

CORPORATE GOVERNANCE IN THE ASX-LISTED LIFE SCIENCES SECTOR



Author's Foreword

Australia has a growing global reputation as a centre of excellence in life sciences and health technology. However, as a growth industry it is still a high risk investment class, and more than great science is required to take a technology from infancy to commercial success.

Following on from large-scale corporate failures in the late 1990s and early 2000s and the recent global financial crisis, substantial pieces of work on corporate governance have emerged around the world, with codes of conduct and recommendations for good corporate governance practice being released in most major markets. The ASX is no exception and first released the *ASX Corporate Governance Council Principles and Recommendations* in 2003.

Given the high-risk nature of the listed life sciences sector and the lack of quantitative analysis on how the sector performs against the ASX Principles and Recommendations, an assessment of the FY2013 Corporate Governance Statements of 89 ASX listed life science and healthcare companies was undertaken, ranging from the very smallest (market cap ~\$1m) to the very biggest (market cap \$30b).

At a high level the data indicates a variable landscape. Notably, independence in the role of chair, separation of the chair and CEO roles, and diversity in board senior management roles were all weaker than may have been expected. Concentration of ownership is high which could be seen to render ordinary retail shareholders somewhat powerless in influencing management, however this is not necessarily unusual in ASX-listed companies. It does however suggest a need for companies to be aware of the need to achieve excellence in shareholder communications and interactions.

The overall picture is one of an emerging growth industry that would benefit from focusing on demonstrating excellent governance standards to investors, alongside the excellence in technology development and commercialisation already in place, if it is to succeed in becoming a significant market sector.

My thanks to the efforts of BioShares for providing a relevant and defined index on which to base this paper, and to AusBiotech for their efforts in developing and delivering content such as this report to the sector.

Bronwyn J Le Grice

Disclaimer

This report was completed in November 2014, using data collected from the 2013 Annual Reports of 89 ASX-listed healthcare companies as a part of a research project for her Masters of Commercial Law at Melbourne University Law School. The views reflected in this paper are the author's own and do not reflect the views of either the University of Melbourne or the author's current employer, Adherium Limited. The full data set can be made available to interested parties by request, in writing, to bronwyn.legrice@fidere.com.au. This report is copyright and should not be copied or reproduced in any form without the prior written consent of the Author and AusBiotech.



AusBiotech Foreword

AusBiotech, as the national industry association representing the Australian life sciences sector, is interested in providing practical support to management and boards. To this end, AusBiotech has in conjunction with the Australian Securities Exchange (ASX) developed *The Code of Best Practice for Reporting by Life Sciences Companies*. AusBiotech has also produced a sister publication, the *Guide for Life Science Company Directors*.

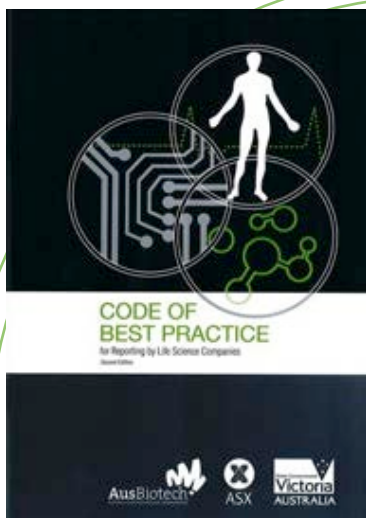
As an extension of this work to date, designed to strengthen boards and assist directors, AusBiotech is pleased to be able to present the analysis in this report, undertaken by Bronwyn Le Grice.

Ms Le Grice has examined listed life sciences companies and asked questions regarding adherence to governance principles and made some remarks regarding diversity and shareholder influence.

AusBiotech hopes that this material will stimulate discussions within the sector and lead to a discernible improvement in future years.

Establishing, managing and progressing a life sciences company pose many challenges. Paying attention to the quality of corporate governance is one risk mitigation that all companies must actively manage.

Dr Anna Lavelle
CEO, AusBiotech





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1. Introduction

The life sciences industry in Australia is recognised globally. With a strong base of internationally competitive medical research, an economy which is largely thought to have come through the 2008 global financial crisis relatively unscathed and some very favourable taxation policies for R&D focused companies; Australia is considered to be a desirable market for emerging healthcare, medical and biopharmaceutical companies.

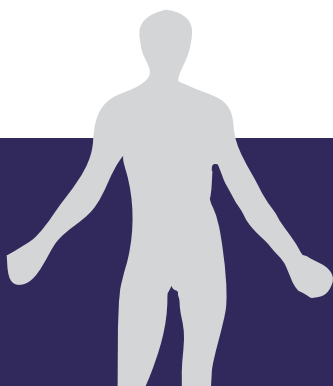
Unlike the exploratory mining and resources sector, the Australian Securities and Investments Commission (ASIC) do not have a dedicated team monitoring the life sciences sector, although the similarities between the two are strong. Instead it

self regulates. High capital requirements, long lead times to revenues and a high risk of failure are key features of both industries, as is a high degree of share price volatility. They are also both perceived as male dominated industries, especially in leadership and board roles.

From an investor standpoint, corporate governance is a key metric for many investors when making an investment decision. The *ASX Corporate Governance Principles and Recommendations* provide a useful framework in assessing the quality of corporate governance. This paper reviews corporate governance across an index of 89 companies, representing a cross section of the life sciences sector, against a number

of the ASX Principles and Recommendations.

A varied picture emerges, with independence in the role of chair, separation of the chair and CEO roles, and diversity being particularly weak, contrasted with high levels of compliance around the use of and structure of board committees. Concentration of ownership also emerges as an issue, with ownership of most companies being so concentrated in the top five and top twenty shareholders, which has implications for management. Thus the overall picture is one of an emerging growth industry that needs to demonstrate on-going excellence in governance, as well as excellence in technology development and commercialisation.



2. An Overview of Corporate Governance in Australia

Businesses globally rely on the capital markets and monies raised from investors to fund their growth. Investors are seeking well managed companies and they rely on the financial and annual reports of these companies to assess them¹.

Arising largely out of significant company failures which have occurred since the 1990s, such as Enron, Barings Bank, HIH and Centro Group, it has become increasingly evident that failures in corporate governance can occur, even when the annual reports and financials appear to be acceptable². This has led to a development of corporate governance theory and practice and the implementation of regulatory requirements and codes for good corporate governance across the world³.

The OECD defines Corporate Governance as follows:

Corporate governance provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined. Good corporate governance should provide proper incentives for the board and management to pursue objectives that are in the interest of the company and its shareholders and should facilitate effective

monitoring⁴.

The OECD *Principles of Corporate Governance* state that the 'corporate governance framework should be developed with a view to its impact on overall economic performance, market integrity and the incentives it creates for market participants and the promotion of transparent and efficient markets.'⁵

It is now generally understood that the observance of principles of good corporate governance are of increasing importance in the investment decisions of investors.⁶

2.1 ASX Listing Rules and Principles of Corporate Governance

ASX Listing Rule 4.10.3 requires companies to include in their annual report either a corporate governance statement or a URL of the website at which a corporate governance statement can be found. Listing Rule 4.10.3 works in conjunction with the ASX Corporate

Governance Principles and Recommendations, introduced in 2003 and further amended in 2010 and 2013.⁷

According to Listing Rule 4.10.3 the corporate governance statement:

must disclose the extent to which the entity has followed the recommendations set by the ASX Corporate Governance Council during the reporting period. If the entity has not followed a recommendation for any part of the reporting period, its corporate governance statement must separately identify that recommendation ... and state its reasons for not following the recommendation and what (if any) alternative governance practices it adopted in lieu⁸

This is commonly referred to as the 'if not, why not' rule, meaning that as long as companies disclose why they did not follow a recommendation, they are entitled to do so. This establishes the ASX Principles as a set of guidelines, rather than a prescriptive set of regulations that must be adhered to.

1. Christine Mallin *Corporate Governance* (Oxford University Press, 3rd Edition, 2010), 2.

2. *Ibid.*

3. *Ibid.*

4. Organisation for Economic Co-Operation and Development *OECD Principles of Corporate Governance* (2004), 11.

5. *Ibid.* 17.

6. *Ibid.* 13.

7. Australian Securities Exchange Corporate Governance Council *Corporate Governance Principles and Recommendations with 2010 Amendments* 3rd Edition (March 2014).

8. Australian Securities Exchange Listing Rules (July 2014) r4.10.3.



In this study a significant amount of variability in reporting was observed. With the latest set of amendments to the principles, there has also been a change to the ASX's Listing Rule 4.7, requires ASX listed companies to lodge a new document, Appendix 4G, alongside their annual reports from the financial year beginning 1 July 2014 onwards.

Appendix 4G is, in effect, a checklist clearly based on the ASX principles⁹. It is expected that this will make the review of the corporate governance practices and compliance with the principles in these companies much easier for investors and shareholders.

