



# Assuring Governance to Facilitate Board Performance

- the role of the company secretary -

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December 2011



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# Outline

- company secretary – a keystone player
- independence of role
- understanding the boardroom dynamics
- “flank guard” and/or “leader”
- board papers and minutes (Centro/James Hardie)
- board meeting tips and traps
- where does the governance buck stop? – accepting the mantle



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## **Effective Corporate Performance (ECP)**

“The delivery of superior shareholder value, relative to a corporation’s peers, in an ethical and responsible and sustainable manner.”

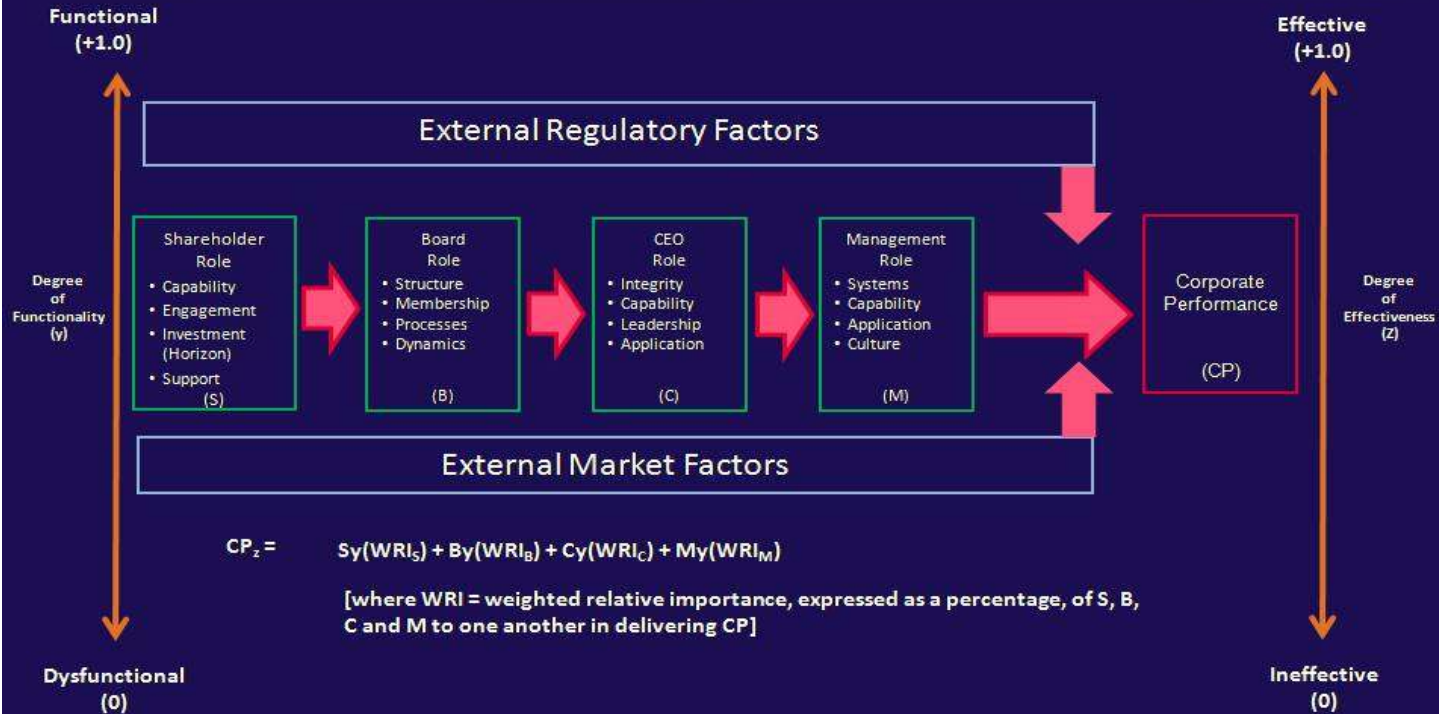
## **Corporate Governance (in context of ECP)**

“The systems and processes of a corporation, in formulating and executing its strategies, which impact upon the probability of:

- enhanced performance outcomes; and
- effective management of risk.



