RESPONSIBILITIES OF THE BOARD OF DIRECTORS: A RESEARCH NOTE

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INTRODUCTION

This research note analyses the allocation of responsibilities between the board of directors and senior management in board charters by companies listed on the Australian Securities Exchange (ASX). There are several reasons why this research is of interest. First, the allocation of responsibilities between the board and senior management is an important part of the system of corporate governance established by companies. The ASX Corporate Governance Council defines corporate governance as "the framework of rules, relationships, systems and processes within and by which authority is exercised and controlled in corporations" with the aim of providing accountability and creating value for the company.[1] How responsibilities are allocated is part of this framework of rules, relationships, systems and processes by which authority is exercised. Investors have acknowledged the importance of companies properly allocating responsibilities between the board and management.[2] For example, the Financial Services Council (FSC) states that: "The respective roles of the board and senior management and the resulting allocation of responsibilities is a fundamental aspect of corporate governance … If the balance is not appropriate, the fundamental governance structure of the company will be flawed and may lead to poor company performance."[3]

Secondly, on occasions courts have identified the responsibilities of the board of directors. For example, in the New South Wales Supreme Court case *AWA Ltd v Daniels (t/as Deloitte Haskins & Sells)* (1992) 7 ACSR 759, Rogers CJ stated:

> A board's functions, apart from statutory ones, are said to be usually four-fold:
> (1) to set goals for the corporation;
> (2) to appoint the corporation's chief executive;
> (3) to oversee the plans of managers for the acquisition and organisation of financial and human resources towards attainment of the corporation's goals; and
> (4) to review, at reasonable intervals, the corporation's progress towards attaining its goals.[4]

It is useful to compare what the courts have said are the responsibilities of the board of directors with what companies themselves state are the responsibilities of their boards.

Thirdly, directors are required to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:

- were a director of a corporation in the corporation's circumstances; and
- occupied the office held by, and had the same responsibilities within the corporation as, the director.[5]

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[1] ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations with 2010 Amendments* (2nd ed, 2010) p 3.

[2] For example, the Australian Shareholders Association (ASA) states that "Companies should establish the functions reserved to the board and those delegated to senior executives and disclose those functions": ASA, *Policy Discussion Paper* (August 2013) p 3. The Australian Council of Superannuation Investors (ACSI) has indicated what it sees as the key responsibilities of the board: ACSI, *A Guide for Superannuation Funds to Monitor Listed Australian Companies*, ACSI Governance Guidelines (July 2013) pp6-7.

[3] FSC, *Corporate Governance: A Guide for Fund Managers and Corporations*, Guidance Note 2 (June 2009) at [11.14].

[4] *AWA Ltd v Daniels (t/as Deloitte Haskins & Sells)* (1992) 7 ACSR 759 at 865-866.

[5] *Corporations Act 2001* (Cth), s 180(1). This duty also applies to officers other than directors.

There are many court judgments applying the duty of care.[6] When courts apply the duty of care, they examine the responsibilities of the defendant director. It is therefore useful to identify what companies themselves state are the responsibilities of their directors.

Fourth, there has been an active debate about what responsibilities boards can delegate.[7] Section 198A(1) of the *Corporations Act 2001* (Cth) contemplates delegation by the board when it states that the business of the company is to be managed by or under the direction of the directors. In the *AWA* judgment, Rogers CJ stated: "Companies legislation has not sought to determine the proper division of functions between the board and management. Instead it evolved in response to the demands of changing company structures and commercial practices."[8] Chief Justice Rogers also stated that:

> The board of a large public corporation cannot manage the corporation's day to day business. That function must by business necessity be left to the corporation's executives. If the director of a large public corporation were to be immersed in the details of day to day operations the director would be incapable of taking more abstract, important decisions at board level… The directors rely on management to manage the corporation. The board does not expect to be informed of the details of how the corporation is managed. They would expect to be informed of anything untoward or anything appropriate for consideration by the board. In the context of the present case directors rely on management to:
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> (a) carry out the day to day control of the corporation's business affairs;
> (b) establish proper internal controls, management information systems and accounting records;
> (c) reduce to writing if appropriate and communicate policies and strategies adopted by the board;
> (d) implement the policies and strategies adopted by the board;
> (e) have a knowledge of and review detailed figures, contracts and other information about the corporation's affairs and financial position and summarise such information for the board where appropriate;
> (f) prepare proposals and submissions for consideration by the board;
> (g) prepare a budget;
> (h) attend to personnel matters including hiring and firing of staff and their terms of employment.[9]