The *Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Act* was introduced in 2011 and established that if a firm receives a 25% or more dissenting vote against its remuneration report at its annual shareholder meeting in two consecutive years, the board of directors may be required to face re-election.¹⁰ Commonly called the 'two strikes rule', it has placed more power in the hands of smaller shareholders and has created an opportunity for activist shareholders to use a 'strike' against the company to force the board to engage more closely with them.¹¹

Overall, the introduction of the ASX Corporate Governance Principles, changes to listing rules and the two strikes rules are now combining with the legal and statutory duties of directors to create an environment where not only good corporate governance practice, but also good shareholder and investor relations, are becoming increasingly important.

2.2 Corporations Act & the Legal Duties of Directors

Under Australian law, directors have a number of duties in both common and statutory law. In statutory law, directors' duties are dealt with under sections 180-183 of the Corporations Act (2001).¹² The duties of directors include to:

- act in good faith in the best interests of the company;
- act with care and diligence;
- avoid a conflict in the position of a director and any other interest that a director may have; and
- abide by a range of duties which prohibit the misuse of information obtained by directors.¹³

Recent case law in Australia has put the onus on directors to exercise their duties of care, diligence and skill in such a way as to prevent them from using reliance on management and/ or third party suppliers such as auditors as a defence. Middleton J reinforced this point in *Australian Securities and Investments Commission v Healey*, stating:

There is a core, irreducible requirement of directors to be involved in the management of the company and to take all reasonable steps to be in a position to guide and monitor. There is a responsibility to read, understand and focus upon the contents of those reports which the law imposes a responsibility upon each director to approve or adopt.¹⁴

This focus on directors and their fulfilment of their duties is likely to remain a key piece of the Australian corporate landscape. Case law may extend the reach of directors duties and expand the expectations of directors in fulfilling them, while non-statutory means of improving corporate governance, such as the ASX Principles, are also becoming standard practice. It is no longer enough for directors to simply attend board meetings; they are expected to add significant value.

9. Australian Securities Exchange Proposed Governance-Related Amendments to the ASX Listing Rules (August 2014), 6 <<http://www.asx.com.au/documents/public-consultations/governance-listing-rule-changes.pdf>>.
10. Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Act Cth (2011)
11. John Elliott, Karen Evans-Oullen and Rod Halstead, 2014: the year of the shareholder activist? Part 2 (20 February 2014) Clayton Utz <http://www.claytonutz.com/publications/edition20_february_2014/20140220/2014_the_year_of_the_shareholder_activist_part_2.page>.
12. Corporations Act Cth (2001)
13. Bob Baxi, Duties and Responsibilities of Directors and Officers (Australian Institute of Company Directors, 19th Edition, 2009), 37.
14. Australian Securities and Investments Commission vs Healey (No.1) (2011) 196 FCR 291, 16



3. About the Australian Life Sciences Industry

In 2014, the Scientific American Worldview Scorecard¹⁵ ranked Australia fourth in the world for biotechnology¹⁶, an improvement on a ranking of 10th in 2012. Australia and Australians have a long and successful history of medical innovation, with successes including the role of Howard Florey in creating the world's first antibiotic, penicillin, to the invention of the cochlear implant by Professor Graham Clark and CSL's global domination of the plasma market.

However for every success, there are many failures which fail to make the tough transition from lab to clinic or navigate the extraordinarily tough regulatory environment required to take a new medical product to market. Ninety five per cent of experimental medicines that reach the milestone of being studied in humans fail to prove the safety and efficacy to attain regulatory approval.¹⁷ A small company successful in placing a new drug on market will spend approximately US\$350 million. In big pharmaceutical companies with large pipelines and high internal costs of failed programs, this cost could be up to US\$5 billion.¹⁸

However, despite these enormous costs and high risk of failure, the ageing population and increasing expectations of healthcare outcomes are creating an insatiable demand for new health technologies. Australia is well positioned scientifically to be a participant in this global bio-economy, but to do so our life sciences companies must excel in other areas beyond technology, including finance, marketing and corporate governance.

3.1 The ASX-Listed Life Sciences Sector

Since the mid to late 1990s many life sciences companies have turned to the ASX to address their need for capital. However, it is generally accepted that many of Australia's life sciences companies list on the exchange earlier in their life cycle than would be commonly accepted in other industries.

The ASX started encouraging developing industries to list on the main board in the early 2000s via lowered entry requirements¹⁹. This has meant that, in the past, Australian life sciences companies have gone to IPO for survival cash flow, rather than to raise funds for mid to long-term growth²⁰.

This immaturity on listing has resulted in persistently low market capitalisations and share prices that are highly sensitive to public relations and financial communications²¹. Of the 89 companies reviewed in this study, 47 companies (53%) had a market capitalisation of under \$25 million and more than 75% had a market capitalisation of less than \$100 million. In addition 55% of companies had share prices of less than \$0.25 per share, leaving many of them exposed to the vagaries of the day trader community and their shareholders exposed to highly volatile share prices.

15. Scientific American, 2014 Scientific American Worldview Overall Scores, (2014) Scientific American <<http://www.saworldview.com/scorecard/2014-scientific-american-worldview-overall-scores/>>.

16. Biotechnology, healthcare and medical technologies are all terms used to describe this sector. This paper will use the term 'life sciences' to describe a sector which includes all of the aforementioned technologies.

17. Matthew Harper, The Cost Of Creating A New Drug Now \$5 Billion, Pushing Big Pharma To Change (11 August 2013) Forbes <<http://www.forbes.com/sites/matthewharper/2013/08/11/how-the-staggering-cost-of-inventing-new-drugs-is-shaping-the-future-of-medicine/>>.

18. *Ibid.*

19. Nick Wells, Brendan Coady and Josephine Inge 'Spinning off, cashing up and branching out: Commercialisation Considerations for biopreneurs in Australasia' (2003) 9 (3) Journal of Commercial Biotechnology 209-218, 212.

20. *Ibid.* 214.

21. *Ibid.*



3.2 Industry Initiatives in Corporate Governance

The life sciences industry has a number of key features which are not necessarily of the same importance or relevance in more traditional industries. Areas such as intellectual property, clinical trials, bio and medical ethics, regulatory affairs and licensing are all often critical, and price sensitive, in the context of a life sciences company.²²

AusBiotech, the member based association representing the industry, has recognised the need for directors of life sciences companies to be equipped with information that is specific to the needs of the sector.

In partnership with the ASX, AusBiotech has released a document that provides support information for directors of life sciences companies: *The Code of Best Practice for Reporting by Life Sciences Companies*²³. AusBiotech has also produced a sister publication, the *Guide for Life Science Company Directors*²⁴.

These guides assist directors, especially those that are not from within the industry, to assess their

responsibilities relevant to the specific features of the sector, and the businesses on whose boards they sit. Although they provide commentary that supports and is complementary to the *ASX Corporate Governance Principles and Recommendations*, they do not, and are not intended to, lay out a framework for the improvement in Corporate Governance standards across the industry.

3.3 Corporate Governance Failures in Australian Life Sciences Companies

Not unlike other sectors in Australia, the life sciences sector has seen a steadily increasing amount of shareholder activism and some notable failures.

The life sciences industry in Australia is often compared to the exploratory mining and resources sector, based on the long time frames to reach revenues and the large amounts of capital it often takes to get there. It is worth noting

that for the purposes of regulatory supervision, the Australian Securities and Investments Commission (ASIC) has a stakeholder group specifically focused on 'Emerging Mining and Resources'²⁵, but no similar group for emerging biotechnology and healthcare companies.

This paper does not suggest that the state of corporate governance in the sector, nor the lack of dedicated oversight from ASIC, is responsible for these failures, however in a high risk, high reward environment with increasing scrutiny and vocal institutional shareholders, it would behave the industry well to take a leading position on corporate governance.

22. AusBiotech, Australian Securities Exchange and State Government of Victoria *Guide for Life Science Company Directors 1st Edition* (2013) <<http://www.ausbiojournals.org/digimag/lifescience/digimag.html>>. ('Guide for Life Science Company Directors')
23. AusBiotech, Australian Securities Exchange and State Government of Victoria *Code of Best Practice for Reporting by Life Sciences Companies 2nd Edition* (2013) <http://www.asx.com.au/documents/research/Code_of_Best_Practice_for_Reporting_by_Life_Science_Companies.pdf>.
24. *Guide for Life Science Company Directors*, above n 22.
25. Australian Securities and Investments Commission, 'Corporate Structure as at 9 September 2014' (9 September 2014) Australian Securities and Investments Commission, <<http://www.asic.gov.au/asic/asic.nst/by/headline/Organisational+chart?openDocument=z>>

4. Methodology

This paper is based on a review of the 2013 annual reports of 89 companies listed in the annual BioShares index. BioShares²⁶ is a widely read industry publication that publishes an annual summary of share price and market capitalisation performance across its index as well as providing weekly analysis and news on the listed life science sector.

The BioShares index has been selected as it has a good cross section of the life sciences sector, spanning the very small companies (Bone Medical, market capitalisation ~\$1 million) to the largest (CSL, market capitalisation ~\$30 billion), and includes companies from a variety of sub-sectors.²⁷

Companies were reviewed against a number of corporate governance criteria as outlined in the *ASX Corporate Governance Principles and Recommendations 2nd Edition, incorporating the 2010 amendments*²⁸, (from hereon referred to as the Principles or the ASX Principles) which was the current framework in place as at the end of the 2013 financial year. Market capitalisations, share prices and company descriptions were all sourced from the BioShares 2013 end of financial year edition²⁹.

