

Gender diversity - now is the time to get ready.

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Equal Opportunity for Women in the Workplace Agency statistics show that the proportion of women directors on ASX 200 Boards fell from 8.7% in 2006 to 8.3% in 2008.^[1] This has sparked much debate in the media and a greater push for more proactivity by business to achieve gender diversity in the boardroom.

Women on Boards recently declared that ASX companies have until 2012 to achieve at least 25% female directors or it will start to push for Government intervention.^[2] Sex Discrimination Commissioner Elizabeth Broderick argues that gender equity would be for women to account for 40% of ASX 200 board directors.^[3]

From a regulatory viewpoint, the ASX has announced a proposal to expand the ASX Corporate Governance Principles and Recommendations (ASX Guidelines) to address the issue of gender diversity.^[4] Under the ASX proposals listed entities will be required to:

- establish a diversity policy that includes measurable objectives relating to gender as set by the board. This policy must be disclosed to the market in full or in summary;
- disclose in their annual report, on an “if not why not” basis, its achievement against the gender objectives set by the board;
- disclose in its annual report, on an “if not why not” basis, the proportion of women employees in the whole organization, in senior management and on the board;
- include in the charter of a board's nomination committee a requirement for that committee to continuously review the proportion of women at all levels in the company; and
- in the performance review of the board, include consideration of diversity criteria in addition to skills. Boards will be required to disclose what skills and diversity criteria they look for in any new board appointment.

The ASX Guidelines will apply to all listed entities with effect from 1 July 2010. This means that ASX listed entities will be expected to report against the above principles in their 2010-11 Annual Reports. The 2010-11 reporting season may seem a long time away, but for some companies it may be little time to implement procedural changes needed to support their gender diversity policy.

If there are no planned vacancies on a board in coming months, boards may need to consider increasing their size to accommodate a new director.^[5] Increasing the size of a board requires review of the company's constitution and director remuneration pool. Changes to a company's constitution to increase the number of directors on the board will require shareholder approval.^[6] Similarly, increasing the directors' remuneration pool to facilitate additional appointments requires shareholder approval.^[7]

Boards requiring such shareholder approvals will need to include them in the in their 2010 annual general meetings if they are to comply with the proposed ASX Guidelines. For many companies with a June financial year end, that is less than 6 months away.

These procedural issues are, of course, in addition to the actual recruitment process which can take several months to conclude.

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The public profile of the gender diversity issue is only likely increase and there will be great interest in how companies report against the proposed ASX Guidelines in their 2010-11 Annual Reports. To be well placed to weather such scrutiny, now is the time for boards to be considering their approach to gender diversity.

[1] "EOWA2008 Australian Census of Women in Leadership", Equal Opportunity for Women in Workplace Agency

[2] See <http://www.womenonboards.org.au/news/media091216.htm>

[3] "Women on boards: 'time for bold steps'", AFR, 18 March 2010

[4] "New ASX Corporate Governance Council Recommendations on Diversity", Australian Stock Exchange Media Release, 7 December 2009

[5] Jillian Segal (National Australia Bank and ASX Limited director) has suggested that each board in the ASX200 add one new female director in 2010 either by filling a vacancy or creating a new one – "Women on boards: 'time for bold steps'", AFR, 18 March 2010

[6] Section 136, Corporations Act

[7] Section 202A, Corporations Act

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