nearly two-thirds of all the respondents (62%) receive their agenda and board papers three to five days prior to the board meeting. In 4% of cases the papers come to the directors with fewer than three days to board meetings and just over a quarter of all directors receive the papers seven days prior to the meeting. In the less than three days category there were no executive directors, a very small number of non-executive directors and 8% of chairs.

Focus Group Commentary

Irrespective of the timing directors seemed to be able to fit in the hours required to read and prepare before meetings. However, there were obviously occasions when the timing - for various reasons - was tight. The situation was summed up somewhat cynically by one director who described his role as that of a “weekend warrior.”

**Question 24: There is significant time in board meetings for us to discuss all the issues. (See Figure 4.19)**

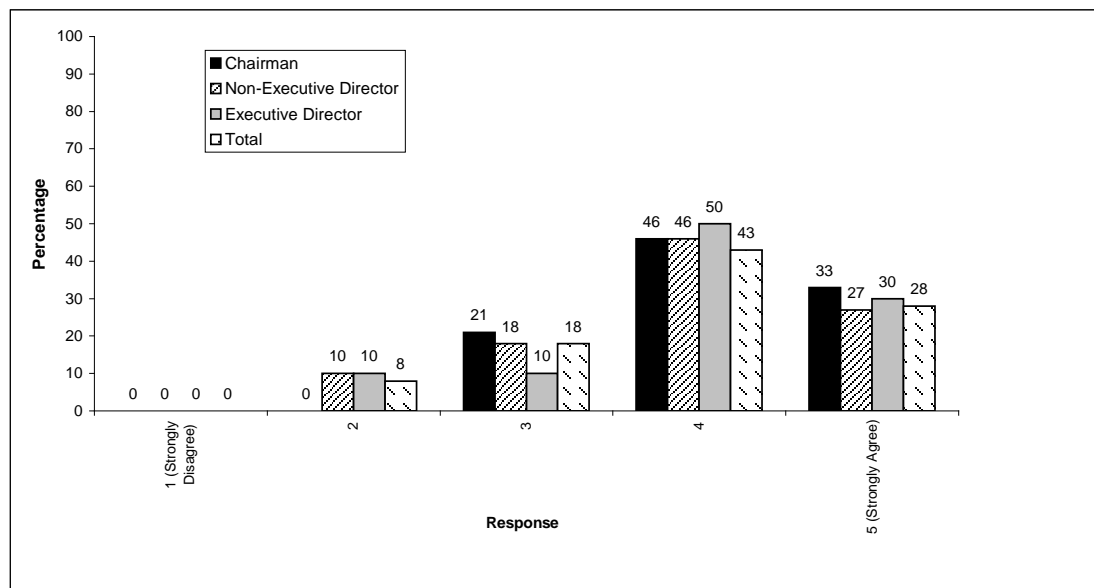


**N=102**

**Figure 4.19. The board has time to discuss all the issues**

While 80 (78%) of the total respondents agreed that there was sufficient time in board meetings to discuss all the issues, 6% disagreed and 16% were undecided. Cross-tabulation between the categories produced a similar result from the non-executive directors (72% and 7% with 21% undecided) but a markedly different result from both executive directors and chairs. Of the chairs 92% thought there was sufficient time in meetings to discuss all the issues (4% did not and 4% were undecided) as did 90% of executive directors (with 10% undecided) and none disagreeing. This is a further example of a view that differs by director category and will be examined further in Chapter Five.

**Question 25: Does the agenda set aside enough time at board meetings for open discussion? (See Figure 4.20)**



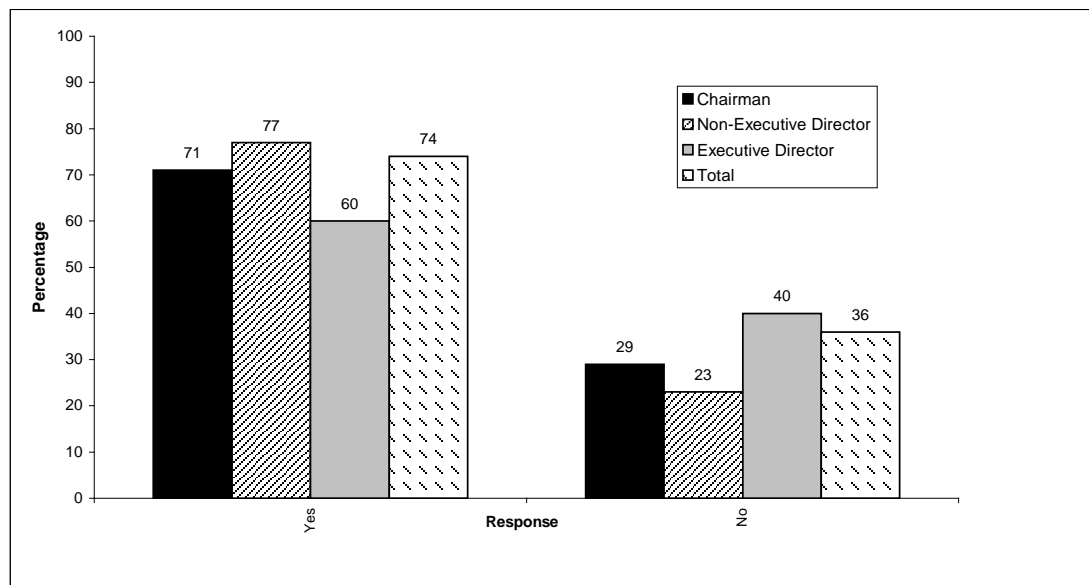
**N=102**

**Figure 4.20. The board has enough time for open discussion**

Overall the majority of respondents agreed (74%) that there was sufficient time set aside in the agenda for open discussion. Only 8% disagreed (none strongly) and 18% were undecided. A similar pattern was repeated across all categories when cross-tabulated.



**Question 26: Does your board work to a prepared annual work plan (i.e., specific issues or topics are given space, times and a date in addition to the ‘normal’ agenda? (See Figure 4.21)**



**N=103**

**Figure 4.21. The board follows an annual work plan**

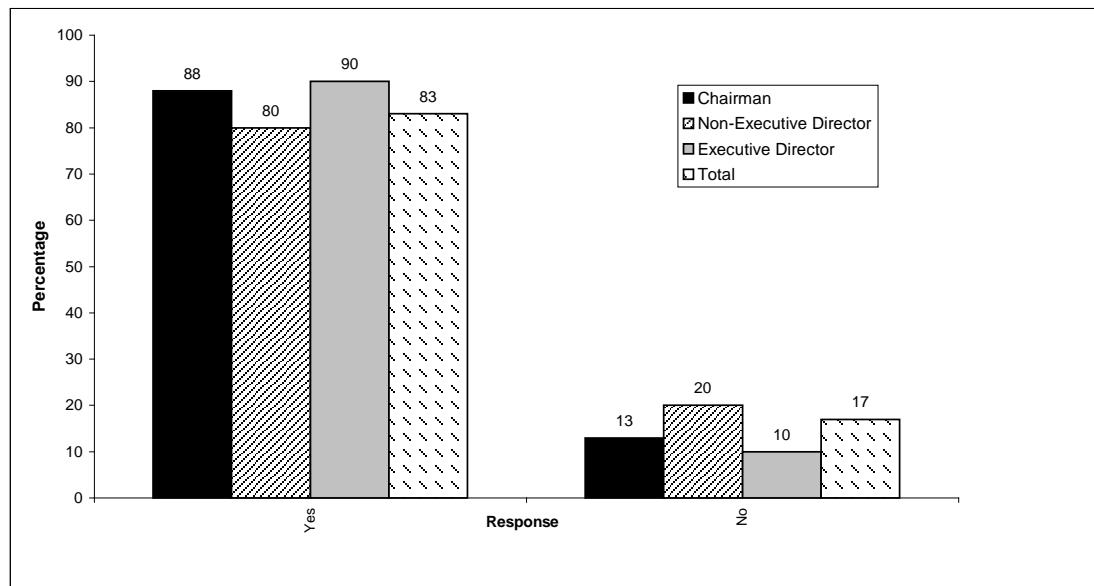
This question sought a “yes/no” response (as did question 27). Of the overall group three quarters of all respondents (74%) confirmed that their board worked to a prepared annual plan while 26% did not. There was no appreciable difference between categories on cross-tabulation. This question looked at the agenda planning aspect and suggests one quarter of all boards do not plan the year to ensure all topics are covered. This aspect will be discussed in Chapter Five.

#### Focus Group Commentary

The focus groups believed it was most effective for boards to plan the year in advance, setting times for a “deep dive” into specific subjects (example e.g. capital expenditure) with a full review of the subject at a date set sufficiently far ahead for management and directors to prepare with adequate time allowed. The purpose of the “deep dive” into either a functional or project area was not to interfere with management but to give an in-depth understanding so that directors could feel

confident in their ability to make good decisions. This was also useful in the board gaining a first hand look at the quality and depth of its people.

**Question 27: Do the agenda items remain flexible up to the time/date of meeting?**  
(See Figure 4.22)



**N=102**

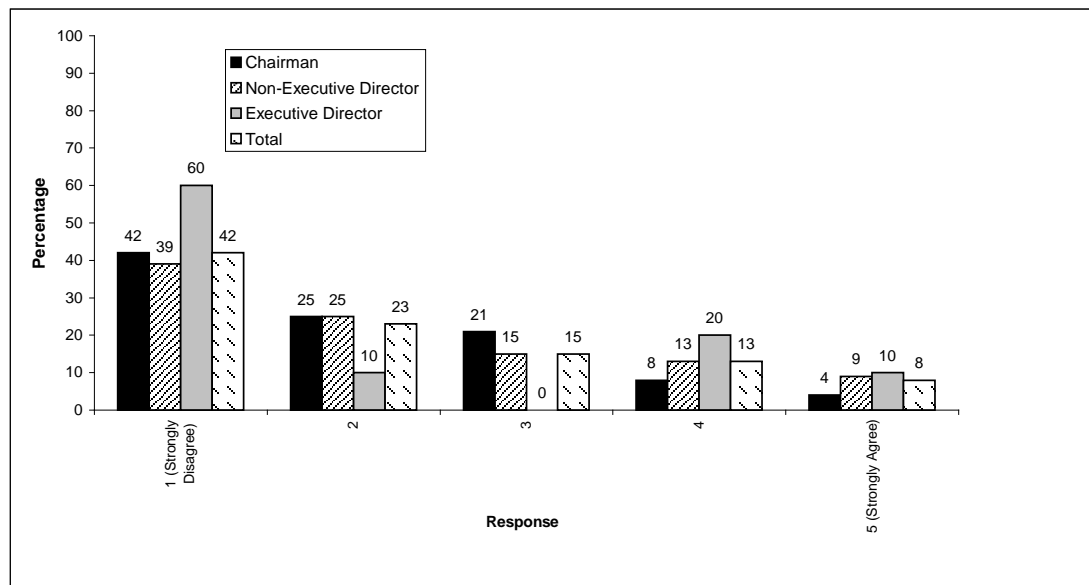
**Figure 4.22. The agenda remains flexible until the meeting**

In the overall response most directors (82%) believed the agenda remained flexible up to the time of the board meeting while 17% believed it did not. The non-executive directors saw less flexibility (80% “yes” and 20% “no”) as opposed to chairmen and executive directors who saw more flexibility (chairmen 87% “yes” and 13% “no”; executive directors 90% “yes” and 10% “no”).

Focus Group Commentary

While flexibility was seen as an essential part of the agenda process the directors agreed that flexibility did not mean the agenda lacked discipline. Again this was a process that had to be managed by the chair.

**Question 28: There is no clear process to follow for the inclusion of an item of business on the agenda. (See Figure 4.23)**

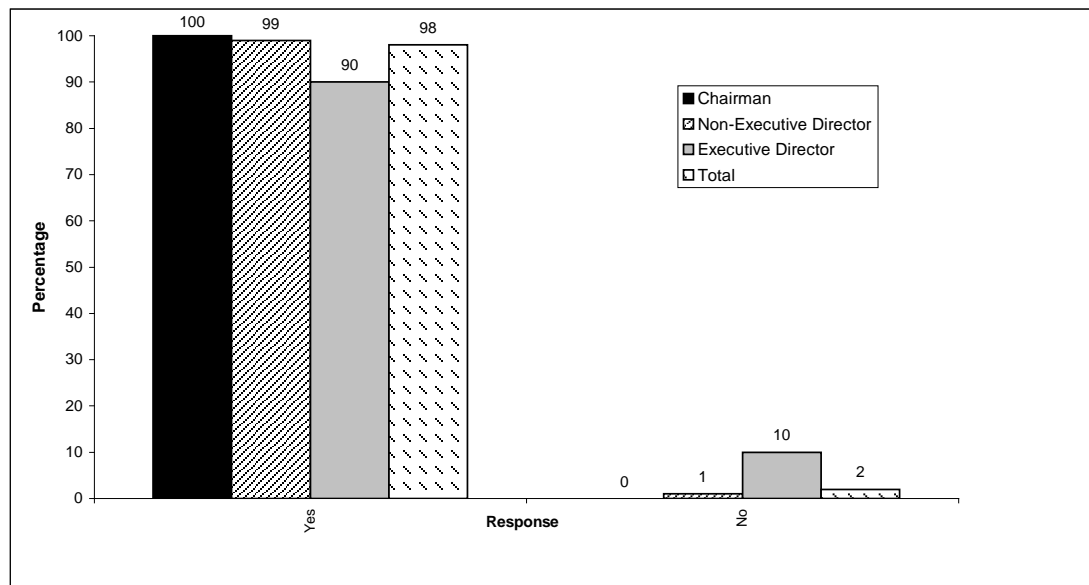


**N=103**

**Figure 4.23. No clear process for agenda item inclusion**

Overall the directors agreed (63%) that there was a clear process to follow for an item of business to be included on the agenda, but 20% (one in five) disagreed and 15% were undecided. This suggests that up to 35% of all directors do not believe there is a process to follow or do not understand the proper process. Cross-tabulated the results were almost identical with the non-executive director category although executive directors and chairmen have a slightly more positive view of clear process (executive directors 70% and chairmen 67%). The results should be read with the results of the reverse question (Question 21). The figures are reasonably consistent across both questions although there is a lower level of positive response to this question (Q. 28) framed in the negative. Again this highlights a point of agenda process that can be addressed by chairs in the correct briefing procedures, pre-appointment, and will be discussed in Chapter Five.

**Question 29: Does your board agenda usually allow for executives to present personally to the board on specialist issues? (See Figure 4.24)**



**N=103**

**Figure 4.24. Executives present personally to the board**

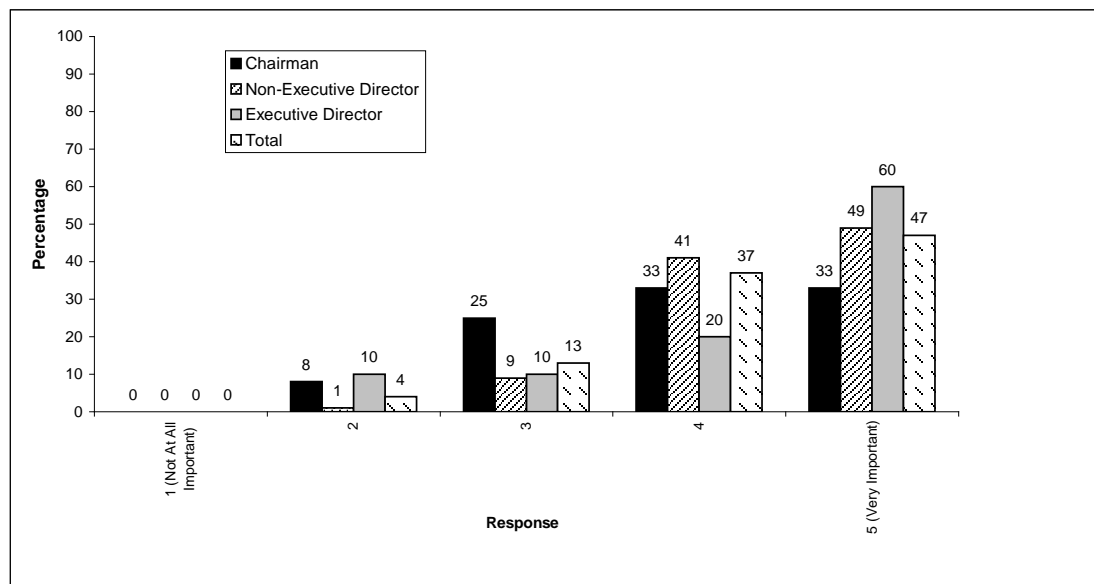
A “yes/no” response was sought to this question. From the total group there was an overwhelming response with 98% of all directors agreeing that the agenda allowed for executives to present personally to the board.

Only 2% said “no.” Cross-tabulation showed a similar view from non-executive directors with a totally positive response from chairmen who were unanimous with 100% agreeing with the statement. This contrasted with the executive director category where one respondent said “no.” (This last result must be considered in context as being the only “no” in the total field of 10 executive directors.) The results of this, as will be discussed in the next chapter, have a high level of importance for the directors as this is a specific opportunity for direct face-to-face questioning of executives on the key issues that face the business and provide the space for in-depth understanding of those issues. If this forum is available in 98% of the companies then why do companies fail or encounter problems unforeseen by directors? This is a key issue for review.

## Focus Group Commentary

The focus groups considered this a very important feature, particularly when there was a “deep dive” into a functional area or project. It allowed board members to see and judge the quality and depth of management, provided an “element of trust” and was useful in succession planning. It was also useful for the chief executive to “step back a bit” from the board and use the opportunity to bring forward members of the management team.

**Question 30: How important is it to you that the directors, as a board, discuss the role they play? (See Figure 4.25)**



**N=103**

**Figure 4.25. Is it important for the board to discuss its role**

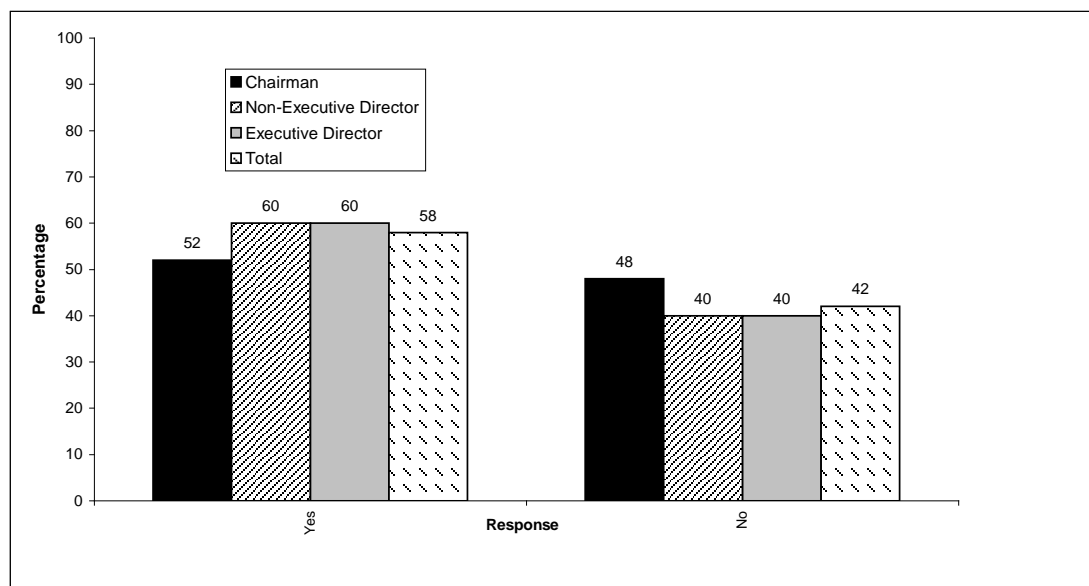
Overall the directors agreed it was important that they discuss their role (83%) with nearly half (47%) responding in the “very important” box. Only four disagreed (with 12% undecided). Non-executive directors were more positive with 90% in the agree category and nearly half (49%) in the strongly agree category. Executive directors were similar to the overall group with chairmen being distinctly less certain. This last category showed two-thirds (67%) agreed, (half of them strongly), 8% disagreed and 25% were undecided.

## Focus Group Commentary

There was a general consensus in the groups that it was important for the board to “discuss regularly the role that they can play.” The directors believed this was perhaps better done in an informal environment, such as over dinner, where they could “test a view” so that individual directors, chair and chief executive could explore avenues to consider how the agenda could be adapted to “add value” so the content was “right” and the directors got more out of the meetings. One group believed it was important that the board put its own performance review on the agenda twice a year for feedback. In general the directors believed this process review should be internal, that is, controlled by the board itself.

### 4.3 AGENDA REVIEW

**Question 31: Has your board agenda changed its focus on content during the course of the last year? (See Figure 4.26)**



**N=102**

**Figure 4.26. Has the agenda content changed in the past year**

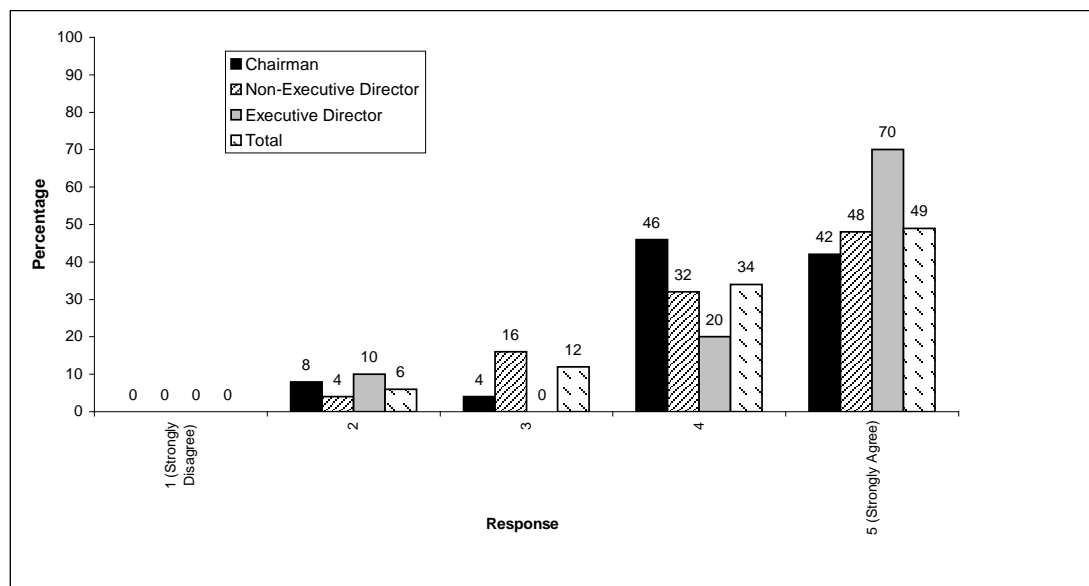
This question sought a “yes/no” response and 58% of all respondents agreed that their board agenda had changed its emphasis on content in the past year - 42% indicated it

had not. In cross-tabulation the response for the non-executive directors almost mirrored the overall figures and the results were only slightly different in the other two categories of chair and executive director.

**Question 32: If ‘yes’, describe in what way.**

This sought individual views of those 57 directors who had answered yes to the previous question on any change to their board agenda content. Those who responded (that is, 50% of chairs, 40% of executive directors, 43% of non-executive directors) articulated two dominant themes or issues – firstly, strategy or strategic items and secondly, a change of weight or emphasis to the existing agenda.

**Question 33: When you receive your agenda and board papers there is sufficient time to study and consider all the items presented. (See Figure 4.27)**



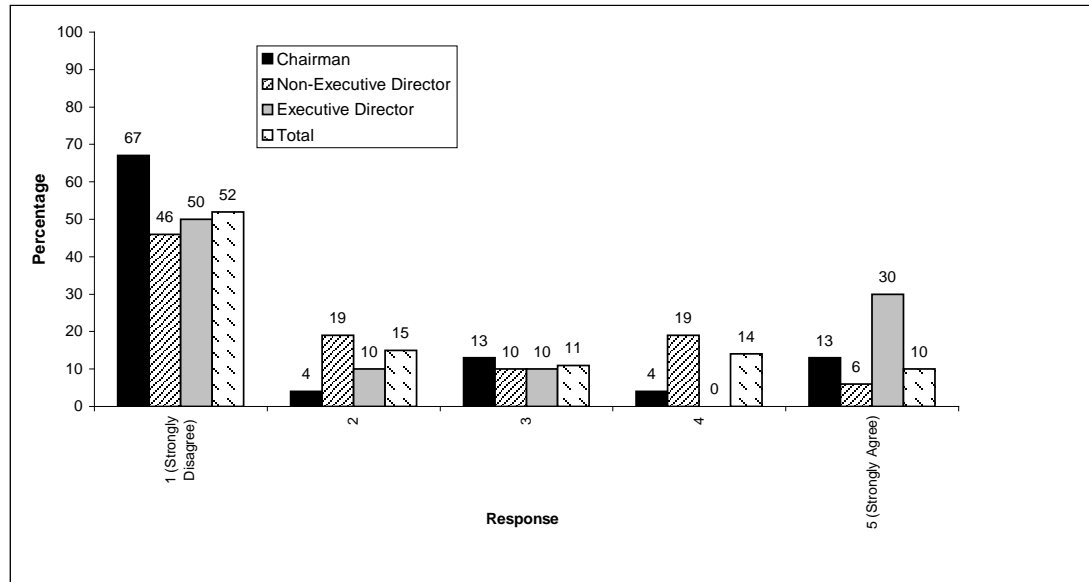
**N=103**

**Figure 4.27. There is sufficient time to study the agenda and papers**

The majority of all respondents (83%) stated that they received their agenda and board papers with sufficient time to study and consider all the items. Only 6% of respondents disagreed, with 12% being unsure. The response was similar through each of the individual respondent categories (although with a somewhat interesting factor being the response of chairs where 8% felt they lacked time to consider the

information). This will be discussed in Chapter Five.

**Question 34: I am very dissatisfied with the manner in which our agenda is prepared. (See Figure 4.28)**



**N=103**

**Figure 4.28. Dissatisfaction with how the agenda is prepared**

Overall, two thirds of the respondents (66%) disagreed with this statement. However, 23% agreed (and therefore expressed their dissatisfaction with the manner in which the agenda was prepared). Some (11) were uncertain. In cross-tabulation non-executive directors and chairs echoed similar views. Executive directors were more black and white expressing as a sub-category the strongest agreement percentage with the statement. In general terms nearly one quarter of all directors expressed their dissatisfaction with the manner of agenda preparation, a subject for further discussion in Chapter Five.

This result expressing dissatisfaction with the agenda setting process is, in general, also supported by the responses to Question 39, which was the reverse question for the section (see Figure 4.32) below under Qn 39. On that question 79 percent of all the directors answered affirmatively to the statement: I am very satisfied with the agenda setting process as it is currently. There were no extreme low readings. The levels of disagreement were much lower suggesting there may be issues individual executive and non-executive directors would like addressed or changed while

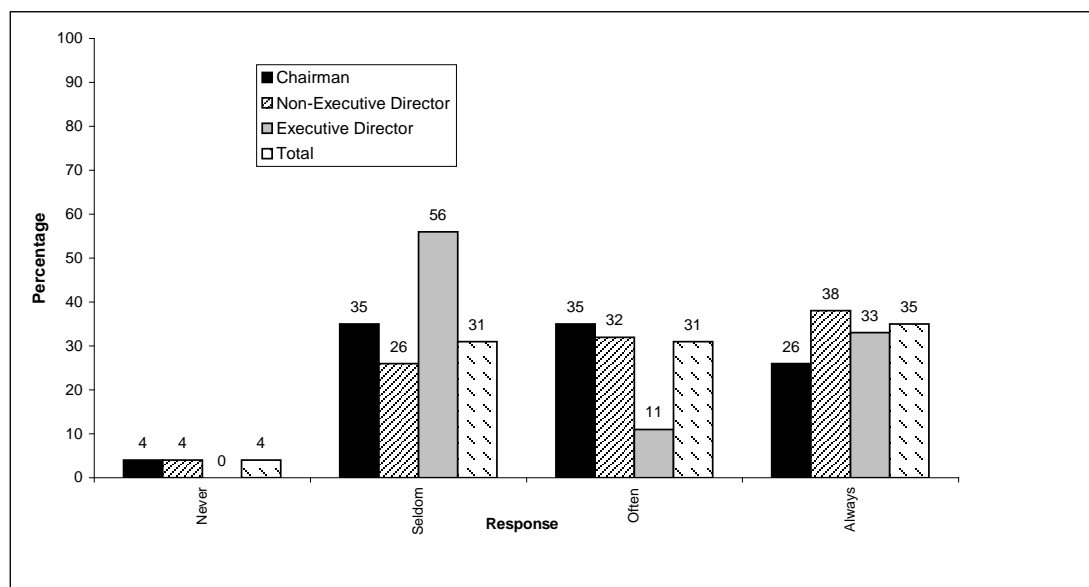


indicating that by and large directors are happy with the agenda process. There were no concerns expressed by chairs. The answers to these questions will be linked in discussion in the next chapter.

### Focus Group Commentary

The lack of concern expressed by the chairs in response to this question was summed up in one of the focus groups by an experienced chair who commented: “As I set the agenda I can hardly complain.”

**Question 35: When you receive your board papers do you critique the agenda for omissions? (See Figure 4.29)**

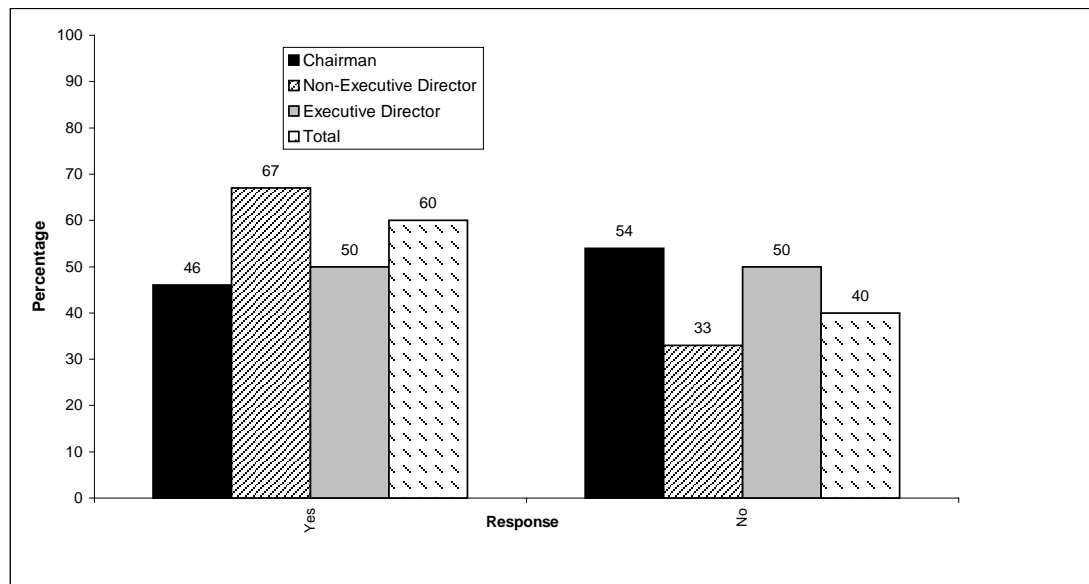


**N=101**

**Figure 4.29. Directors critique the agenda for omissions on receipt**

Overall 35% of directors always critique the agenda for omissions with an almost similar percentage (31%) often following this process. About one third of all directors (31%) seldom review the agenda in this way and a small number (four) never. Those who recorded the highest reading in the seldom category were executive directors.