Specifically companies were assessed against recommendations falling under the following ASX GCG principles:

- Principle 2: Structure the board to add value;
- Principle 3: Promote ethical and responsible decision making;
- Principle 4: Safeguard integrity in financial reporting; and
- Principle 5: Make timely and balanced disclosure.

Principles 1, 6, 7 & 8 were not directly addressed in the data gathered for the purposes of this paper.

In addition, aspects of ownership, specifically the concentration of ownership in the top 5 and top 20 shareholdings were also assessed.

Data was gathered directly from the 2013 annual report of each company, each company's website and the BioShares Quarterly Review June 2013. Where company information was not available on the company's website, the ASX company page for that company was used.

26. BioShares 'About Us' BioShares.com.au <<http://www.bioshares.com.au/aboutus.htm>>

27. Three companies included in the BioShares index at the end of 2013 were excluded from this study; Bioxyme which had a market cap of less than \$1 million; Heartware, which is now solely listed in the US; and Acuvax, which was in the middle of a reverse takeover at the end of the financial year and as such was facing a complete change in board composition. Subsectors include biopharmaceuticals, medical devices, healthcare equipment and services and others (such as nutraceuticals and over the counter medicines)

28. Australian Securities Exchange Corporate Governance Council Corporate Governance Principles and Recommendations with 2010 Amendments 2nd Edition (August 2010). (ASX Corporate Governance Principles 2010)

29. BioShares (2013) 509 BioShares Quarterly Review 5-10

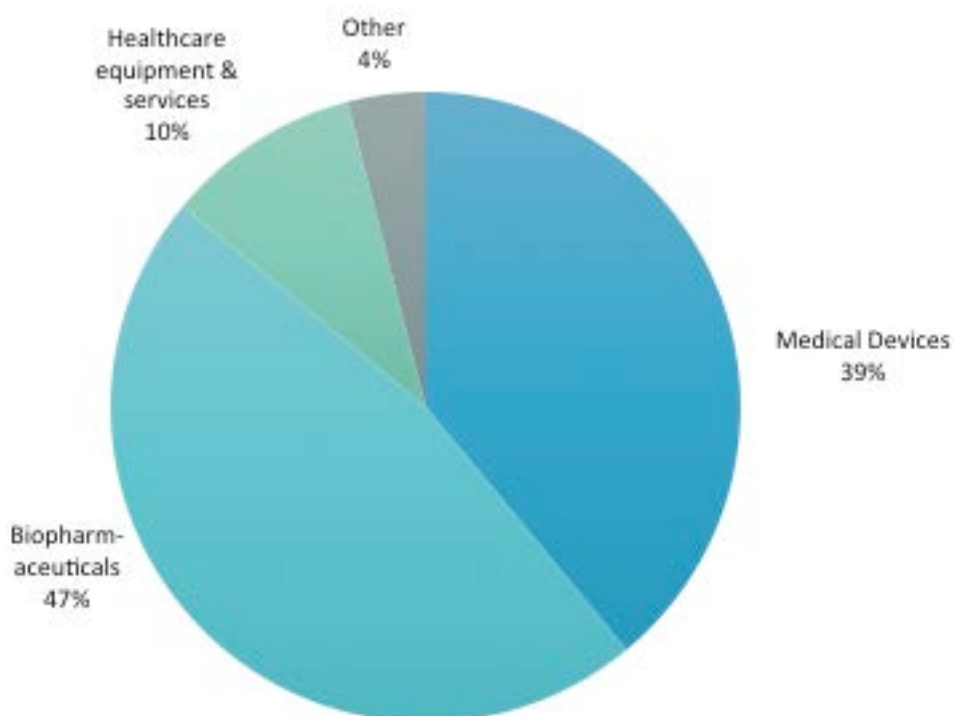
5. The Index

The index comprises 89 ASX-listed companies (Figure 1). Of those 89 companies, 42 are in the business of biopharmaceuticals, 35 are in medical devices, nine provide healthcare equipment and services and three are grouped in 'other', which includes over the counter and nutraceutical products.

Sixty five per cent of index members have market capitalisations of less than \$50m and 43% have less than \$25m. Seven companies commanded a market capitalisation in excess of \$500m.

A list of companies included in the index, their market capitalisation and a description of their business is available in Appendix 1.

Figure 1: BioShares Index by Sub-Sector



6. Structuring for Value?

Board Size & Independence.

Principle 2: Structure the Board to Add Value: 'The board should have a board of an effective composition, size and commitment to adequately discharge its responsibilities and duties'³⁰.

Figure 1: Index by market Capitalisation

Market Capitalisation AUD as at 28/06/2015	# Companies	% of Total
<10M	19	21%
11-25M	28	31%
26-50M	11	12%
51-100M	11	12%
101-500M	13	15%
501M+	7	8%

The listed life sciences sector is heavily weighted towards small companies with a market capitalisation of less than \$50m (Figure 2). As such, it is not surprising that boards are generally small, in keeping with the size of the companies, and usually comprise people with experience in the sector, along with one or two individuals with 'relevant expertise' in law, accounting or similar. However, many companies may feature founders or early investors in the CEO and/or chair role, limiting their level of independence.

6.1 Board Size

Board size itself is not referred to in the Principles. However it is useful to assess board size as a potential determinant of other factors which are included in the recommendations. For example, very small boards may not be well equipped to have a full suite of board committees, and may experience higher proportional rates of executive and non-independent directors, simply through virtue of their size.

Figure 2: Board Sizes



Board sizes in the sector range from three to ten (Figure 3). In general, board size increases with market capitalisation, with an average board size of 4.6 directors in companies with a market capitalisation of less than \$25m and an average of 6 directors in \$500m plus companies.

Almost a third of all boards are comprised of five members, with 69% having between four and six members. Only two companies have boards which comprise more than eight directors.

³⁰. ASX Corporate Governance Principles 2010, above n 32, 10.



6.2 Recommendation 2.1: Board Independence

*A majority of the Board should be independent directors.*³¹

The use of independent directors on boards is generally considered to be key to improving the quality of the monitoring function of the board and to lower the likelihood of the directors being dominated by the company's executive management.³²

On average, independent directors make up 65 percent of company boards. In 47% of company boards across the index, independent directors represent more than two thirds of their number. However, 24 companies (27%) have 50% or less of the board comprised of independent directors, and thus do not meet the standard set by recommendation 2.1.

Notably, board size is not necessarily a good indicator of independence (figure 4). Across the spectrum of board sizes, each grouping has varying levels of independence, however the majority of companies meet the requirement of recommendation 2.1.

Board size does not appear to be a driver of independence. However, it appears that in many cases independence is linked to market capitalisation. In the smaller companies the percentage of directors who are independent is markedly lower, and the percentage of executive directors higher (Figure 5).

Figure 3: Board Size and Independence

# Directors on Board	# Companies in Category	# Companies >50% Independent	% Companies >50% Independent
3	13	10	77%
4	17	12	71%
5	26	21	81%
6	15	13	87%
7	7	5	71%
8	5	3	60%
>9	2	1	50%

Board size does not appear to be a driver of independence. However, it appears that in many cases independence is linked to market capitalisation. In the smaller companies the percentage of directors who are independent is markedly lower, and the percentage of executive directors higher (Figure 5).

31. ASX Corporate Governance Principles 2010, above n 32, 16.
32. Commonwealth Bank of Australia v Friedrich & Ors (1991) 9 ACLC 946

Figure 4: Board Independence by Market Capitalisation

BOARD COMPOSITION	MARKET CAPITALISATION AU\$ MILLIONS				
	1-25M	26-50M	50-100M	101-500M	500M+
# Companies in Cohort	47	11	11	13	7
# Directors	4.6	5.7	5.1	5.8	6
Chairman - Independent?	55%	45%	73%	69%	71%
Chairman - Non Executive?	72%	73%	73%	92%	71%
Average # Independent Directors	2.7	3.5	3.5	4.5	4.71
% Independent Directors	59.6%	61.7%	70.4%	78%	77%
Average # Executive Directors	1.3	1.2	1.2	1.1	1.14
% Executive	29.4%	21.7%	23.7%	18%	20%
Combined CEO/ Chair	21%	36%	27%	8%	14%

Smaller life sciences companies may also be led by founders and early stage investors, leading to less independence across the board as well as in the role of chair, and a significant number of companies where the CEO and chair roles are held by the same person. However, given that these companies have listed on the ASX, and thus have attracted a retail shareholder base, it would be preferable to see greater adherence to recommendations 2.2 and 2.3, in keeping with the interests of shareholders.

6.3 Recommendation 2.2: An Independent Chairperson

*The chair as an independent director.*³³

Across the entire index the percentage of companies which do not have an independent chairperson is 40%, which demonstrates a high rate of non-compliance with the basic premise that the chairperson should be an independent director (Principle 2.2). Market capitalisation appears to impact on the likelihood of a company having an independent chair (Figure 5) with 55% of smaller companies (sub \$50m market cap) having an independent chair, and the proportion of independent chairs in the larger companies exceeds 70%.

