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SOX as a window on transference of corporate governance norms across jurisdictions

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Abstract

This paper considers the issue of the transference of norms across jurisdictions in corporate governance contexts through the lens of an Australian case study. The paper focuses on the impacts of the United States of America (US) legislation the Sarbanes-Oxley Act 2002 (SOX)[2] from an Australian perspective. The paper draws on a series of semi-structured interviews (n=14), with senior personnel of: accounting firms; business organisations; consumers; financial exchanges; government; institutional investors; investment banks; law firms; private investors; professional associations; and regulators. The findings from the study are that key stakeholders in Australia have taken notice of SOX and its effects in the US, but that the influence of SOX in specifically Australian contexts has been limited. The general perception in Australia seems to be that SOX has had some flaws in its inception and in its subsequent delivery in the US, but also that it has produced some positive outcomes. However, domestic factors and influences are overwhelmingly more important in shaping how financial regulation and corporate governance evolve in Australia. Therefore, it seems that SOX does not signify in any substantive way a regulatory hegemony emanating from the US that determines financial market regulation or the evolution of corporate governance in Australia.

Globalisation and norms transfer

Private, corporate and state forces are continually at work in the worlds of governance and regulation. Regulatory control is a reciprocal arrangement, shaped by negotiated and symbiotic relationships and as such is a social and political process of continuing adaptation within a regulatory setting, not value-neutral and/or pre-destined. These forces can be observed in how regulatory regimes evolve because norms and standards in regulation can be local, national or international phenomena, with regulatory norms and standards interacting at a number of levels in different ways. These interactive effects have

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2 Details of the enactment process and formal title of SOX are listed below. The common usage of the Sarbanes-Oxley Act refers to its two main promoters. Paul Sarbanes was a Democratic senator from Maryland from 1967–2007, who in 2002 was chair of the Senate Banking, Housing and Urban Affairs Committee. Michael G Oxley was a Republican member of the House of Representatives from 1981–2007, who in 2002 was chair of the House Financial Services Committee.

become more complex in current conditions of globalisation.[3] Globalisation has been a widely used term since the 1980s as technological innovation, especially in the information technology sector has surged,[4] more easily connecting people and organisations around the world and reducing the effects of time-space distantiation in a host of economic, social, cultural and environmental contexts. The ongoing processes of globalisation reflect this increasing interaction between human activity with closer economic integration across jurisdictional borders, movement of people across borders and sectors, and similarly technology transfer across borders and sectors. The cumulative effect of these forces prompts greater interaction and interdependence between national economies. One of the substantive implications of globalisation is that information, knowledge and normative behaviours (in particular for the purposes of this article, business norms and protocols) may be transmitted and dispersed across national, sectoral and cultural boundaries. These normative transmissions and dispersals can become constituent factors in the *game* between jurisdictions as they seek to attract and/or retain capital investment. These processes of regulatory competition are more pronounced in this current era of globalisation, when economic and political ties between many jurisdictions are deepening and jurisdictions increasingly are playing a mediating role regarding the interests of much business that may be conducted within and around their spheres of influence.[5]

However, transference of norms, including legal norms is, of course, not a novel phenomenon that has been occurring merely in the last 30 years or so.[6] Rather, norms, whether, social, economic, legal or cultural have been transferred across national and societal boundaries throughout history. Some commentators have argued that social norms can be more influential than legal rules in directing how corporate governance is made operational within and between firms.[7] Almost inevitably, the debate and various studies focusing on the relative influence of norms and rules on governance contexts become murky and riddled with subjective evaluation – this is perhaps unavoidable given the scale and nature of the subject matter. Nevertheless, there are myriad instances, in life in general and in business in particular, when people will behave in certain ways, because they are the individual and/or collective normative standards to which they are committed. For example, Tyler's research in the US, based on citizen experiences of the criminal justice system, concluded that citizens' levels of commitment to the system were directed by how fairly

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3 Globalisation can be a contested concept and this article will not discuss the utility of various definitions of globalisation or how best to evaluate its impacts. There are many texts that analyse globalisation including: M Bordo, A M Taylor and J G Williamson, *Globalization in Historical Perspective* (Chicago: University of Chicago Press 2003); J A Frieden, *Global Capitalism: Its fall and rise in the twentieth century* (New York: W W Norton & Company 2006); J Gray, *False Dawn: The delusion of global capitalism* (London: Granta Books 1998); P Hirst and G Thompson, *Globalization in Question: The international economy and the possibilities of governance* (Cambridge: Polity Press 1998); K Ohme, *The End of the Nation State* (New York: Free Press 1995); J A Scholte, *Globalization: A critical introduction* (Houndmills: Palgrave Macmillan 2005); and J Stiglitz, *Globalization and its Discontents* (New York: W W Norton & Company 2003).