**Question 36: During your term as a director has the board formally reviewed its agenda process? (See Figure 4.30)**



**N=103**

**Figure 4.30. During the director's term the board has reviewed its agenda process**

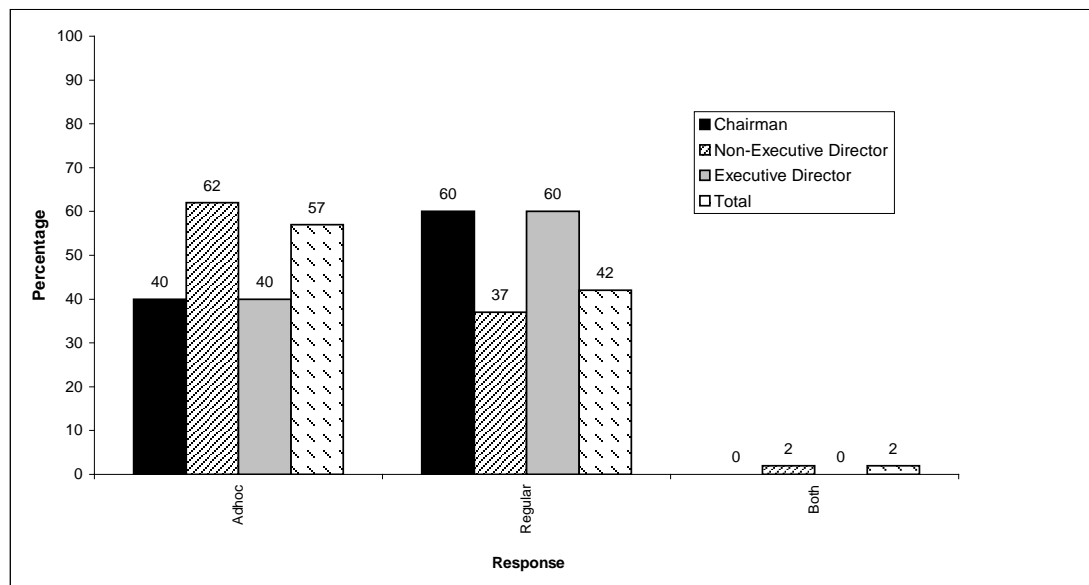
Sixty percent of all directors said that their board had formally reviewed the agenda process during their term of office while 40% had not. While cross-tabulation showed a similar theme for each director category the important feature of this result (to be considered in the next chapter) is the relatively high proportion of all directors who have not been part of a formal agenda review process during their term of office (overall 40%; chairs 54%; non-executive directors 33% and executive directors 50%).

**Focus Group Commentary**

The focus groups agreed that the process of board internal review (where this was conducted) had “become more prescriptive” in recent times. Processes varied from “a governance issue with an individual ticking a few boxes” to a board using an outside facilitator. The most established technique used “over the years” was for a chair to consult the senior directors and then “drilldown” into issues or concerns. It was mentioned that a large number of boards - one figure quoted was 60% - still did not review their process and performance. The overall view was that a regular review of

process was important and that the process should include an overview of board capability and succession planning.

**Question 37: If ‘Yes’, was this review conducted as a regular feature or just an ad hoc process? (See Figure 4.31)**

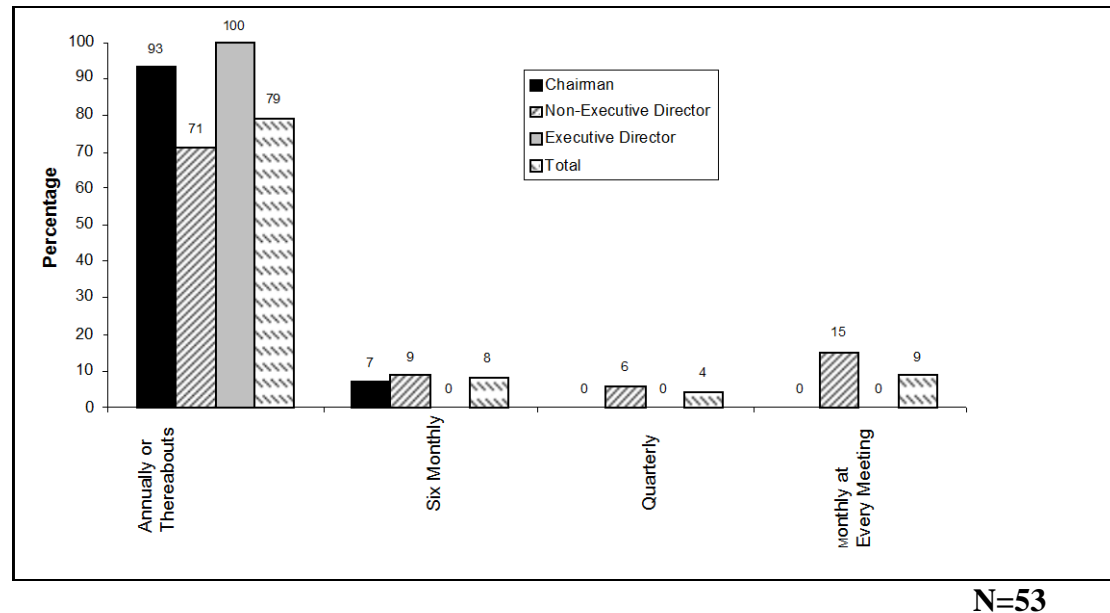


**N=62**

**Figure 4.31. Was this a regular review or ad hoc**

Of all those who had experienced an agenda review process during their time on the board 42% stated that this was a part of a regular agenda review process while 56% had encountered this only on an ad hoc review basis.

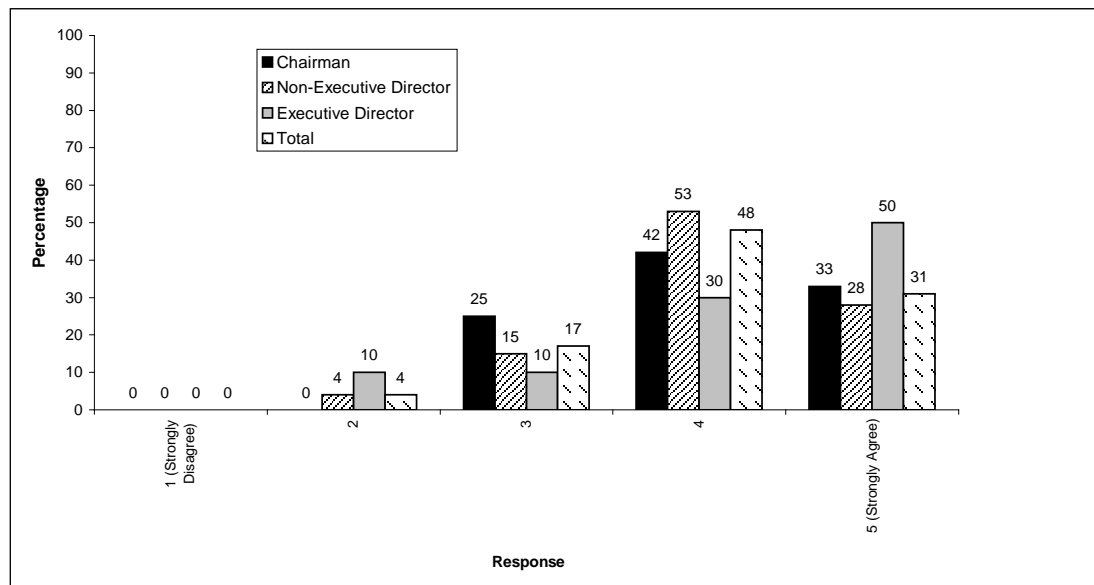
**Question 38: If this is a regular process, how often are the agenda format and content discussed by the board? (See Figure 4.32)**



**Figure 4.32. How often are the agenda format and content discussed**

The large majority of the respondent directors (77%) believed the agenda format and content review discussion process by the board occurred on an annual basis. Some (8%) thought it occurred six-monthly, 4% said quarterly and 9% said monthly.

**Question 39: I am very satisfied with the agenda setting process as it is currently.**  
**(See Figure 4.33)**



**N=102**

**Figure 4.33. Satisfied with the current agenda setting process**

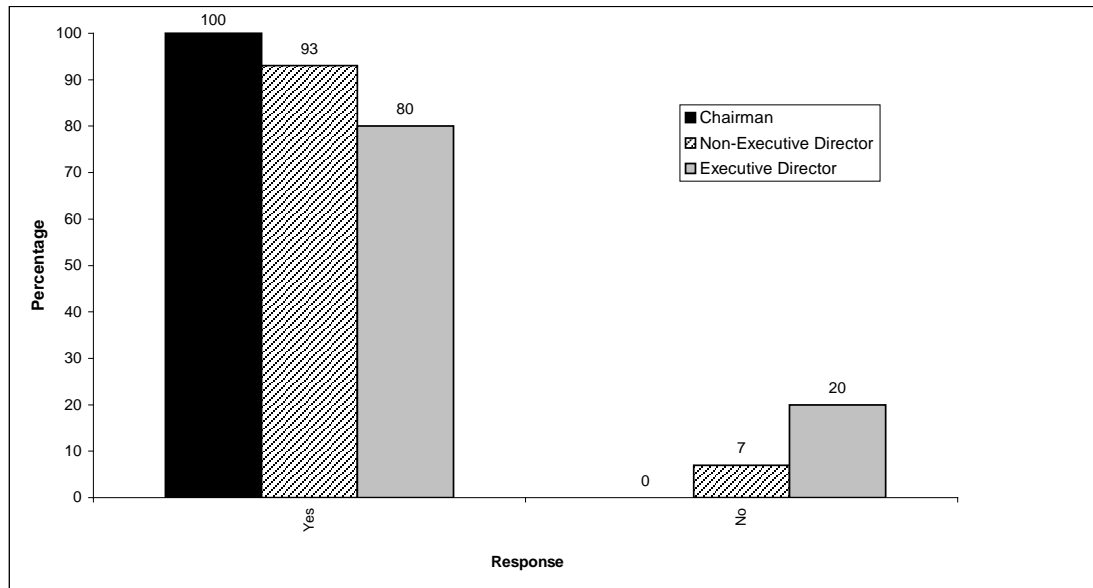
The response to Question 39 has already been considered with its reverse question for this section (see 34 above).

**Question 40: If you disagree, specify how you would improve the process.**

There were few responses to this request for process improvement (only one chair, nine non-executive directors and one executive director provided comment) and in general terms those responses revolved around more director discussion.

## 4.4 AGENDA INFLUENCE

**Question 41: Does your board provide an opportunity for you as directors to meet as a board without the chief executive to discuss items (other than his/her remuneration)? (See Figure 4.34)**

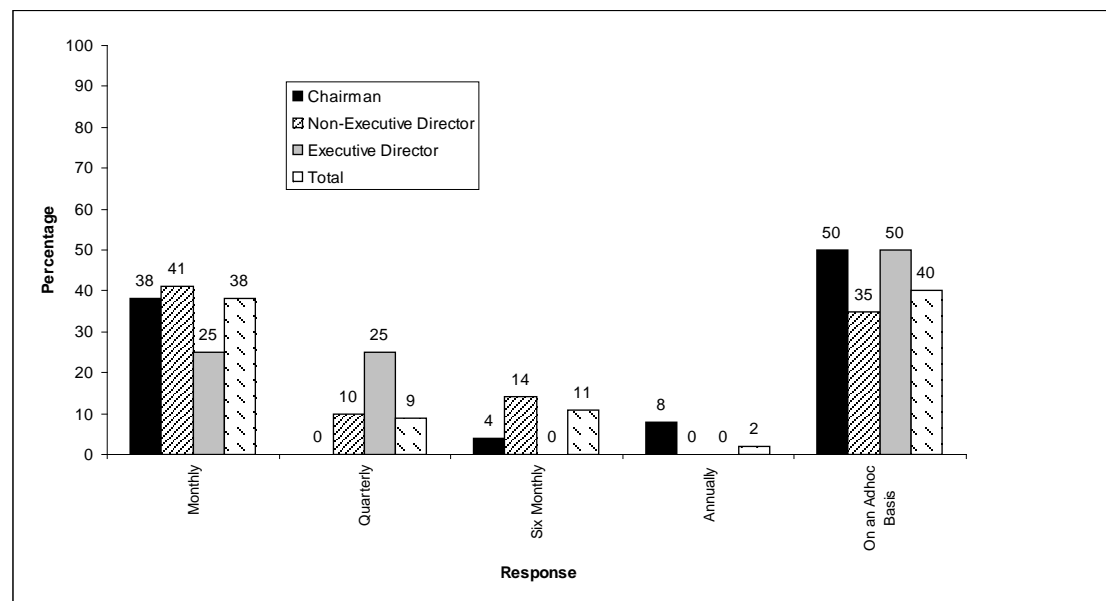


N=103

**Figure 4.34. The board meets without the chief executive**

Of the total directors surveyed 93% said there was the opportunity for the directors to meet as a board without the chief executive present. Only 7% did not have that opportunity. The response was not dissimilar when cross tabulated and viewed by category, with one exception - chairs considered this opportunity was always available (100%). The concept of this director only meeting is important and will be part of the discussion in the next chapter.

**Question 42: If ‘Yes’, how often? (See Figure 4.35)**



**N=95**

**Figure 4.35. How often does this occur**

This question sought to expand on the information provided by the previous question (Q.41). It gave the respondents the choice of options of monthly, quarterly, six-monthly, annual or ad hoc director-only meeting basis. As an overall group the respondents reported the most common feature was an ad hoc meeting arrangement. However, nearly as many respondents (just over one third) indicated that their boards meet each month, that is, at every board meeting, for a period where the chief executive is not present.

**Focus Group Commentary**

This opportunity to meet without the chief executive was regarded as essential by all the directors who believed that time as “directors only” was crucial. The overall view was that this should be a regular part of each meeting so that it did not cause speculation and was seen as just a regular feature of the agenda process.

**Question 43: Approximately what percentage of your information about the company comes from your board agenda and in accompanying papers?**

The results from all respondents (101) and across each sub-group provided a similar picture and showed that around 80 percent of the information that directors rely on about the company is provided by board agenda and information papers. This question led into question 44 which sought to determine what other sources directors rely on.

**Question 44: What other sources of information do you, as a director, access?**

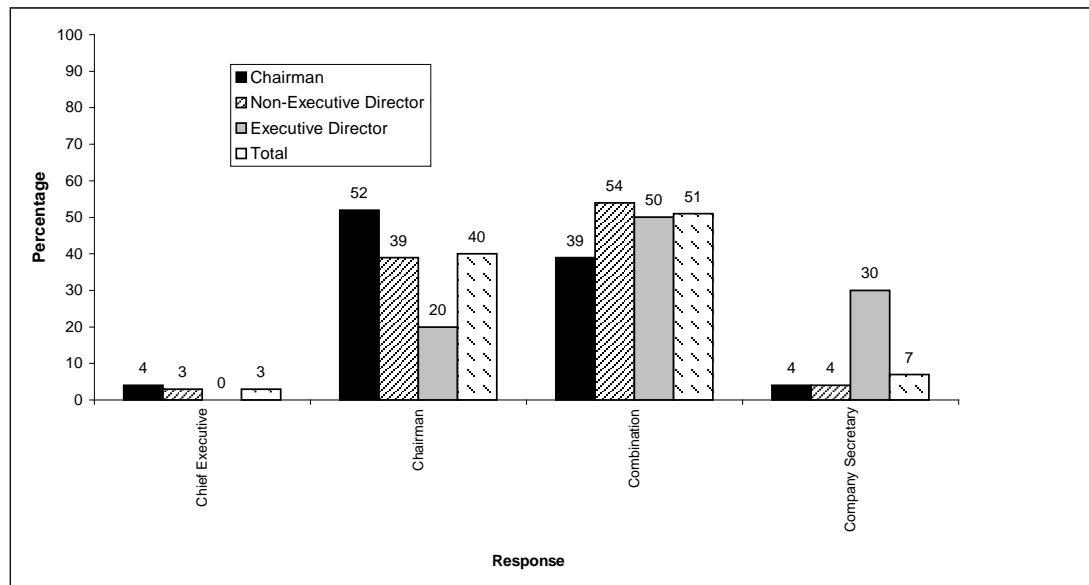
A feature that is important in ensuring that directors have a balanced overview of their responsibilities can be seen through the response (97) to this question. The results shown that directors do not just rely on their board papers for information about the company they govern. They access other sources for comparative data and information as a part of their role. They reported that this includes analyst and stock reports, remuneration advisors, management in formal and informal meetings, general reading from media and management journals, commentary from customers, staff and shareholders, other company directors and industry sources.

Focus Group Commentary

The focus groups indicated that they got most of what they required from the board papers and the essence of the business performance from the chief executive's report. However, they agreed that as individuals they read widely from papers to specialist publications and were exposed, generally, to other businesses so they had a good flow of relevant information. One director pointed out that he gained perspective and competitive information from the websites of other businesses in the same field.



**Question 45: If you wish to put an item on your board agenda for discussion whom do you approach? (See Figure 4.36)**

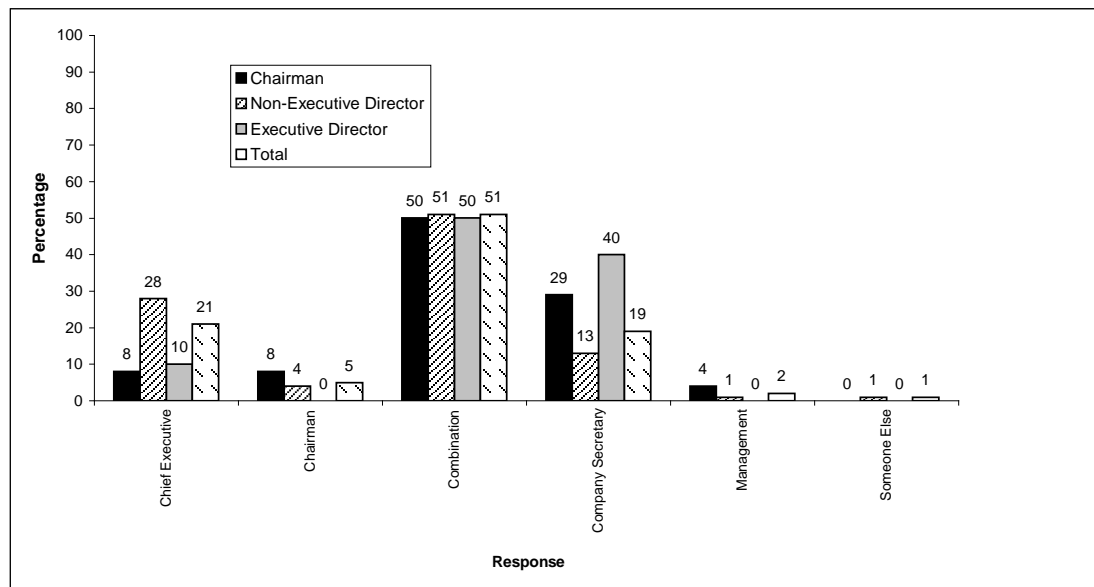


**N=101**

**Figure 4.36. Who do directors approach to put an item on the agenda**

The chairman was seen as the most important single person to approach (particularly in his own view - 52%) by all categories of respondents except for the chief executive who relied at least in part on the company secretary (more so than the chair.) However, the respondents as a whole and by sub-group universally saw a combination of these three people as the ones to be approached. The results suggest directors see this as a multi-faceted approach process and do not rely on one category of individual. This is an important aspect for discussion in the next chapter.

**Question 46: Who actually prepares your board agenda in the company/or companies of which you are a director? (See Figure 4.37).**

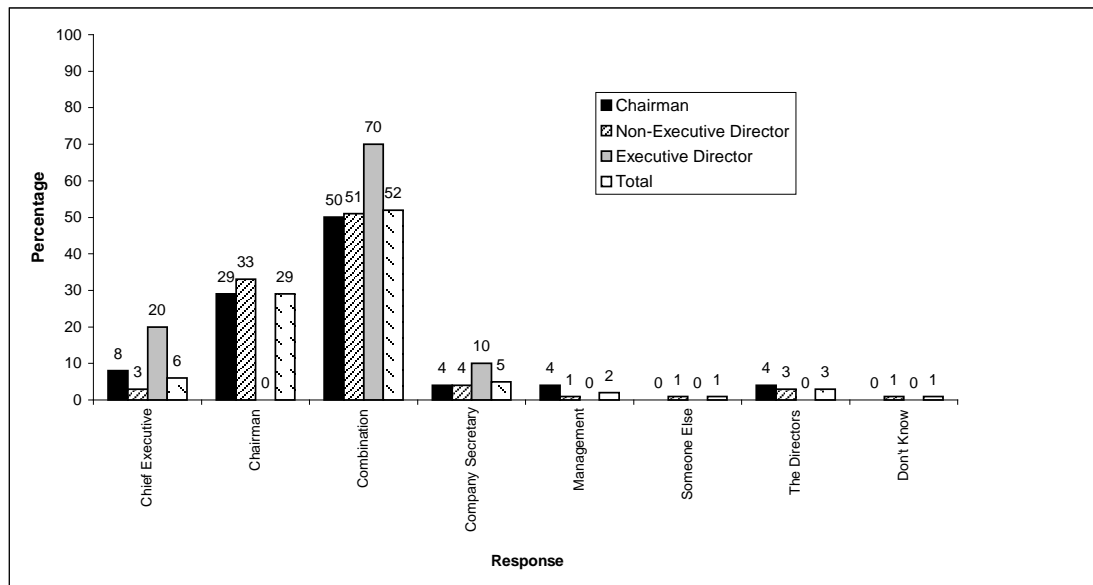


**N=103**

**Figure 4.37. Who prepares the agenda**

The responsibility for this was seen to be clearly in the hands of the chief executive by one fifth of all the respondents (21%), while a further fifth flagged the company secretary (19%). The chair was seen to have control by a small group (5%) but mostly a combination of these three featured as the control group (50%). In overall terms these people controlled the agenda preparation in the view of 77% of the respondents. This is a key question that will be examined in Chapter Five, Discussion.

**Question 47: Who determines the order of those board agenda items? (See Figure 4.38)**

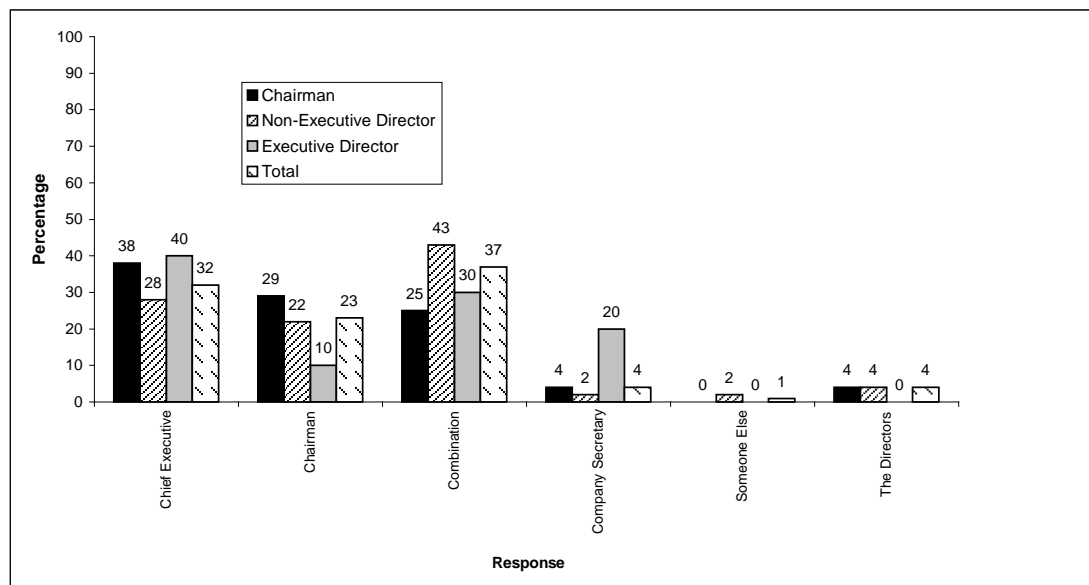


**N=103**

**Figure 4.38. Who determines the order of board agenda items**

Question 47 clearly identifies the forces responsible for determining the order of the board agenda items. The chair is the single most powerful influence in the view of 29% of all respondents followed by the chief executive at 6% and the company secretary at 5%. Again a combination of these people is seen by 52% of all respondents as the group that determines the manner in which the board agenda items are organised.

**Question 48: In your view who exerts the most influence on the agenda? (See Figure 4.39)**



**N=103**

**Figure 4.39. Who exerts the most influence on the agenda**

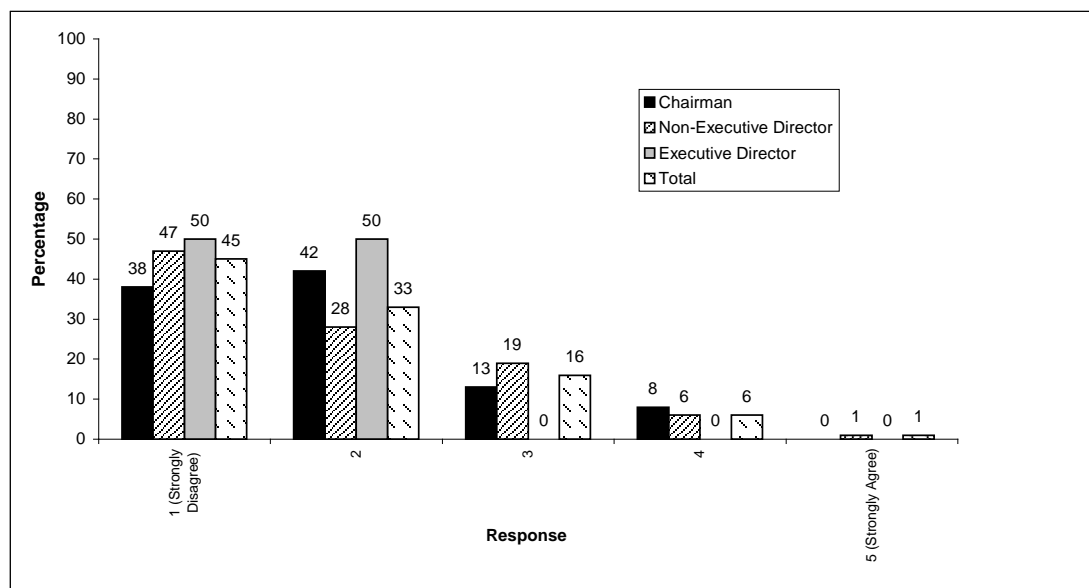
One third of all respondent directors (31%) saw the chief executive as the person who exerted the most influence on the agenda. A further 23% considered it was the chairman but the biggest respondent group specified the combination of the chairman and the chief executive (37%). The results of this question show clearly that 91% of directors believe that one of, or both of these individuals acting in concert, control the agenda process. The company secretary is not seen as a strong influencer by directors (4%) and similarly directors did not see themselves as influential (4%). The chief executive considered the company secretary to have an influential role (20%), more so than any other sub-group. The influence of “others” (however they may be defined) is not seen to have any impact or influence (1%). This is an important finding for discussion in the next chapter.

### Focus Group Commentary

The focus groups considered that the agenda should be primarily driven by the chair although the chief executive was seen to drive a lot of the content. Chairs themselves felt comfortable letting the chief executive set the agenda provided they had viewed it and that it “delivered the items we want it to.” (However, the directors were rather

vague on the process to deliver this.) But the chairs wanted to see and clear the draft minutes before they were circulated to the full directorate. All the focus groups agreed that “who controls the agenda, controls the meeting.”

**Question 49: As directors, Board members have no control over the agenda. (See Figure 4.40)**



**N=103**

**Figure 4.40. Directors have no control over the agenda**

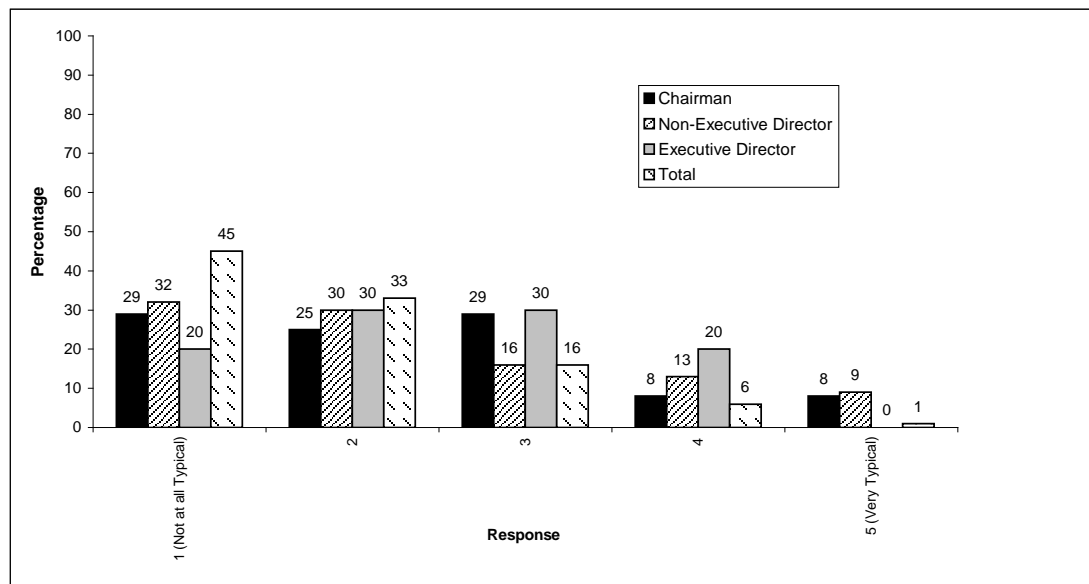
This question should be read in conjunction with its reverse question (Q. 62) which asked in the affirmative, if, collectively, the board directors exercise full control over the agenda. All the respondent directors emphatically rejected the statement that they lacked the ability to control the agenda. Nearly 78 percent strongly disagreed or disagreed with only one respondent strongly agreeing (out of a group of seven that agreed with the statement).