In an industry where failure rates are high, and technologies can fail, without the need for independent directors to provide objectivity and oversight is significant, and thus the prevailing high rates of non-independence in the chair role could be perceived as a risk for shareholders and investors

with exposure to these companies.

It is likely that the involvement of founders and substantial shareholders in the chair role is a key contributor to this scenario. Combined with the significant percentage of companies combining the CEO and chair roles into one, (Recommendation 2.3), concerns could be raised about the ability of those boards to be truly effective in reviewing and challenging management.

6.4 Recommendation 2.3: Separation of Chair & CEO

*The roles of chair and chief executive officer exercised by the same individual.*³⁴

The role of the combined CEO/chairman appears well entrenched at the smaller end of the index, with percentages only tapering off in the companies with market capitalisations over \$100m. Across the index, 20 companies (22.5%) do not comply with recommendation 2.3 (Figure 6). Most of these companies fall into the sub \$100m category, however two companies are substantially

larger companies that do not comply with Recommendation 2.3.

In many of these cases the individual holding the joint role may be a founder of the company and/or an early stage investor. Many of these individuals are undoubtedly people with unusually high levels of understanding and competence to in relation to these businesses³⁵.

6.5 Recommendation 2.4: Board Renewal and the Nomination Committee

*The board nomination committee.*³⁶

In relation to Recommendation 2.4, due to the number of occurrences of the nomination and remuneration committees being served by one joint committee, the use of Nomination committees has been addressed in the Section 8 on The Use and Independence of Board Committees, which covers the use of committees including nomination, remuneration and audit.

33. ASX Corporate Governance Principles 2010, above n 32, 17.
34. *Ibid* 18.
35. *Ibid* 22.
36. *Ibid* 18.

7. Diversity

Fact or Fiction

7.1 An Introduction to Diversity - Principle 3: Promote Ethical and Responsible Decision Making

Over the past five to 10 years, the issue of gender diversity in Australian boardrooms has become a hotly-debated topic. Following the financial crisis of 2008, many people put forward the view that more women on the boards of those companies that suffered corporate collapses may have prevented many of them. Some of the reasons for promoting the inclusion of women on boards include³⁷:

Figure 6: Diversity Metrics across the Index

CRITERIA	# COMPANIES	INDEX AVERAGE
No Women at Board Level	53	60%
Have Women Directors	35	39%
Have A Female Chair	3	3%
Have a Female CEO	11	12%
Total # Female Directors (of 453 total directors)	35	8%
Ave % of a Board Comprised of Women		9.99%
Average % Women Senior Executives		23.48%
Have a Diversity Policy	54	61%
Disclosed Female Board & Executive numbers (5 of these did not disclose overall female employment)	74	83%
Objectives disclosed in Annual Report (3.3)	29	33%
% Workforce comprised of Female Employees		49.07%

- provision of positive role models for women in lower level roles;
- avoidance of boardroom ‘groupthink’ via a proliferation of ideas and viewpoints on boards which contribute to better assessment of risk; and
- board composition would better reflect the diversity in the environment surrounding the corporation

In 2010, Principle 3 of the ASX Principles was amended to incorporate requirements for companies to develop and disclose: a diversity policy; measureable diversity objectives; and the proportion of women in the organisation, at senior management level and at Board level. The requirement upon companies to make these disclosures utilising the ‘if not, why not’ rule took effect from January 1, 2012³⁸.

Of the 453 directors of companies in the index in 2013, only 35 (8%) were female. In comparison, according to the Australian Institute of Company Directors, women held 17.3% of directorships in the ASX 200³⁹. Sixty per cent of all companies in the index had no women at board level.

37. Douglas M Branson, ‘An Australian Perspective on a Global Phenomenon: Initiatives to Place Women on Corporate Boards of Directors’ (Working Paper No 2012-2013, University of Pittsburgh School of Law, May 2012) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2064087>.

38. ASX Corporate Governance Principles 2010, above n 32, 22.

39. Australian Institute of Company Directors Gender Diversity on Boards – Statistics (2014) Australian Institute of Company Directors <<http://www.companydirectors.com.au/Director-Resource-Centre/Governance-and-Director-Issues/Board-Diversity/Statistics>>

Like many industries, the life sciences often attracts the description of being an ‘old boys club’. However at the most basic level of female workforce participation, diversity is alive and well. On average almost 50% of employees are female. In the 69 companies which reported total female employment numbers (Figure 7), 40% had workforces which were more than half female, and 81% of those companies had women representing at least a quarter of their workforce.

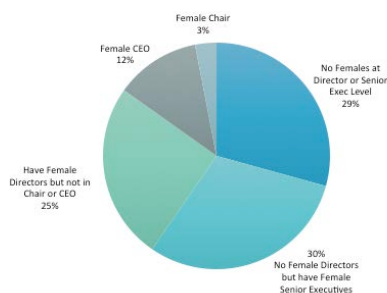
Figure 7: Representation of Women in Employment

Percentage Female Employees	# Companies	% Reporting Companies
0%	6	9%
1-25%	7	10%
26-50%	28	41%
51-75%	23	33%
76-100%	5	7%
Total	69	100%

At the senior executive and board levels these numbers change significantly. Only 12% of the index comprises companies with a female CEO (Figure 7), but only three companies: Circadian; Impedimed; and Cellmid, have a female chairperson.

The data gathered from the 89 companies was used to group the companies into five categories:

Figure 8: Gender Diversity Across the Index



- No females at senior executive or board level;
- No female Chair, Directors or CEO, but do have female executives;
- No female Chair or CEO but do have female directors;
- Female CEO; and
- Female Chairperson.

There were no substantial trends indicating that female representation was more prevalent in specific sub-sectors, but company size was important with lower levels of compliance with all diversity recommendations in companies valued at under \$50m (Figure 11). This combined with the fact that 29% of the companies in the index had no women at executive or board level at all (Figure 10), suggests that there could be systemic issues relating to gender diversity in leadership positions.

Figure 10: Diversity Metrics by Market Capitalisation

Market Capitalisation at 28/06/13	1-25M	26-50M	51-100M	101-500M	500M+
# Companies	47	11	11	13	7
Female Chairperson	4%	0%	9%	0%	0%
Female CEO	15%	18%	0%	23%	0%
Have Female Directors	32%	45%	36%	62%	43%
% Board Female Directors	9.0%	9.5%	8.3%	16%	8.4%
% Female Senior Executives	16.1%	25%	40%	37%	29%
Diversity Policy	51%	55%	64%	85%	71%
Female Staff % or Numbers Disclosed	68%	91%	100%	100%	100%
Objectives disclosed in Annual Report (3.3)	26%	55%	18%	46%	43%
% Female Employees	47.2%	45.2%	52.2%	51%	56%

Most notably, 60% of companies had no women at board level, although roughly half of those did have women in senior executive roles. 24% of companies had one female director, 15% had more than one female director and only one company had more than two female directors (Figure 12). This demonstrates that at the senior most levels of the industry, the sector remains heavily dominated by men.

Figure 11: Boards with One or More Female Director

# Female Directors	0	=1	>1	>2
# Companies	53	21	13	1
% Total Index	60%	24%	15%	1%

7.2 Recommendation 3.2 The Implementation of Diversity Policies

Companies establishing a policy concerning diversity and disclose the policy or a summary of that policy.⁴⁰

A study undertaken by BlackRock Investments recently found that ‘while presenting the opportunity for higher returns, gender diversity also presents investors with those returns at lower levels of risk.’⁴¹ The implementation of a diversity policy is widely considered to be a fundamental step in transforming the diversity profile of boards.

Figure 12: The Uptake of Diversity Recommendations

Criteria	# Companies	Index Average
Have a Diversity Policy	54	61%
Disclosed Female Staff % or Numbers	74	83%
Objectives disclosed in Annual Report (3.3)	29	33%

61% of companies in the index indicated that they had implemented a diversity policy (Figure 13). Reasons for not implementing a diversity policy included: not believing the company was of sufficient size to warrant a diversity policy⁴²; stating that current adherence to the Equal Opportunity Act meant that a diversity policy was not required; and statements that as diversity was much wider than simply gender, a gender focused diversity policy would be inappropriate⁴³.

On deeper analysis, the data suggests that diversity may lead to greater diversity (Figure 14).

Figure 13: Diversity Metrics by Diversity Category. Does Diversity Breed Diversity?

	No Females (Chair, CEO, Board or Exec)	No Female Directors But have Female Snr Execs	Female Directors (Not in Chair or CEO Role)	Female CEO	Female Chair
# Companies	26	27	22	11	3
% Index	29%	30%	25%	12%	3%
Female Chair?	0%	0%	0%	0%	100%
Female CEO?	0%	0%	0%	100%	33%
Women Directors?	0%	0%	100%	91%	100%
# Women Directors	0.0	0.0	1.2	1.6	1.3
% Women Directors	0%	0%	22%	29.1%	30.6%
%Women Senior Executives	0%	32%	30%	35%	38.5%
Diversity Policy	27%	74%	77%	64%	67%
Objectives disclosed in Annual Report (3.3)	19%	30%	45%	45%	0%
% Female Employees	42%	¹⁵ 45%	50%	66.3%	70.5%
% of Cohort that did Not Disclose Female Employment #s	35%	15%	18%	18%	33%

40. ASX Corporate Governance Principles 2010, above n 32, 24.

41. Pru Bennett, Why Corporate Australia's Gender Policies Need To Be Wound Into Their DNA BlackRock Investment Management (Australia) Limited, (2014) 3.