# Functional business model of Corporate Performance



© cole corporate



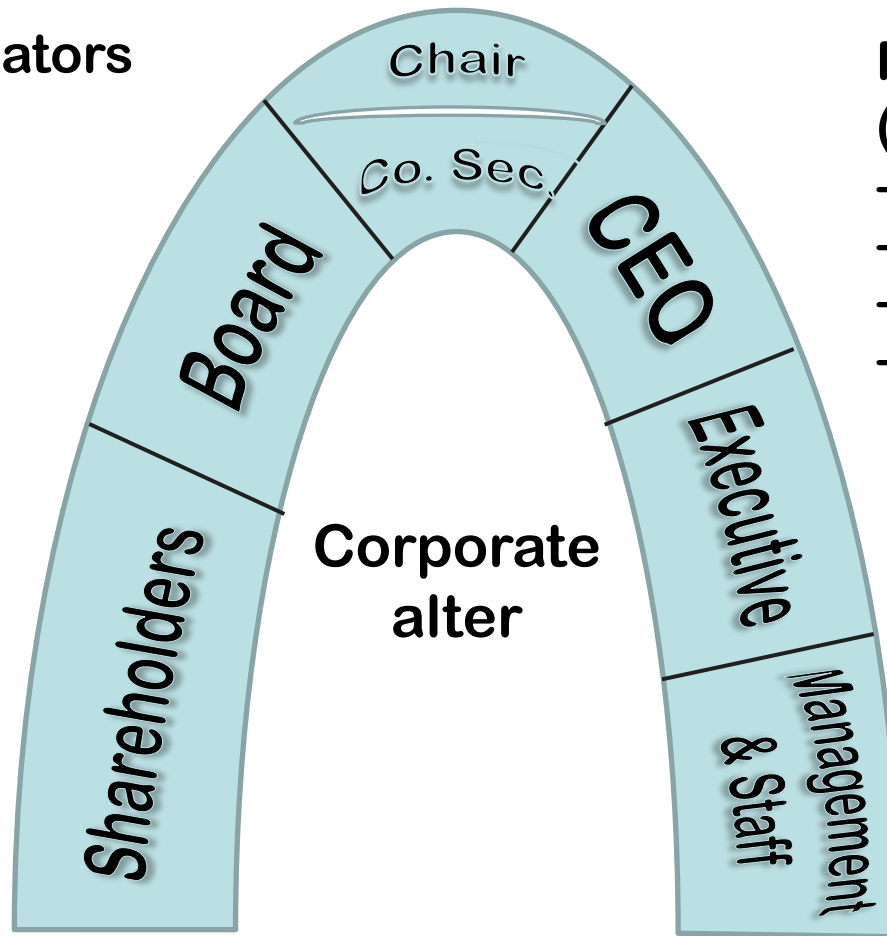
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# Keystone roles within the Corporate Church

## Parish regulators

- ASIC
- ATO
- ACCC
- APRA
- ASX



## Parish stakeholders (external)

- suppliers
- customers
- neighbours
- community

Corporate Infrastructure &  
Resources



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**At a board level, effective corporate governance is about making quality informed decisions, and monitoring their execution, to optimise the probability of:**

- **enhanced performance outcomes**
- **effective management of risk**



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**Relevant factors within the company secretary's domain to facilitate “quality informed decision making and monitoring their execution” include:**

- **Nature of the information**
- **Presentation of the information**
- **Facilitating Board decision making processes**
- **Interface for execution and monitoring**



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- **Nature of the information**
  - **quality**
  - **relevance**
  - **relative weighting**
  - **context**
  - **sufficiency**
  - **completeness**
  - **comprehensibility**
  - **succinctness**



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- **Presentation of the information**
  - **timeliness**
  - **accessibility**
  - **form (text, diagrammatic, pictorial, experiential)**
  - **order**
  - **clarity**



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- **Facilitating Board decision making processes**
  - **identifying key issues**
  - **time to properly deliberate**
  - **clarity of decision made**
  - **recording and minuting**



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- **Interface for execution and monitoring**
  - **communication of decision and action arising to relevant parties**
  - **follow up monitoring of execution**
  - **reporting and acquittal**