On the reverse question (Q. 62) the results were similar if not quite as emphatic. There 69% agreed that they as directors had full control of the agenda while 15% of all respondents disagreed.

## Focus Group Commentary

There was an unanimous view by the directors that they had the ability to control the agenda and did. In their view the agenda should have “structure but reasonable flexibility;” should be capable of being “informally altered” up to and including the start of the meeting; and should be tested outside the board meetings in informal discussion to ensure the meetings retained their value. The final outcome was, in the words of one experienced chair and senior director, “an issue of board dynamics.”

**Question 50: So far as you are aware, is it typical that agenda items/papers that come before your formal board meeting have been discussed by some of the directors in informal session before the meeting? <sup>10</sup> (See Figure 4.41)**



N=103

**Figure 4.41. Agenda items before the board have been discussed informally by some directors**

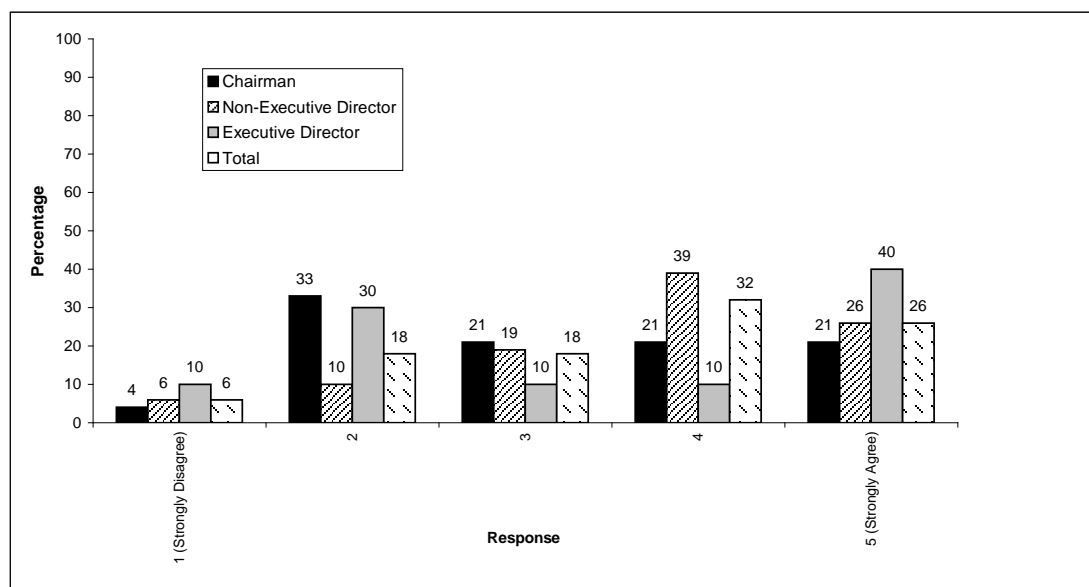
The majority of directors believe the papers that come before the board meeting have not been discussed by any of the directors informally prior to the meeting. However, that obviously happens in some cases (about one fifth) with the most likely directors to include the executive directors (managing directors). The relevance and issues around this will be discussed in the next chapter.

<sup>10</sup> This question specifically asked that directors exclude the discussions of formal committees of the board such as the audit committee.

### Focus Group Commentary

The focus groups discussed the issue of board members “talking away from board meetings and so forming cliques or groups within the board.” The view from experienced chairs was that these factions did occur (“without a doubt”) and the chair had to deal to the issue, being astute and well connected enough to pick up the factions and “smart enough” to deal to them outside the boardroom.

**Question 51: The manner in which items on the board agenda are framed (presented) or ordered (sequenced) is important. (See Figure 4.42)**



**N=103**

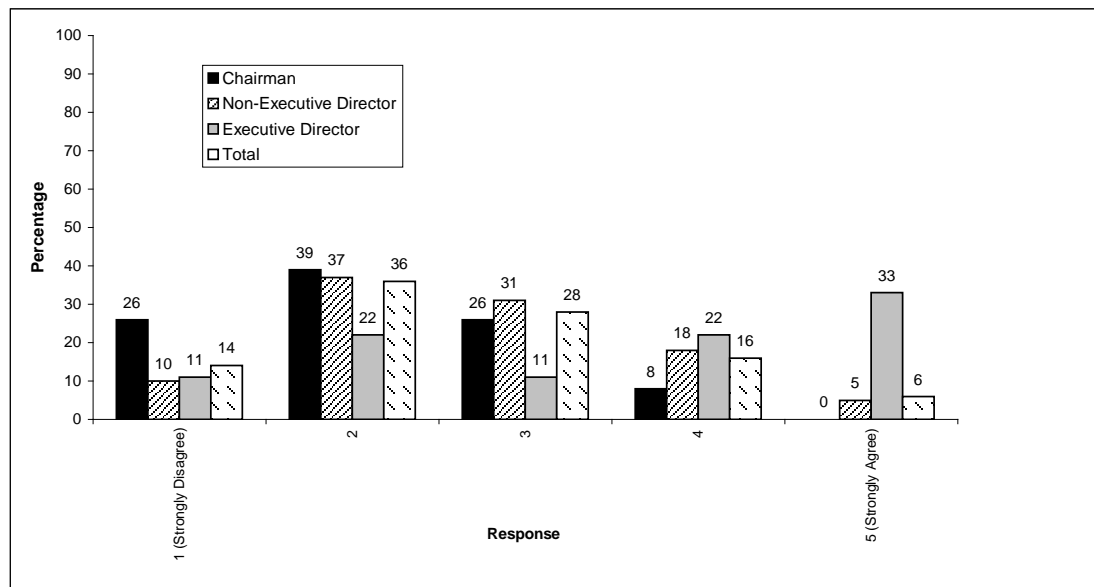
**Figure 4.42. The framing and order of agenda items are important**

Of the total respondents 58% agreed with the statement while 29% disagreed. The highest level of agreement featured in the non-executive director category (65%) with the strongest level of disagreement showing in the chair category (38%). This will be discussed in the next chapter.

The directors were also asked to add any relevant comment if they wished. Of the total respondents 31 chose to make additional comment. The most repeated comment

was that issues should be addressed in order of importance (18) while three directors stated that “content should take precedence over form.”

**Question 52: An agenda item put forward for approval by the board that is turned down/rejected generally reappears on a subsequent agenda. (See Figure 4.43)**



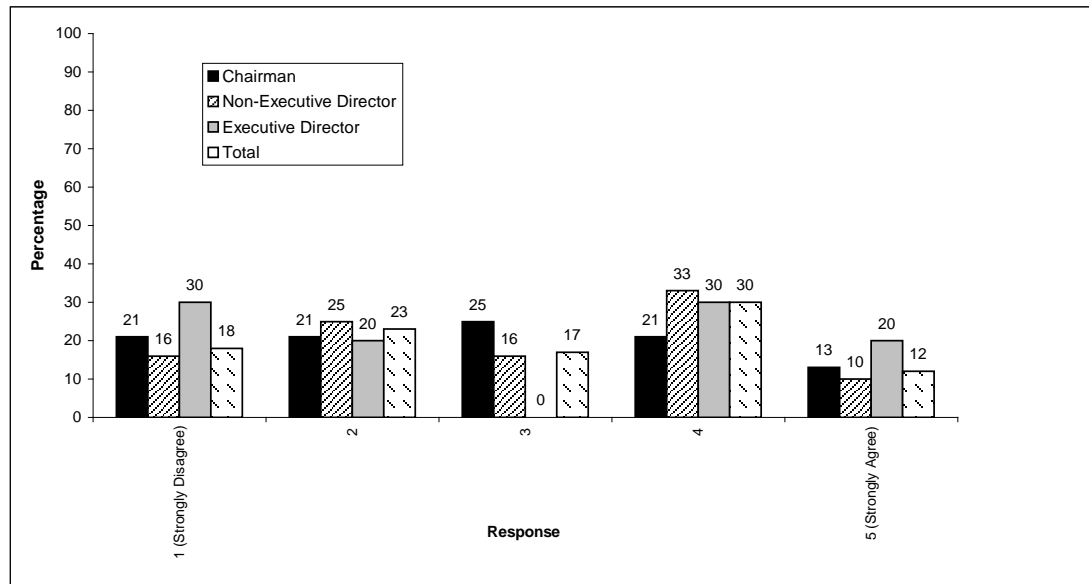
**N=94**

**Figure 4.43. Agenda items rejected by the board reappear in subsequent agendas**

Of the total respondent group of all directors only 22% agreed with this statement. Half of the total group of directors disagreed or strongly disagreed. This is an issue for further discussion in the next chapter.



**Question 53: Issues that appear on the agenda are often promoted by a particular sector of management or staff (i.e., by a source other than the directors). (See Figure 4.44)**

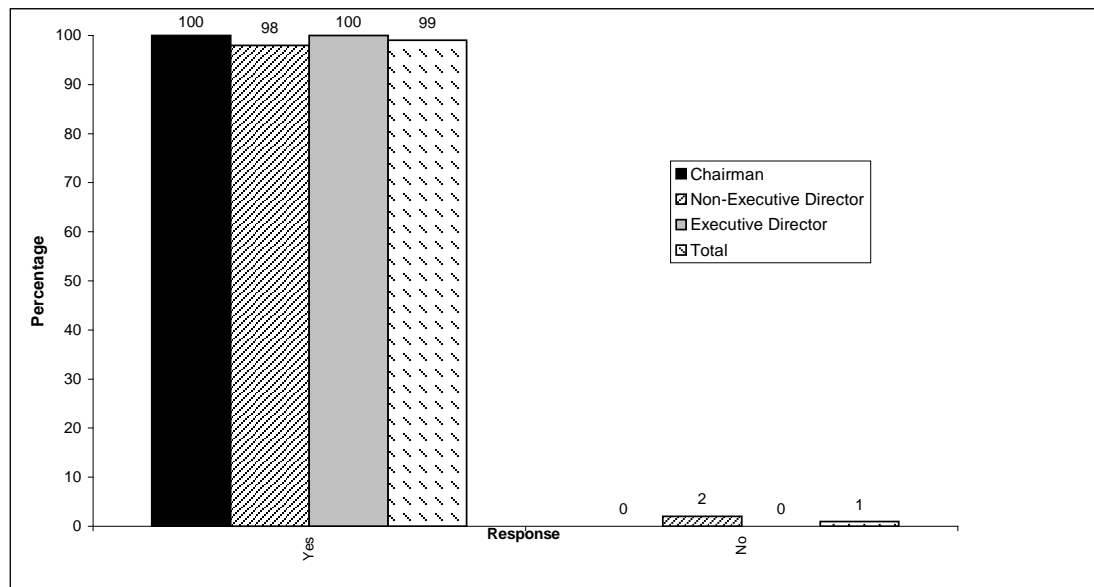


**N=103**

**Figure 4.44 Agenda issues are often promoted by a source other than directors**

Issues that come to the agenda promoted by management or staff are clearly seen by the majority of directors to originate from those quarters. Furthermore, in the comment that was invited as an adjunct to this question (and to which 30 directors responded) those items were listed as ones which had been invited, when appropriate, by the board and were for a specific purpose of capital, policy or new strategic direction. This is reinforced by the directors who almost unanimously (99%) show in Q. 54 that the source of those items is clearly and openly disclosed (see Figure 4.45 below). The overwhelming response to this question (even from a somewhat smaller response group) clearly indicates that in the publicly listed corporate the directors in all categories believe that second or third faces of power influencing the agenda are not hidden from the view of directors, particularly that from management and staff. This will be discussed in the next chapter.

**Question 54: If these issues arise is the source/originator of the issue openly disclosed? (See Figure 4.45)**

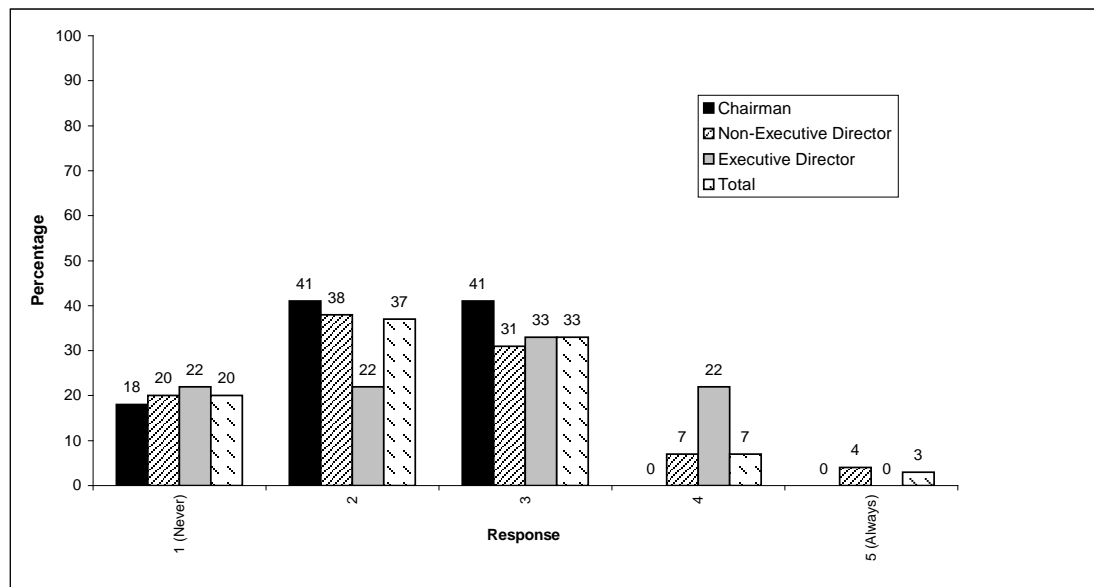


**N=82**

**Figure 4.45. Is the source of the issue openly disclosed**

Again, all the respondents were invited to add additional comment. Only 11 chose to do so and in those cases the directors mentioned that the source was always disclosed and in most cases the originator was the person who spoke to the issue or board paper. This adds weight to the director view that there are no hidden sources of power impacting on the agenda, especially those emanating from management and / or staff / refer to the previous question. However, sources of power beyond employees, such as, external pressure and lobby groups or dominate shareholder groups remain unknown.

**Question 55: Is there any consistent pattern or subject in the nature of those issues? (See Figure 4.46)**

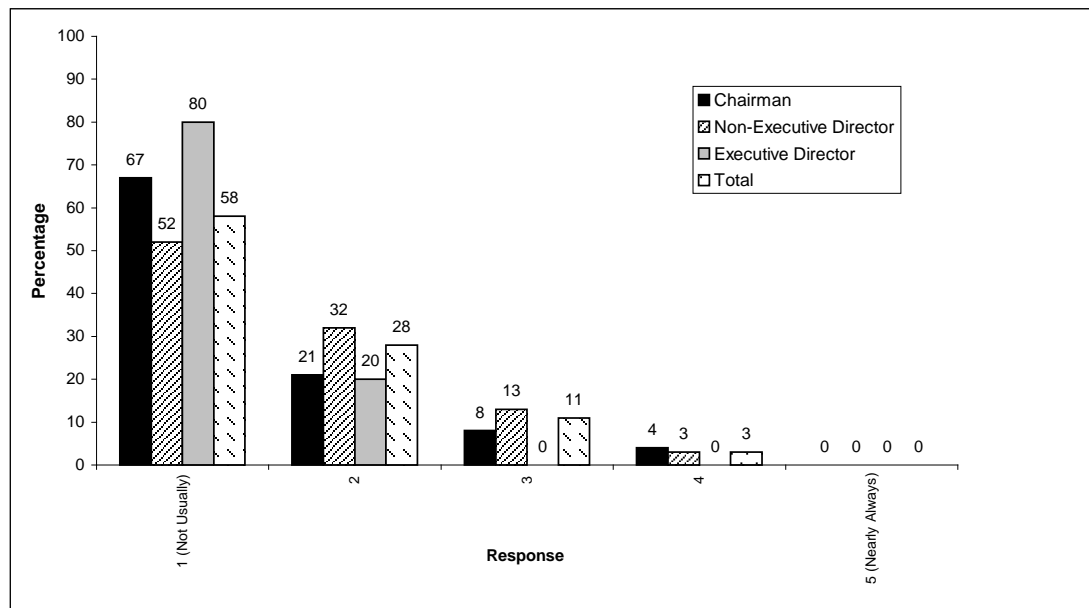


**N=82**

**Figure 4.46. Is there any consistent pattern to those issues**

Only a small number of directors (and no chairs) believed there was some pattern or consistent subject (10%). The large majority of directors (nearly 60% of all respondents) could not perceive a consistent pattern or subject. A large number of the respondents (approximately one third) were ambivalent or neutral. This is useful when considering the question of influence and will be discussed in the next chapter.

**Question 56: Have you experienced board discussions where there has been an undisclosed ‘sub agenda’ that was later apparent. (See Figure 4.47)**



**N=102**

**Figure 4.47. Has there been an undisclosed ‘sub agenda’ that is later apparent in discussions**

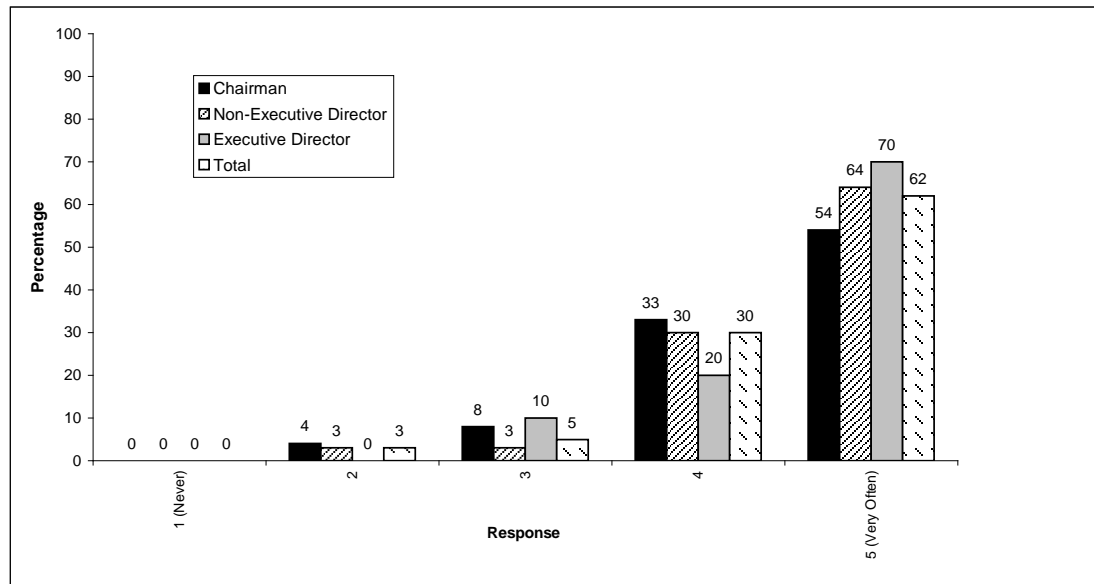
The responses showed clearly that few, if any, of the directors of any category had encountered this issue. That was reinforced by the few comments that were made in the additional information directors were invited to add to their answer.

**Question 57: The directors were then tested on the focus of the board agenda against their specific responsibilities in relation to (See Figures 4.47 to 4.51)**

|                 |                     |
|-----------------|---------------------|
| Shareholders    | (57a – Figure 4.49) |
| Stakeholders    | (57b – Figure 4.50) |
| The community   | (57c – Figure 4.51) |
| The environment | (57d – Figure 4.52) |
| Social issues   | (57e – Figure 4.53) |

This question required multiple responses that were measured by subject and by category for analysis. Each subject is shown on an individual graph with the responses from each category of director.

#### Question 57a

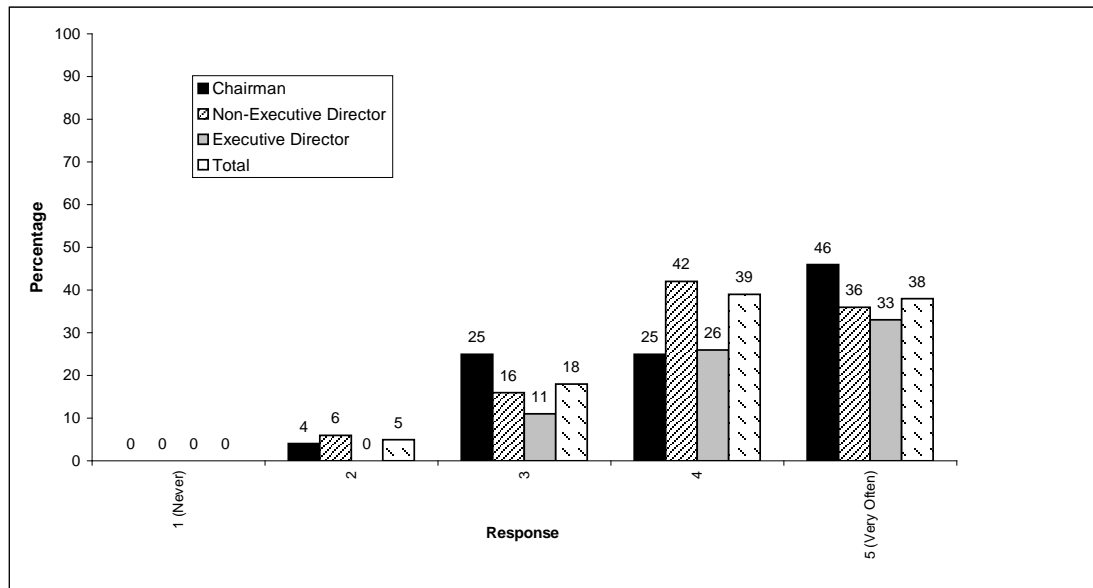


N=

**Figure 4.48. Shareholders – as a focus of board discussion**

Board directors reported overall that the needs and views of shareholders received frequent discussion (92%). Cross-tabulated, the results by each category were almost identical.

## Question 57b

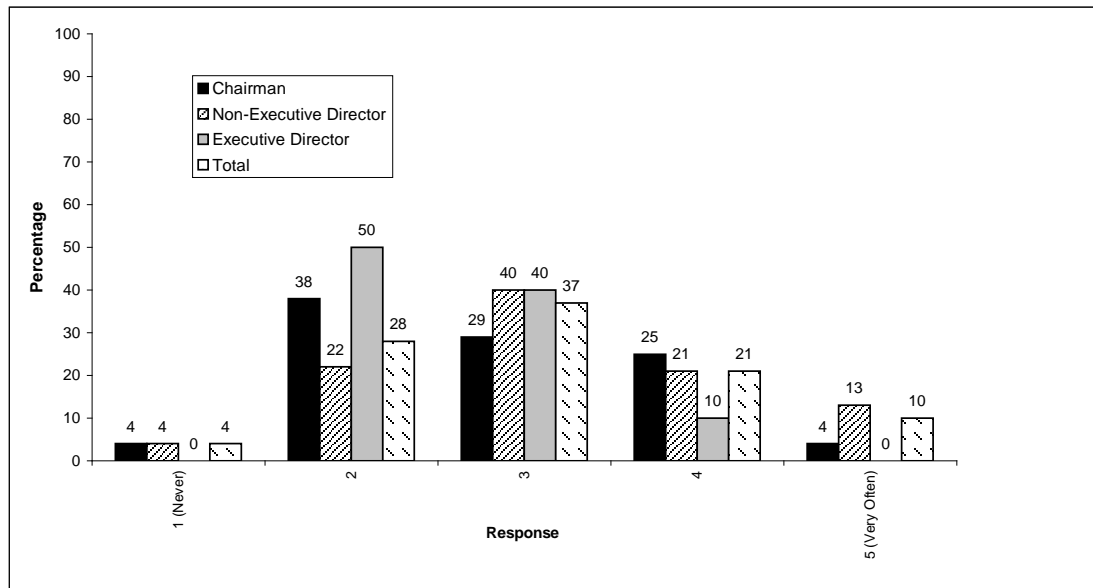


N=103

**Figure 4.49. Stakeholders – as a focus of board discussion**

Again 78% of all directors spent time discussing the needs and views of stakeholders. Only 5% said they did not. The responses in all categories were similar.

### Question 57c

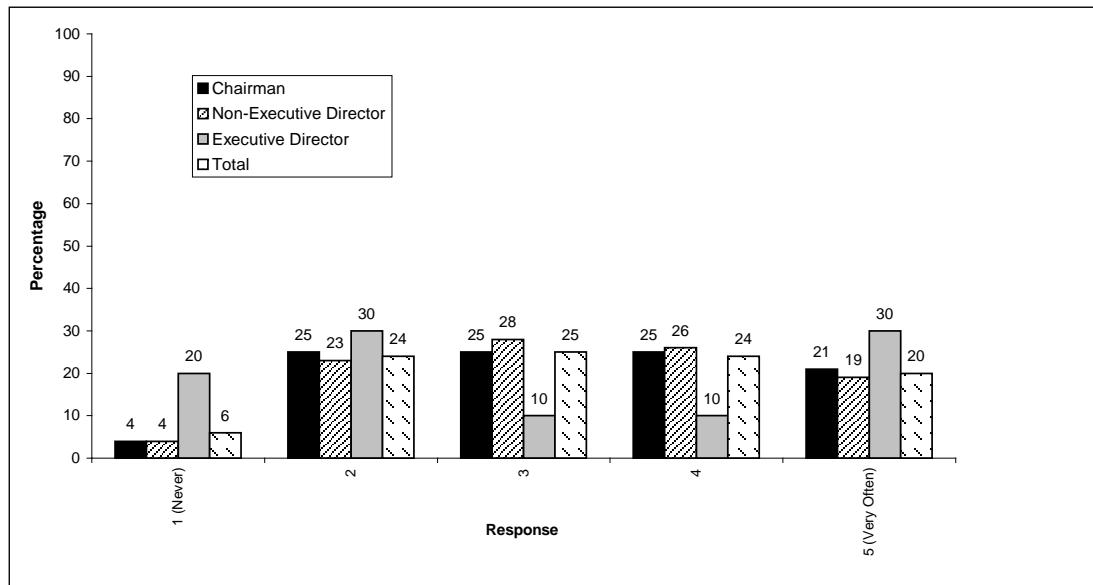


**N=103**

**Figure 4.50. Community – as a focus of board discussion**

The needs of the community received less attention with 30% of all directors reporting that their boards discussed community needs and views often or very often. About 4% never discussed those issues and 28% did so occasionally.

## Question 57d



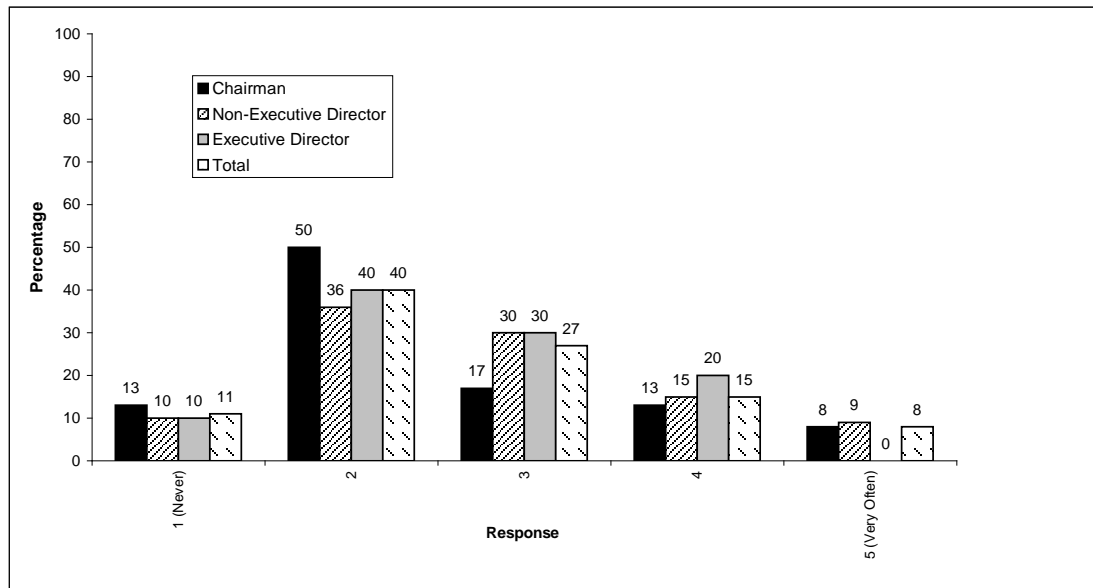
**N=103**

**Figure 4.51. Environment – as a focus of board discussion**

Environmental issues were discussed often/very often by 45% of all board directors and occasionally by a further 24% of directors. Some 6% never discussed these issues. The pattern of response was similar across all director categories.