A much discussed judgment in the context of delegation by directors is *Australian Securities and Investments Commission v Healey* (2011) 196 FCR 291; [2011] FCA 717. The defendant directors were held to have contravened their statutory duty of care and diligence by approving consolidated financial statements in circumstances where the statements failed to disclose significant matters and did not comply with the accounting standards. The non-executive directors argued they were entitled to rely on company management and the company's external auditors to ensure the financial statements complied with the accounting standards. However, the court stated that the non-executive directors relied "completely" and "solely" on management, their advisors, and the processes in place.[10] The court stated that the defendant directors could not substitute reliance upon others:

> [F]or their own attention and examination of an important matter that falls specifically within the board's responsibilities as with the reporting obligations. The Act places upon the board and each director the specific task of approving the financial statements. Consequently, each member of the board was charged with the responsibility of attending to and focusing on these accounts and, under these circumstances, could not delegate or 'abdicate' that responsibility to others.[11]

In addition, s 198D of the *Corporations Act* states that unless the company's constitution provides otherwise, the directors may delegate any of their powers to a committee of directors, a single director,

[6] For example, see the judgments discussed in Austin RP and Ramsay IM, *Ford's Principles of Corporations Law* (15th ed, LexisNexis Butterworths, 2013) Ch 8.

[7] Austin and Ramsay, n 6 at [8.340].

[8] *AWA Ltd v Daniels (t/as Deloitte Haskins & Sells)* (1992) 7 ACSR 759 at 865.

[9] *AWA Ltd v Daniels (t/as Deloitte Haskins & Sells)* (1992) 7 ACSR 759 at 866-867.

[10] *ASIC v Healey* (2011) 196 FCR 291; [2011] FCA 717, Middleton J at [569], [580] and [582].

[11] *ASIC v Healey* (2011) 196 FCR 291; [2011] FCA 717, Middleton J at [175].

an employee of the company, or any other person. Given these legal principles that apply to the delegation by boards of their responsibilities, it is important to identify what companies themselves state are the responsibilities of their directors.

DISCLOSURE BY COMPANIES OF BOARD RESPONSIBILITIES

ASX Listing Rule 4.10.3 requires listed entities to provide: "[a] statement disclosing 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 all of the recommendations the entity must identify those recommendations that have not been followed and give reasons for not following them."[12] The recommendations referred to in Listing Rule 4.10.3 are contained in the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations*. The Council identifies eight principles. Principle 1 – lay solid foundations for management and oversight – provides that companies should establish and disclose the respective roles and responsibilities of the board and management.[13]

It is stated in the *Corporate Governance Principles and Recommendations* that:

> Boards should adopt a formal statement of matters reserved to them or a formal board charter that details their functions and responsibilities. There should be a formal statement of the areas of authority delegated to senior executives. The nature of matters reserved to the board and delegated to senior executives will depend on the size, complexity and ownership structure of the company, and will be influenced by its tradition and corporate culture, and by the skills of directors and senior executives.
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> Disclosing the division of responsibility assists those affected by corporate decisions to better understand the respective accountabilities and contributions of the board and senior executives. That understanding can be further enhanced if the disclosure includes an explanation of the balance of responsibility between the chair, the lead independent director, if any, and the chief executive officer, or equivalent. The division of responsibility may vary with the evolution of the company.[14]

The *Corporate Governance Principles and Recommendations* contain a list of the responsibilities of the board which, according to the ASX Corporate Governance Council, are those which the board will usually be responsible for. They are:

- overseeing the company, including its control and accountability systems;
- appointing and removing the chief executive officer (CEO), or equivalent;
- where appropriate, ratifying the appointment and the removal of senior executives;
- providing input into and final approval of management's development of corporate strategy and performance objectives;
- reviewing, ratifying and monitoring systems of risk management and internal control, codes of conduct, and legal compliance;
- monitoring senior executives' performance and implementation of strategy;
- ensuring appropriate resources are available to senior executives;
- approving and monitoring the progress of major capital expenditure, capital management, and acquisitions and divestitures; and
- approving and monitoring financial and other reporting.[15]

METHODOLOGY

Our methodology was to survey board charters as board responsibilities are typically outlined in this document. However, some of the companies did not have a specific board charter so reference was also made to the corporate governance statements which companies are required to produce as a result of their disclosure obligations. The sample was 30 companies comprising the top 20 listed companies

[12] ASX, *ASX Listing Rules* (1 December 2013) p 408, http://www.asx.com.au/documents/rules/Chapter04.pdf.