42. Example: Optiscan Ltd Annual Report (2013) 14, <http://www.optiscan.com/investors/pdf/ann_rep_2013_1.pdf>.

43. Example: Avita Medical Ltd Annual Report (2013) p 37 <<http://www.avitammedical.com/?ob=3&id=384>>.

What is clear from the data is that the presence of women in either senior executive or director roles has a real and fundamental impact on whether or not a company has implemented a diversity policy. In the 26 companies where there are no women in director or senior executive roles, only 27% have adopted a diversity policy, in comparison to an adoption rate of 64-77% in companies which do have women in senior roles. They are also 11-25% less likely to have disclosed objectives for gender diversity in their annual report.

7.3 Recommendations 3.3 & 3.4 Measurable Objectives & Female Workforce Participation

3.3 Company disclosure in each annual report of the measurable objectives for achieving gender diversity.⁴⁴

3.4 Company disclosure in each annual report of the proportion of women employees in the whole organisation, women in senior executive positions and women on the board.⁴⁵

Whilst 83% of all companies disclosed their gender diversity employment figures at some level (not all included total female staff across the organisation, but most included senior executives and board members), only one third of companies disclosed measurable objectives in their annual reports.

Unsurprisingly, those companies with diversity policies in place were four times more likely to disclose measurable objectives relating to diversity (Figure 15).

Figure 14: The Relationship Between Having a Diversity Policy & Compliance with Other Diversity Recommendations

Companies With Diversity Policy	Companies Without Diversity Policy			
	# Companies	% Cohort	# Companies	% Cohort
Total Companies	54	100%	35	100%
Disclose Measurable Objectives	24	44%	4	11%
Disclose Gender Staff Numbers	45	83%	28	80%

⁴⁴. ASX Corporate Governance Principles 2010, above n 32, 25
⁴⁵. Ibid.

It appears that the specific role played by women in the organisation does not have a substantive impact; rather, it is the presence of women at senior executive or board level that correlates with the existence of measurable objectives and disclosure of staff numbers by gender.

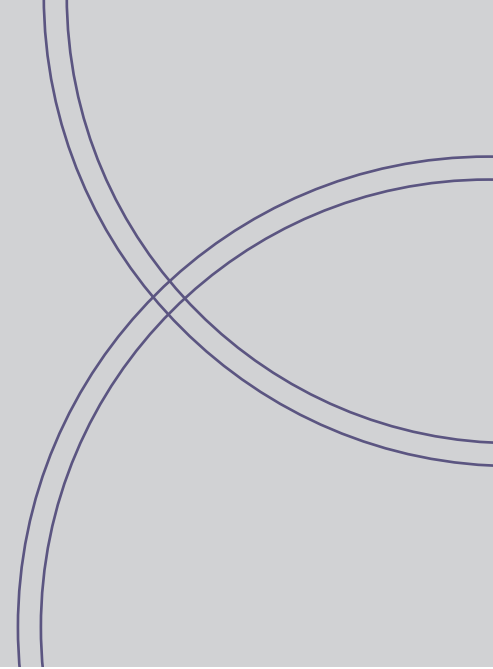
Only 19% of companies with no women in leadership (board or executive) roles disclosed annual objectives for gender diversity, in comparison to 30-45% in those organisations which had women in leadership roles. Interestingly, of the three companies which were chaired by women, none complied with recommendation 3.3. Companies with no women in leadership roles and companies chaired by women also had the lowest rate of adherence to reporting on gender workforce participation (Figure 16).

Figure 15: Adherence with Diversity Recommendations by Diversity Category

	No Females (Chair, CEO, Board or Exec)	No Female Directors But have Female Snr Execs	Female Directors (Not in Chair or CEO Role)	Female CEO	Female Chair
Diversity Policy	27%	74%	77%	64%	67%
Objectives disclosed in Annual Report (3.3)	19%	30%	45%	45%	0%
% Female Employees	42%	45%	50%	66.3%	70.5%
% of Cohort that did Not Disclose Female Employment #s	35%	15%	18%	18%	33%

However, the cohort of companies with women in the role of chair is so small (n=3) that it is difficult to draw a conclusive opinion on whether having a female chair impacts on adherence to the recommendations. Nonetheless, it is clear that diversity remains a substantive issue in the 29% of the index with no women in leadership.

In those companies with no women the uptake of the diversity recommendations in the ASX Principles is substantively poor in comparison to the rest of the index, suggesting that in this cohort there is no appetite for change and lending credence to the 'old boys club' reputation that the industry attracts.



8. The Use & Independence of Board Committees

The roles of committees on boards provide a framework for focused attention on key areas of board responsibility. The key committees under the ASX Principles are the:

- Nomination committee;
- Audit committee; and the
- Remuneration committee.

Board committees under the guidelines are required to fulfil a standard set of guidelines under the principles. They are⁴⁶:

- The committee should be comprised of a majority of independent directors;
- The committee should have a chairperson who is an independent director and is not the chairperson of the board; and
- The committee should have at least three members.

In addition, it is suggested that audit committees should be comprised only of non-executive directors.⁴⁷

For the purposes of this paper, nomination and remuneration committees (Recommendations 2.4 and 8.1) will be dealt with together. This arises from the fact that due to a prevalence of small companies, many of the companies in the index have a joint nomination and remuneration committee, or only have one or the other.

Figure 15: Adherence with Diversity Recommendations by Diversity Category

# Board Committees	# Companies	% Index
0	9	10%
1	9	10%
2	47	53%
3	18	20%
4	3	3%
5	3	3%

8.1 Use of Committees Across the Index

Ninety per cent of the companies in the index have at least one board committee (Figure 17). In general, where companies do not have any board committees, they state that the full board fulfils the role of the committees, which negates the role of the committee as a predominantly independent sub-group which meets away from the influence of an executive director.

⁴⁶. *Ibid* 18, 26, 37.
⁴⁷. *Ibid* 26.



Half of the index have two committees, with 26% of companies having three or more. Additional committees, where used, tend to be in areas specific to the sector such as innovation and intellectual property, or due diligence and transactions.

Unsurprisingly, the average number of committees increases with market capitalisation (Figure 18). Smaller companies are more likely to fulfil specific committee roles using the full board. This may increase the risk of the committee functions being less independent of executive management, but is possibly a realistic approach given the very small size of some boards.

Figure 17: Board Committees by Market Capitalisation

Market Cap as at 28 June 2013	1-25M	26-50M	50-100M	101-500M	500M
# Board Committees	1.7	2.2	2.4	2.6	3.0

The highest rate of committee use is that of audit committees with 90% of companies utilising an audit committee. 22% of companies do not have either a remuneration or nomination committee, 31% of companies use a joint nomination and remuneration committee and 45% of all companies keep the two functions separate.

8.2 Recommendations 4.1 & 4.2: Audit Committees

Recommendation 4.1: Company Audit Committees

Recommendation 4.2: The Audit Committee to be structured so that it is predominantly independent and is chaired by an independent director.

Principle 4, Safeguard Integrity in Financial Reporting, calls for the establishment of an audit committee. The committee's function is to ensure that the company has a system of review and authorisation as relates to the financial position of the company and its 'truthful and factual presentation'.⁴⁸ According to the commentary in the Principles, the system should allow for the audit committee's review of financial statements and information, as well as ensuring 'the independence and competence of the company's external auditors.'⁴⁹

Audit committees are the most prevalent board committee across the index, used by 90% of companies surveyed. The remaining nine companies have no board committees at all and use their full board to fulfil committee roles. Ninety one per cent of companies utilising an audit committee had an independent chair of the committee and the average percentage of representation of independent directors was 85%.

48. Ibid 26.
49. Ibid.

Figure 18: Use of Audit Committees by Market Capitalisation

Market Capitalisation at 28 June 2003	1-25M	26-50M	51-100M	101-500M	500M+
# Companies with an Audit Committee	37	11	11	13	7
% Group with an Audit Committee	79%	100%	100%	100%	100%
Average Number of Directors on Audit Committee	2.7	2.8	2.7	3.1	3.1
% of Companies with an Independent Chair of Audit Committee	89%	82%	91%	100%	100%
Average Number of Independent Directors on Audit Committees	2.2	2.2	2.4	3.0	3.1
Average % Independents Audit Committees	79.4%	75.8%	89.4%	97%	100%

The lack of oversight of an audit committee is really only a factor in the sub \$25m market capitalisation group (Figure 19). This is not unexpected, given that these companies often have very small boards and limited resources. Despite this, uptake of audit committees is still 79% in this group, demonstrating that most boards accept that this is a key role for a focused, predominantly independent sub-group of the board.