### Question 57e

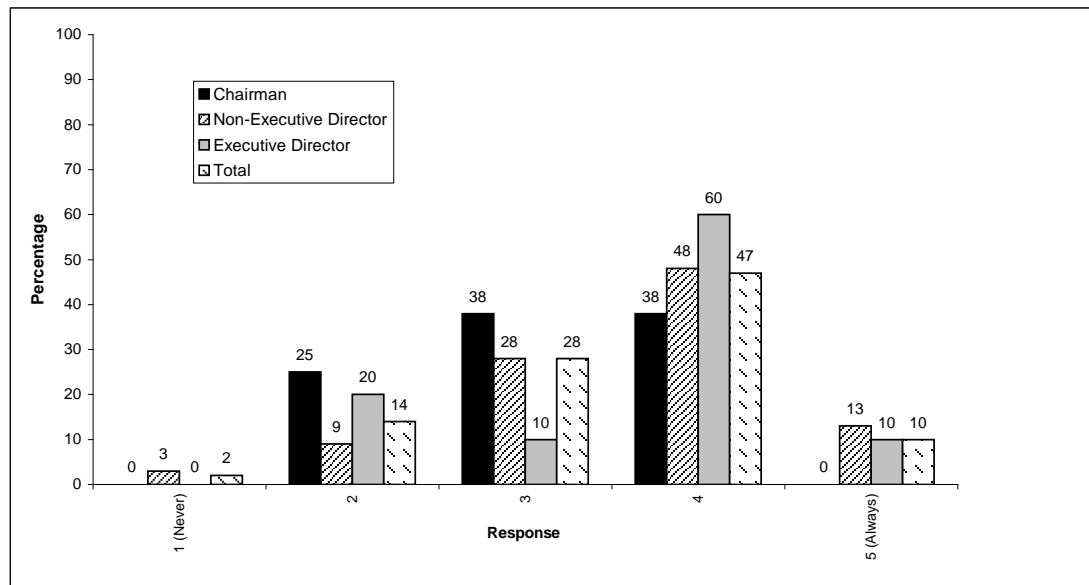


**N=103**

**Figure 4.52. Social issues – as a focus of board discussion**

Of the total respondent directors about 22% said that their boards spent some time focussed on social issues. Approximately half said the board rarely, if ever, considered issues of this nature. Again the pattern did not vary greatly with director category.

**Question 58: In board meetings the agenda is adhered to rigidly. (See Figure 4.53)**



**N=103**

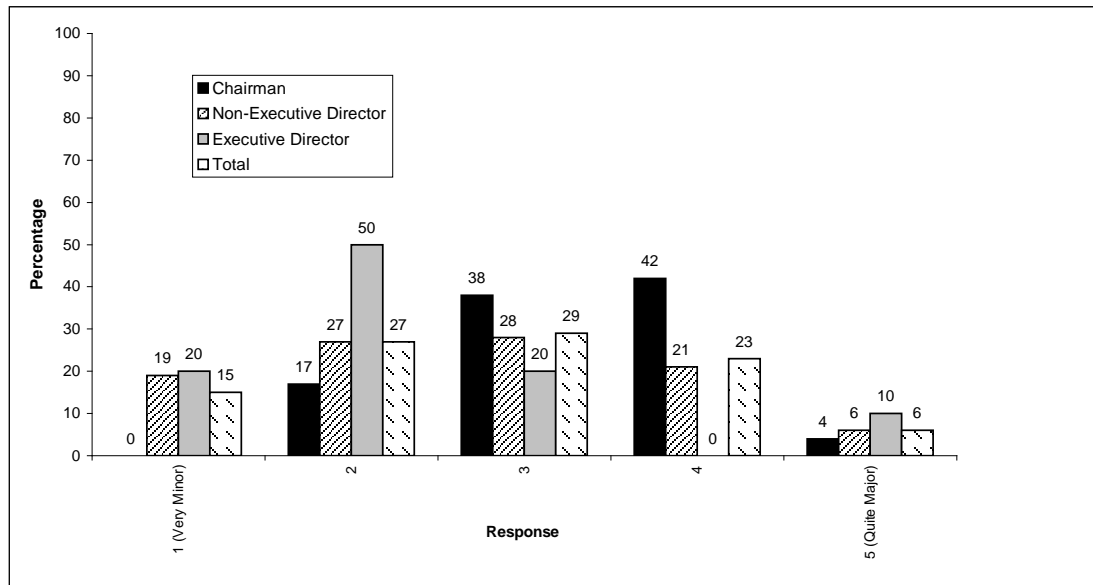
**Figure 4.53. In board meetings the agenda is rigidly adhered to**

Only about 2% of all the directors reported that their boards never adhered rigidly to the agenda as opposed to 10% who said “always.” The biggest group (47%) reported they generally adhered to the agenda and the results indicate that while the agenda provides the roadmap, variances can and do occur. This will be discussed in the next chapter.

**Focus Group Commentary**

The directors all considered that while an agenda may be “set” for a meeting the board was not compelled to follow that agenda rigidly and could vary it “if an issue arose.” Variations could arise from something as simple as releasing management staff earlier for a conflicting but important meeting the individual had to attend, through to additional reports or strategic issues of urgency and it was the role of the chair to deal to this with “sensitivity.”

**Question 59: If there are variances are they generally of a minor or major nature? (See Figure 4.54)**

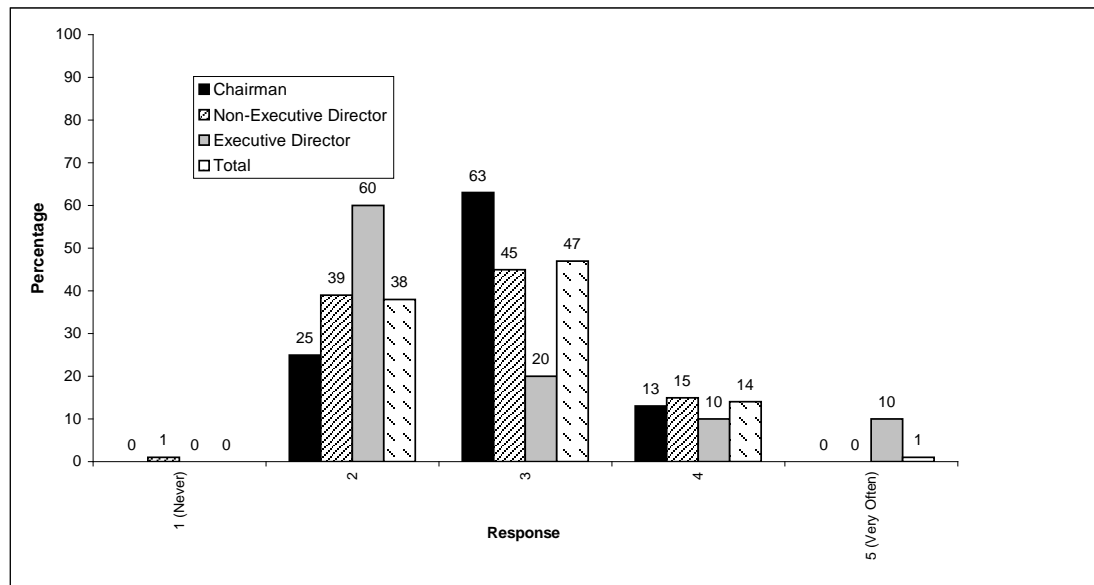


**N=102**

**Figure 4.54. Are agenda variances minor or major**

Overall about 30% of the total respondents saw the variances as being of a major nature while 41% saw them as being minor or not of great importance. Only 6% of the total saw the variances as quite major and this fitted the same pattern in all categories with the exception of the executive directors where 10% regarded the variances as quite major. This suggests that issues of importance that arise unexpectedly can be dealt to even though there is a predetermined agenda. This will also be discussed in the next chapter.

**Question 60: Do these variances occur frequently? (See Figure 4.55)**



**N=103**

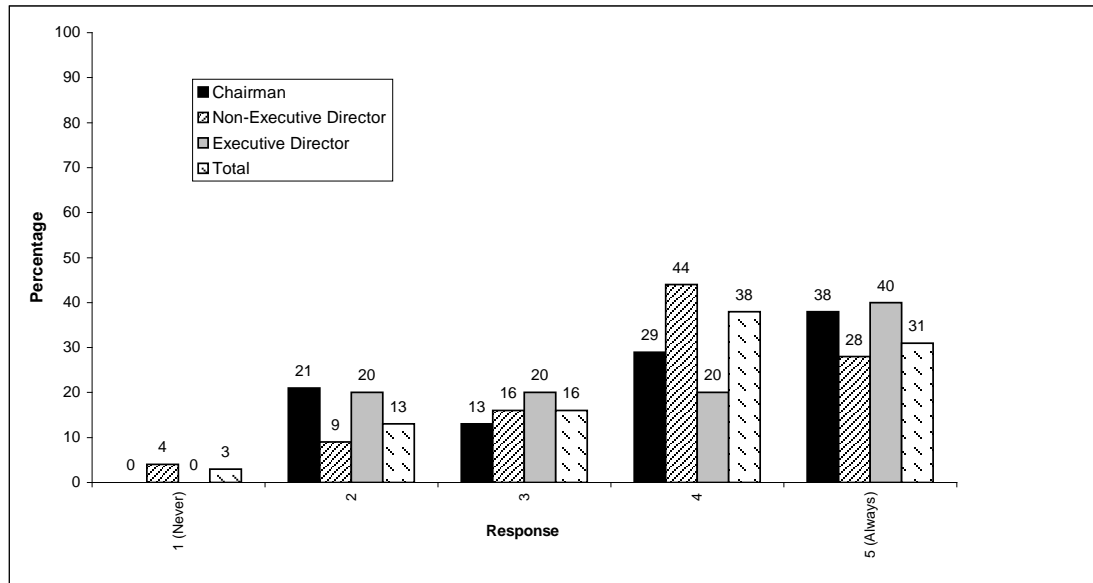
**Figure 4.55. Do these variances occur frequently**

Of the total responses only 15% thought these variances to be frequent/very often, a response that was not dissimilar in pattern to each of the sub-groups. The main body of directors were neutral but, considering all the responses, 38% of directors reported that these variances occurred.

**Question 61: Describe why these variances occur?**

This question sought to expand on the reasons for variances in the director view. By far the most mentioned reason from the 84 respondents was the need to address priority issues of importance to the company (42), followed by the practicalities of timing for directors or management who may only be available at certain times when the monthly board meeting occurred (12). The third most cited point was a change that required an update of strategic thinking or an event that warranted discussion (7).

**Question 62: Collectively, the board directors exercise full control over the agenda. (See Figure 4.56)**

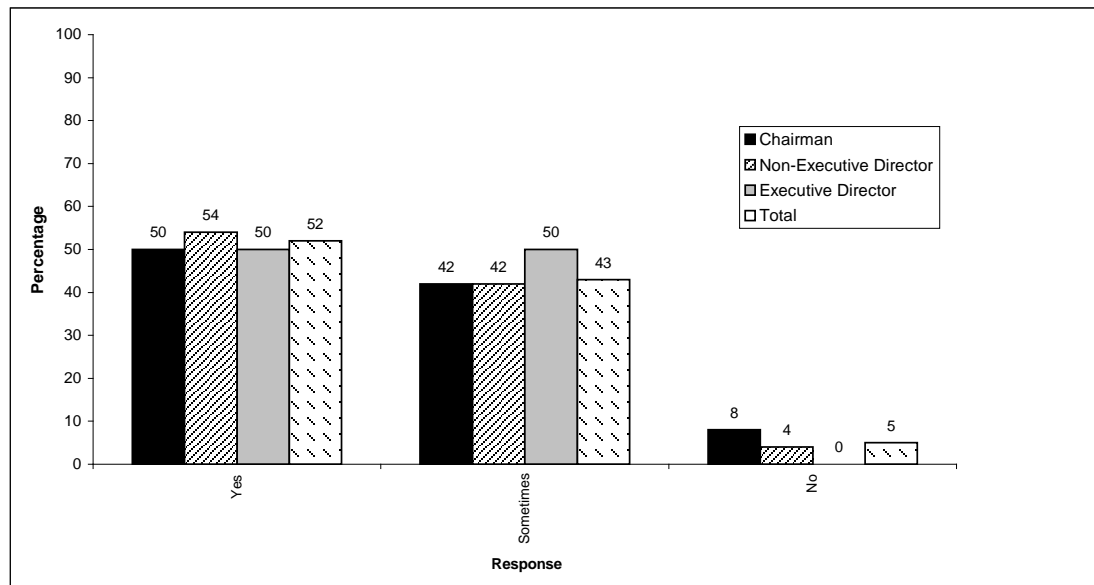


**N=103**

**Figure 4.56. The directors exercise full agenda control**

Of the total director respondents 70% saw themselves as having control of the agenda with 31% marking “always.” Only 16% (drawn from all categories) saw themselves as not having full or strong control of the agenda. The results to this important question are discussed in the next chapter.

**Question 63: Board subcommittees in practice have the ability to influence/change the agenda. (See Figure 4.57)**



**N=103**

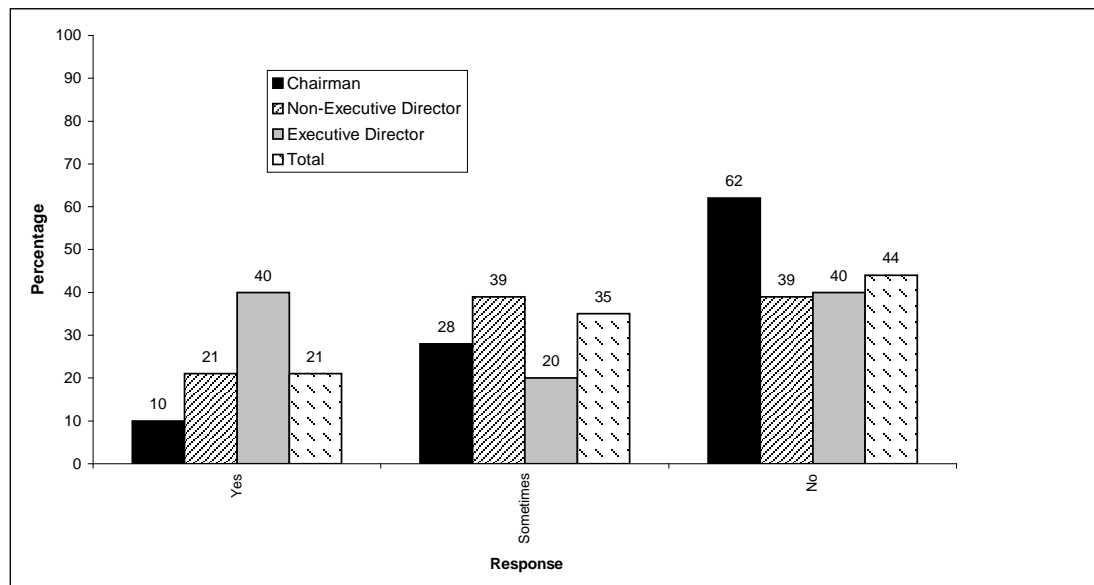
**Figure 4.57. Board subcommittees may influence/change the agenda**

Of all the respondents 95% believed that the work of board sub-committees could change or influence the board agenda. These committees were seen as an influencing factor capable of bringing forward items for full board discussion.

#### Focus Group Commentary

The directors favoured the concept of sub-committees of their members provided these were limited and specialist, such as, an audit committee. There was a general consensus that directors should be “totally in the loop and totally engaged” and that too many sub-committees were an abdication of board responsibility. As one focus group member phrased it: “It is always good to remember that they are only committees of the board and all they can do is recommend back to the full board.”

**Question 64: Major shareholder directors' representatives are able to influence the agenda. (See Figure 4.58)**

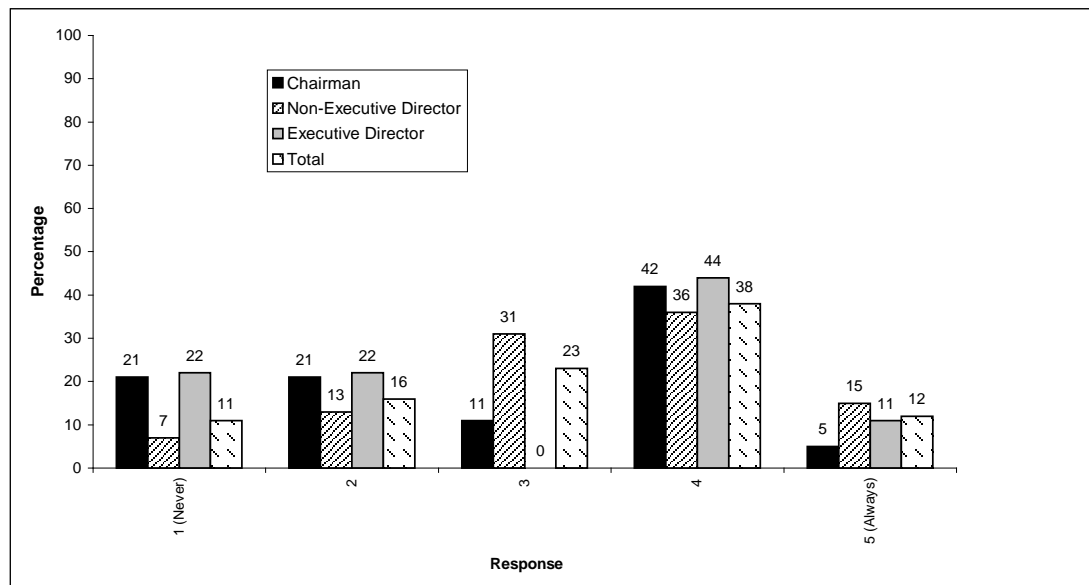


**N=97**

**Figure 4.58. Major shareholder directors can influence the agenda**

Just over half of the total respondents felt that major shareholder influence was a factor in influencing the board agenda. Some 60% of the executive directors thought so as did a similar proportion of the non-executive directors (58%). Chairs did not share the same level of belief in shareholder influence with only a quarter of their total number indicating it was a factor. This facet of influence will be discussed in the next chapter.

**Question 65: Major shareholder directors should be present when debates on aspects of their specific interest are held. (See Figure 4.59)**



**N=90**

**Figure 4.59. Major shareholder directors should be present for debates on their specific interests**

While 23% of all the directors were undecided or neutral on this issue over 50% thought those directors should be present during debates on their specific interest areas. Only 11% of those surveyed felt those directors should never be present. Chairs and executive directors were stronger on this exclusion issue at just over 20% in each case. This suggests they are more conscious of the influence factor.

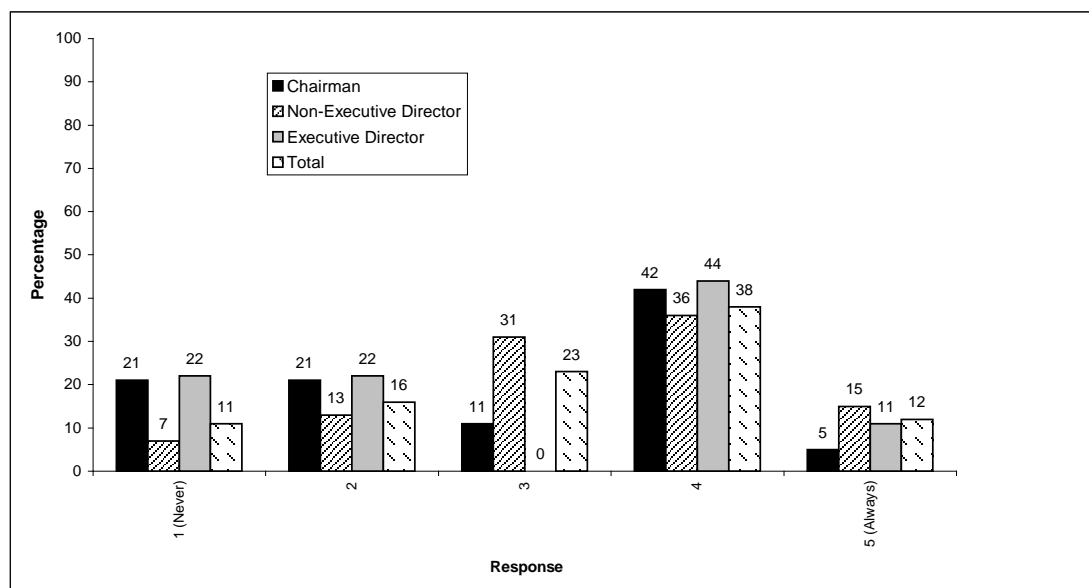
#### Focus Group Commentary

The focus groups debated this fully and even extended the discussion in one group by raising and considering the question of whether any director who was conflicted in any way should even receive the relevant board papers. A consensus view was reached that conflict issues and subsequent debate participation were issues for the chair to determine and rule on. (Obviously it was expected that issues of conflict or interest were known or declared by directors.) In general the directors felt that those who represented interests should be present during the board discussions of the relevant items, should state their views as part of that discussion but then should leave



the room while the decision was taken. It was acknowledged that this did not necessarily happen in the case of directors who represented strong shareholding blocks. The chair was seen to have a key role in this “standing above the issue,” and controlling it effectively in a manner that clearly differentiated the responsibilities of director and chair. Sometimes a director faced agreeing or disagreeing with an action of the board and ultimately the question, “do I resign?” As one director put it: “If you are not comfortable that you are able to influence the direction of the business the way you think it should be influenced and you can’t get your fellow directors to agree with your view then you should get out.” An alternative was to note an objection to the action of a major shareholder. In the case of a major shareholder dispute one of the focus groups felt that an interested party should put those views in writing to the chair but be excluded from the meeting while the issue was discussed and the conflict also scrutinised for legal and financial obligations.

**Question 65: Major shareholder directors should be present when debates on aspects of their specific interest are held. (See Figure 4.60)**



**N=90**

**Figure 4.60. Major shareholder directors should be present for debates on their specific interests**

While 23% of all the directors were undecided or neutral on this issue over 50% thought those directors should be present during debates on their specific interest

areas. Only 11% of those surveyed felt those directors should never be present. Chairs and executive directors were stronger on this exclusion issue at just over 20% in each case. This suggests they are more conscious of the influence factor.

### Focus Group Commentary

The focus groups debated this fully and even extended the discussion in one group by raising and considering the question of whether any director who was conflicted in any way should even receive the relevant board papers. A consensus view was reached that conflict issues and subsequent debate participation were issues for the chair to determine and rule on. (Obviously it was expected that issues of conflict or interest were known or declared by directors.) In general the directors felt that those who represented interests should be present during the board discussions of the relevant items, should state their views as part of that discussion but then should leave the room while the decision was taken. It was acknowledged that this did not necessarily happen in the case of directors who represented strong shareholding blocks. The chair was seen to have a key role in this “standing above the issue,” and controlling it effectively in a manner that clearly differentiated the responsibilities of director and chair. Sometimes a director faced agreeing or disagreeing with an action of the board and ultimately the question, “do I resign?” As one director put it: “If you are not comfortable that you are able to influence the direction of the business the way you think it should be influenced and you can’t get your fellow directors to agree with your view then you should get out.” An alternative was to note an objection to the action of a major shareholder. In the case of a major shareholder dispute one of the focus groups felt that an interested party should put those views in writing to the chair but be excluded from the meeting while the issue was discussed and the conflict also scrutinised for legal and financial obligations.

## 4.5 STATISTICS

Questions 66, 67, 68 and 69: The first two of these, Questions 66 and 67, were used statistically to check the allocation of director category that was originally assigned to each respondent. For example, when the questionnaires were despatched the category of each person the questionnaire was addressed to was researched. On the return of the questionnaire that category was checked by reference to Question 66. A further check on the question of director status (67) was to examine if respondents were major shareholders where their category should move from non-executive director to executive director. Question 68 was used to ensure an even spread/representation of all industry sectors was captured by the survey while Question 69 was used to identify the individual director's company size by revenue. The findings of the research were discussed by one final focus group drawn from the members of the first three focus groups. This group was made up of experienced chairs, non-executive and executive directors. The final thoughts of the group (again run following the Delphi technique as experts in the field – see Chapter 3, Methodology) are considered in the discussion chapter, Chapter Five and the recommendations they make on good practice feature in Chapter Six, Conclusions.

It is important to draw attention to the differences of view point that appear to be expressed by responses in the different director categories in some questions. This was a feature also noted in the focus groups. It would appear that chairs and executive directors particularly may have views that are at variance with those of the non-executive director category in some areas. While that was observed it is difficult to draw conclusions or inferences without further work to test by way of hypothesis and subsequent quantitative study and analysis. These differences identify areas for further research.

## **CHAPTER FIVE: DISCUSSION AND OBSERVATIONS**

### **5.1 THE QUESTION RESTATED**

The present study contributes to knowledge on how boards actually begin to work by viewing power and influences on the board agenda and asking who determines what corporate directors discuss . It covers some of that missing knowledge as to why boards of directors who are “at the apex of the control system” (Leighton & Thain, 1997, p. 1) appear to be largely irrelevant in “a void of direction and accountability.”

Data collection was based around a survey questionnaire of directors of publicly listed companies in New Zealand. The questionnaire required both quantitative and qualitative responses. Survey responses were then discussed by a focus group of publicly listed company board directors following a Delphi technique. With little literature on influences in the agenda setting processes available the questionnaire had to cover all anticipated aspects of agenda setting - within the context of New Zealand’s publicly listed companies. The questionnaire responses provide a wealth of information on content, process, review and influence. However, in terms of the research topic, the interesting section was that with the specific questions that looked at influence and issues of power in agenda setting. Comment on the issues by the focus groups who reviewed the results of the questionnaire is included in the analysis of results and, in general terms, these comments were aligned with the results of the questionnaire. The responses also identified questions for further research required in this aspect of governance.

The results of the research - however black and white these may appear - do not necessarily provide all the answers. Some aspects of power and influence, on the now visible key figures of chair and chief executive that emerged from the research (namely, the unseen second and third faces of power that may be a factor of influence on those people) could remain hidden from view. Although these additional faces of power were not identified as being a significant feature in this project such influences

may vary as a relevant force depending on individual and board circumstances. Insight to this might be further enhanced by undertaking in depth one-on-one interviews and observations over time, but even then this may not be openly or willingly disclosed and merely speculated upon. Confirmation of this type of influence requires factual evidence based on actual events. The reasons for suggesting this be reviewed in more depth revolve around why dissatisfaction with the agenda does not necessarily lead to remedy.

Obviously, there can be many different examples of this hidden influence which, as in the Bernard Madoff case, may not appear until after the crisis or collapse when a business is subjected to a full post mortem. For example, The Associated Press (2009) reported in the N.Z. Herald:

Bernard Madoff's brother, sons and a niece used the family finance business like a "piggy bank", a court-appointed trustee said as he demanded in a lawsuit they return almost US\$200 million that fuelled their lavish lifestyle at the expense of investors. The trustee, Irving Picard, sought US\$198.7 million from Madoff's brother, Peter, who had worked at Madoff's Manhattan investment company since 1965, and sons, Mark and Andrew. (p. B13)

Forces of influence such as family (as above), trusts, personal obligations or liabilities that are not disclosed may all be factors influencing a view or driving a power focus. One face of power that may have been expected to surface in this survey of publicly listed companies - and did not - is the indirect influence of investor analysts and commentators. That was not mentioned in response to the questionnaire or in focus groups and yet it could be surmised as a substantial consideration in the announcement of many board decisions and reports. For these reasons it is important to keep in mind the comment of Lewis and Considine (1999, p. 2) when they described agenda setting as a critical vantage point from which to "observe and explain some important aspects of the nature of power and influence" that allowed some subjects to emerge and others to never be fully considered. Obviously they were reviewing government processes and referring to the compromises political parties or sectional government interests are forced to consider when they legislate or operate inside the parameters of election promises and policy mandates. That is seen in the New Zealand political landscape in features of compromise necessary to obtain majority voting under our proportional system of party representation. The contention

is that the private sector is ultimately no different and that pressure, influence, or obligation may force eventual compromise.

The present research project is a first step in attempting to understand a mysterious process that is only very rarely reported on, and even more rarely observed (see Chapter 1). The origins of the agenda explain how boards identify what is to be discussed and what are its priorities and so it lays the foundations for board decision-making. It enables us to understand if they are beginning at the right place to “protect and create shareholder value” (Charan, 1998, p. 3). If that is the goal, as Charan states, the manner in which this agenda process is handled, and by whom, allows a first glimpse of directors in action on the decision pathway that determines whether the board has “released its competitive power” (p. 5) and is preparing to work effectively. Coming to terms with how items get on an agenda for discussion and who controls that space begins to prise open the window on how boards actually work, allows us to assess the strengths and weaknesses of the present process and the power factors that drive it so we can consider how it can be improved.

The research looked at how the board agenda was set and who dictates what directors discuss and in Chapter Three proposed a theory or concept of director abdication or omission. That discussion suggested failure to drive the process from the boardroom left directors without influence or power in setting the parameters and subject of their own debates. This omission or abdication would occur through either a lack of willingness to force change or a lack of knowledge about required change. The results suggest a need for change is recognised by a significant group of directors, but not effected, eliminating the concept of omission but leaving unanswered the question of abdication.

The research survey in this study adopted, at the onset, an assumption of a collective, single focus by directors as to whom they work. What emerged is a view of power cliques and sectional influences within the board that dispels any universal concept of a unanimous, collective board approach. This is clearly demonstrated by the result showing that 23% of the directors are dissatisfied with the manner in which the agenda is prepared. The results identify that different factions and views may exist within a board. These responses appear to be subject to the hierarchies of power (that

is, mainly chair and chief executive or a combination of the two). Those hierarchies may control the board and an acceptance of an inability to challenge that power by a sizable proportion of directors can be observed/interpreted as passivity and, therefore, labelled abdication.

A passive acceptance of the status quo was observed in the preliminary discussion with the small sample of focus group directors at the beginning of this project. The manner in which the agenda is prepared, who prepares it and what is included was treated somewhat superficially at first and shrugged off with comments that suggested directors regarded this as a process to be left to management, to the chair or just ignored altogether opting for the traditional convention their particular board has always adopted.

## 5.2 SPECULATIONS ON ABDICATION OR OMISSION

The concept of potential abdication or potential omission was suggested as a theory to be supported by future research. Considering firstly the theory of omission, this theory fails if the directors recognise the importance of the agenda and the need for them to exercise competent control of its structure and content. Although there were some directors who had not given the agenda much thought from this perspective, the research shows clearly that the majority of directors are well aware of the agenda's importance in setting the parameters of their discussions. Repeatedly in the questionnaire this understanding was shown. For example, in Question One (see Chapter 4, Results) they overwhelmingly agreed their agendas cover all the appropriate issues for competent governance and, in Question 16, the majority (90%) agreed that their board papers covered all the issues that "keep you awake at night." This was "not about how the agenda was set up but how it drove the outputs" (Q. 18, focus group commentary).

It was also clear (Q. 18) that most directors believe the agenda helps them add value. This was recognised in focus group discussions when the directors stated that they regarded the agenda as "much more significant than a template" (Q. 18, focus group commentary) and, in the words of one chair, "who controls the agenda, controls the

meeting” (Q. 48, focus group commentary). This removes from consideration any concept of potential omission. Therefore, if directors understand the importance of the agenda and yet fail to exercise control this suggests potential abdication. A state of abdication appears to arise for several reasons including: belief that it is not a director’s role, that is, it should fall to the chair or chief executive; through a failure to assess the true impact of their passive acceptance of the process, that is, a lack of understanding or competence; or, through a knowledge that change is necessary but they (the directors) do not have the power or influence to actually affect the change needed, that is, they cannot control the forces that forge the agenda. Whatever the reasons, abdication means the directors ignore their obligations.