[13] ASX Corporate Governance Council, n 1, p 10.

[14] ASX Corporate Governance Council, n 1, p 13.

[15] ASX Corporate Governance Council, n 1, pp 13-14.

in terms of market capitalisation ("top 20") as well as 10 companies chosen at random from the lower third of listed companies with small market capitalisation ("small capitalisation 10"). The date of selection of the 30 companies was 30 June 2013. The 30 companies are listed in Table 1. The companies represent a cross-section of industries including financials, energy, materials, health care, information technology, telecommunications and consumer discretionary/staples.

TABLE 1 List of companies in the sample

Top 20		
ASX Code	Company Name	Sector
AMP	AMP Ltd	Financials
ANZ	ANZ Bank Ltd	Financials
BHP	BHP Billiton Ltd	Materials
BXB	Brambles Ltd	Consumer discretionary
CBA	Commonwealth Bank of Australia	Financials
CSL	CSL Ltd	Health care
MQG	Macquarie Group Ltd	Financials
NAB	National Australia Bank Ltd	Financials
NCM	Newcrest Mining Ltd	Materials
ORG	Origin Energy Ltd	Energy
QBE	QBE Insurance Group Ltd	Financials
RIO	Rio Tinto Ltd	Materials
STO	Santos Ltd	Materials
SUN	Suncorp Group Ltd	Financials
TLS	Telstra Corporation Ltd	Telecommunications
WBC	Westpac Banking Corporation	Financials
WDC	Westfield Group	Consumer discretionary
WES	Wesfarmers Ltd	Consumer staples
WOW	Woolworths Ltd	Consumer staples
WPL	Woodside Petroleum Ltd	Materials
Small Capitalisation 10		
APP	APA Financial Services Ltd	Financials
CRQ	Credo Resources Ltd	Materials
EUM	Eumeralla Resources Ltd	Materials
GED	Golden Deeps Ltd	Materials
KAB	Kaboko Mining Ltd	Materials
MYA	MyATM Holdings Ltd	Consumer discretionary

TABLE 1 *continued*

NTM	Northern Manganese Ltd	Materials
PPY	Papyrus Australia Ltd	Industrials
SPI	Spitfire Resources Ltd	Materials
WNS	World.Net Services Ltd	Information technology

We analyse the top 20 ASX listed companies[16] because they constitute a large portion of the market capitalisation of the entire ASX. The total market capitalisation of the ASX as at 30 June 2013 was $1.34 trillion,[17] of which the top 20 companies constituted $7889 billion[18] (or 59%). There are approximately 2,100 companies listed on the ASX. So while the top 20 companies constitute only about one per cent of the total number of companies on the ASX, they constitute the majority of market capitalisation.

The small capitalisation 10 companies were selected randomly from companies that had a market capitalisation of less than $4 million as at 30 June 2013.[19] We selected 10 companies from the lower end of the ASX listed companies so that we could compare their board responsibilities with those of the top 20 companies. This methodology allows us to determine if matters reserved for the board are chosen with regard to the nature of the company itself.

In assessing the responsibilities listed by the companies in our sample, we identified the 20 most common responsibilities. We compared not only the top 20 and small capitalisation 10 disclosures regarding board responsibilities but also how the disclosures compared to the list specified by the ASX Corporate Governance Council. In assessing whether or not provisions in each company's board charter came within the Council's list, we searched for an explicit expression of the responsibility, rather than responsibilities that could be implied to fall within a particular category.

RESULTS AND DISCUSSION

In line with the *Corporate Governance Principles and Recommendations*, the overwhelming majority of companies that we surveyed (and all of the top 20) had a separate board charter as well as corporate governance statements. Typically, board charters specify a list of powers and responsibilities of the board and provide general limitations to be placed on management such as referral to the board on particular matters or restrictions on expenditure over a specified amount. The board charters also typically included a general delegation to the CEO/management although some companies chose more detailed delegations that specified the responsibilities and powers of management in a manner similar to the matters reserved for the board.[20] Of the companies surveyed, it was common to delegate the day-to-day business of the companies to the CEO and/or management. An example of such a delegation can be seen in the Wesfarmers Group board charter: "The Board delegates to the Group Managing Director all powers to manage the day-to-day business of the Group, subject to those powers reserved to the Board in clause 1 and any specific delegations of authority approved by the Board."[21] However, some companies had different drafting for their delegation provision; for example, National Australia Bank's charter states: "Directors may delegate their powers as they consider it appropriate. Ultimate responsibility for strategy and control of the Company rests with the directors."[22]

[16] The top 20 ASX companies provided by S&P Dow Jones Indices, McGraw Hill Financial, *S&P/ASX 20 (AUD)*, http://au.spindices.com/indices/equity/sp-asx-20.