8.3 Recommendations 2.4, 8.1 & 8.2: Nomination Committees & Remuneration Committees

*Recommendation 2.4: The Company to have a Nomination Committee structured so that it is predominantly independent and is chaired by an independent director.*⁵⁰

*Recommendation 8.1: The Company to have a Remuneration Committee*⁵¹

*Recommendation 8.2: The Remuneration Committee to be structured so that it is predominantly independent and is chaired by an independent director.*⁵²

The establishment of a nomination committee falls under Principle 2, Structure the Board to Add Value⁵³. Dunbar states, ‘The nomination committee is an important tool in the appointment of the independent director as it assists in making sure that the ‘hard’ elements of independence are met... The nomination committee circumvents the possibility of independent directors formally meeting the criteria of being independent,

50. Ibid 18.
51. Ibid 26.
52. Ibid.
53. Ibid 18.

but in fact being appointed by executive management.⁵⁴

The use of nomination and remuneration committees across the sector clearly increases as the size of the company increases. Approximately one third of companies with a market capitalisation of less than \$25m had no nomination or remuneration committee, whereas larger companies were more likely to have these committees. The use of joint committees also decreases with market capitalisation, with companies with a market capitalisation in excess of \$50m having 64% or more likelihood of having separate nomination and remuneration committees (Figure 20).

Figure 19: Use & Structure of Nomination & Remuneration Committees

Market Capitalisation at 28 June 2003	1-25M	26-50M	51-100M	101-500M	500M+
Total # Companies in Group	47	11	11	13	7
# Companies with Separate Nomination & Remuneration Committees	16	3	7	9	5
% Group with Separate Nomination & Remuneration Committees	34%	27%	64%	69%	71%
# Companies No Nomination or Remuneration Committee	15	1	1	2	0
% Group with No Nomination or Remuneration Committee	32%	9%	9%	15%	0%

Across all groups the rate on independence in the chair was high, with 100% of companies valued at over \$50m with joint committees having an independent in the role of committee chair. Companies with a market capitalisation of 26-50m are the most likely to have adopted a joint committee structure, with 64% of this group indicating use of a joint committee (Figure 21). In the smaller market capitalisation groups of sub \$25m and \$26-50m, the rate of independence remained high at 86% and 71%.

Figure 20: Use of Joint Nomination & Remuneration Committees

Joint Nomination & Remuneration Committees	1-25M	26-50M	51-100M	101-500M	500M+
# Companies with a Joint Nomination/Remuneration Committee	14	7	3	2	2
% Group with Joint Committee	30%	64%	27%	15%	29%
# Directors Joint Committee	3.2	2.7	2.7	3.0	3
% Cohort Independent Chair	86%	71%	100%	100%	100%
Ave # Independent Directors	2.6	2.1	2.7	3.0	3
% Independent Directors	82.1%	78.6%	100.0%	100%	100.0%

The use of separate nomination committees is at its lowest in companies with a market capitalisation of \$26-50m, but this is in most part due to the high use of joint committees in this group.

Across the entire index only 29% of boards have a dedicated nomination committee (Figure 22). Only 17% of companies valued at less than \$25m category had a nomination committee. This is an area of concern, as these boards are also most likely to have a combined CEO/chair, and/or a dominant or influential founder or early stage investor on their board.

As a tool which acts to prevent executive management having undue influence over the appointment of independent directors, it is disappointing to see such a low adoption rate. It could also be surmised that this may be a contributing factor in the low levels of diversity as it points to a lack of formal, independent process around the selection and recruitment of board members.

However, where nomination committees are used, in 100% of all committees the chair role and over 90% of all committee seats were filled by independent directors, showing that those companies that did follow the recommendation took the outlined requirements for independence seriously.

Figure 21: Use of Separate Nomination Committees

Nomination Committees	1-25M	26-50M	51-100M	101-500M	500M+
# Companies with Nomination Committee	8	1	4	9	4
% Group with Nomination Committee	17%	9%	36%	69%	57%
Ave # Directors	3.3	3.0	2.5	3.7	5
% Cohort Independent Chair	100%	100%	100%	100%	100%
Ave # Independent Directors	3.1	3.0	2.5	3.3	5
% Independent Directors	95.8%	100.0%	100.0%	93%	100.0%

Principle 8 states that ‘a company needs to balance its desire to attract and retain senior executives and directors against its interest in not paying excessive remuneration.’⁵⁵ The purposes of the remuneration committee are to give effect to this objective. Under the Principles the ASX indicates that this committee may not be necessary for smaller boards, where the board has suitable processes put in place to ensure reasonable remuneration policies are in place.⁵⁶

Use of a remuneration committee is lower in the smaller companies, with over 70% of all companies with a market capitalisation of \$51m or more having a remuneration committee and only 31% of sub \$50m companies having one (Figure 23). In the groups with a market capitalisation of \$51-100m and \$500m plus, all companies which do not have a joint nomination and remuneration committee have a separate remuneration committee.

55. ASX Corporate Governance Principles 2010, above n 32, 36
56. Ibid.

Figure 22: Use of Separate Remuneration Committees

Remuneration Committees	1-25M	26-50M	51-100M	101-500M	500M+
# Companies with Remuneration Committee	16	2	8	9	5
% Group with Remuneration Committee	34%	18%	73%	69%	71%
Ave # Directors	2.8	3.0	2.9	3.2	3
% Cohort Independent Chair	100%	100%	88%	100%	100%
Ave # Independent Directors	2.4	2.0	2.5	3.0	3
Ave % Independent Directors	81.4%	66.7%	92.5%	94%	100.0%

Across the board separate remuneration committees are more prevalent than separate nomination committees. It would be reasonable to assume this is due to the focus of investors on remuneration, and also the impact of the two strikes rule.

9. Ownership Matters: The Myth of the Widely Held Listed Company

Corporate governance theory to a large extent is based on the separation of management and ownership. The 'agency problem' refers to the situation which occurs due to the separation of management and ownership. It suggests that although the separation of ownership (shareholders) from control (directors) provides for a situation where those managing the corporation (ideally) have a specific set of skills, knowledge and expertise, it also creates a scenario where the welfare of shareholders is placed in the hands of a limited few, who may be motivated to act in their own interests.⁵⁷

The agency problem is addressed via a variety of means including market forces, audits, corporate governance frameworks and the legal and statutory duties of directors. One of the other mechanisms that can be used to address the agency problem is shareholder activism.⁵⁸

The prevalence of shareholder activism is increasing in the Australian corporate environment⁵⁹. The implementation of the 'two strikes rule' has been seen as creating a fundamental shift in power back to the shareholders. However, the fundamental premise of shareholder activism is that small shareholders, acting collectively, can have an impact on the management of the company, holding them accountable and thus addressing the agency problem.

ASX Listing Requirements state that, upon listing, a company must have a minimum of 300-400 shareholders, depending on the company, each holding a marketable parcel valued at \$2000 or more⁶⁰. It is often commonly assumed, therefore, that listed companies have a broad shareholder base, each with a small parcel of shares - i.e. that there is no shareholder or group of shareholders with absolute control of the company.

Given the understanding that the founders and early investors in many life sciences companies retain substantial shareholdings, the concentration of ownership in the top 5 and top 20 shareholders was assessed to ascertain how much voting power small shareholders actually have. One company was excluded from this assessment as the top shareholdings information was not readily available.

9.1 What does ownership really look like in the life sciences sector?

Across the entire index, on average the top five shareholders control an average of 41.89% of the company and the top 20 shareholders control 60.46% (Figure 24).

Figure 23: Ownership of Top 5 & Top 20 Shareholders by Market Capitalisation

Ownership	1-25M	26-50M	51-100M	101-500M	500M+
% Company held by top 5 shareholders	37.6%	51.8%	42.3%	40.58%	59.3%
% Company held by top 20 shareholders	58.3%	66.6%	56.7%	61.26%	73.0%

57. Boros, Elizabeth and John Duns Corporate Law (Oxford University Press, 3rd Edition, 2013), 90.

58. Ibid

59. Elliott, Evans-Cullen and Halstead, above n 11.

60. Australian Securities Exchange ASX Listing Requirements (Online) <<http://www.asx.com.au/listings/listing-capital-raising/listing-requirements.htm>>.

There are no consistent trends on ownership according to market capitalisation (Figure 26), although the very high concentration of ownership in the largest companies has an average of 59% ownership in the hands of the top 5 shareholders and 73% in the hands of the top 20.

Somewhat surprisingly, the ownership issue is widespread across the subsectors (Figure 26), with no particular concentration in the biopharmaceuticals sector, which is often touted as requiring the most capital and taking the most time to reach a commercial outcome. In fact medical device companies, often promoted for their shorter time to commercialisation and lower capital requirements, feature a higher concentration of ownership.

Figure 24: Ownership of Top 5 and Top 20 Shareholders by Sub Sector

Sub Sector	BioPharmaceuticals	Medical devices	Healthcare Equipment & Services	Other
% Company held by top 5 shareholders	38.8%	43.0%	53%	38.4%
% Company held by top 20 shareholders	56.8%	62.9%	70%	54.3%

It is likely that the very high capital requirements of life sciences is a contributing factor in the concentration of ownership shown across the sector. On the path to commercialisation, many life sciences companies need to raise multiple rounds of capital, with each subsequent raise diluting the existing shareholders. Whilst institutional investors with an existing exposure to the company are often capable of and willing to participate in each capital raise, many retail investors may not be able to, further compounding the concentration of ownership and control in the hands of a small minority. From an investor perspective, retail shareholders should be aware when investing that they will often not have any ability to influence the board or management of the company without the participation of at least one, if not all, of the top five shareholders.