The argument for potential abdication is strengthened beyond this research by reports such as that of McKinsey (2008). In a global survey of 586 corporate directors only 45% reported they had good access to key company performance data and leading industry indicators. Less than half of the respondents in that survey “have substantive discussions with management or consider global trends and future scenarios when developing value creation plans” (p. 1). McKinsey also reinforced the results of this study by expressing the view that directors need to spend more time working on businesses’ long-term strategy.

The recognition of gaps in board process and director information supports the view that any director passivity is not due to omission. It is, therefore, open to speculate why the survey directors appear to abdicate from their responsibility in demanding governance change and information. One possible suggestion that emerged from the McKinsey survey (2008) is that “many boards may not even recognise where they have gaps in knowledge or other performance issues” (p. 8). This fits with the view of Deakin and Konzelmann (2004) who, in reviewing the Enron collapse, commented that the charge against the directors was that they failed to make an appropriate assessment of the risks to which the company was exposed and that the directors were ultimately responsible:

not simply for the company’s high risk accounting policy but also for a human resources strategy which made it more likely than not that it would never receive the information it needed about the company’s accounting practices. (p. 140)

This brings us back to a question of director competence and presses the point for



greater insistence on full and regular evaluation of director performance. The failure in this area is emphasised by the same global McKinsey Survey (2008) where only one third of the respondents indicated that directors were evaluated in the course of a year. It is further supported by the comments from the OECD report on Corporate Governance (2010), the Green Paper from the European Commission (2010) and the Institute Of Chartered Secretaries and Administrators Report (2009).

In a review of governance a year later Campbell and Sinclair (2009) commented that mobilising the board required a fundamental overhaul of how the members interact and the only solution was to force change as boards tended to establish patterns of behaviour and have a default operating mode. In their experience “there tends to be relatively little scope for genuine free thinking or for any fundamental re-examination of the premise of the company” (p. 2). This brings into sharp focus the quality of board room interaction and the dynamics of board behaviour as expressed by Letendre (2004) and covered by The Financial Reporting Council Report (2010). If as Campbell and Sinclair (2009) believe boards need open discussion, stronger follow-through and fresh thinking coupled with dramatic leadership from chairmen, and if, as Gillies and Morra (1997) comment, it is individuals not corporations who make decisions then our focus should be on ensuring those individuals have the competence to do the job well and avoid the Olds’ failing of parsley on fish.

So if the directors fail to exercise full control over the agenda and to clearly define their discussion parameters there is potential abdication. Full control will show in process, that is, it can be seen that they are reviewing their agenda regularly and adjusting it to recognise their key responsibilities and obligations as they work to add value to the entity. Significantly, it will show in the ability of directors to point to an established agenda review process that their boards have established. This aspect was totally missing in the focus group discussions and not one director could point to a particular formula for agenda review used by any company in his/her experience. The proposition of control versus abdication may be reinforced by minuted evidence of substantive debate with management showing clearly a pattern of board decisions being made by an experienced and intelligent group of people who balance risk and opportunity as they plan the future of the business without thought of personal circumstance.

If passivity towards process is in reality abdication then abdication has two likely causes as suggested above. It is either that the directors are perhaps inept and should not have been appointed or that they are perhaps powerless to change the situation but content to let it occur. Either way they hold liability. On the one hand is ineptitude: but ignorance is no excuse under the law and neither should it be for a director who assumes that role. On the other, that is, lack of power to change a course of the company, the director has a clear choice: resign or let the power cliques rule and accept the consequences and liability for lack of action.

A key issue in this theory of potential abdication reverts to the process of director selection: Were the directors selected because they were competent of governing and capable of arguing a reasoned case? If not, it reinforces the call for formal and regular reviews of directors to be seriously addressed with the results considered by the board collectively while also being available to those external and interested stakeholders.

In analysing the overall results against this statement of theory of potential director abdication or potential omission, the research information provided a recurring theme to be considered in answering the fundamental questions posed above. First, what importance do directors place on the agenda setting process (in its formulative stage)? The research showed that a good percentage of survey directors assigned little importance to the process; had not really thought of the implications of agenda preparation control, or, did not see it as their territory or responsibility to direct or become involved in the process of agenda setting.

This theme can be traced to the very beginnings of the project when the first focus group questioned the reasons for the specific research focus on the process of agenda setting which some individuals obviously saw as very narrow. One director asked generally of that focus group: "Do you think he (the researcher) is making a mountain out of a molehill?" That individual also questioned the definition of "formal control" of the agenda and pointed out that agenda focus was much more likely to feature in a large company. Yet another pointed out: "I would be surprised, as an experienced director, if anyone told me when I was being interviewed about preparation of the agenda."

Another asked of a very experienced chair in the same group: “Has anyone ever discussed agenda to you when you’ve been on a board?”

Reply: “Not directly.”

Response: “I didn’t know it meant a lot.”

The questioner then continued by saying that working through the questions on agenda setting it became interesting to consider the pattern of influence that was ultimately more about “board dynamics and board power plays than being too purest about it.”

It appears from this commentary that a large proportion of directors are ambivalent about the importance of the agenda, in spite of the fact that 85% felt it helped them add value to their company (Q. 18). It was interesting to observe the commentary of the focus group that debated the question of whether the agenda was “a template on which the content of the meeting hangs” or something more significant than that (Q. 18, focus group commentary). It was obvious from the discussion that debate around this topic was a first for most of the participating directors. However, when the discussion had finished they concluded that the agenda was indeed something more significant, particularly for the part it played in driving outputs (Q. 18, focus group commentary).

Both the questionnaire results and discussion leave the distinct impression that many directors simply accept the process as it is without questioning it. However, 23% expressed dissatisfaction with the manner in which their agenda was prepared (Q. 34) and when directors do question it, as happened in the focus groups, they begin to see agenda setting as an important part of the governance process of board control. This suggests directors need guidance to think about the impact of the agenda process on their deliberations. It is hard to escape the conclusion that without the prompting of the focus group sessions the agenda would not have been seen as a significant control mechanism for the directors involved.

It leads to a second fundamental question as to whether directors need to rethink the agenda setting process. That is already established by the answers outlined to the first question. If directors see the agenda as being important to setting the discussion process for adding value and driving outputs and a significant proportion (23%) have issues, structural change or content they wish to see changed then agenda process review should be an essential part of their deliberations. The fact that it does not appear to be essential suggests strongly that directors have not really thought through the implications of agenda control or do not have the power block to enforce discussion and change.

The answers to the first question support this and also indicate that a number, but not all boards, appear to need outside help to identify and define this key starting point of ensuring board time is effective and focussed on the right issues - the outputs. While directors in the focus groups may not previously have given the agenda process any in-depth thought, once they focussed attention on the agenda and its implications of structure, content and value add they expressed the belief the agenda should include all the relevant governance items where boards “ran good process” (Q. 6, focus group commentary).

If the large majority of directors (83%) agree it is very important for directors to discuss their role as a board (Q. 30) and if the agenda has not been a part of that - and 40% have not participated in an agenda review during their term in office (Q. 36) - it suggests there is a need for an outside catalyst or process to ensure the agenda setting task comes into review during that discussion. This is particularly important if, as was mentioned in research and focus group discussion (Q. 36, focus group commentary), there are still 60% of boards who do not review their process and performance as a board. Does this mean that all they are really doing is attending board meetings to learn more about the company from the chief executive?

Obviously not all boards will fall into this category of passivity. Even many that do may still be lucky enough to escape significant problems and remain unscathed and therefore unchallenged (in terms of process or ability). However, as Druker (1992) pointed out, in all of the major corporate failures the board were notable for being the last to realise things were going wrong and this emphasises director ignorance or

passivity.

The final question posed earlier in this chapter was whether the focus on compliance had lead the directors surveyed away from issues of strategy, performance and control or overshadowed the focus on those things. The surveyed directors themselves do not believe that has occurred. Indeed, while they noted that increasing compliance has added complications and time to the workload (particularly in reporting to the new IFRS regime) this was seen as just an extra burden to be dealt to. The majority of the directors (85%) reported through the questionnaire that less than 25% of their time (Q. 9) was absorbed by compliance issues, so the heavy regulatory regime imposed after the international collapses appears to have been accepted and built into their control space. The bulk of their need, focus and demand for more input showed clearly to be around the issues of performance, strategy and risk (Q's. 10 & 11). Why do they not drive this themselves through the agenda process?

The survey responses (reinforced by the focus group commentary) were notable for the emphasis on an increasing demand of directors for more macro-strategic input, that is, the overall business positioning going forward. That demand for increasing understanding and debate about the future options suggests a number of boards have considered their governance charter and decided on a need for increasing control and influence over the future direction of the company. Increased compliance (in their view) does not hinder or obstruct their view of that more strategic task.

### 5.3 WHO DETERMINES WHAT DIRECTORS DISCUSS – THE POWER FACTOR

The control of the agenda and, therefore, the power to set the ground rules is left to the chair, the chief executive or both of them acting together. This is clearly demonstrated by the responses to Question 48, (“Who exerts the most influence on the agenda?”) where one third of all directors ranked the chief executive as the person most influential in the process of agenda setting while 23% of directors thought the chairman the most influential. However, the biggest block of directors (37%) specified the strongest influence was a combination of these two people, that is, the chairman and the chief executive working collectively.

Question 48 is particularly important. It shows that 91% of all the directors surveyed believe that one, or both the chair and the CEO acting together, controls the agenda setting process. Overwhelmingly, directors consider the agenda the territory of the chief executive and the chair. While there may be differences in different boards (driven by personality and individual strengths and weaknesses) the clear response is that influence on the agenda process is very much under the control of one of those two people or both of them acting together. Either individually or as a pair this is the power clique that drives the work of the board. In all probability the chief executive - who has a management team with information and expertise behind him - is the strongest influencer as the research of Stiles (2001), Lorsch (1995), Felton (2004), Shen (2003), and Kleiner (2003) suggests. And if, as the directors believe, the other powerful force is the chair, then a chief executive or a chair is the most likely to set and run the agenda. With a combination of the two working as a clique it is even more likely, as the research suggests, that it will exert complete dominance and, as Felton (2004, p. 32) suggests “will strongly oppose giving up the power and influence they have worked so hard to accumulate.”

The chief executive and the chair become the seamless pivot and the overwhelming force of power and agenda influence that set the rules within which the board operates and their relationship is, as Edlin (2007, p. 255) concludes, not only “vital” but “at the heart of effective decision-making.” As a power base these two, and whosoever may

be brought into their inner circle, effectively drive the board agenda process. Bear in mind the chair in the focus group that said: “as I set the agenda I can hardly complain” (Q. 34, focus group commentary). This all points to the reality that directors leave the agenda to either chair, chief executive or both of them, recognise the defects but accept, almost unanimously, the process (passivity). This passivity is reinforced by the finding that 80% of directors - the vast majority - do not receive a draft agenda before the final version is sent to them (Q. 22) and some 35% in total do not believe (or do not understand) there is a process to follow to include an item on the agenda.

While 82% of directors believe the agenda remains flexible up to the time of the meeting (Q. 27) nearly 20% of the directors - a similar figure to that who believe content or structure should be changed - consider it is inflexible.

Nearly three-quarters (74%) of the directors surveyed felt there was sufficient time for open discussion (Q. 25) and overwhelmingly directors agreed it was important to discuss their role. The question then is who determines what sits under the heading of open discussion. If the agenda is pre-determined then this must, to some extent, also influence the open discussion space. Under the heading of open discussion - something supported by the American directors in the McKinsey study (see Chapter Two) - there should be sufficient time for the directors to have discussions that focus on the agenda and its process. The lack of change or review appears to be a function of either acceptance (passivity), or, oversight (ignorance of the ability to control the board's work through the agenda), or, perhaps the lack of control to implement change (power).

The responses to this survey also demonstrate that directors do not believe the company secretary is a strong agenda influencer (only 4% thought this, Q. 48) even though he or she may actually prepare the agenda. The view of the chief executive suggests he/she considers the company secretary is somewhat more influential (20%) but the CEO's view may be simply based on the mechanics of the physical preparation. While board notices, arrangements and minutes are often the responsibility of the company secretary this may not be the complete picture as experience suggests a company secretary *can* be an influential member of the top management team, often seen as impartial and often relied on as a sounding board for

management advice.

A most important aspect of Question 48 was the response that highlighted director belief that there were no others of importance who had influence or impact on the agenda process (1%, or, only one of the respondents felt that was the case). This clearly points out that there are no discernible second or third faces of power, or forces unseen, acting as unknown influencers on the board agenda setting process - at least none that are obvious to the directors or willingly disclosed by them. This finding was confirmed by the final focus group - not one member articulated or could highlight any instance in their experience or knowledge where an influencer outside the board environment had impacted on the agenda in a meaningful way. The commentary on the Madoff failure (Associated Press, 2009) does show an example of other forces at work at a subsidiary level and confirms expectations of second and third faces of power such as family, a major shareholder (responsible for the board appointment), or even, perhaps, an organisation such as a major union.

The research results point clearly to the chief executive, the chairman and, working in tandem, these two, as the people who dominate and control the space in agenda setting, item inclusion and framing. As the chair, the chief executive or both set the parameters of the board discussions then by any measure they hold responsibility for ensuring they have covered all the important issues to be considered in the debate that follows. Both the chief executive and the chair, by virtue of time, knowledge and the power inherent in each of their roles have positions of strong influence. That immediately raises the question of how that coalition may utilise their power and leads back to the work of Stevenson and Radin (2009. p. 40) who consider “a clique can become a dominant coalition that makes decisions while excluding non-coalition board members from participation.” The development and maintenance of a mutually exclusive relationship between the CEO and chair can potentially lead to the exclusion of other board members.

Clearly this combination of chair and chief executive provides the dominant power base. That may cause directors who acknowledge change is needed to accept that they can do nothing about the implementation of any change in the face of such a powerful combination.



The role of the independent director/s, a position seen as so important by regulators and external observers, could be negated as a result of this relationship. The appointment of an independent director - however impeccable his/her qualifications - may be irrelevant in the face of a power clique that includes the chair and chief executive. It suggests clearly that more important than independent directors is the issue of good process which should open the pathway to effective stewardship.

The process to appoint a chief executive, by this research arguably the most influential of the pair, is well established and in most public companies is subject to an impartial process of search and review. Even internal candidates are subjected to that scrutiny and comparison. But, if the chair and chief executive acting individually or in concert can form such a powerful clique then surely much more thought should be given to the selection of the chair and, particularly, to any sector or voice of influence (such as shareholders) he/she represents. The experience in most New Zealand publicly listed companies shows the directors themselves elect a chair from within their ranks or, in the case of a new entity, the nomination is often left to a major shareholder or dominant party.

Although an aspect not directly covered by the research it would seem appropriate for a board, rather than nominating and appointing a chair from within, to consider some alternative process such as using a selection panel made up of directors, shareholders, and stakeholders to run a contestable process and recommend candidates for final board approval and wider shareholder acceptance. Otherwise the existing process, regardless of independent directors, can leave the suspicion that it has been manipulated by the powers within the board. It avoids, for example, the type of speculation that occurred in the badly executed takeover of Ansett by Air New Zealand (Lockhart & Taitoko, 2005). That did not appear to be driven by reasoned uniformity in the board but by a sectional power clique that had another purpose and was dominated by a chair and major shareholder influence running its own agenda irrespective of the interests of others.

The type of dominant shareholder interest noted above was acknowledged by over 50% of the directors as a factor in board direction (Q. 64). In other words the directors

recognise both the power clique formed by the chief executive and chair and also the power of an influential shareholder interest.

Although 93% of boards say they have the opportunity to meet without their chief executive (Q. 41), where there is an opportunity to address agenda control, a significant number feel change does not occur as a result. Then the inability of the board to control or influence the agenda can only be explained if the chief executive or chair (or both working in tandem) are dominant. One third of the directors never critique the agenda for omissions (Q. 35) which, again, suggests a passive approach (that is, a view it is pointless) or satisfaction (that is, that the board follows good process). This again suggests that the board and directors may simply ignore the opportunity to control their space or accept that they cannot. The majority clearly believe they have full control of the agenda. Therefore, they accept the process as it is with whatever flaws it may have.

Obviously the agenda preparation and its order are seen very much in the hands of the chair and chief executive (Q's. 46 & 47) - with the assistance of the company secretary - and this supports the concept of complete control by the two. Even then, 42% of chairs acknowledged that they did not see a draft agenda (Q. 22) so this clearly displays the power exerted by the chief executive. While the research shows that directors feel they can freely put forward items for debate - even if they are unsure on the process - they see their role as suggesting an issue, not framing or structuring the item for discussion. That, again, is typically left in the hands of the chief executive and chair.

The power of the chief executive and chair is also important if non-executive directors are appointed by the chair and a small committee of the board (as they often are mid-term and then recommended to shareholders for ratification at the next annual general meeting). That process almost certainly allows any power clique to maintain or even, possibly, enhance its position of power. Therefore, a powerful combination of chair and chief executive could explain why decisions are made outside the boardroom and ratified inside. The focus group commentary from the director who described agenda setting as more about "power plays and board dynamics" (Q. 49, focus group commentary) may indeed be a shrewd observation. This director is suspected to be

one who recognises the reality of the existing board system in action and was prepared to draw it to the researcher's attention.

The research showed that the abdication of control was not a formal pre-approved board arrangement but was, in the main, delegated by expectation or traditional acceptance. That is, the directors willingly, unasked and without question abdicated their power over this part of the process in the full expectation that it would be thoroughly and properly covered by either or both of chair or chief executive. It offered a view of a totally informal and unspoken system where director expectations could be summarised as being passive.

In considering the research results it is difficult to escape the conclusion that while a director might not agree with the manner in which the agenda was laid out and run by the chair he or she would not generally interfere; and, that if the director did put forward a suggestion it would be around a particular item and not around a process concept or the agenda process as a whole. Further, it suggested that there was a general director view or belief that a capable chair would run this process well. It left the researcher with a conviction that many directors would suffer rather than object where the chair did not perform up to expectation. For example, no one provided an example of a chair being forced to readdress the agenda process by his/her directors and yet it was clear from the focus groups discussions that chairs are informally ranked by their boards (certainly in the minds of individual directors) as being either strong or weak in their capability.

So the chair and chief executive (individually and acting together) are clearly expected to provide a competent and useful agenda but nowhere does this process get formally delegated, audited or performance reviewed. Nowhere was there presented a format or formal process by any chair or director that provided a guide or model for this. This may well be symptomatic of a larger problem - the one referred to by Olds (Kristie, 2009) when he accused directors of being parsley on fish (see Chapter 2).

If, in setting the basis for the director discussions, the chair and chief executive go unchallenged in the preliminaries it raises two questions: What else goes unchallenged in the actual decision-making processes; and, are directors prepared to confront the

chair and chief executive when problems arise and they already compromised. Are they, as Sonnenfield (2002, p. 113) recommends, prepared to have “a good fight now and then” - something we should expect when directors run good process.

So if directors are not totally in control of their agenda can we really expect them to control all the decision-making processes? Does this suggest a passivity that answers the question of control posed by MacAvoy and Millstein (2003) who asked: Where was the board when this happened? The board was there, but just unable or unwilling to invoke change or influence the controlling power clique. They were, as Olds said, decorative. Perhaps, he failed to recognise that their helplessness or passivity was either ineptitude or lack of ability/willingness to influence the process in the face of a power clique.

Nevertheless, as MacAvoy and Millstein (2003) point out:

the board is where the buck stops. ... the board must identify and take control of its own agenda and information needs. To do so the board needs to self-help; it needs to correct itself.  
(p. 116)

Therefore, if the status quo appears in the eyes of a significant number of directors (that is, 23% - see Q. 34 and Q.39) to be untenable then change must occur. For if directors continue to fail in control of the agenda they will continue to be referred to, ignominiously, as parsley on fish.

## 5.4 AGENDA ISSUES

Survey responses to Question one show that the majority of directors believe the agenda “covers all the issues” for competent governance and “everything that keeps you awake at night” (Q. 16). A majority of directors surveyed (84%) believe the board papers give them confidence in management. So if 44% of the directors believe some change is necessary, and that they wish to see other things on the agenda (questionnaire, content Questions 3, 4, 5, 12, 13, 14), there are significant issues to be discussed about change. If as the agenda and focus groups state there is an opportunity to meet and discuss the agenda why do directors not focus on these missing or inadequately treated issues? All the more so because 86% of all survey directors see the agenda as the means through which to add value to the company (Q. 18). Why, apart from broadly expressed categories of strategy, risk and performance, are the directors unable to articulate issues they see as missing from the agenda (Q. 14)? It is almost as if this is the first time they have been asked to define key issues for inclusion.

Responses to Questions 34 and 39 show that 23% of respondent directors are dissatisfied with the manner in which the agenda is prepared. Even with this level of disquiet about the agenda process and content they apparently still take no action and allow the debate format to be set and controlled by a chair, chief executive or both. In other words they abdicate the right to control the agenda leaving it to the chair, the chief executive or both to exercise this right with “sensitivity” (Q. 58) and, almost exclusivity. What happens if the chair lacks this sensitivity or competence or is driven by a dominant chief executive or shareholder or some combination of one or the other/s? The result is unlikely to fit the description of one member of the focus group who spoke of good agenda process as being the key to “avoiding management capture.” The Sarbanes-Oxley Act of 2002 and the New York Stock Exchange’s revised listing rules of 2003 have, according to Useem and Zelleke (2006, p. 10), “mandated more independent director oversight” and non-executive directors are now required to meet periodically without company executives. That already occurs in the New Zealand survey sample reported in this research and, as Question 41 shows, 93% of all directors have the opportunity to meet without the chief executive (and,

therefore the company management). Every chair surveyed said there was always that opportunity. However, whether mandated or always available it appears to make little difference if the right to change results in little or no change.

So this available right still does not seem to have solved director dissatisfaction expressed in the questionnaire on the issues of content and process.

The Olds' (Kristie, 2009) passivity syndrome (Chapter 2) is illustrated by the responses to Questions 34 and 39 which suggest that over 20% of directors have some dissatisfaction or question over the agenda process. But, when pressed to expand on that response, and asked in the next item as to how and what should be done to improve the process, the response was minimal and drew written qualitative reply from only one chair, nine non-executive directors and one executive director, or, a mere 10% of the total survey sample. There was a lack of concerted focus and simply nothing constructive put forward - just a generalised view that directors required more discussion time. The results suggest there is concern of substance but no organised response or motivation that is reflected in director action. In other words the dissenting directors demonstrated a passive or non-constructive attitude that fails to alter the status quo.

One third of all the directors (Q. 5) surveyed indicated they would change some aspect of the agenda, its presentation or layout (and that view included 29% of the chairs and 35% of the non-executive directors). The directors in focus group also agreed that items would not be missing from the agenda where boards "ran good process" (Q. 5, focus group commentary). Only one quarter of the respondent directors (26%) could identify specific change when they were asked to expand on their survey response in the next question (Q. 6). Regrettably, suggestions put forward were generalist and vague in nature around "structure" and "more strategy" and not on to the concept of change through agenda control. If one-quarter of all directors feel there should be change then surely a full review of the process - including control - is warranted.

The focus group commentary (Q. 5) made particular reference to "having a good CEO and board who are proactive to ensure the right items are featured on the agenda."

This points to a strong reliance on the chief executive to nominate the key issues for the agenda, that is, to have a key role in guiding the board. If that is the case then the New Zealand system may not, in the end, be too different from that of the United States where, as Useem and Zelleke (2006, p. 9) point out, decisions “on what deserves board attention when new issues arise are still largely the preserve of management.”

The quarter (26%) of survey directors who expressed disquiet may know what should occur but are either powerless or unwilling to tackle the control system of chief executive and chair where either or both are seen as dominant or powerful. In other words their views are simply suppressed by the extant power cliques. The different director categories in the survey show differing views (for example, see the responses to Q's. 34 & 39) where the attitudes of the chief executives and chairs (the defined power clique) are substantially different to those of the non-executive directors. This finding adds strength to the commentary of Stevenson and Radin (2009, pp. 33-34), who found the chief executives they surveyed believed there was no real business conducted in board meetings - it was just “a minuted meeting”, “the formal thing”, in an environment where the board's business took place outside the meeting. As one CEO told them: “Don't confuse board actions with board decisions. Board decisions don't take place in the boardroom. Board actions take place in the boardroom.”

The Stevenson and Radin study - “the first to survey the networks of all of the board members” (p. 38) - showed that ties and cliques were the biggest predictors of influence on a board and this was “in direct contrast to the current regulatory assumption that independent board members will be most able to influence board policies.” The research in the present project, and those differing director category views it shows, supports their findings. It suggests that a large number of directors do recognise the need to control the process - as this research shows - but they also recognise their inability to influence a system where the decisions are already made and made outside the formal boardroom meeting. Their indecision may just be the recognition of an inability to shape or change a course of action already determined by a powerful group or clique that dominates the board. The parsley on fish label may simply represent their recognition of inability to affect change and not an inability to understand that change is required. The passivity we have assumed as *laissez faire* or

habit may simply be an acceptance or expression of powerlessness or, alternatively, recognition that the director has joined/been excluded from an established group and is either left out or swept along with its decisions. The real reasons for passivity may not be seen until there is substantial further research (requiring direct observation) on the process of board decision-making in formal session. However, if board decisions do not take place in the boardroom that might prove equally fruitless.

The current environment may, however, force change. Campbell and Sinclair (2009) argue that:

Board chairmen need to play a special role in the coming months by challenging their boards to think things through afresh. This is not an easy task. Board procedures are anchored too. Meetings, agendas and timetables typically follow a preset annual pattern ... Attempts to make changes are often resisted – in part because of habit and in part because those involved have busy calendars ... Granted, most boards have an annual offsite day when members talk strategy but there is an understanding that major change is not expected. (pp. 1-2)

Without dramatic leadership from chairmen Campbell and Sinclair (2009) believe many companies will wander and struggle in the current tough conditions. This commentary supports the survey and focus group research suggesting the leadership role demands the chair and chief executive critically review their part in the process.

As has already been suggested a possible cause of passivity could simply be director inadequacy, that is, a lack of understanding or the inability to comprehend the potential problems. After all what director appointment system places a focus on the conceptual reasoning strengths of the candidates, their functional abilities to serve and whether they really understand what they are doing? The financial literacy testing of candidates for Crown company board training in New Zealand, measured by way of an online diagnostic (Lockhart, 2010) and the director candidates at the Stanford short course director training (already mentioned) show a large number of aspiring and current directors struggle with this aspect of board work. Worse still when this covers just the financial analysis of past performance, not the assessment of future value creation or risk.

Consider the gaps in their armour and look at the four areas that were listed in this



research as areas where the survey directors feel it important they add value, that is, in setting and controlling performance, in strategy, in risk assessment and in the assessment of the top management team (Q. 11). The lack of financial skill and understanding only applies to one of the four areas - the aspect of setting and controlling performance in financial terms. Are the directors any better equipped to deal to the other areas of board work where strong numeracy is required? If the results in just one of the four areas that has been measured - financial skills - are anything to go by it means there could be serious shortfalls of knowledge and ability, particularly in two of the remaining three key areas, that is, setting and discussing macro strategic issues and judgment on risk. It suggests testing for director qualification should be more rigorous across all of the disciplines and knowledge requirements.

This contention is supported by Deakin and Konzelmann (2004) who argue that the failure of Enron was not a failure of the board to monitor but rather a failure to understand the inherent risks in the company's business plan:

Enron's directors failed to make an appropriate assessment of the risks to which the company was exposed. Enron was engaged in what an Andersen<sup>11</sup> partner called "intelligent gambling" (Senate Subcommittee, 2002, p. 19) ... The board, while not aware of the degree to which senior managers were enriching themselves, *was* informed not just about the SPE transactions which were later to lead to the company downfall ... it was also told by Andersen they "pushed limits" and were "at the edge" of acceptability ... Enron's board was ultimately responsible not simply for the company's high risk accounting policy but also for a human resources strategy which made it more likely than not that it would never receive the information it needed about the company's accounting practices. (p. 140)

Enron, say Deakin and Konzelmann, (2004) appears to have been a case of mismanagement of corporate risk. In discussing this the authors point to the difficulties non-executive directors have as outsiders who often lack the knowledge and experience to make a difference to the outcome. Therefore, there may be not one but two limitations in action here. The first, as the research demonstrates, is passivity. The second, not examined here but postulated elsewhere, is ignorance. The resulting hubris fairly supports rather than challenges Olds' syndrome. To further complicate matters is the explosive potential of management greed. No regulatory framework will

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<sup>11</sup> Refers to Arthur Andersen, a leading international chartered accounting firm at the time, which itself became a casualty of the failure of professional standards.

ever overcome these phenomena - nor should they - for that is the role of the market.

## 5.5 OTHER QUESTIONS OF INFLUENCE FROM QUESTIONNAIRE AND FOCUS GROUPS

The survey directors were asked to answer (Q. 62) whether they believed, as directors, they exercised full control over the agenda. Of all the respondents 70% replied in the affirmative with only 16% (from all categories) saying they did not have full or total control of the agenda. It is appropriate to comment that this result may well have been different had the question been phrased in a different way.

The question asked if directors had *full control* of the agenda and may have been interpreted by the negatively responding individual directors as having less than full control because of the input from the chief executive and/or the chair who each show as an important feature of influence (Q. 48). The reverse question to Q. 62 (Q. 49, board members have no control over the agenda) emphasised and confirmed the director belief in their full control of the agenda process with a strong rejection of the statement (78%) and only one respondent strongly agreeing with the proposition. The focus groups, particularly the final review group of experts, endorsed this finding of total control by directors.

The research also sought to examine the influence of appointed sub-committees. These are normally in the audit/finance and remuneration area and can be expected to exert influence. While 95% of the directors did consider that one of their sub-committees could change or influence the agenda (Q. 63) and bring forward issues for full board discussion, this is seen from the research findings as a legitimate process working under delegated authority of the full board. It is obvious from this and the focus group comments that directors entrust specified reviews to these colleagues and respect their right to bring forward an important item or finding to the full board for discussion, decision, or, to assure the board that particular issues have been examined and are in order.