[17] ASX, *End of Month Values*, (June 2013), http://www.asx.com.au/about/historical-market-statistics.htm#End_of_month_values.

[18] DatAnalysis Premium (2013), *ASX 20 Market Capitalisation as Reported at 1 July 2013* (11 October 2013).

[19] DatAnalysis Premium (2013), *ASX Listed Companies With Less Than $4 Million Market Capitalisation* (26 September 2013).

[20] For example, see CSL Limited, *Board Charter* (10 December 2013) Art 5, http://www.csl.com.au.

[21] Wesfarmers Limited, *Board Charter* (February 2013) Art 2.2, http://www.wesfarmers.com.au.

[22] National Australia Bank, *Principal Board Charter*, Art 5.1, http://www.nab.com.au.

TOP 20 COMPANIES

Table 2 provides a summary of the findings for the top 20 companies. The responsibilities of the board are ordered from most common to least common and the number of companies that had an explicit provision of that nature is indicated in brackets. The board responsibilities listed by the top 20 companies are consistent with the responsibilities listed as "usual" by the ASX Corporate Governance Council. The most important responsibilities (ranking equally important) were responsibilities: regarding strategic direction of the company; monitoring capital management, including approval of major capital expenditure; and remuneration framework, with 19 out of the top 20 companies including responsibilities of these types. Ranking just below this, with 18 out of 20 companies listing responsibilities of this type, were: risk management policy; overseeing succession planning; appointment and performance of the CEO and senior management; budget/financial approval/financial performance; and determination/approval of documents. Responsibilities that were listed by fewer companies in the top 20 included the right to alter matters reserved for its decision, external auditor performance and review of diversity initiatives and progress.

TABLE 2 Analysis of responsibilities reserved for the boards of top 20 companies

1. Strategic direction of the company (19/20)
2. Monitoring capital management, including approval of major capital expenditure (19/20)
3. Remuneration framework (19/20)
4. Risk management policy (18/20)
5. Overseeing succession planning (18/20)
6. Appointment and performance of CEO and senior management (18/20)
7. Budget/financial approval/financial performance (18/20)
8. Determination/approval of documents (as per constitution/statute/external regulation including financial reports and other reports) (18/20)
9. Review/monitor corporate governance policies and practices (16/20)
10. Overseeing external/internal audit activities and internal control and reporting systems (13/20)
11. Approval of acquisitions and divestments (13/20)
12. Evaluate board performance and composition (13/20)
13. Establishment and empowerment of the committees of the board (13/20)
14. Monitoring performance of management (13/20)
15. Corporate social responsibility (social, ethical and environmental impact of company's activities) (11/20)
16. Determine/approve dividend policy (9/20)
17. Review diversity initiatives and progress (8/20)
18. External auditor performance (8/20)
19. Right to alter matters reserved for its decision (7/20)
20. Other

COMPARISON OF THE TOP 20 COMPANIES WITH SMALL CAPITALISATION 10 COMPANIES

Board responsibilities for the small capitalisation 10 companies are listed in Table 3. A comparison of the top 20 companies with the small capitalisation 10 companies reveals that the content of the most common responsibilities are similar. Responsibility for the strategic direction of the company and budget/financial approval/financial performance were the responsibilities listed most often by the small capitalisation 10 companies: 90% or greater included responsibilities of this kind in their board charter. Strong majorities of these companies also included responsibilities for the appointment and performance of the CEO and senior management, risk management policy, reviewing/monitoring corporate governance policies and practices, and monitoring capital management, including approval of major capital expenditure. These responsibilities were also commonly listed by the top 20 companies.

The common board responsibilities are similar to those identified by Rogers J in the *AWA* judgment. In the *Healey* judgment, the court stated that the board has a specific responsibility regarding the company's financial statements. Ninety per cent of the top 20 companies listed determination/approval of financial reports as a responsibility of the board. However, only 30% of small capitalisation 10 companies listed this as a responsibility of the board.