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**True or false?**

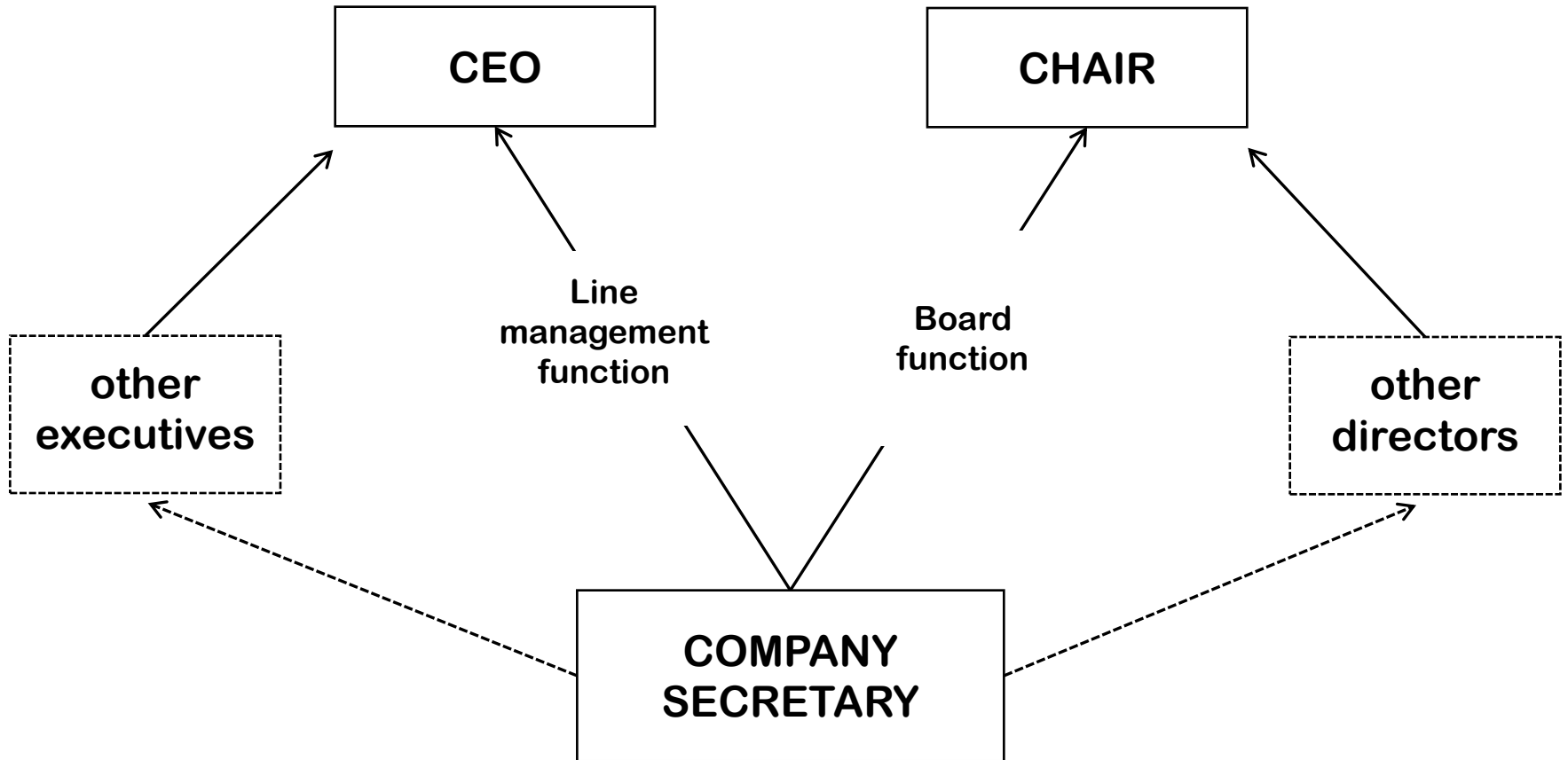
**“The company secretary is a fearless adviser to the board, owing an unqualified allegiance and duty to serve the board faithfully”**



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# The bifurcation of responsibility / accountability