10. Conclusions

Interesting trends were also observed across the index, giving a varied picture on the quality of governance in the listed sector.

In general size of the companies, as defined by market capitalisation, had a major impact on governance performance.

Notwithstanding market capitalisation, board sizes are generally small, between 4 and 6 directors, with 60% of all companies having an independent chairperson. However independent directors make up, on average 65% of a board. There remains a cohort of 20 companies (22% of the index) that has not separated the roles of CEO and chairman. This is likely to be due to a founder or early stage investor retaining this role.

Diversity is an issue for the sector, with the data supporting the anecdotal claim that the sector is dominated by men. Sixty per cent of companies had no women at board level and 29% of the index had no women at board or executive level. For an industry with 49% female employment, this suggests a systemic problem in

progressing women through into executive and director ranks. Ironically, 61% of companies had a diversity policy and rates of disclosure of female participation were relatively high. Many companies did not disclose measurable objectives with only 33% of companies doing so. It was also observed that compliance with diversity recommendations was significantly lower in companies that did not have women represented at board or executive level.

Committee use is strong across the sector with only 10 companies not using a committee structure at all. Audit committees were used by 90% of companies and had very high levels of independence in the chair and on the committee itself. Nomination and remuneration committees were less prevalent, although where used had persistently high levels of independent chairs and representation of independent directors.

Nomination committees were the least utilised committee with only 29% of boards having a dedicated nomination committee.

Ownership remains an area of the sector which requires further assessment. It is clear that ownership across the sector remains heavily concentrated with an average of 41.2% of companies owned by the top five shareholders and over 60% owned by the top 20 shareholders. In four companies, the top 20 shareholders control over 95% of the total equity on issue.

As global fund managers and investor focus on corporate governance increases, especially in the context of assessing performance against published guidelines, the need to focus on performance in corporate governance will become a core issue for companies. Best practice governance can be seen as a factor in mitigating investment risk and should be a priority for growth companies in sectors, such as the life sciences, where other types of risk are also high.

Although much progress has been made on the governance front, it appears from the quantitative data, that there are still improvements which can be addressed at an industry-wide level.

11. Appendix 1:

Companies in the BioShares Index

Source: BioShares (2013) 509 BioShares Quarterly Review, 5-10.

Company Name	ASX Ticker	Principal Activities	Classification	Market Cap (AU\$m)	Share Price
Acrux	ACR	Developer of the transdermal drug products Axiron, Evamist/ Ellavie and Recuvyra	BioPharmaceuticals	584	\$3.51
Actinogen	ACW	Early stage developer of antibiotics that show activity against MRSA and VRE bacteria	BioPharmaceuticals	2	\$0.02
Advanced Surgical Design & Manufacture	AMT	A developer and manufacturer of prosthetic implants and medical devices	Medical Devices	5	\$0.11
Agenix	AGX	Developing a compound to treat Hepatitis B, AGX1009. Also seeking a partner in China to develop Thromboview, an imaging agent. Completed 1:25 share consolidation	BioPharmaceuticals	2	\$0.02
Alchemia	ACL	Biopharmaceutical company with a revenue generating product, generic fondaparinux. Lead product HA-Irinotecan in a pivotal Phase III trial for colorectal cancer.	BioPharmaceuticals	104	\$0.32
Allied Health (Now Admedus)	AHZ	Diversified medical products group. Investor in Coridon, a vaccine technology company.	Healthcare equipment & services	51	\$0.05
Analytica	ALT	A medical devices company that has developed a retractable syringe	Medical Devices	11	\$0.02
Anteo Diagnostics	ADO	Developer of a biological coatings technology that can be applied to immunoassays, bio-separations, drug delivery and other medical devices	Medical Devices	46	\$0.06
Antisense Therapeutics	ANP	Developing antisense compounds to treat multiple sclerosis and acromegaly	BioPharmaceuticals	14	\$0.01
Asian American Medical Group	AJJ	Manages liver treatment centres in Asia . Recently changed name from Asian Centre for Liver Diseases and Transplantation	Healthcare equipment & services	26	\$0.13

Company Name	ASX Ticker	Principal Activities	Classification	Market Cap (AU\$m)	Share Price
AtCor Medical	ACG	Markets the SphygmoCor device, a noninvasive technology that provides information regarding the functioning of the cardiovascular system	Medical Devices	11	\$0.07
Australian Pharmaceutical Industries	API	Pharmaceutical wholesaler	Healthcare equipment & services	210	\$0.43
Avexa	AVX	Developing an HIV drug, apricitabine. Has invested in a US coal company.	BioPharmaceuticals	12	\$0.01
Avita Medical	AVH	Markets ReCell, a skin repair product	Medical Devices	44	\$0.14
Benitec Biopharma	BLT	R&D company focusing on gene silencing, specifically DNA delivered RNAi technology	BioPharmaceuticals	16	\$0.01
BioDiem	BDM	Focused on the development of LAIV influenza vaccines	BioPharmaceuticals	5	\$0.03
Bioniche	BNC	Developing a bladder cancer treatment and food safety vaccine; sale of veterinary products	BioPharmaceuticals	32	\$0.30
Bionomics	BNO	Developing drugs to treat cancer and CNS diseases, and has also developed a gene diagnostic for epilepsy.	BioPharmaceuticals	140	\$0.34
Biotron	BIT	Developing compounds to treat HCV and HIV.	BioPharmaceuticals	12	\$0.08
Blackmores	BKL	Manufactures vitamin, mineral and herbal supplements and skin & hair products in Australia and N.Z.	Other	457	\$26.94
Bluechiip	BCT	Development, manufacture and commercialisation of a tracking system for biological samples	Medical Devices	16	\$0.17
Bone Medical	BNE	Developing treatments for bone and joint degenerative diseases such as arthritis and osteoporosis.	BioPharmaceuticals	1	\$0.00
Brain Resource	BRC	Development and commercialisation of functional brain analysis techniques	Medical Devices	25	\$0.27
Calzada	CZD	Holds a 100 % stake in PolyNovo, a polymer chemistry company.	BioPharmaceuticals	26	\$0.07

Company Name	ASX Ticker	Principal Activities	Classification	Market Cap (AU\$m)	Share Price
Cellmid	CDY	Developing therapies that target the midkine protein. Recently launched a range of hair loss products.	BioPharmaceuticals	16	\$0.02
Circadian Technologies	CIR	Developing drugs, including antibodies, around the VEGF C and VEGF D targets	BioPharmaceuticals	11	\$0.24
Clinuvel Pharmaceuticals	CUV	Developing an analogue of the alpha-MSH protein, named Scenesse, as a photo-protective agent	BioPharmaceuticals	69	\$1.81
Clover Corporation	CLV	Development and production of omega-3 food additives from tuna oil.	Other	95	\$0.58
Cochlear	COH	Manufactures cochlear hearing implants	Medical Devices	3,520	\$61.71
Cogstate	CGS	Marketing cognitive performance diagnostic products	Medical Devices	28	\$0.36
Compumedics	CMP	Develops, manufactures and markets sleep diagnostic and monitoring equipment.	Medical Devices	9	\$0.06
Cordlife	CBB	Rolling out tissue banking services in Australia and Asia	Healthcare equipment & services	8	\$0.05
Cryosite	CTE	Provides specialised storage services, especially for umbilical cord blood	Healthcare equipment & services	20	\$0.43
CSL	CSL	Manufactures pharmaceutical products including vaccines and human plasma fractions	Biopharmaceuticals	30,056	\$61.58
Cyclopharm	CYC	A nuclear medicine company that markets the Technegas lung imaging system	Medical Devices	10	\$0.18
Ellex Medical Lasers	ELX	Develops, manufactures and markets solid state ophthalmic lasers used to treat secondary cataracts and retinal disorders.	Medical Devices	17	\$0.20
Genera Biosystems	GBI	Develops, manufactures and distributes advanced molecular diagnostic tests, with a particular focus on women's health.	Medical Devices	9	\$0.11
Genetic Technologies	GTG	Provides DNA paternity testing services and holds broad patents relating to the use of non-coding DNA.	Medical Devices	45	\$0.10
GI Dynamics, Inc	GID	Commercialising the Endobarrier, an implantable polymer liner for the management of obesity and diabetes	Medical Devices	178	\$0.60