Given the attention that is now focussed on risk management, it is notable that 90% of top 20 companies and 80% of small capitalisation 10 companies reserved the determination of risk management policy to their boards. In its Guide for small-mid market capitalised companies released in 2009,[23] the Chief Supervision Officer for ASX Markets Supervision noted smaller companies may have difficulties implementing compliant risk management policies due to a lack of resources.[24] However, in 2013, it appears that reserving the responsibility for determining the risk management policy to the board is the norm rather than the exception even for companies with small market capitalisation. The content of what is in the board charters regarding risk management varies. It is stated in the BHP Billiton board charter that the risk and audit committee will assist the board by focussing on, among other things, the effectiveness of the systems of internal control and risk management.[25] One of the more detailed statements about board responsibility for risk management is contained in Westpac's board charter:

> The key responsibilities of the Board are as follows …
>
> d) Considering and approving the Westpac Group's overall risk-reward strategy and frameworks for managing all categories of risk, including credit, market, liquidity, equity, reputation and operational risk.
>
> e) Monitoring the effectiveness of risk management by the Westpac Group, including satisfying itself through appropriate reporting and oversight that appropriate internal control mechanisms are in place and are being implemented.
>
> f) Assessing and determining whether to accept risks beyond the approval discretion provided to management.[26]

Each of the companies in the financial sector, including those in the small capitalisation 10, had a committee dedicated to assisting the board to make decisions regarding risk management. While ASX Listing Rule 12.7 requires all companies in the ASX 300 to have an audit committee, there is no such requirement for a risk committee. The use of a risk committee may be a reflection of the heightened focus on risk management for companies in the financial sector. There are, however, differences between the top 20 companies and the small capitalisation 10 companies regarding some board responsibilities. Differences were identified with regards to the:

- responsibility for monitoring the remuneration framework – only 50% of small capitalisation 10 companies included this compared with 95% of the top 20;
- responsibility for overseeing succession planning – no small capitalisation 10 companies included this compared with 90% of the top 20;
- responsibility for the determination/approval of documents – 30% of small capitalisation 10 companies included this compared with 90% of the top 20;
- responsibility for corporate social responsibility – no small capitalisation companies included this compared with 55% of the top 20;
- responsibility for determining/approving dividend policy – only 10% of small capitalisation 10 companies included this compared with 45% of the top 20; and

[23] ASX, Deloitte, and Blakiston Crabb Lawyers, *Principle 7: Recognise and Manage Risk Guide for Small-Mid Market Capitalised Companies* (2009), http://www.asx.com.au/documents/asx-compliance/final_principle_7_deloitte_blakiston_crabb_2009.pdf.

[24] ASX, Deloitte, and Blakiston Crabb Lawyers, n 23, foreword.

[25] BHP Billiton, *Board Governance Document* (8 July 2013) p 4, http://www.bhpbilliton.com.

[26] Westpac, *Board Charter* (21 August 2012) pp 1-2, http://www.westpac.com.au.

- responsibility for the review of diversity initiatives and progress – 10% of small capitalisation 10 companies included this compared with 40% of the top 20.

TABLE 3 Analysis of responsibilities reserved for the boards of small capitalisation 10 companies

1. Strategic direction of the company (10/10)
2. Budget/financial approval/financial performance (9/10)
3. Appointment and performance of CEO and senior management (8/10)
4. Risk management policy (8/10)
5. Review/monitor corporate governance policies and practices (8/10)
6. Monitoring capital management, including approval of major capital expenditure (8/10)
7. Monitoring performance of management (8/10)
8. Evaluate board performance and composition (7/10)
9. Overseeing external/internal audit activities and internal control and reporting systems (6/10)
10. Establishment and empowerment of committees of the board (6/10)
11. Approval of acquisitions and divestments (5/10)
12. Remuneration framework (5/10)
13. External auditor performance (4/10)
14. Determination/approval of documents (as per constitution/statue/external regulation (includes financial reports and other reports) (3/10)
15. Right to alter the matters reserved for its decision (3/10)
16. Review diversity initiatives and progress (1/10)
17. Determine dividend policy (1/10)
18. Corporate social responsibility (social, ethical and environmental impact of company's activities) (0/10)
19. Oversee succession planning (0/10)
20. Other

Where a responsibility is not listed in the board charter, this can mean (depending upon the particular responsibility) that:

- the company does not have this as a responsibility (because it is not considered to be important enough or because the company might want to undertake the responsibility but it does not have the resources to devote to the responsibility); or
- the company has it as a responsibility but it is not a responsibility of the board.