**Getting Biblical:**

**“man cannot serve two masters”**

**Matthew 6:24**



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To the CEO	To the Chair
• the “boss”	• “special relationship”
• direct report	• trust and confidence
• executive team member	• governance reliance
• multi-roled co-sec (legal counsel, financial, management functions)	

### Risk of tension:

- “whistleblowing” expectations (& consequences)
- issues of:
  - proof / robustness of evidence
  - seriousness, extent and degree of concern (style / approach)
  - expediency of outcome
  - risk of isolation from both camps
- CEO / Chair relationship



## Understanding the Boardroom Dynamics

- importance of board dynamics in delivering effective governance at board level
- company secretary's primary domain:
  - nature of the information
  - presentation of the information
  - facilitating board decision making processes
  - interface for execution and monitoring
- understanding the dynamics can materially assist in the discharge of the company secretary's primary domain



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**(a) Chair (style and competence)**

- executive / non-exec / independent?
- dominant / balanced / passive?
- effective and efficient?
- respected?

**(b) Executive Directors**

- CEO alone (risk of interpretative bias or information filtering)
- unity / tension between executive directors



**(c) CEO**

- **dominant / balanced / passive?**
- **effective and efficient?**
- **delegator / control freak?**
- **protective of turf / comfortable with position**

**(d) Chair / CEO relationship**

- **respectful?**
- **functional?**
- **too cosy?**
- **constructively challenging?**



## **(e) Non Executive Director**

- **factional / personal cliques?**
- **respected?**
- **prepared at meetings?**
- **engaged or not?**
- **strategic / operational focus?**
- **major shareholder representative?**
- **independence of thought / contribution**
- **specialist knowledge areas**
- **thinking / reasoning style**
- **talkative / silent type**
- **Myers - Briggs factors**
  - **extraversion / introversion**
  - **sensing / intuition**
  - **thinking / feeling**
  - **judging / perceiving**



## (f) **Company Secretary**

- **where do you fit in?**
- **what is your style with each?**
- **what are your relationships?**
  - : professional**
  - : social**
- **do you use your understanding of the boardroom dynamics to better fulfil your responsibilities and the quality of your contribution?**
- **do you LISTEN, UNDERSTAND, CONSIDER and ACT?**



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## **“Flank guard” and / or “leader**

- **beyond preparation of agendas, organising meetings and taking minutes**
- **more interactive and involved**
- **advice and guidance to board**
  - **legal**
  - **governance**
  - **compliance**
  - **risk**
- **confidential sounding board to CEO/Chair/directors (BUT TAKE CARE)**



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***“a good company secretary gives the board more freedom to focus on getting the business moving forward and keeping it moving.”***

**Kim Hancock FAICD  
Chair, Aerial Consolidated Transport (2009)**

***“The clock is ticking – the company secretary must be ready to support the directors and ensure that they have access to all the information and advice they need in order to make the right decision.”***

**Michaela Healy  
Company Secretary, National Australia Bank (2009)**



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***“Today’s company secretaries need to be pro-active and to anticipate the needs of directors. The deeper their understanding of the ‘colour’ of the organisation, the more effective their contribution to the board is likely to be”***

**John O’Grady  
Company Secretary & General Counsel  
Ramsay Healthcare (2009)**

***“A company secretary will sometimes need to be quite confident in order to put the issues of corporate governance or ethics on the table in a way that is acceptable by the board.”***

**Domini Stuart  
Company Directors Journal (Dec 2008)**



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# Board papers and minutes (Centro & James Hardie lessons)

## (a) Papers

- agenda not too cluttered
- information “overload”
- time to properly review and consider information
- version control
- directors’ personal notes on papers
- “a letter to the judge” (Henry Bosch)?
- personal retention / destruction of papers
- technology
- paperless board packs
- remote meeting attendance





## **(b) Minutes**

- how detailed?
- lengthy / prosaic or succinct
- attribution of comments / ideas
- purpose of minutes?
- minute resolutions
- describe proceedings
- defence against liability claim
- statutory requirements and presumptions
- pro forma minutes – risks/issues arising
- “power of the minute taker”
- what was actually said and resolved? [OR]
- what was generally understood as should be resolved?
- checking and verifying minutes
- chair
- directors
- recording abstentions / dissent