The focus groups, in discussing this, agreed with the concept of subcommittees for audit review and executive remuneration, but reached the consensus view of a limited

place for subcommittees to avoid “an abrogation of the board responsibility” (Q. 63, focus group commentary). In the two areas suggested above there was a distinct place for a small group of board members to ferret around and find out what is going on for the board. While directors may see that as a committee role it is ultimately a responsibility that cannot be delegated for directors themselves must understand the workings of the business. Such committees should be used more as an early warning bell or red flag. It was, said the directors, “always good to remember that they are only committees of the board and all they can do is recommend back to the full board” (Q. 63, focus group commentary).

While over half of the directors felt major shareholders could influence the agenda through directors who represent such powers (shareholder appointed/supported directors) this appears to be a feature of clearly identified influence openly canvassed and acknowledged. As an influence factor it is ranked as more important by chief executives and less important by chairmen. This point brought some debate in focus groups but the consensus was around an open acknowledgement and understanding of the role major shareholder representative directors play. The aspect most discussed was whether those directors should be in the room during a debate that involved their declared interests or absent from it. Both processes are used by different boards and decisions on which is correct are often based on the sensitivity of subject matter. Whether excluded or not the directors felt that the representative directors still had a right and duty to express their views to the board. All this ignores the primary obligations the directors have in their main duty to the company under the Companies Act 1993. Their obligations are, of course, largely developed by case law but directors are primarily required to exercise their powers in good faith and in the best interests of the company (Simpson Grierson Butler White, 1993). The definition of that primary duty takes, or should take, precedence in guiding their decisions in any issues of substance.

Approximately 20% of directors recognise that some items on the agenda will have been discussed by board members in informal session before the board meeting (Q. 50) but this is seen to include executive directors and was not regarded as an undue influence or problem for the board. Of course, a problem with this could potentially occur as none of these informal meetings or decisions are minuted. In spite of this the

focus groups considered this type of discussion, particularly on an informal basis between directors, was inevitable. (It was certainly something that could be expected of representative directors in their role as major shareholder advocates.) The focus groups believed in, and emphasised, the importance of directors engaging in informal discussion on agenda matters outside board meetings on a one to one basis. This was seen as being very important to test views and concepts. That view was supported by individual comments from the experienced directors in the focus groups who suggested it was appropriate on sensitive issues. The only concerns expressed were that this activity did not become an organised feature of a structured group of directors operating for the wrong reasons outside the formal board environment. Perhaps the concerns with this, in light of the proposition that power cliques drive a board, is whether it should occur at all. This is of particular relevance in the light of the earlier comments drawn from the research of Stevenson and Radin (2009, p. 33) that “board decisions don’t take place in the board room” but board actions do.

Again, focussing on influence of executives in the board agenda process, the response to Question 53 (issues promoted to the agenda by a particular sector of management or staff) showed the origins of these issues were clearly visible to and identified by directors. Nearly all (99%) of the directors surveyed (Q. 54) considered that the sources were clearly and openly disclosed. There was no suggestion of a consistent pattern of influence or cause that the directors could discern that affected the process (Q. 55) or was something that had occurred, to the best knowledge of the focus group members. Of course, in the event that boards are driven by a power clique it is unlikely that this will be openly visible outside the directorate and it may even be less than visible within it.

Importantly, survey directors overwhelmingly agreed (93%) that they had the opportunity to meet as a board without the chief executive being present (Q. 41). That is supported by the view of every chairman surveyed who considered that the opportunity to meet without the chief executive was always available. If the chief executive is the key influencer of relevance outside appointed directors (as seen by 31% of the directors in Q. 48) and if it is always possible for boards to meet without that influence, then there can be no doubt that they, the directors, should be able to determine and control the direction and subject of their board discussions. This means

that directors, in their view, have the opportunity to discuss and control the shape and nature of their deliberations without undue influence from any second, third or other external party (known or unknown). However, in practice it is more likely that these discussions without the chief executive are only provoked when directors discuss his/her performance and remuneration package.

Further, (Q. 56) the directors were asked if they had experienced board discussions where it became apparent later that there had been an undisclosed sub-agenda. The results suggested that few, if any, had encountered this problem and, although invited to do so, few had any relevant comment on the subject. Any notion that other unseen faces of power have a serious influence on the agenda is either unnoticed or ignored, or remains confined to the chief executive or chair bivariate.

To confirm the real levels of authority, Questions 46 and 47 identify that the chair and the chief executive (aided by the company secretary) as those who are responsible for preparing the board agenda and determining the order of the agenda items. These two (or three) on occasions either individually or acting collectively, have 87% of the say when it comes to setting out the order of discussion. That was reinforced during the focus group discussions (Q. 34) where one chair commented: “As I set the agenda, I can hardly complain about it.”

Importantly also, an overwhelming majority of the directors agreed (Q. 1) that the agenda “covered all the appropriate issues to ensure competent corporate governance” and they reaffirmed this in the response to Question 16, that their agenda “covered all the issues that keep you awake at night.”

While 44% of directors indicated they would like to see some change in agenda content (see Q’s. 3, 4, 5, 12, 13, 14) those changes were about emphasis on subject matter and weight, particularly on expanded board discussion of strategic issues. Their responses showed there is opportunity for directors to raise and address those issues in their meeting format and it was therefore surprising that 23% of the survey directors then expressed their dissatisfaction with the manner in which their agenda was prepared (Q. 34) - a view strongest among the non-executive directors. A collaborating result on the reverse question suggests that the vast majority are happy

with the process (or do not see it as important enough to focus on) although perhaps, at times, they may feel left out rather than disenfranchised from the process. Certainly, as Question 33 shows, directors consider they have time to read and absorb the agenda so they are not subject to influence or pressure from too little time or undue haste.

Overall the research shows that the large majority of the survey directors clearly believe responsibility for the agenda content and control sits in their hands and that their process maintains total control. The importance of agenda influence in determining the focus of the debate was emphasised by one focus group which agreed unanimously with an experienced chair's statement, "who controls the agenda controls the meeting" (Q. 48, focus group commentary). This supports the research question entirely, but leaves open to debate - in the absence of formalised process - who is responsible for controlling the agenda, if not the directors. It simply highlights the conflict between who is responsible and who actually does it.

One issue that arose out of Question 30 and provoked considerable discussion in the focus groups was an examination of the differing behaviour requirements of directors in different sized companies. Smaller companies were seen to require more director involvement - directors descending more into management detail and advice - whereas in the larger concerns their focus was seen to be at a higher level in strategy and governance. These distinctions of size were not probed as that difference was not the primary focus of the research. However, one member of the second focus group pointed out that some smaller, private concerns did not even prepare or provide an agenda (although experience shows an agenda is certainly the norm in all publicly listed companies, state concerns and larger private organisations).

Company directors clearly believe agenda control is in their hands and their hands alone. They do not see the agenda being substantially influenced or driven by forces other than themselves either in or out of the organisation. They consider they have the processes and opportunities to ensure this remains their right and in both questionnaire and focus group the view was expressed that delegation of this responsibility was only for routine preparation and did not include the right for others, of any position, to put forward material or concepts without request. However, the

major and substantial exception to that is the chief executive or chair, or combination thereof. At first glance this looks reasonable, however, it does not acknowledge the power clique that may be formed by those two positions. The apparent passive nature of the survey directors could well be responsible for its creation.

While individual directors may have differing views on who controls the agenda process, that is, managing directors, chairs or both working together, the chief executives themselves appear to see this process as the prerogative or territory of the chairman. In the focus groups there was a strong view that the chairman was the proactive person in agenda setting. It was also seen as his/her task to provoke at least an annual review of the process. If that review does not occur - as has been suggested in up to 60% of the boards - then the responsibility is obviously and clearly in the hands of the chair.

Repeatedly mentioned throughout the focus groups was the board agenda work plan - an annual prescription of what defined subjects the board would focus on and when and, to some extent, how. This was seen as having both a strategic and performance focus for directors: strategic, in that it provided space for an in depth look at specific subjects where directors were expected to contribute to the conceptual and planning discussions. Performance, in that it provided a defined point in time where there was space to focus on the delivery of certain issues or items for an in depth look that was not possible in the course of an ordinary board meeting. The forward notice was seen to give directors the time to consider and formulate their questions and thoughts. Organising this was clearly seen by all the focus groups as the sole responsibility of the chair and part of the planning process he or she laid out for the year ahead. Ideas could be passed to the chair but it was the chair's prerogative to prepare and present this work plan. Without the chair provoking this (according to the focus groups) the work plan did not happen. That in itself is a frightening confirmation of the control power of chair and the passivity of directors.

The board review of performance and individual directors is also clearly seen by directors as a chair function, something clearly articulated by Sir Adrian Cadbury (2002). Again, control by the chair of director performance is a powerful tool in the power clique armoury. The Cadbury report, published in 1992, had considered this in

a code of best practice for boards of directors (Leighton & Thain, 1997).

Quite obviously, anything to do with the agenda, its content, framing, and process is in the hands of two people, the chairman and the chief executive. However, opportunity appears to remain for the directors, either individually or collectively, to put forward concepts or items for discussion. This finding is supported by the focus group discussions. One comment from the final focus group by a survey director who serves on several large boards illustrated the point. His style was to let the chairman and the chief executive set the agenda, but, if there was an item he wanted included he would ensure the board scheduled that for discussion at a future meeting. There certainly are directors who find this does not fit their experience on every board. Of course, those directors then have a clear option if they are frustrated or blocked by the chair, chief executive or the process - they can resign. In doing so they recognise they do not have the power to insist on or drive change. However, change is far easier to implement from within the boardroom than outside of it. But whether or not directors are committed to such positive change in their stewardship role remains a moot point.

Perhaps one of the very interesting comments came from a focus group member, who describing the place the agenda has in board process, observed that the agenda was an indication of the company and its culture showing what was important in what was discussed. It may be that observing boards in action over extended periods and identifying who puts what forward and who seconds the move will tell us more about the power behind key features of agenda and board action, although that too is constrained by what is on the agenda.

A feature of discussion highlighted by one focus group pointed to a clear difference between the boards of publicly listed companies and state owned enterprises or government appointed boards. (This focus group member serves on both categories of board.) It addressed director concern at their lack of influence over who joined the board of a Crown company. The expressed view was that external appointees could produce a problem of inexperience or bias that did not feature in publicly listed companies. The implication being that directors may fail to fully understand and control the direction and content of their discussions (or may have a political agenda themselves) and, therefore, may fail to appropriately control and guide the direction of



the corporate in decision-making.

A notable case in point was the break up of the Broadcasting Corporation of New Zealand into three distinct arms of Television New Zealand, Radio New Zealand, and, the New Zealand Symphony Orchestra. (The further breakout of Engineering Services - Broadcast Communications Ltd, now Kordia – followed at a later date. Initially it was left with Television New Zealand.) In the separation to three state owned enterprises, Radio NZ was given a new board and chair. The government appointed board appeared to have had little relevant commercial skill and it was finally the refusal of chairman Richard Rowley to sign off annual accounts to government that led to a disbandment of the board and a full reappointment process.

Included in those who responded to the questionnaire and sat in the focus groups were a number of directors who sit or have sat as board members of private, not-for-profit, government boards or state owned enterprises. With the size of the New Zealand market and the fact that there are a number of commercially run government boards (SOEs) in the more than 500 government appointed boards, it is normal to find directors with some government or ad hoc body experience in their portfolio of roles. In this survey many of the respondents fitted into that category. Indeed, in the initial focus group of nine directors, four had current or past government or SOE experience as directors or chair. Their responses and discussion of the agenda setting process in both questionnaire and focus group, although directed at publicly listed companies, could not escape the experience the directors had gained in those roles and commentary on that surfaced regularly in focus group discussion. It strongly suggests that the findings of this research could be similar in those organisations. In other words these agenda setting views are probably universal, at least in New Zealand anyway, and not necessarily limited to publicly listed concerns.

The research provides some important thoughts to consider in a journey towards ensuring good governance. In the final chapter the questions to consider include: should the regulators drop the focus on independent directors (who are probably outside the established power clique anyway); should in future the board concentration be on *good process* (the term the focus group directors used); should board/director performance be viewed in a different manner; should board review

include the process used in setting the agenda to ensure it allows independence of thought and action and the ability to openly identify problems. These and final thoughts on future good governance are outlined in Conclusions, Chapter Six.

## CHAPTER SIX: CONCLUSIONS

### 6.1 THE QUESTION ANSWERED AND IMPLICATIONS

The research question sought to identify power and influences on the board's agenda and who determines what corporate directors discuss by looking at how the agenda is set. It focussed on a specific sector - publicly listed companies in New Zealand. The same research findings may apply to unlisted private concerns, although the consequences are somewhat different, and government organisations (such as SOEs) in New Zealand (particularly as many of the survey directors also hold directorships in those organisations). The research findings focus solely on the power and influences that are exerted on the agenda setting process as a preliminary determinant of board director discussion. During the course of the research it became obvious that while this was one important part of agenda setting (and the study focus) there was a second feature of the process that had not been considered at all, that is, the agenda in action or how it actually works.

The directors listed the chief executive as the prime force of influence on the agenda, with the chair close behind. These two (individually or in tandem) are seen as the controllers of the agenda by over 90% of survey respondents. While the chief executive holds the reins in agenda setting, the actual control of the agenda falls to the chair to execute. The dominant position of these two as the major influencers was reinforced by focus group commentary.

Although in New Zealand the chairman is overwhelmingly non-executive - a situation the reverse of the United States - and by far the majority of Australian and New Zealand directors are non-executive (e.g., Korn Ferry, 2008, shows non-executive directors as 74% of all Australian directors - 80% in the top 50 companies) the overall impact this difference has on the agenda seems irrelevant. The majority of New Zealand directors appear unperturbed that the chief executive exercises the greatest share of agenda control. This control by chief executive and management, a regime the regulators want to break, mirrors research findings in the United States.

The research suggests that regime of management control will not be altered by the introduction of independent directors. Independents are unlikely to affect the way in which the board operates if the agenda is laid down by a chief executive. This is a critical finding and showed that the board, however and wherever it operates, may find the role of an independent chair or director of questionable value. As an independent the individual is likely to be powerless; subsequently captured by the chief executive or chair power clique that dominates the board process, independence is lost. Without influence or power an independent director is likely to be irrelevant on the board. Shareholders should not rely on independence as a lever for change and impartiality and should not assume it is a valid concept.

The appointment of the chair is, therefore, as critical, or even more important, than that of the chief executive. However, while the chief executive is normally selected after a thorough board process the chair appointment does not usually follow the same scrutiny, and should, if ability and true independence of thought and action is the end goal. This process of chair selection requires a disciplined, impartial and objective format for, as Leblanc and Gillies (2003, p. 10) point out, “it is impossible to have an effective board without effective directors.” That is even more true of the chair.

## 6.2 POWER CLIQUES

At the outset the research did not address the concept that boards - like any other grouping - can be made up of factions or power groups (power cliques). It was assumed that the directors were there with a common purpose, working together for the good of the company, the shareholders and the broader stakeholder community. There can be no doubt from this research project that boards do not function as one concerted and unanimous body. They have their own groups, motivation and reasons for taking part and, as the research recognised, may at times act in the interests of their family, sponsors or power group irrespective of their primary legal requirements.

The research assumed the board was the ultimate authority that set the goals, monitored the progress and drove for results without fear or favour. In other words was the highest level of authority, unified in thought and action. While it anticipated power would have degrees of strength, that is, it would vary from, say, director to chair, it assumed the board acted as a cohesive unit. On the face of it boards are a collective on a common path, but management and influencers with external links, obligations and views drive different agendas for individual members, reflect widely differing views and therefore much decision-making is likely to be compromise.

The actions of individual board members, the interface with the chair and chief executive and the social and political pressures exerted on the directors, coupled with the fluid nature of power within a corporate, form a set of dynamics unlikely to ever be fully understood or identified through current research projects. These are traditionally a snapshot (such as the present study) or short-term. Therefore, if more is to be known about governance, it is imperative to learn how crucial decisions are made. That implies a long term view to observe repetition of crucial decisions that may only arise annually (example e.g., budgets, strategic planning and board performance reviews). To fully understand boards it is necessary to conceive and execute an on-going longitudinal in depth study that covers the corporate life cycle and spans individual director and chair terms. Such a study requires total immersion in the corporate and a long term research commitment by an appropriate university project team (as with the University of Otago study of individuals and their development mentioned in Chapter Five).

## 6.3 PASSIVITY AND ABDICATION

One issue that emerged offered a new insight to board agenda process and overrode the other findings in its significance. From both questionnaire and focus group there was a strong undercurrent from many survey directors that boards and their processes needed to change or at least bring their *modus operandi* into review. That was shown by 83% of directors who agreed it was important to discuss their role as a board. However, 40% had not participated in an agenda review and 23% had issues, structural items or content they wish to see changed.

The surprise factor in considering the scale of this was the resultant director passivity when it came to actual change. The need to change the agenda was articulated but action was apparently lacking. More disturbing was the revelation that this was not seen as important. (Director comment, focus group commentary: “I didn’t know it meant a lot” Chapter 5, 5.2.)

Why, when directors express the need for change, and can even suggest the areas which should be addressed, do they then take no action? In the theory of abdication or omission this eliminates omission and can only be interpreted as abdication. In asking why a number abdicate in this key responsibility that sets the parameters of their discussions the obvious conclusion is that the knowledge and the wish to change is one thing, the ability to drive change in a board quite another. Abdication must simply be recognition by those directors that they do not have the power or the majority of the board with them to ensure change occurs. Therefore while Olds’ view of directors as parsley on fish is valid in viewing the end result, Olds seems to have overlooked the possibility that directors are ineffectual in driving change if they do not have the power to do so. Many directors seem prepared to live with this situation. Therefore, either they do not see the desired changes to be of a major nature or they do not wish to risk their position on the board by attempting to force change. Either way change does not occur.

It appears, therefore, that there is a tension between conforming on the one hand, and a need or desire to do so, yet a situation where the directors’ expectations are not

being met on the other. Conforming appears as a significant moderating force.

When this spills into decision-making it suggests boardroom debates may become sub-optimal because of the tendency/desire to conform. If that is so the boardroom is not the robust debating chamber desired (or the open forum perceived by those externally) and, in fact, that outcome is likely to be rare.

This clearly brings back the issue of power in the control of the board and suggests that what is important in considering board performance is not only the individual and personal abilities but, more importantly, the implementation of strong formal and disciplined board process.

## 6.4 GOOD PROCESS

What can be determined from this research is that the board agenda process - and therefore the focus of board discussion - pivots on two people, the chief executive and the chair. Upon them rests responsibility for achieving good process under the current system. For reasons already outlined this may be their most onerous task as “corporate governance is about ‘doing the right things’ and ‘doing the things right’: a twofold condition often neglected” (Berghe & Levrau, 2004, p. 462). If good process overrides all other requirements so that standards are defined, implemented and reported against with transparency it supports the proposition put forward by Leblanc and Gillies (2003, p. 10) that “board process may be the single most important factor in determining a board’s effectiveness.”

So good process is needed from the very beginning of director involvement and starts with professional selection assessment of directors and is transparently continued through the full gamut of the board decision making function. Good process will show a consistent and transparent audit trail of logic and intent and will demonstrate no director self-interest in decision-making. It will start with the agenda.

While the survey directors considered they exercised control of the agenda, it is possible they do not and their own responses showed that. They have input to it - primarily by suggesting a topic or concept - but the way in which that topic appears

on the agenda, its framing and content depends not on the directors but on chair, chief executive, the management executive and the format those people choose to use in presenting a subject to the board (or even suppressing it altogether).

The research comments from the United States executives who considered the board meetings just the formalisation of the decision-making process - where the decisions are already known - appear an accurate reflection of true process. Crucial decisions appear to be thought through and discussed by the power cliques before they are listed on the agenda. In such circumstances the forces for decision are already marshalled and organised by the chairman and chief executive prior to the meeting. In many cases board members just face firm recommendations to adopt and not open-ended discussion for guidance on a way forward or innovative thoughts and seasoned judgment.

## 6.5 A FORMAT FOR GOOD PROCESS

In the final focus group discussion, when the directors considered the overall questionnaire results and qualitative findings, they made a series of observations they unanimously agreed offered important guidelines for current or prospective chairs, directors, chief executives and others who are responsible for agenda management and preparation. They did this in full recognition that the agenda process will differ from company to company and that there was, as Paul Light (1999) observed, no ordered common process recognised by directors. They felt certain principles and values were important and should be observed by all corporates and organisations and made these recommendations as guidelines for the process.

The background experience of this final group included an independent, non-executive director with no chair roles; an independent, non-executive director who chairs several companies (including high profile concerns) and is the former CEO of a major New Zealand corporate; an independent, non-executive director on several prominent New Zealand/Australasian boards who is also currently deputy-chair of a state owned enterprise; an independent, non-executive director of major New Zealand/Australasian corporates who has held several high profile chair roles



including the chair of a major state owned enterprise; and, a former CEO of a major publicly listed company, now an independent, non-executive director. All five could be accurately classified as experts under the parameters of a Delphi concept; three were men and two women. Between them they represent many years of board experience in New Zealand and a huge diversity of industry grouping from financial services to retail to manufacturing and major service organisations. All were drawn from the surveyed respondent pool of publicly listed company directors and brought to this their experience of directorships in private companies, in not-for-profit concerns, in government and in state owned enterprises.

None of these people - or indeed any of the other focus group members - were surprised or disagreed with the basic findings of the research in terms of agenda influence. However, they considered agenda control by directors as just good process in governance. The final focus group listed some key concepts the directors believed to be crucial to good board practice in agenda management. Those were:

*The agenda and its management should be recognised as an important part of director responsibility. The chair and the chief executive hold the most important roles in setting the agenda. Control must be the preserve of the chairman. Board papers should be available to directors a full five working days prior to a board meeting. There was unanimous agreement that directors should accept the inevitable fact that they do not get weekends off – the group labeled directors “the weekend warriors.” The agenda must remain flexible up to the time of the actual meeting. Those setting the agenda should work on a concept of no surprises and there was consensus that adequate notice of impending issues was essential for all directors. Estimated times for the discussion of each agenda item should be pre-established and shown on the agenda. The role of the chairman was to bring discipline to this aspect of time management. Major presentation data should be available prior to board meetings if key decisions were sought at those meetings.*

*Where there were major projects under review it was perfectly acceptable for those board papers to come at different times and under different cover from the agenda (provided adequate time lines were observed). Late papers were acceptable if there were pressing issues or genuine management need. All boards should develop and*

*operate an annual work plan and directors must make time available to consider, on a regular basis, every part of the business and not leave that task until the part to be scrutinized was in crisis. Major strategy sessions for directors should be kept separate from regular meetings and held off-site.*

*Chairman, chief executive and the company secretary all share responsibility for board follow up on matters arising, notes and actions for the next meeting agenda. Security should be maintained but board papers should be delivered physically as well as electronically. Electronic delivery was seen as more timely and an effective way of maintaining a comprehensive and orderly archive of board business papers. Attendance at all board meetings was a must for the chief executive and the chief financial officer and both should remain for the entire meeting. The chief executive was recognised by the directors as their key officer and lead actor and the person who should decide which of the key executives he/she should put in front of the board to support papers/recommendations; and, any exclusion of these two, that is, the chief executive and the chief financial officer, from board meetings for board only discussion was best handled at a defined time and for a defined duration (say, 15 minutes) at the conclusion of each board meeting. This exclusion should not be ad hoc or be seen as a departure from any normal process (to eliminate any staff speculation as to reason).*

*Directors should make it their personal responsibility to know and evaluate the abilities and experience of the first tier top management team – a process that started with board presentations. It was seen as important for directors to truly understand for themselves the strengths and weaknesses of each individual in the top management team. A suggested method that achieved consensus was the opportunity to meet these people informally at, say, dinner the night before a board meeting to develop a more intimate relationship in a less formal environment. Added advantages were the ability to assess potential successors to the CEO and the opportunity to expose senior staff to directors.*

## 6.6 LIMITATIONS OF THE STUDY AND RECOMMENDATIONS FOR FURTHER RESEARCH

In considering limitations there are three main observations. Firstly, New Zealand by its very size, does not provide a huge pool of publicly listed companies and few of the companies that are listed have scale. The potential research base is therefore small in relative terms to, say, Australia or the United States, where the data does include a large number of multi-billion dollar turnover businesses.

Secondly, the research focussed on the country's publicly listed companies and this leaves open to question whether the findings can be totally extended to private companies and not-for-profit concerns and/or to co-operatives (of which there are a number of substantial examples in the New Zealand). The question also arises as to whether the substance of the findings could be migrated to the Crown sector and apply to the 500 plus boards in that area. Issues in all of these cases include discipline in the board appointment process. For example, co-operatives generally have a ward system of director appointment that nominates and votes in directors by majority private companies often rely on people they know and feel comfortable with; Crown appointments often reflect political favour.

The Crown sector also has a different set of obligations for directors to observe that are imposed under special Acts of Parliament (for example, the State Owned Enterprise Act, the Crown Entity Act) with terms of reference driven by the policies of the day (for example, the service charter laid down by government for the state-owned television channels of Television New Zealand). These features suggest change could meet resistance or be subjugated to what may be seen as a primary purpose.

The study produced a wealth of data but its focus - by the nature of these projects - was confined to one small area of board process. That view was sufficient, however, to raise multiple questions about other aspects of board work and governance research that need to be addressed.

Still unanswered is the critical question of whether boards actually make a difference,

that is, how efficiently do they work and what bearing do they have on profit and value. If they do make a difference, how and what drives that difference? There must be highly efficient boards that enhance performance. The problem is to measure them on a common format, study what they do differently and build this into a model of good practice. Such a definition (which includes the agenda process) will allow regulators, shareholders and other stakeholders to define the skills and qualities needed in board appointments and provide measures of director competence.

The present research into agenda influence left three other interesting questions to be addressed by future researchers. Those questions cover critical factors that will demand answers from board directors as we learn more about their decision-making processes. The first and most obvious question is: how much do directors really know about the companies they control? In both survey and focus group there was a confidence among directors that they clearly understood every aspect of the business, that they were in control and that there were no elements that would surprise them. And yet, as surveys show, those directors, in general terms, spend no more than 40 days in any year working on or in the company.<sup>12</sup> If they do understand their companies so well why are there any failures at all? If directors know everything there is to know about the company then failure (which implies unforeseen circumstances or recklessness) should not occur. If directors do indeed control both the subject and extent of their discussions then the question that arises in a crisis or failure of where was the board when this happened (MacAvoy & Millstein, 2004) takes on new meaning in terms of both knowledge and ultimate responsibility. The conclusion that must be drawn from this is that a gap exists between what directors think they know and what is actually the case. That gap in director knowledge, as it exists, needs to be measured as part of the concept of good process. Once it is measured the true extent of the information the board has before them can be accurately assessed, any gaps closed and decisions made on the basis of full knowledge.

The second question, which leads on from the first, is how much responsibility should the board of directors take when things go wrong. Inevitably, if the first question

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<sup>12</sup> A Korn Ferry statistic from their 2007 annual survey of director remuneration for Australia and New Zealand calculated directors spend 4 hours per meeting for 11 meetings a year with a maximum involvement of 44 days in their role for the company. Another survey from the same group in 2006 suggested that 82% of New Zealand directors spent less than 25 hours a month on board affairs.

proves there is a knowledge gap then responsibility for performance comes home clearly to the directors. After all they state categorically that they, and no others, control the space of their debate. If, as the research shows, their agendas' address all the key issues and the directors have confidence in management why do things go wrong? If there is no knowledge gap then the question was the board reckless becomes the issue to address as the board holds ultimate responsibility to shareholders for any failure.

The third, and perhaps most interesting question, revolves around how boards select the chair. Does this process need to be re-examined in the light of its importance to ensure it balances and adds to the skills and experience of the chief executive? In considering that the chair controls (or should control) the direction of the company through its board agenda (as one of the two most important influencers) this appointment should be handled in a manner similar to a chief executive appointment and not by a show of hands around the table. The appointment is a critical factor when agenda space for board decision-making is determined/controlled by this person.

## 6.7 LESSONS FROM THE RESEARCH

The survey directors identified four key areas of vital director concern essential in ensuring good governance. They listed, in order of importance, strategic input; performance control and monitoring; risk assessment; and, ensuring the top management team has the quality and ability to deliver.

The research also showed that a large number of directors had concerns but abdicated at the first hurdle in ensuring those concerns were dealt to. This is attributed to ineptitude or a lack of power to change the status quo. Also, a factor shown by the research to be most important was articulated as good process. In considering all these there is a clear message for those concerned with the achievement of good governance.

Shareholders can ensure high standards are met by first of all eliminating ineptitude. Director candidates can, and should be, measured for their ability and intellect to deal

with strategic issues; their financial understanding must show the competence to deal with past and future company performance *and* risk management; and, they should show proven judgement in people assessment. After eliminating the inept, shareholders should insist directors bring with those competencies a record of experience and judgment exercised at a high executive level; a capability of sound communication to clearly articulate argument; a sound understanding of the business (or a commitment to get to grips with it); and, a penchant for following good process even to the extent of bloody-mindedness. Any alignment of influence or conflict should be declared and noted on all decisions of importance.

Shareholders can and should insist on visible audit trails that demonstrate impeccable process. The statements of good governance that are now appearing in the annual general reports of companies should be taken to the next level of measurement. Boards and individual directors should be externally reviewed and reported on by an external audit team, that is, measured against those statements they have signed off on.

If the real success of good governance is in good process then nothing should be allowed to impede that good process. From director selection to each collective and individual action good process should be both done and seen to be done. If the directors have the qualities identified in good process and there are no impediments they will be able to reach the level to which all directors aspire - the plane of good stewardship. How well they perform on that platform and maintain that level of performance will ultimately depend on continuing attention to process and critical self-review. It is, as suggested by McNulty, Roberts and Stiles (2003), all about intelligent accountability.

The question that was raised by one director during the research can now be answered: "Is the agenda a template on which the content of a meeting hangs or something more significant?" It is something more significant, a vital filament that connects all board decision-making.

## **7. APPENDICES**

### **7.1 ETHICAL ISSUES**

There are issues of commercial and personal sensitivity and confidentiality in this project. Those issues apply to individuals, boards and companies. The researcher did not seek access to commercially sensitive subject matter or intellectual property and for that reason the standards imposed by the Massey University Code of Ethics rated this project as low risk. But where this information was disclosed - intentionally or unintentionally - confidentiality has been strictly observed. Company and individual director names are not disclosed and are protected by a bond of confidentiality. The project focus has been on process, not content, so no issue of board, director or individual view that would compromise that stance or disclose sensitive information about individuals or their companies is included or discussed. Company or individual information that is included are comments drawn from media or public information sources.

The researcher obtained signed consent from all participating parties and undertook to protect all company data and material, in confidence, if that emerged during the course of the study.