It can be argued that whether or not a responsibility is given to the board is a reflection of the importance given to the responsibility by the company. One responsibility that differs between the top 20 companies and the small capitalisation 10 companies is corporate social responsibility – no small capitalisation companies included this as a responsibility of the board compared with 55% of top 20 companies. Principle 3 of the *Corporate Governance Principles and Recommendations* deals with corporate social responsibility and states that "companies should not only comply with their legal obligations, but should also consider the reasonable expectations of their stakeholders including: shareholders, employees, customers, suppliers, creditors, consumers and the broader community in which they operate".[27] Some companies are explicit in their board charters about corporate social responsibility. For example, Origin Energy states that it is the responsibility of the board to oversee "the Company's commitment to its principles and values, sustainable development, the environment and the health and safety of employees, contractors, customers and the community".[28] However, others are less explicit or do not deal with this in their board charters.

Another responsibility that differs between the top 20 companies and the small capitalisation 10 companies is review of diversity initiatives and progress; 10% of small capitalisation 10 companies included this as a responsibility of the board compared with 40% of the top 20 companies. In 2010, the ASX Corporate Governance Council amended the *Corporate Governance Principles and Recommendations* to require each entity listed on the ASX, on an "if not, why not" basis, to adopt and disclose a diversity policy that includes measurable objectives for achieving gender diversity. The

[27] ASX Corporate Governance Council, n 1, p 22.

[28] Origin Energy, *Board Charter* (December 2011) Art 4, http://www.originenergy.com.au.

board should assess annually both the objectives and progress in achieving them. Within their diversity policy, listed entities are required, on an "if not, why not" basis, to disclose in their annual report:

- their achievement against the gender diversity objectives set by their board; and
- the proportion of women employees in the whole organisation, in senior executive positions and on the board.

It may be that the top 20 companies are under more pressure from large investors and others to demonstrate their commitment to matters such as corporate social responsibility and diversity initiatives and progress. For example, ACSI states that it represents the collective interests of its member superannuation funds regarding the management of environmental, social and corporate governance investment risk in the companies in which its members invest.[29] It also refers to boards needing skilled directors with diverse backgrounds.[30] So this representative organisation of institutional investors assesses the companies in which its members invest by their commitment to matters such as corporate social responsibility and board diversity. However, institutional investors tend to invest in the larger listed companies. This means that smaller listed companies will not be under the same pressure from institutional investors to demonstrate their commitment to matters such as corporate social responsibility and diversity initiatives and progress.

CONCLUSION

We have investigated the responsibilities of the boards of directors of the top 20 ASX companies and a sample of 10 small capitalisation ASX companies. It is important to understand how companies divide responsibilities between the board and senior management given that the allocation of these responsibilities is part of the system of corporate governance established by companies. In addition, it is useful to identify these responsibilities given the current debate about what responsibilities boards should be able to delegate and to compare the responsibilities to what courts have said are the responsibilities of the board of directors.

There are many similarities when the board responsibilities of the top 20 companies and 10 small capitalisation companies are compared. These common responsibilities include responsibility for the strategic direction of the company, budget/financial approval/financial performance, appointment and performance of the CEO and senior management, risk management policy, reviewing/monitoring corporate governance policies and practices, and monitoring capital management, including approval of major capital expenditure. There are, however, some notable differences with regard to responsibilities such as monitoring the remuneration framework, overseeing succession planning, corporate social responsibility, and review of diversity initiatives and progress. Possible reasons for these differences were explored including the top 20 companies being under more pressure from large investors and others to demonstrate their commitment to these issues.

When we compare what courts have said are the responsibilities of the board with what companies themselves say, while the common board responsibilities are similar to those identified by Rogers J in the *AWA* judgment, there is a difference regarding responsibility for the company's financial statements – which is a board responsibility as noted in the *Healey* judgment. Ninety per cent of the top 20 companies listed determination/approval of financial reports as a responsibility of the board but only 30% of the small capitalisation 10 companies did this.

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[29] ACSI, n 2, p 3.

[30] ACSI, n 2, p 14.