# CSA Good Governance Guide: Board Minutes (2011)

- any advice received from management
- significant issues raised by the directors and how they have been addressed
- a record of any delegation of authority the board makes or any independent advice which is received on any aspects of the board's discussion
- the alternative considered, if any, and the reasons why they were rejected
- a reference to any certification by management to the board that all relevant information regarding a proposal have been provided to the board
- a resolution that describes the decision of the board and the related material determinations of the board
- a record of any director's dissent from a resolution (if so requested)
- other documents tabled at the meeting
- any member of management and/or external adviser present at the meeting, the agenda items for which they were present and the advice, if any
- the actions decided – it is good governance that actions record what is to be done, by whom and by when. A separate action list is compiled and maintained that tracks the status and completion of actions
- a reference to any paper or discussion on any carried-forward items, matters arising or outstanding issues
- proposals submitted and by whom they were prepared and/or presented
- significant aspects that were taken into consideration in relation to a matter
- a declaration of any interests of a director or officer and whether it is material or personal and how the issue has been addressed See also Good Governance Guide: *Conflict of Interest and related-party transactions*
- the impacts of a proposal
- the conclusions reached in regard to the identified material risks resulting from proceeding with a proposal
- the details of any conditions of any approval and a clear statement as to how the board will be satisfied that conditions have been met
- the reports included in the board papers or tabled at the meeting See also Good Governance Guide: *Board reports*
- the presentations made to the meeting
- any request for additional information or advice
- a separate action list



# Board Meeting Tips and Traps

## Generally

### (a) Always focus on the “3 P’s”

- **Purpose**
  - without a destination, any direction is acceptable and going nowhere is inevitable
- **Preparation**
  - be a good Scout (Lord Baden-Powell “Be Prepared”)
- **People**
  - shopping trolleys with minds of their own

### (b) Watch the left-field play

- expect the unexpected
- rely not on pre-meeting commitments



**(c) Remember Murphy's Law**

- **if something can go wrong, it often will (when you least expect it, or can least afford it)**
  - **venue logistics (accessibility)**
  - **audio/visual facilities**
  - **participant's arrival delays and early departure**

**(d) Time Management**

- **a good chairman starts and finishes on time, occasionally needing some extra time to finish off a big match, without the need to resort to a penalty shoot out**
- **a good company secretary facilitates this**



## **Where does the governance buck stop?**

**“The buck stops here”**

**US President Henry Truman**

**In a governance context, those words have application to company secretaries**

**“President Truman did not assume personal liability for his decisions, just the responsibility to do his job”.**

**John Story  
Chair, Suncorp Group Ltd (2011)**



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## **Duty, responsibility and accountability**

- **Duty – legal obligation with liability consequence**
- **Responsibility – matters and issues which lie for attention within the scope of the company secretary's role**
- **Accountability – requirements of disclosure and acquittal**



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***“The company secretary role has evolved from one of “a mere servant of the board and minute taker” to that of “chief administrative officer and chief governance professional”. The company secretary is expected, more than ever, to focus on the responsibilities of the board of directors and officers of the company, to “remind them” and to “protect them” from the pitfalls that exist in the plethora of legislation, regulation and compliance obligations that have to be dealt with. We live in an environment which is “ever changing”. Legislation is evolving to become more complex and there is more of it. Attention to detail has never been more important.”***

**Judith Howard  
Company Secretary, Seven Network (2004)**



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# Conclusion

*The days of the company secretary exemplified by the gentleman in the stone grey cardigan are over ... their role nowadays can encompass:*

- *corporate governance authority*
- *legal, financial, regulatory and risk management specialist*
- *coach, confidante and mentor to the board and CEO*
- *scrutineer and editor of board papers*
- *manager of the board agenda*
- *minute taker at board and committee meetings*
- *administrator conveying board decisions to line managers*
- *logistics organiser for the company annual general meeting (AGM)*
- *networker, negotiator and administrator working closely with corporate regulators such as the Australian Stock Exchange, the Australian Securities & Investment Commission and the Australian Prudential Regulation Authority*

*Ali Cromie  
Principal, Rigour Group (2005)*

## ASSURING GOVERNANCE TO FACILITATE BOARD PERFORMANCE



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