Company Name	ASX Ticker	Principal Activities	Classification	Market Cap (AU\$m)	Share Price
Holista Colltech	HCT	Has developed a novel technology for the extraction of collagen from sheepskins	Medical Devices	3	\$0.06
IDT Australia	IDT	Manufacturer of pharmaceutical ingredients to international standards for major pharmaceutical groups.	Healthcare equipment & services	11	\$0.20
Immuron	IMC	Sales and development of hyper-immune bovine colostrum products for therapeutic use	BioPharmaceuticals	4	\$0.00
Impedimed	IPD	Markets products that aid the diagnosis of secondary lymphoedema, muscle wasting and other disorders	BioPharmaceuticals	16	\$0.09
Imugene	IMU	Now a drug delivery technology company. Has acquired Linguet asset from CGP	BioPharmaceuticals	1	\$0.00
Invion	IVX	Formerly Cbio. Evaluating Xtoll biologic for lupus and developing an approved heart drug, Nadalol, for COPD and asthma.	BioPharmaceuticals	15	\$0.03
Isonex	ISN	Respiratory and pulmonary devices company. Recently completed 20:1 share consolidation.	Medical Devices	79	\$0.36
ITL	ITD	Develops and distributes medical devices such as safety equipment to prevent needle stick injuries and sterile preparation kits.	Medical Devices	25	\$0.28
LBT Innovations	LBT	Developed the MicroStreak technology for the automation of microbiology laboratory processing. Now developing an Automated Optical Plate Sorting system.	Medical Devices	9	\$0.10
Living Cell Technologies	LCT	Developing cell therapies for diabetes, haemophilia and Huntington's disease	BioPharmaceuticals	15	\$0.04
Mayne Pharma	MYX	Developing an improved dosing anti-fungal drug, Subazole and operating manufacturing services. Acquired Metrics, a private US generics business.	BioPharmaceuticals	242	\$0.43
Medical Australia	MLA	Manufacture and supply of medical devices and equipment. Not previously included in these tables. Previously known as BMDI Tuta and IMD Group	Medical Devices	8	\$0.02
Medical Developments	MVP	Commercialising the Pentrox inhaler for temporary pain relief. Used widely in ambulances across Australia.	Medical Devices	73	\$1.27

Company Name	ASX Ticker	Principal Activities	Classification	Market Cap (AU\$m)	Share Price
Medigard	MGZ	Developed retractable syringe technology and other safety medical products.	Medical Devices	3	\$0.03
Mesoblast	MSB	Developing therapies based on mesenchymal pre-cursor stem cells, with applications in cartilage regrowth and heart and bone repair.	BioPharmaceuticals	1,668	\$5.30
Nanosonics	NAN	Developing a novel disinfection technology, the first product is a point of care ultrasound probe disinfection unit	Medical Devices	158	\$0.61
Neuren Pharmaceuticals	NEU	Developing neuroprotective therapeutics	BioPharmaceuticals	84	\$0.07
Novogen Limited	NRT	Acquired Triaxial Pharmaceuticals in 2012. Now developing 'super' benzopyrans for the treatment of cancer.	BioPharmaceuticals	27	\$0.20
NuSep Holdings	NSP	Manufacture and sale of protein separations technologies	Medical Devices	6	\$0.05
OBJ	OBJ	Developing transdermal drug delivery technologies	BioPharmaceuticals	12	\$0.01
Oncosil Medical	OSL	Formerly Neurodiscovery. Acquired the former oncology assets of pSiVida, through the acquisition of Enigma Therapeutics.	BioPharmaceuticals	7	\$0.04
Optiscan Imaging	OIL	Manufacture of confocal microscopes for clinical diagnosis	Medical Devices	11	\$0.07
Osprey Med Inc	OSP	Developing the CINCOR system to limit the incidence of contrast induced nephropathy.	Medical Devices	50	\$0.49
Patrys	PAB	Developing human antibody therapies for the treatment of lung, pancreatic, gastric and colon cancers	BioPharmaceuticals	11	\$0.02
Pharmaxis	PXS	Markets the lung function test, Aridol. Bronchitol is approved in Europe for the management of cystic fibrosis.	BioPharmaceuticals	43	\$0.14
Phosphagenics	POH	Commercialising a platform technology (alpha-tocopherol) that improves the delivery of pharmaceutical and other products across the skin.	BioPharmaceuticals	133	\$0.13
Phylogica	PYC	Developing peptide compound libraries for use in human therapeutics.	BioPharmaceuticals	8	\$0.02

Company Name	ASX Ticker	Principal Activities	Classification	Market Cap (AU\$m)	Share Price
Prana Biotechnology	PBT	Developing drugs to treat CNS diseases such as Alzheimer's and Parkinson's	BioPharmaceuticals	93	\$0.25
Prima Biomed	PRR	Developing the CVac immunotherapy.	BioPharmaceuticals	78	\$0.07
Probiotec	PBP	Manufacturer, marketer and distributor of a range of over the counter (OTC) pharmaceuticals, complementary medicines and speciality ingredients	Other	15	\$0.28
Progen Pharmaceuticals	PGL	A developer of cancer therapeutics, including PI-88 and PG545	BioPharmaceuticals	12	\$0.23
pSivida Corp	PVA	Developing drug delivery technologies, with a special focus on ophthalmic applications	BioPharmaceuticals	93	\$4.00
QRxPharma	QRX	Developing a 'dual opioid' drug (MoxDuo) to treat moderate to severe pain.	BioPharmaceuticals	152	\$1.05
ResMed Inc.	RMD	Manufactures diagnostic and treatment equipment for sleeping disordered breathing	Medical Devices	7,169	\$5.00
Resonance Health	RHT	Marketing the FerriScan technology, a non-invasive tool for measuring liver iron levels	Medical Devices	4	\$0.01
Reva Medical, Inc	RVA	Developing a bioresorbable coronary stent	Medical Devices	186	\$0.56
Rhinomed	RNO	Developing the BreatheAssist product. Completed a 5:1 share consolidation.	Medical Devices	7	\$0.03
SciGen Limited	SIE	Developer and manufacturer of biopharmaceuticals. Company is based in Singapore and was spun out of Sonic Healthcare in 2002.	BioPharmaceuticals	11	\$0.02
SDI Limited	SDI	Manufacture & distribution of amalgam (fillings) & other dental materials and product R&D.	Healthcare equipment & services	61	\$0.51
Sigma Pharmaceutical	SIP	Pharmaceutical manufacturing and wholesaling	Healthcare equipment & services	891	\$0.79
Sirtex Medical	SRX	The company's core technology uses radioactive particles to irradiate tumours in the liver. Approved for use in most major regions.	Medical Devices	668	\$11.98
SomnoMed	SOM	Markets oral devices for the treatment of sleep apnea and snoring.	Medical Devices	39	\$0.91

Company Name	ASX Ticker	Principal Activities	Classification	Market Cap (AU\$m)	Share Price
Starpharma Holdings	SPL	Developer of pharmaceutical applications of chemical scaffolds known as 'dendrimers'	BioPharmaceuticals	231	\$0.82
Suda	SUD	Developing the anti-malarial product ArTiMist. Recently changed name from Eastland Medical Systems	BioPharmaceuticals	16	\$0.03
Tissue Therapies	TIS	Developing the VitroGro product for ulcer and wound healing	BioPharmaceuticals	25	\$0.12
Unilife Corporation	UNS	Developer of retractable syringes	Medical Devices	304	\$0.57
Universal Biosensors	UBI	Development, manufacture and commercialisation of a range of in vitro diagnostic tests for point-of-care use	Medical Devices	117	\$0.67
Uscom	UCM	Marketing a non-invasive heart output function monitor. Recently acquired Pulsecor, which has developed a non-invasive central blood pressure product.	Medical Devices	12	\$0.17
Viralytics	VLA	Developing a cancer treatment based on the application of viruses (oncolytic virus technology)	BioPharmaceuticals	21	\$0.25
Vita Life Sciences	VSC	Development, manufacture and distribution of prescription and OTC medicines as well as complementary and alternative medicines, dietary supplements and health foods	Healthcare equipment & services	57	\$1.01

About Bronwyn Le Grice

Bronwyn has over 12 years' executive experience in the life sciences sector including senior business and corporate development roles in Australia and as Chief Executive Officer of NZBIO, New Zealand's national industry body representing bio-based industries.

Prior to joining Adherium, Bronwyn was an Investment Director with leading healthcare fund manager BioScience Managers in 2012, where she was a member of the investment team responsible for two funds totalling AU\$96M under management. She also project managed the acquisition of New Zealand company Rex Bionics on behalf of Union Medtech Plc and the merged entity's subsequent listing on the AIM market, including pre-IPO and IPO capital raisings of £10.9M.

Bronwyn joined Adherium in August 2014 to project manage the company's recent A\$35m capital raising and Initial Public Offering on the ASX. She joined the Adherium Executive team as Head of Commercial Development & Corporate Affairs and Company Secretary following the IPO.

Bronwyn is currently undertaking her Masters of Commercial Law at the University of Melbourne. She has a B.Com from the UWA, a Professional Certificate (Post Graduate) in Commercialisation from the University of Melbourne and is a Member of the Australian Institute of Company Directors.

About AusBiotech

AusBiotech is Australia's biotechnology organisation, working on behalf of members for almost 30 years to provide representation and services to promote the global growth of Australian biotechnology. AusBiotech is a well-connected network of over 3,000 members in the life sciences, including therapeutics, medical technology (devices and diagnostics), food technology and agricultural, environmental and industrial sectors.

AusBiotech is dedicated to the development, growth and prosperity of the Australian biotechnology industry, by providing initiatives to drive sustainability and growth, outreach and access to markets, and representation and support for members nationally and around the world.

AusBiotech has representation in each Australian state providing a national network to support members and promote the commercialisation of Australian bioscience in the national and international marketplaces.

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