Questionnaires and individual views obtained during focus group meetings are anonymous and confidential. The informed consent of all participants was obtained and confidentiality, individual or corporate, has been respected. Recorded or taped sessions and transcripts are held securely and will be kept secure and ultimately destroyed in accordance with the requirements of Massey University.

## 7.1.1 A PROFESSIONAL CODE OF ETHICS

### Code of Ethics

The Association of Executive Search Consultants, Inc. (AESC) is a worldwide association of retained executive search consulting firms. In order to perform their duties responsibly, AESC member firms are guided by the following ethical principles

**AESC members will:**

- Professionalism:** conduct their activities in a manner that reflects favorably on the profession.
- Integrity:** conduct their business activities with integrity and avoid conduct that is deceptive or misleading.
- Competence:** perform all search consulting assignments competently, and with an appropriate degree of knowledge, thoroughness and urgency.
- Objectivity:** exercise objective and impartial judgment in each search consulting assignment, giving due consideration to all relevant facts.
- Accuracy:** strive to be accurate in all communications with clients and candidates and encourage them to exchange relevant and accurate information.
- Conflicts of Interest:** avoid, or resolve through disclosure and waiver, conflicts of interest.
- Confidentiality:** respect confidential information entrusted to them by clients and candidates.
- Loyalty:** serve their clients loyally and protect client interests when performing assignments.
- Equal Opportunity:** support equal opportunity in employment and objectively evaluate all qualified candidates.
- Public Interest:** conduct their activities with respect for the public interest



## 7.1.2 A PROFESSIONAL CONFIDENTIALITY AGREEMENT

### MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement ("**Agreement**") is made on this **Date** by and between **John Peebles Associates** and **Company / Individual** having a place of business at **103 Carlton Gore Road, Level 2 – Newmarket, Auckland New Zealand**.

**John Peebles Associates** and **Company / Individual** would like to exchange certain information which may be considered trade secret, proprietary, confidential and/or sensitive information of each party and/or their respective subsidiaries and affiliates (collectively, "**Confidential Information**" and as further defined below in Section 4). To ensure the protection of such Confidential Information and in consideration of the agreement to exchange information, the parties agree as follows:

1. Neither party is required to disclose any particular information to the other and any disclosure is entirely voluntary and is not intended to, and shall not, create or modify any contractual or other relationship or obligation of any kind between the parties beyond the terms of this Agreement. Furthermore, neither this Agreement, nor any exchange of information under it, will be construed as creating, conveying, transferring, granting or conferring upon the other, any rights, including, but not limited to intellectual property rights, license or authority in or to the information exchanged.
2. Both parties acknowledge and agree that the exchange of information hereunder shall not commit or bind either party to enter into a contract or any other business arrangement. Neither party shall rely on any information exchanged as a commitment or an inducement to act or not to act in any given manner. Correspondingly, neither party shall be liable to the other in any manner whatsoever for any decisions, obligations, costs or expenses incurred, changes in business practices, plans, organization, products, services, or otherwise, based on either party's decision to rely on any information exchanged hereunder or use such information in accordance with this Agreement.
3. Each party agrees to use the Confidential Information only for the purpose of evaluating a potential transaction between them. Each party agrees to regard and preserve as confidential, all Confidential Information of the other party which may be obtained from any source as a result of this Agreement. Each party agrees to use the same degree of care that it uses to protect its own Confidential Information from unauthorized disclosure, but in no event less than a reasonable degree of care. In

maintaining confidentiality hereunder, each party agrees it shall not, without first obtaining the written consent of the other party, disclose or make available to any person, firm or enterprise, reproduce or transmit, or use (directly or indirectly) for its own benefit or the benefit of others, any Confidential Information of such other party. Each party agrees that its own use and/or distribution of the other's Confidential Information shall be limited to its own employees on a "need to know" basis; provided, however, that the parties may disclose Confidential Information learned pursuant to this Agreement to its employees, including the employees of their respective parent, subsidiary and affiliated companies, and to consultants or other persons retained for purposes specifically and solely related to the use or evaluation of Confidential Information as provided for herein.

4. As used herein, "**Confidential Information**" shall include, but is not limited to, specific information relating to a project or work effort contemplated by the parties, as well as all other information related to either party's past, present and future plans, businesses, activities, products, services, customers and suppliers. Both parties agree that information will not be considered Confidential Information to the extent, but only to the extent, that such information: (i) is already known to the receiving party free of any confidentiality obligation at the time it is obtained; (ii) is or becomes publicly known through no breach of agreement or other wrongful act of the receiving party; (iii) is rightfully received by the receiving party from a third party without restriction and without breach of this Agreement; or (iv) is independently developed by the receiving party without reference to the Confidential Information of the other party, which can be demonstrated by written record.

5. If any Confidential Information is subject to disclosure pursuant to an order, decree, subpoena or other validly issued judicial or administrative process requiring either party or their respective representatives (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose such Confidential Information, such party will promptly notify the other party of such request or requirement so that such other party may seek to avoid or minimize the required disclosure and/or to obtain an appropriate protective order or other appropriate relief to ensure that any Confidential Information so disclosed is maintained in confidence to the maximum extent possible by the agency or other person receiving the disclosure, or, in the discretion of such other party, to waive compliance with the provisions of this Agreement. In any such case, and in addition to the notice contemplated in this Section 5, the party in receipt of such Confidential Information will use its reasonable efforts, in cooperation with the other party or otherwise, to avoid or minimize the required disclosure and/or to obtain such protective order or other relief to protect the Confidential Information. If, in the absence of a protective order or the receipt of a waiver hereunder, a party or its representatives are compelled to disclose the Confidential Information or else stand liable for contempt or suffer other censure or penalty, such party will disclose only so much of the Confidential Information to the person compelling disclosure as it believes in good faith on the basis of advice of counsel as required by law. Such party shall give

the other party prior notice of the Confidential Information it believes it is required to disclose.

6. You agree and understand that **John Peebles Associates** may be evaluating similar proposals and/or transactions with other parties, including, but not limited to potentially competing companies, and may be considering, currently or in the future, internal developments similar to those being discussed by the parties. Nothing in this Agreement shall restrict the right of **John Peebles Associates** to create, protect (whether by patent, trademark, copyright, trade secret or other means), procure or market any products or services, including, but not limited to those that may be competitive with those offered by you; provided, however, **John Peebles Associates** has not used your Confidential Information for such purposes. So long as **John Peebles Associates** has not used your Confidential Information in violation of this Agreement, you further agree not to challenge or make claims against or to such **John Peebles Associates** products or services. This Agreement shall not obligate **John Peebles Associates** to obtain any services from you, or enter into any business relationship or contract with you, or prevent **John Peebles Associates** from entering into agreements with other companies or individuals.

7. This Agreement shall not be construed to limit either party's right to independently develop or acquire products or services without use of the other party's Confidential Information. Nothing in this Agreement deprives either party of the ownership rights to any independently developed or received information.

8. Each party agrees to ensure, by agreement, instruction or otherwise, compliance with the confidentiality obligations of this Agreement by its employees, agents, subcontractors, consultants and others who are permitted access to or use of (in accordance with the terms herein) the Confidential Information of the other party. If **Company / Individual** knows of or suspects a violation of these confidentiality obligations by any current or former employee, agent, subcontractor, consultant or other personnel of the Company, **Company / Individual** may request that Company enforce, and Company will enforce, these confidentiality obligations. Each party agrees that if there is a breach or threatened breach of the provisions of this Agreement, the other party may have no adequate remedy in money or damages and accordingly shall be entitled to seek injunctive relief and any other appropriate equitable remedies for any such breach without proof of actual injury. Each party further agrees that it will not oppose the granting of such relief and that it will not seek, and agree to waive any requirement for, the posting of any bond in connection therewith. Such remedies shall not be deemed to be the exclusive remedies for any breaches of this Agreement by a party or its representatives, and shall be in addition to all other remedies available at law or in equity.

9. If any of the provisions of this Agreement are held invalid, illegal or unenforceable, the remaining provisions shall be unimpaired.

10. In no event shall either party be liable, one to the other, for any indirect, incidental, special, punitive, exemplary, or consequential damages arising out of or in connection with the agreement.

11. The parties acknowledge that the confidential information disclosed is provided "as is" and the disclosing party makes no representations or warranties of any kind, expressed or implied, including, without limitation, regarding its accuracy or completeness or any implied warranty of merchantability or fitness for a particular purpose.

12. Neither party shall acquire a right to use, and may not use without the other party's prior written consent in each instance, the names, characters, artwork, designs, trade names, trademarks or service marks of the other party in any advertising, publicity, public announcement, marketing, press release, promotion, and/or client list.

13. At any time after the disclosure or receipt of any Confidential Information by the receiving party, and at the request and option of the disclosing party, the receiving party agrees to promptly: (i) return the Confidential Information of the disclosing party to the disclosing party; or (ii) destroy or erase (on all forms of recordation) the Confidential Information of the disclosing party and certify such destruction all copies (including any archival copies) of the Confidential Information to the disclosing party (and delete all forms of recordation in whatever media stored, whether in existence now or invented in the future).

14. Neither party may assign or otherwise transfer this Agreement, or any of its rights and obligations hereunder, to any third party without the consent of the other party and any attempt to do so will be in violation of this Section 14 and shall be deemed null and void.

15. This Agreement may be executed in any number of counterparts, each of which shall be an original, but which together shall constitute one and the same instrument. This Agreement may be executed and delivered by facsimile. Any facsimile signatures shall have the same legal effect as manual signatures.

16. This Agreement, which constitutes the entire agreement between the parties as to the subject hereof, shall be construed and interpreted fairly, in accordance with the plain meaning of its terms, and there shall be no presumption or inference against the party drafting this Agreement in construing or interpreting the provisions hereof.

17. Any provision of this Agreement, which contemplates performance or observance subsequent to termination or expiration of this Agreement (including, without limitation, confidentiality and limitation of liability provisions) shall survive termination or expiration of this Agreement and continue in full force and effect.

18. The termination of any other agreement or business relationship between, or involving both parties, shall not relieve either party of its obligations with respect to Confidential Information disclosed pursuant to the terms hereof.

19. This Agreement shall be governed in all respects by the substantive laws that apply within the jurisdiction of New Zealand

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date(s) written below:

**John Peebles Associates**

**Company / Individual**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## 7.2 LIST OF ABBREVIATIONS

|      |   |
|------|---|
| ASX  | Australian Stock Exchange                       |
| CC   | Corporate Citizenship                           |
| CEO  | Chief Executive Officer                         |
| CFO  | Chief Financial Officer                         |
| CSR  | Corporate Social Responsibility                 |
| EVA  | Economic Value Added                            |
| EP   | Equity Partnership                              |
| GDP  | Gross Domestic Product                          |
| IFRS | International Financial Reporting Standards     |
| MVA  | Market Value Added                              |
| NZX  | New Zealand Stock Exchange                      |
| OECD | Organisation for Economic Community Development |
| PLC  | Publicly Listed Company                         |
| PwC  | PriceWaterhouseCoopers                          |

## 7.3 CONTROL SHEETS

Following are the control sheets for the questionnaire, project categories and director classes and numbers.

(See below)

Control Sheet 1

4.1 Agenda Content

| Draft             | V2        | V3      | V4      | V5      | V5d      |
|-------------------|-----------|---------|---------|---------|----------|
| Q1                | Q1        | Q1      | Q1      | Q1      | Q1       |
| Q2                | Q2        | Q3      | Q3      | Q3      | Q3       |
| Q16               | Q3        | Q2      | Q2      | Q2      | Q2       |
| Q18               | Q4        | Q5      | Q5      | Q5      | Q5       |
| Q19               | Q5        | Q6      | Q6      | Q6      | Q6       |
| Q25               | Q6        | deleted |         |         |          |
| Q27               | Q7        | Q4      | Q4      | Q4      | Q4       |
| Q28               | Q8        | Q7      | Q7      | Q7      | Q8       |
| Q29               | Q9        | deleted |         |         |          |
| Q30 (Split)       | Q10 & Q11 | Q8 & Q9 | Q8 & Q9 | Q8 & Q9 | Q9 & Q10 |
| Q31               | Q12       | Q10     | Q10     | Q10     | Q11      |
| Q36               | Q13       | Q12     | Q12     | Q11     | Q12      |
| Q42               | Q14       | Q13     | Q13     | Q12     | Q13      |
| Q43               | Q15       | Q14     | Q14     | Q13     | Q14      |
| Q44               | Q16       | deleted |         |         |          |
| New Qtn           | Q17       | Q16     | Q16     | Q14     | Q15      |
| New Qtn           | Q18       | Q18     | Q18     | Q16     | Q17      |
| New Qtn           | Q19       | Q17     | Q17     | Q15     | Q16      |
| New Qtn           | Q20       | Q15     | Q15     | deleted |          |
|                   | New Qtn   | Q11     | Q11     | deleted |          |
|                   | New Qtn   | Q19     | Q19     | Q17     | Q18      |
| 4.2 Agenda Review |           |         |         | New Qtn | Q7       |

| Draft | V2  | V3      | V4  | V5      | V5d |
|-------|-----|---------|-----|---------|-----|
| Q3    | Q30 | Q30     | Q31 | Q29     | Q31 |
| Q4    | Q31 | Q31     | Q32 | Q30     | Q32 |
| Q21   | Q32 | Q33     | Q34 | Q32     | Q35 |
| Q22   | Q33 | Q32     | Q33 | Q31     | Q33 |
| Q37   | Q34 | Q34     | Q35 | Q33     | Q36 |
| Q38   | Q35 | Q35     | Q36 | Q34     | Q37 |
| Q39   | Q36 | Q36     | Q37 | Q35     | Q38 |
| Q40   | Q37 | Q37     | Q38 | Q36     | Q39 |
| Q41   | Q38 | Q38     | Q39 | Q37     | Q40 |
| Q50   | Q39 | deleted |     |         |     |
|       |     |         |     | New Qtn | Q34 |

4.5 Statistical

| Draft | V2      | V3  | V4  | V5  | V5d |
|-------|---------|-----|-----|-----|-----|
| Q53   | Q63     | Q63 | Q64 | Q62 | Q66 |
| Q54   | Q64     | Q64 | Q65 | Q63 | Q67 |
| Q55   | Q65     | Q65 | Q66 | Q64 | Q68 |
| Q56   | Q66     | Q66 | Q67 | Q65 | Q69 |
| Q57   | Deleted |     |     |     |     |

4.3Agenda Process

| Draft   | V2      | V3      | V4  | V5      | V5d |
|---------|---------|---------|-----|---------|-----|
| Q7      | Q21     | Q28     | Q29 | Q27     | Q29 |
| Q10     | Q22     | Q20     | Q20 | Q18     | Q19 |
| Q11     | Q23     | Q21     | Q21 | Q19     | Q20 |
| Q12     | Q24     | Q22     | Q22 | Q20     | Q21 |
| Q23     | Q25     | Q23     | Q24 | Q22     | Q23 |
| Q26     | Q26     | Q24     | Q25 | Q23     | Q24 |
| Q52     | Q27     | Q25     | Q26 | Q24     | Q25 |
| New Qtn | Q28     | Q26     | Q27 | Q25     | Q26 |
| New Qtn | Q29     | Q27     | Q28 | Q26     | Q27 |
|         | New Qtn | Q29     | Q30 | Q28     | Q30 |
|         |         | New Qtn | Q23 | Q21     | Q22 |
|         |         |         |     | New Qtn | Q28 |

4.4Agenda Influence

| Draft   | V2      | V3  | V4  | V5      | V5d |
|---------|---------|-----|-----|---------|-----|
| Q5      | Q40     | Q39 | Q40 | Q38     | Q41 |
| Q6      | Q41     | Q40 | Q41 | Q39     | Q42 |
| Q8      | Q42     | Q41 | Q42 | Q40     | Q43 |
| Q9      | Q43     | Q42 | Q43 | Q41     | Q44 |
| Q13     | Q44     | Q43 | Q44 | Q42     | Q45 |
| Q14     | Q45     | Q44 | Q45 | Q43     | Q46 |
| Q15     | Q46     | Q45 | Q46 | Q44     | Q47 |
| Q17     | Q47     | Q46 | Q47 | Q45     | Q48 |
| Q20     | Q48     | Q47 | Q48 | Q46     | Q50 |
| Q24     | Q49     | Q48 | Q49 | Q47     | Q51 |
| Q32     | Q50     | Q49 | Q50 | Q48     | Q52 |
| Q33     | Q51     | Q50 | Q51 | Q49     | Q53 |
| Q34     | Q52     | Q51 | Q52 | Q50     | Q54 |
| Q35     | Q53     | Q52 | Q53 | Q51     | Q55 |
| Q45     | Q54     | Q54 | Q55 | Q53     | Q57 |
| Q46     | Q55     | Q55 | Q56 | Q54     | Q58 |
| Q47     | Q56     | Q56 | Q57 | Q55     | Q59 |
| Q48     | Q57     | Q57 | Q58 | Q56     | Q60 |
| Q49     | Q58     | Q58 | Q59 | Q57     | Q61 |
| Q51     | Q59     | Q59 | Q60 | Q58     | Q62 |
| New Qtn | Q60     | Q60 | Q61 | Q59     | Q63 |
| New Qtn | Q61     | Q61 | Q62 | Q60     | Q64 |
| New Qtn | Q62     | Q62 | Q63 | Q61     | Q65 |
|         | New Qtn | Q53 | Q54 | Q52     | Q56 |
|         |         |     |     | New Qtn | Q49 |

First Questionnaire

| Q#  | Code |               |
|-----|------|---------------|
| A01 | A    | Participants  |
| A02 | B    | Names deleted |
| A03 | A    |               |
| A04 | C    |               |
| A05 | B    |               |
| A06 | B    |               |
| A07 | C    |               |
| A08 | C    |               |
| A09 | A    |               |

Coding

|   |                   |  |
|---|-------------------|--|
| 1 | Agenda Content    |  |
| 2 | Agenda Process    |  |
| 3 | Agenda Review     |  |
| 4 | Agenda Influence  |  |
| 5 | Statistical       |  |
| A | Chairman          |  |
| B | Director          |  |
| C | Managing Director |  |

Qn Sample

|                    |  |  |
|--------------------|--|--|
| Executive Director |  |  |
| Non Exec Director  |  |  |
| Chair (NonExec)    |  |  |
| Chair (Exe)/CEO    |  |  |

| <u>Reverse Questions</u> |              |
|--------------------------|--------------|
|                          |              |
| Section1                 | Q18 ◇<br>Q7  |
| Section2                 | Q21 ◇<br>Q28 |
| Section3                 | Q39 ◇<br>Q34 |
| Section4                 | Q62 ◇<br>Q49 |

Sample

|             |  |
|-------------|--|
| 3 Chairs    |  |
| 3 Directors |  |
| 3 MD's      |  |

| <u>Field</u> | 450 Directors |       |
|--------------|---------------|-------|
| Chair        | 81            | 18.6% |
| Directors    | 328           | 72.9% |
| MD's         | 41            | 9.1%  |



## 7.4 THE QUESTIONNAIRE

The first questionnaire is shown with the final questionnaire (version six) illustrating the changes to individual questions and the provision of categories of process, influence, control etc; the control sheets show the development of each question with reverse questions also listed.

### 7.4. 1 FIRST VERSION

#### Agenda-setting – the director's view A01

*In this questionnaire you will be asked for your views on key issues of the corporate board agenda-setting process. Your answers and comments will be treated in confidence and, as an individual, you will not be identifiable in any subsequent report. Please tick the box for the answer that represents what you believe is most appropriate. This questionnaire also seeks your personal views and comments on the agenda process as you have experienced it in the director or chief executive role. Where comment is sought space is provided below the question for your views.*

*Should you have any queries please phone me on (09) 524 1637, or 021 974 247.*

*J. B. Peebles*

1. Your board agenda covers all appropriate issues for competent corporate governance today.

Strongly Agree

Strongly Disagree

☐☐☐☐☐

1

2

3

4

5

2. Describe what you would change or what items you would add or delete from your board agenda.

|  |
|--|
|  |
|--|

3. Has your board agenda changed in format and/or content during the course of the last year?

\*Yes

\*No

|  |
|--|
|  |
|  |

4. If 'Yes', describe in what way?

|  |
|--|
|  |
|--|

5. Does your board agenda provide for you as directors to meet as a board without the chief executive to discuss items other than his remuneration?

\*Yes

\*No

|  |
|--|
|  |
|  |

6. If 'Yes', how often?

\*Monthly

\*Quarterly

\*Six monthly

\*Annually

\*On an ad hoc basis

|  |
|--|
|  |
|  |
|  |
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7. Does your board agenda allow for executives to present personally to the board on specialist issues?

\*Yes

\*No

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8. Is your board agenda and its accompanying papers the sole source of your information about the company?

\*Yes

\*No

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9. If 'No', what other sources of information do you as a director access?

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10. When appointed as a director you were given an explanation as to how your board agenda was prepared.

Strongly Agree

Strongly Disagree

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11. In your appointment briefing for the director role you were given directions as to how you could place items for board discussion on your board agenda.

Strongly Agree

Strongly Disagree

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12. As a director if you wish to have an agenda item put up for discussion you are clear about the proper procedure.

Strongly Agree

Strongly Disagree

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13. If you wish to put an item on your board agenda for discussion whom do you approach?

\*The chairman

\*The chief executive

\*The company secretary

\*A nominated board member

\*The Board in session

\*Another (specify below)

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14. Who actually prepares your board agenda in the company of which you are a director?

- \*The chairman
- \*The chief executive
- \*The company secretary
- \*The directors
- \*Management
- \*Someone else (Specify) \_\_\_\_\_
- \*Don't know

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15. Who determines the order of your board agenda items?

- \*The chairman
- \*The chief executive
- \*The company secretary
- \*The directors
- \*The management
- \*Someone else (Specify) \_\_\_\_\_
- \*Don't know

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16. Are the items on your board agenda organised in a set, unchanging sequence or in order of current importance of issues?

- \*A set, unchanging sequence
- \*Current importance of issues

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17. In your view who exerts the most influence on the agenda format, order and content?

- \*The board
- \*The chairman
- \*The chief executive
- \*The company secretary
- \*Management
- \*Others (please specify)

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18. Would you personally change anything about your board agenda content/presentation/layout?

- \*Yes
- \*No

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19. If 'Yes', specify what changes you would make

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20. Have any of the agenda items/papers that come before your formal Board meeting for approval been discussed by one or more of the directors in informal session before the meeting? (Please exclude items that come from approved board subcommittees such as the audit committee).

|                          |                          |                          |                          |
|--------------------------|--------------------------|--------------------------|--------------------------|
| Never                    | Occasionally             | Often                    | Always                   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

21. When you receive your board papers do you critique the agenda for omissions?

|                          |                          |                          |                          |
|--------------------------|--------------------------|--------------------------|--------------------------|
| Never                    | Occasionally             | Often                    | Always                   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

22. When you receive your agenda and board papers there is sufficient time to study and consider all the items presented.

|                          |                          |                          |                          |                          |                   |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|-------------------|
| Strongly Agree           |                          |                          |                          |                          | Strongly Disagree |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |                   |
| 1                        | 2                        | 3                        | 4                        | 5                        |                   |

23. How many days before your board meeting do you receive your agenda and papers?

|                          |                          |                          |
|--------------------------|--------------------------|--------------------------|
| 2 days                   | 3-5 days                 | more than 5 days         |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

24. The manner in which items on the board agenda are framed (i.e., presented) or ordered (i.e., sequenced) is important.

|                          |                          |                          |                          |                          |                   |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|-------------------|
| Strongly Agree           |                          |                          |                          |                          | Strongly Disagree |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |                   |
| 1                        | 2                        | 3                        | 4                        | 5                        |                   |

Comment (if any):

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25. Are there any items regularly absent from your board agenda that you believe should feature in your discussions? If so, specify.

26. All issues on the board agenda get placement that allows adequate time and coverage for board discussion.

Strongly Agree

Strongly Disagree

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27. Are there issues missing, treated inadequately or given too little time and coverage? Specify.

28. How many pages were there in total in your last agenda and board papers?

\*less than 15

\*16-30

\*31-45

\*46-60

\*61-75

\*more than 76

29. Was this a typical agenda in size and content?

\*Yes

\*No

30. Approximately how much of your board agenda is devoted to items that are compliance/regulatory/control/financial reports/past performance issues? Count the pages in your last agenda and calculate these items as a proportion of the whole agenda).

\*less than 10 %

\*11-25%

\*26-50%

\*51-75 %

\*76-100%

31. How much of your board agenda relates to strategic/growth/value add/future planning/product/people development issues? (As a suggested guide quickly count the pages in your last agenda and calculate as a proportion of the whole agenda).

\*less than 10%

\*11-25%

\*26-50%

\*51-75%

\*76-100%

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32. An agenda item put forward for approval by the board that is turned down/rejected always reappears on a subsequent agenda.

Strongly Agree

Strongly Disagree

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33. Issues that appear on the agenda are often promoted by a particular sector of management or staff (i.e., by a source other than the directors).

Strongly Agree

Strongly Disagree

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34. If these issues arise is the source/originator of the issue openly disclosed?

\*Yes

\*No

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Comment (if any):

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35. Is there any consistent pattern or subject in the nature of those issues?

\*Yes

\*No

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Comment (if any):

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36. Is there one single issue you would like to see on the agenda more regularly?

\*No

\*Yes (Describe that issue in the box below)

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37. During your term as a director has the board formally reviewed its agenda process?

\*Yes

\*No (If 'No', go to Q.40).

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38. If 'Yes', was this review conducted as a regular feature or just an ad/hoc process?

\*Regular

\* Ad/hoc

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39. If this is a regular process, how often is the agenda format and content discussed by the board?

\*every meeting

\*at least quarterly

\*six monthly

\*annually

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40. I am happy with the agenda setting process as it is currently.

Strongly Agree

Strongly Disagree

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41. If you disagree, specify how you would improve the process.

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42. List what you consider to be the most important items on the board agenda.

43. List items which have failed to appear on your agenda in the past 12 months and you believe should feature.

44. What do you regard as the single most important issue on the agenda? (Specify)

45. Does your board agenda ever focus discussion on the specific responsibilities of the board to the needs/views of:

|                 | Regularly                | Occasionally             | Never                    |
|-----------------|--------------------------|--------------------------|--------------------------|
| Shareholders    | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Stakeholders    | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| The community   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| The environment | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Social issues   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

46. In Board meetings the agenda is adhered to rigidly.

Strongly Agree

Strongly Disagree

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47. If you disagree, are the variances of a minor or major nature?

\*Major

\*Minor

☐  
☐

48. Do these variances occur frequently?

\*Yes

\*No

☐  
☐

49. If 'Yes', describe below why these variances occur?

50. Do you think the board agenda process should be modified in any way in your company?

\*Yes

\*No

☐  
☐

(If 'Yes', please specify below how you would modify the agenda).

51. You and your fellow board directors exercise control over the agenda.

Strongly Agree

Strongly Disagree

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52. Do you believe the agenda sets aside enough time at board meetings for open discussion?

\*Yes

\*No

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53. Which of the categories below describes your role in the organisation?

- \*non-executive director
- \*executive director
- \*chairman
- \*CEO and board member

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54. Please indicate the proportion of equity you hold as a director on the Board.

- \*Nil
- \*1 to 10 percent
- \*11 to 20 percent
- \*21 to 30 percent
- \*More than 30 percent

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55. What is your organisation predominantly involved in:

- \*Retail/wholesale
- \*Infrastructure/utility
- \*Service industry
- \*Import/export
- \*Primary industry
- \*Manufacturing
- \*Other (please specify)

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56. What is the approximate revenue/turnover of your organisation in the past financial year:

- \*Less than \$50 million
- \*\$51 million to \$100 million
- \*More than \$100 million

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57. Is your organisation:

- \*Newly listed
- \*Established listed

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If you have any comments or thoughts on the agenda or agenda setting process that you think are relevant and would help in this study please do not hesitate to outline these below:

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Please return the questionnaire in the envelope provided.

Thank you for your time and assistance. It is greatly appreciated.

The work that I can now do with the detailed information you have provided will be of considerable assistance to boards and directors in furthering our understanding of board processes and issues. It concentrates on the study and knowledge of a neglected area of board process and is could prove very important to company directors and future board studies by academics. Thank you again for your time.

---

John Peebles

C/- Box 28541

Remuera

Auckland

Ph (09) 524 1637

## 7.4.2 FINAL VERSION

### Agenda-setting – the director's view

*In this questionnaire you will be asked for your views on the agenda-setting process for boards of New Zealand publicly listed companies. Your answers and comments will be treated in confidence and, as an individual, you will not be identifiable in any subsequent report. Please tick the box for the answer that represents what you believe is most appropriate. This questionnaire also seeks your personal views and comments on the agenda process you may have experienced in the roles of a director or a chief executive. Space is provided below questions for your views where additional commentary is sought.*

*Should you have any queries please phone me on (09) 524 1637, or 021 974 247.*

I intend when the research is complete, to provide a summary of the main findings to those who are interested. Please indicate below if that would be of interest to you and provide a card/email address that is separate from the questionnaire if you wish. I will ensure you receive a copy of the findings.

*Thank you.*

*John Peebles*

---

John Peebles

C/- Box 28541  
Remuera  
Auckland

Yes, I would like to receive a summary of your findings ☐

(please tick)

My address/card is enclosed.

**Section One – Agenda Content**

1. Your board agenda normally covers all the appropriate issues for you to ensure competent corporate governance today.

| Strongly Disagree        |                          |                          | Strongly Agree           |                          |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 1                        | 2                        | 3                        | 4                        | 5                        |

2. Are the items on your board agenda organised in a set, unchanging sequence or in order of current importance of issues?

|                              |                          |
|------------------------------|--------------------------|
| A set, unchanging sequence   | <input type="checkbox"/> |
| Current importance of issues | <input type="checkbox"/> |

3. Describe what content you would change or what items you would personally add or delete from your board agenda.

4. Are there issues missing, treated inadequately, or given too little time and coverage? Specify.

5. Would you personally change anything about your board agenda presentation/layout?

|     |                          |
|-----|--------------------------|
| Yes | <input type="checkbox"/> |
| No  | <input type="checkbox"/> |

6. If 'Yes', specify what changes you would make

7. As a director, agenda influence is not important in adding value to the business.

Strongly Disagree

Strongly Agree

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8. How many pages are there in total in your typical agenda and board papers (including appendices)?

less than 15

☐

16-30

☐

31-45

☐

46-60

☐

61-75

☐

more than 76

☐

9. Approximately how much of your board agenda is devoted to items that are compliance/regulatory issues? (Either count the pages in your last agenda and calculate these items as a proportion of the whole agenda or simply estimate this percentage on the basis of your experience).

less than 10 %

☐

11-25%

☐

26-50%

☐

51-75 %

☐

76-100%

☐

10. Approximately how much of your board agenda is devoted to items that are operational reports/performance issues? (Count the pages in your last agenda and calculate these items as a proportion of the whole agenda or simply estimate this percentage on the basis of your experience).

less than 10 %

☐

11-25%

☐

26-50%

☐

51-75 %

☐

76-100%

☐

11. How much of your board agenda is devoted to strategic/value add issues? (As a suggested guide either quickly count the pages in your last agenda and calculate as a proportion of the whole agenda or simply estimate this percentage on the basis of your experience).

less than 10%

☐

11-25%

☐

26-50%

☐

51-75%

☐

76-100%

☐

12. Is there one single issue you would like to see on the agenda more regularly?

No

Yes (Describe that issue in the box below)

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13. List what you consider, in your view, are the items on the board agenda that are especially important to the company.

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14. List issues which have failed to appear on your agenda in the past 12 months and you believe should feature.

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15. The content of the board papers gives me confidence in management.

Strongly Disagree

Strongly Agree

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16. The board papers cover all the issues that “keep you awake at night”.

Strongly Disagree

Strongly Agree

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17. The agenda reports on the key performance indicators the board has established for the CEO and management to track progress against strategy.

Strongly Disagree

Strongly Agree

☐☐☐☐☐

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18. Overall, the agenda helps me, as a director, to add value to the organisation.

Strongly Disagree

Strongly Agree

☐☐☐☐☐

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## Section Two – Agenda Process

19. When appointed as a director you were given an explanation as to how your board agenda was prepared.

|     |                          |
|-----|--------------------------|
| Yes | <input type="checkbox"/> |
| No  | <input type="checkbox"/> |

20. In your appointment briefing for the director role you were given directions as to how you could place items for board discussion on your board agenda.

|                          |                          |                          |                          |                          |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Strongly Disagree        |                          |                          | Strongly Agree           |                          |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 1                        | 2                        | 3                        | 4                        | 5                        |

21. As a director if you wish to have an agenda item put up for discussion you are clear about the proper procedure.

|                          |                          |                          |                          |                          |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Strongly Disagree        |                          |                          | Strongly Agree           |                          |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 1                        | 2                        | 3                        | 4                        | 5                        |

22. Do you receive a draft agenda separate and before the final version and the board papers?

|     |                          |
|-----|--------------------------|
| Yes | <input type="checkbox"/> |
| No  | <input type="checkbox"/> |

23. How many days before your board meeting do you typically receive your agenda and papers?

|                          |                          |                          |
|--------------------------|--------------------------|--------------------------|
| 2 days                   | 3-5 days                 | other (show)             |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

24. There is significant time in board meetings for us to discuss all the issues.

|                          |                          |                          |                          |                          |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Strongly Disagree        |                          |                          | Strongly Agree           |                          |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 1                        | 2                        | 3                        | 4                        | 5                        |

25. Does the agenda set aside enough time at board meetings for open discussion?

Strongly Disagree

Strongly Agree

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26. Does your board work to a prepared annual work plan (i.e., specific issues or topics are given space, times and a date in addition to the 'normal' agenda)?

Yes

☐

No

☐

27. Do the agenda items remain flexible up to the time/date of meeting?

Yes

☐

No

☐

28. There is no clear process to follow for the inclusion of an item of business on the agenda.

Strongly Disagree

Strongly Agree

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29. Does your board agenda usually allow for executives to present personally to the board on specialist issues?

Yes

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No

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30. How important is it to you that the directors, as a board, discuss the role they play?

Not at all important

Very Important

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### Section Three – Agenda Review

31. Has your board agenda changed its focus on content during the course of the last year?

Yes ☐  
No ☐

32. If 'Yes', describe in what way?

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| <br><br><br><br><br><br><br><br><br><br> |
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33. When you receive your agenda and board papers there is sufficient time to study and consider all the items presented.

|                          |                          |                          |                          |                          |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Strongly Disagree        |                          |                          | Strongly Agree           |                          |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 1                        | 2                        | 3                        | 4                        | 5                        |

34. I am very dissatisfied with the manner in which our agenda is prepared.

|                          |                          |                          |                          |                          |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Strongly Disagree        |                          |                          | Strongly Agree           |                          |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 1                        | 2                        | 3                        | 4                        | 5                        |

35. When you receive your board papers do you critique the agenda for omissions?

|                          |                          |                          |                          |
|--------------------------|--------------------------|--------------------------|--------------------------|
| Never                    | Seldom                   | Often                    | Always                   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

36. During your term as a director has the board formally reviewed its agenda process?

Yes ☐  
No (If 'No', go to Q.38). ☐

37. If 'Yes', was this review conducted as a regular feature or just an ad/hoc process?

|                          |         |
|--------------------------|---------|
| <input type="checkbox"/> | Regular |
| <input type="checkbox"/> | Ad/hoc  |

38. If this is a regular process, how often is the agenda format and content discussed by the board?

Monthly at every meeting  
quarterly  
six monthly  
annually or thereabouts

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39. I am very satisfied with the agenda setting process as it is currently.

Strongly Disagree

Strongly Agree

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40. If you disagree, specify how you would improve the process.

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## Section Four – Agenda Influence

41. Does your board provide an opportunity for you as directors to meet as a board without the chief executive to discuss items (other than his/her remuneration)?

Yes ☐  
No ☐

42. If 'Yes', how often?

Monthly ☐  
Quarterly ☐  
Six monthly ☐  
Annually ☐  
On an ad hoc basis ☐

43. Approximately what percentage of your information about the company comes from your board agenda and in accompanying papers?

\_\_\_\_\_ %

44. What other sources of information do you as a director access?

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| <br><br><br><br><br><br><br><br><br><br> |
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45. If you wish to put an item on your board agenda for discussion whom do you approach? (Tick more than one if appropriate).

|                        |                          |
|------------------------|--------------------------|
| The Chairman           | <input type="checkbox"/> |
| The Chief Executive    | <input type="checkbox"/> |
| The Company Secretary  | <input type="checkbox"/> |
| The directors          | <input type="checkbox"/> |
| Management             | <input type="checkbox"/> |
| Someone else (Specify) | <input type="checkbox"/> |
| _____                  | <input type="checkbox"/> |
| Don't know             |                          |

46. Who actually prepares your board agenda in the company/or companies of which you are a director? (Tick more than one if appropriate).

|                       |      |           |
|-----------------------|------|-----------|
| The Chairman          |      |           |
| The Chief Executive   |      |           |
| The Company Secretary |      |           |
| The directors         |      |           |
| Management            |      |           |
| Someone               | else | (Specify) |
| <hr/>                 |      |           |
| Don't know            |      |           |

47. Who determines the order of those board agenda items? (Tick more than one if appropriate).

|                       |      |           |
|-----------------------|------|-----------|
| The Chairman          |      |           |
| The Chief Executive   |      |           |
| The Company Secretary |      |           |
| The directors         |      |           |
| Management            |      |           |
| Someone               | else | (Specify) |
| <hr/>                 |      |           |
| Don't know            |      |           |

48. In your view who exerts the most influence on the agenda? (Tick more than one if appropriate).

|                       |      |           |
|-----------------------|------|-----------|
| The chairman          |      |           |
| The chief executive   |      |           |
| The company secretary |      |           |
| The directors         |      |           |
| Management            |      |           |
| Someone               | else | (Specify) |
| <hr/>                 |      |           |
| Don't know            |      |           |

49. As directors, Board members have no control over the agenda.

|                   |                          |                          |                          |                          |                          |
|-------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Strongly Disagree |                          |                          |                          |                          | Strongly Agree           |
|                   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
|                   | 1                        | 2                        | 3                        | 4                        | 5                        |

50. So far as you are aware, is it typical that agenda items/papers that come before your formal Board meeting have been discussed by some of the directors in informal session before the meeting? (Please exclude items that come from approved board subcommittees such as the audit committee).

|                          |                          |                          |                          |                          |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Not at all typical       |                          |                          | Very typical             |                          |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 1                        | 2                        | 3                        | 4                        | 5                        |

51. The manner in which items on the board agenda are framed (i.e., presented) or ordered (i.e., sequenced) is important.

|                          |                          |                          |                          |                          |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Strongly Disagree        |                          |                          | Strongly Agree           |                          |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 1                        | 2                        | 3                        | 4                        | 5                        |

Comment (if any):

52. An agenda item put forward for approval by the board that is turned down/rejected generally reappears on a subsequent agenda.

|                          |                          |                          |                          |                          |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Strongly Disagree        |                          |                          | Strongly Agree           |                          |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 1                        | 2                        | 3                        | 4                        | 5                        |

53. Issues that appear on the agenda are often promoted by a particular sector of management or staff (i.e., by a source other than the directors).

|                          |                          |                          |                          |                          |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Strongly Disagree        |                          |                          | Strongly Agree           |                          |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 1                        | 2                        | 3                        | 4                        | 5                        |

Comment or give an example/s (if any):



54. If these issues arise is the source/originator of the issue openly disclosed?

Yes ☐  
No ☐

Comment (if any):

55. Is there any consistent pattern or subject in the nature of those issues?

Never Always

☐ ☐ ☐ ☐ ☐

1 2 3 4 5

Comment (if any):

56. Have you experienced board discussions where there has been an undisclosed 'sub agenda' that was later apparent?

Not usually Nearly always

☐ ☐ ☐ ☐ ☐

1 2 3 4 5

Comment or give an example/s (if any):

57. Does your board agenda ever focus discussion on the specific responsibilities of the board to the needs/views of:

|                 | Never                    |                          |                          |                          | Very often               |
|-----------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Shareholders    | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Stakeholders    | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| The community   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| The environment | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Social issues   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
|                 | 1                        | 2                        | 3                        | 4                        | 5                        |

58. In Board meetings the agenda is adhered to rigidly.

Never

Always

59. If there are variances are they generally of a minor or major nature?

Very minor

## Quite Major

60. Do these variances occur frequently?

Never

Very often

1      2      3      4      5

61. Describe below why these variances occur?

|  |
|--|
|  |
|--|

62. Collectively, the board directors exercise full control over the agenda.

Never

Always

63. Board subcommittees in practice have an ability to influence/change the agenda.

Yes

Sometimes

No

|  |
|--|
|  |
|  |
|  |

64. Major shareholder directors' representatives are able to influence the agenda.

Yes

Sometimes

No

|  |
|--|
|  |
|  |
|  |

65. Major shareholder directors should be present when debates on aspects of their specific interest are held.

Never

Always

☐☐☐☐☐

1

2

3

4

5

## Section Five – Statistics

66. Describe your role.

Non-executive director  
Executive director  
Chairman (non-executive)  
Chairman (executive)/CEO

|  |
|--|
|  |
|  |
|  |
|  |

67. Please indicate below the proportion of share equity (if any) you hold as a director on the Board.

---

68. What industry is your organisation predominantly involved in? (Please specify, i.e., retail/wholesale, infrastructure/utility, service industry, etc).

---

69. What was the approximate revenue/turnover of your organisation in the past financial year? (Please specify below).

---

If you have any comments or thoughts on the agenda or agenda setting process that you think are relevant and would help in this study please do not hesitate to outline these below:

---

---

---

---

---

Please return the questionnaire in the envelope provided.

Thank you for your time and assistance. It is greatly appreciated.

The work that I can now do with the detailed information you have provided will be of considerable assistance to boards and directors in furthering our understanding of board processes and issues. It concentrates on the study and knowledge of a neglected area of board process and is could prove very important to company directors and future board studies by academics. Thank you again for your time.

---

## **7.5 INITIAL SAMPLE – COMMENTS FROM REVIEW GROUP**

Key comments from the initial sample review group of nine who trialled the first version of the questionnaire were:

The process of allowing top management to present to the board allowed directors to view the depth of executive talent the company had and directors could make a judgement on how much trust they should place in those people. The group reflected some interesting views on how this should be handled - particularly in times of stress - without provoking divisiveness in ensuring this was done through the right channels and did not result in “splitting the board apart.”

The difficulty of ensuring the board “kept out of management.”

While the group considered the board needed to maintain a compliance and monitoring role it was agreed the best value for management came from discussions with the board on opportunities and issues. “Looking over history is pretty easy for board directors ... but added value is a different issue.”

Forty percent indicated they were given no briefing on the process of agenda preparation when they joined the board and little or no direction on how to get items put forward for discussion (Q. 10, see appendices, first version questionnaire, p.197). In spite of this none indicated a problem getting an item put in the agenda although only half of the directors did this by approaching the chair.

The directors believed the agenda order should reflect item importance and mostly they reported that they were happy with their agendas as they stood.

Of this initial group 70% ranked the main agenda influencers as the chair and the chief executive (Q. 17).

It was important to have informal director/board discussions (Q. 20).

In their responses to the initial questionnaire the group members believed that the agendas they faced as board members covered all the necessary items for good

governance (Q. 1, see appendices, first version questionnaire, p. 197).

All agreed that the agenda format had undergone change during their various terms of office (Q.3, see appendices, first version questionnaire, p. 197).

All but one indicated they had other sources of information about the company other than the board agenda and papers (Q.8, see appendices, first version questionnaire, p. 197).

Forty percent indicated they were given no briefing on the process of agenda preparation when they joined the board and little or no direction on how to get items put forward for discussion (Q. 10, see appendices, first version questionnaire, p. 197). in spite of this none indicated a problem getting an item put in the agenda although only half of the directors did this by approaching the chair.

Consensus was very important as was the issue of framing (that is, constructing the debate or report on an issue in a particular manner).

Issues that arose for discussion were in general provoked by management (Q. 33) but not with any element of subterfuge or pattern that dominated their boards (Q. 34 & Q. 35).

The agenda was reviewed formally by 75% of the boards they were involved with (Q. 37) although only half reported this was done on a regular basis (Q. 37).

Asked about the timing of such a review (Q. 39) it was felt this should be a six monthly or an annual event.

In general the directors reported that they were happy with the agenda process (Q. 40) although two of the small group of nine in this sample reported that they did not feel they had any control over the agenda and three (one third of the directors in this sample) felt there was not enough time set aside for open discussion (Q. 52).

When asked what subject should be considered in this open discussion or if there was a feeling or sense that something important was being missed the group considered

that this time should be to focus the board on what it should be monitoring.

## **7.6 THE CONTRIBUTION OF PRACTITIONERS – A BRIEF CAPSULE OF LEARNING**

For practitioners to extract some pragmatic value from the views expressed by the experienced directors who comprised the focus groups it is worth noting the key points they believed directors / aspiring directors should keep in mind. This is not a comprehensive list of practise issues for a director as it focuses only on agenda in the predecision aspects of governance. There is no attempt to provide a manual on board governance pillars. That is for a broader study to determine. However, this may provide a starting point in that process. The key concepts the final focus group of survey directors believed to be crucial to good board practice in agenda management are:

the agenda and its management should be recognised as an important part of director responsibility;

chair and chief executive hold the most important roles in setting the agenda;

control is the preserve of the chairman;

board papers should be available to directors a full five working days prior to meeting;<sup>13</sup>

the agenda must remain flexible up to the time of actual meeting;

those setting the agenda should work on a concept of no surprises;<sup>14</sup>

estimated times for the discussion of each agenda item should be pre-established and shown on the agenda;

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<sup>13</sup> There was total agreement that board directors should accept the inevitable fact that directors do not get weekends off; the group labelled directors the “weekend warriors.”

<sup>14</sup> There was consensus that adequate notice of impending issues was essential for all directors.

the role of the chairman is to bring discipline to this aspect of time management;

major presentation data should be available prior to board meetings if key decisions are sought at those meetings;

where there are major projects under review it is perfectly acceptable for those board papers to come at different times and under different cover from the agenda (provided adequate times lines are observed);

late papers are acceptable if there are pressing issues or genuine management need;

all boards should develop and operate an annual work plan;<sup>15</sup>

major strategy sessions for directors should be kept separate from regular meetings and held off-site;

chairman, chief executive and company secretary all share joint responsibility for board follow up on matters arising, notes and actions for the next meeting agenda;

security should be maintained but papers should be delivered physically as well as electronically;<sup>16</sup>

attendance at all board meetings is a must for the chief executive<sup>17</sup> and the chief financial officer and both should remain for the entire meeting;<sup>18</sup>

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<sup>15</sup> Directors must make time available to consider, on a regular basis, every part of the business and not leave that task until the part to be scrutinised is in crisis.

<sup>16</sup> Electronic delivery was seen as a more timely and effective way of maintaining a comprehensive and orderly archive of board business papers.

<sup>17</sup> The CEO was recognised by the directors as their key officer and lead actor and the person who should decide which of the key executives he/she should put in front of the board to support papers/recommendations.

<sup>18</sup> Exclusion of these officers from board meetings for board only discussions was best handled at a defined time and for a defined duration (that is, say, 15 minutes) at the conclusion of each board meeting. It should not be ad hoc or be seen as a departure from any normal process (to eliminate any staff speculation as to reason).



directors should make it their personal responsibility to know and evaluate the abilities and experience of the first tier top management team,<sup>19</sup> a process that starts with board presentations.

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<sup>19</sup> It was seen as important for directors to truly understand for themselves the strengths and weaknesses of each individual in the top management team. A suggested method that achieved consensus was the opportunity to meet these people informally at, say, dinner the night before a board meeting to develop a personal relationship in a less formal environment. Added advantages were: the ability to assess potential successors to the CEO and the opportunity to expose senior staff to directors.

## Corporate Governance

TOWER's Board and the management team have a responsibility to achieve the highest standards of corporate performance, ethical behaviour and accountability. The Board has adopted and developed corporate governance structures and practices that are consistent with best practice and ensure the integrity of the governance framework, with continual reassessment of its practices against these standards. Where developments arise in corporate governance, the Board is committed to review TOWER's practices and incorporate changes where appropriate to ensure TOWER maintains best practice governance structures.

### Compliance with Governance Requirements and Recommendations

As TOWER securities are listed on the New Zealand and Australian Stock Exchanges, TOWER adheres to the NZX Limited (NZX) NZSX Listing Rules; the NZX Corporate Governance Best Practice Code; the New Zealand Securities Commission Corporate Governance Principles and Guidelines; the Australian Stock Exchange Limited (ASX) Listing Rules; and the ASX Corporate Governance Council Best Practice Recommendations.

For the reporting period to 30 September 2009, TOWER considers its corporate governance practices have complied with the NZX Corporate Governance Best Practice Code and the ASX Corporate Governance Council Best Practice Recommendations.

Copies of the principal governance documents and more detail about TOWER's governance practices are available on TOWER's website at [www.towerlimited.com](http://www.towerlimited.com) under 'Corporate Governance'.

### How TOWER's Business Practices Reflect Corporate Governance Best Practice

#### Role of the TOWER Board of Directors

The Board, elected by TOWER shareholders, is responsible for the performance of the TOWER Group as a whole. In practice, this is achieved through formal delegation to the Group Managing Director and to its three Board committees (Audit

and Compliance Committee, Remuneration and Appointments Committee, and Investment Committee – the role of each of these committees is outlined on pages 13 and 14).

The day-to-day leadership and management of the Group is undertaken by the Group Managing Director and senior executives. The Group Managing Director has also formally delegated certain functions to senior management to ensure consistent and efficient decision-making across the Group. Executives have no power to do anything which the Group Managing Director cannot do pursuant to his delegations. Within this formal delegation framework those executives who report directly to the Group Managing Director have authority to sub-delegate certain authorities to their direct reports. The Board meets regularly with management to provide strategic guidance for TOWER and effective oversight of management.

Each year the Board holds a strategy session with senior management to review TOWER's business direction. The application of these strategies within each business area is reviewed regularly at Board meetings.

The Board is primarily governed by the Board Charter, Board Protocols and the Code of Ethics. The Board Charter records the Board's roles and responsibilities, the Board Protocols describe internal Board procedures for efficient decision-making and the Code of Ethics ensures decision-making is in accordance with TOWER's values. These documents can be found under 'Corporate Governance' on TOWER's website at [www.towerlimited.com](http://www.towerlimited.com).

The Board Charter records that the primary role of the Board is to effectively represent and promote the interests of shareholders with a view to enhancing growth and returns across the Group, adding long-term value to TOWER shares. The Board, when fulfilling its roles and responsibilities, is required to have appropriate regard to TOWER values, the concerns of its shareholders, its relationships with significant stakeholders and the communities and environment in which it operates.

The Board reserves certain functions to itself. These include:

- determining the Group's strategic objectives, and approving annual operating plans, financial targets and capital expenditure plans;
- assessing and monitoring performance, including management's performance against the strategic objectives, operating plans and financial targets;
- approving all changes to the Group's corporate structure where these are of strategic importance;
- determining Group financial and treasury strategies and policies, including approving all dividend policies and distributions to shareholders, lending and borrowing, tax, and investment and foreign exchange policies;
- determining the Group risk management policies and

framework and the Group information technology strategies and policies;

- approving capital expenditure, operating expenditure, asset acquisitions and divestments, and settlement of legal proceedings, in all cases where this is outside the normal course of business and/or above delegated limits;
- approving all transactions relating to major business and company acquisitions, mergers and divestments; and
- approving the appointment and remuneration of the Group Managing Director.

## Board Composition, Nominations and Appointments

### Board composition

At 30 September 2009 the Board included six non-executive Directors and the Group Managing Director. The TOWER Constitution requires a minimum of six Directors and a maximum of nine.

The Remuneration and Appointments Committee is responsible for identifying Directors for appointment to the Board to ensure there is an appropriate blend of commercial skills and experience to govern and add value to the TOWER businesses. The Committee is also responsible for the Board Protocols which have been established to facilitate the effective operation of the Board. Current Directors contribute significant commercial, financial, legal and investment skills to the Board. Directors' profiles are on pages 10 to 12.

### Role of Chairman

The Chairman's role is to lead and manage the Board so that it operates effectively, and to facilitate interaction between the Board and the Group Managing Director. The Group Managing Director is charged with the day-to-day leadership and management of the TOWER Group.

The Chairman of the Board is elected by the Directors. The Board supports the separation of the roles of Chairman and Group Managing Director and these roles have always been separate at TOWER. Tony Gibbs was appointed Chairman of TOWER Limited on 19 December 2006.

### Nominations, appointments and ongoing education

The Remuneration and Appointments Committee recommends to the Board suitable candidates for appointment as Directors. The Committee will consider, among other things:

- the candidate's experience as a director;
- their skills, expertise and competencies (including in the financial services industry);
- the extent to which those skills complement the skills of existing Directors;
- their ability to devote sufficient time to the directorship; and
- the candidate's reputation and integrity.

On appointment to the Board, Directors receive a formal letter of appointment outlining their duties and obligations and are provided induction information about TOWER in the form of a Director's Manual. The Director's Manual contains historical background on TOWER and its operations, information about how the Group is structured, details of the Company's directors' and officers' insurance, the Board Charter and other TOWER corporate governance policies. The induction process also involves one-on-one discussions with the Chairman, other Directors and briefings from senior management to help new Directors participate actively in Board decision-making at the earliest opportunity.

To ensure ongoing education, Directors are regularly informed of developments that affect TOWER's industry and business environment, as well as company and legal issues that impact the Directors themselves. The Directors receive comprehensive board papers and briefing information before Board meetings, including a report from the Group Managing Director and

divisional reports from the CEO of each business unit. Directors have unrestricted access to management and any additional information they consider necessary for informed decision-making. The Company Secretary is usually the first point of contact for such requests.

Senior management also attend Board meetings in order to provide presentations to the Board and answer any queries Directors may have. This allows the Board to understand the practical issues affecting TOWER and the impact of these issues on its performance.

Directors are expected to develop their skills, competencies and industry knowledge by taking responsibility for their continuing education.

A Director may obtain independent professional advice relating to the affairs of TOWER or his/her responsibilities as a Director or Board Committee member. Where the Director has the approval of the Board Chairman or Committee Chairman to obtain independent professional advice, TOWER will meet the reasonable costs of the advice.

### Director Independence

The Board Protocols require that a majority of the Board are independent Directors. The Board regularly assesses the independence of each Director based on the interests disclosed by them. For this purpose Directors are required to immediately advise the Board of any new or changed relationships so the Board can make this assessment.

Based on the NZX Listing Rules and the ASX Corporate Governance Council Best Practice Recommendations, the Board Protocols define a Director as being independent if he/she is a Non-executive Director who does not have any direct or indirect interest or relationship that could, or could reasonably be perceived to:

- reasonably influence, in a material way, his/her decisions relating to TOWER; or
- materially interfere with his/her ability to act in the company's best interests.

Examples of relationships that remove independence are relationships with a material TOWER customer, supplier, professional advisor or substantial shareholder. Currently, the Board considers that four of the Directors are independent, namely: Bill Falconer, John Spencer, Susie Staley and Denis Wood. The Board considers that Tony Gibbs and Mike Jefferies are not independent as a result of their appointment to the TOWER Board by Guinness Peat Group, a substantial shareholder of TOWER.

In accordance with TOWER's Constitution, Directors with an actual or potential conflict of interest on particular issues are required to disclose the conflict and may still attend meetings but will abstain from voting on that issue.

### Retirement and re-election

At least one-third of the total number of Directors must retire from office each year by rotation and, if they choose, stand for re-election by shareholders at the Annual Meeting. The Directors who retire each year are those who have been in office longest since their last election. If two Directors have held office for equal terms and cannot agree who will retire, it is determined by lot.

In addition, all Directors appointed by the Board since the last Annual Meeting to fill a casual vacancy must stand for election. Shareholders will be provided with relevant information on the Directors standing for re-election prior to the Annual Meeting to enable them to make informed decisions when voting.

### Board and Committee Performance Review

The Board recognises that the performance of the Directors, and Board Committees are crucial to TOWER's success and to the interests of shareholders. The Board reviews its

own composition and performance and that of the Board Committees in accordance with the terms of the Board Charter. The Remuneration and Appointments Committee is responsible for the performance management and annual appraisal of the Group Managing Director and individual Directors. Evaluations may be carried out by an external consultant. Further details regarding the Group Managing Director's remuneration are set out on page 15.

#### **Director share ownership**

All Directors are required by the company's constitution to hold TOWER shares. Directors and management are required to comply with TOWER's Insider Trading Guidelines when purchasing and disposing of TOWER securities. The number of shares held by each Director and their dealings in TOWER securities during the financial year are disclosed on page 21 of the Regulatory Disclosures section.

#### **Indemnities and Insurance**

TOWER has given Deeds of Indemnity to Directors for potential liabilities and costs they may incur for acts or omissions in their capacity as Directors. Directors' and Officers' liability insurance is in place for Directors and employees acting on behalf of TOWER and its subsidiaries. While the insurance covers risks arising out of acts or omissions of Directors and employees acting for TOWER, it does not cover dishonest, fraudulent or malicious acts or omissions, or criminal liability.

#### **Attendance at Board and Committee Meetings**

The Board held nine scheduled meetings during the year from 1 October 2008 - 30 September 2009 and 5 special meetings. Director attendance at the Board meetings is set out on page 14. The Group Managing Director attends all Committee meetings and the Group Chief Financial Officer attends meetings of the Audit and Compliance Committee and Investment Committee. The Company Secretary attends all Board and Committee meetings, and is responsible for taking accurate minutes of each meeting and ensuring that Board procedures are observed.

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## **TOWER Board of Directors**



*Back row: Bill Falconer, John Spencer, Susie Stoley, Denis Wood, Mike Jefferies.  
Front row: Tony Gibbs - Chairman, Rob Flannagan - Group Managing Director*

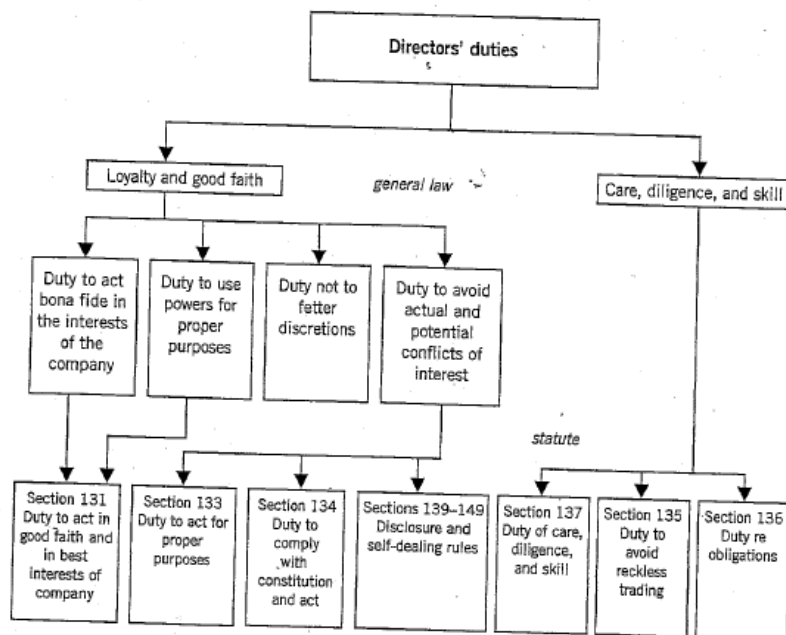


Figure 10.3 Current New Zealand law

the civil remedy regime. These are subject to a Business Judgment Rule in section 180(2) but are supplemented by section 588G which imposes a duty to prevent insolvent trading, and other provisions which impose due diligence obligations. The latter fall outside the protection of the Business Judgment Rule.

New Zealand has the same general law remedies but the statutory duties are sometimes different and exist for a different purpose. The statutory duties are the duty on directors to act in good faith and in the best interests of the company (section 131), to exercise powers for a proper purpose (section 133), to comply with the Act and constitution (section 134), to avoid reckless trading (section 135), to avoid obligations which the company will be unable to perform (section 136), and a duty of care, diligence, and skill (section 137). These are supplemented by the self-interested transaction rules in sections 139 to 149.

New Zealand has reformed and codified the general law remedies in Part IX but does not have a civil penalty regime and the relationship of the above sections to the general law is not completely clear. Presumably they codify and restate the law. As in the Canadian model which they follow, the position has not been made clear.<sup>1</sup>

1. See *Taurus Transport v Taylor* High Court, Napier CP33/99 22 May 2000, Master Thomson; *Benton v. Priore* (2003) 9 NZCLC 263, 053.

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