4 For example, Internet World Stats estimates that, by the end of 2008, 1.6bn or 24% of the world's population were internet users and this rate is rising rapidly, see www.internetworldstats.com/stats.htm.

5 G. Gilligan, "Whither or wither the European Union Savings Tax Directive? – A case study in the political economy of taxation" (2003) 11(1) *Journal of Financial Crime* 56.

6 There is a substantial literature which considers issues of norm transference. See, for example, J N Drobak (ed.), *Norms and the Law* (New York: Cambridge UP 2006); J Elster, "Social norms and economic theory" (1989) 3(4) *Journal of Economic Perspectives* 99–117; R A Posner, "Social norms and the law: an economics approach" (1997) 87 *American Economics Review* 365–9; E Posner, *Law and Social Norms* (Cambridge, Mass: Harvard UP 2000); J F Scott, *Internalization of Norms: A sociological theory of moral commitment* (Englewood Cliffs, NJ: Prentice-Hall 1971); and O Williamson, *The Economic Institutions of Capitalism* (New York: Free Press 1985).

7 For example, M Eisenberg, "Corporate law and social norms" (1999) 99 *Columbia Law Review* 1253; G P Gilligan, *Regulating the Financial Services Sector* (London: Kluwer Law International 1999).

they perceived the system treated them.[8] Coffee comes to a similar conclusion with regard to the corporate arena, noting that managers and controlling shareholders are often constrained in their behaviour by social forces which are independent of underpinning legal sanctions, and that the relative capacity of social norms to influence controlling shareholders can vary significantly across jurisdictions.[9]

It can be difficult to know sometimes where the influence of social norms begins and the influence of legal rules ends because in so many cases they can meld or be mutually sustaining. This is because there is not always a clear distinction between when norms are internalised by actors and the extent to which compliance with, or acceptance of, norms is motivated by the potential impact of third-party enforcement through formal mechanisms such as the justice system, or more informal ones, such as a firm's internal business culture or philosophy. So, when considering relative influences in the production of corporate governance norms, there is merit in emphasising behavioural approaches to how governance standards are produced and how they are evaluated by those who are involved in their application, what Stout describes as "the reality of socially contingent, other-regarding preferences".[10] Similarly, Rock and Wachter posit that firms are largely governed by norms which they interpret as non-legally enforceable rules and standards.[11]

Despite the difficulties of assessing the impacts of norms on business practice, there has been no shortage over the last 15 years or so of international organisations generating codes of preferred behaviour which they hope will gain traction as influential corporate governance norms across jurisdictions. Examples include the International Monetary Fund (IMF),[12] the World Bank[13] and the Organisation for Economic Co-operation and Development (OECD).[14] These initiatives do not bind jurisdictions but instead are preferred benchmarks to stimulate improved corporate governance in both national and international contexts. What is of special interest for this article is not a general appraisal of international codes of governance and how well they may travel in terms of their impact on different countries.[15] Rather, the article's purpose is to examine how influential those corporate governance norms, emanating from the world's most powerful nation the US, may be in terms of shaping prevailing corporate governance standards in other jurisdictions, in this case Australia. In particular, whether US corporate governance norms produced in the US are more privileged in terms of their capacity to shape regulatory initiatives in other jurisdictions.

8 T R Tyler, *Why People Obey the Law: Procedural justice, legitimacy and compliance* (New Haven: Yale UP 1990).

9 J C Coffee Jnr, "Do norms matter?: A cross-country examination of the private benefits of control", *Columbia Law and Economics Working Paper* No 183 (2001), pp. 3 and 29: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=257613.

10 L A Stout, "Other-regarding preferences and social norms", *Georgetown Law and Economics Research Paper* No 265902, *Georgetown Public Law Research Paper* No 265902 (2001), p. 32, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=265902.

11 E B Rock and M L Wachter, "Islands of conscious power: law, norms and the self-governing corporation" (Spring 2001) *Symposium, Norms and Corporate Law, University of Pennsylvania Review*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=269328.

12 IMF, *Good Governance: The IMF's role* (Washington, DC: IMF Publication Services, August 1997).

13 International Bank for Reconstruction and Development/World Bank and OECD, *Global Corporate Governance Forum: 1 Focus: Corporate Governance and Development* (Washington, DC 2003).

14 OECD, *OECD Principles of Corporate Governance* (Paris: OECD Publications Service 2004).

15 For an analysis of the capabilities of initiatives by international organisations to promote convergence in national corporate governance schemes, see F de Zwart and G Gilligan, "Comparative corporate governance schemes and their relevance for the sporting sector", *Monash University Department of Business Law and Taxation Research Paper* No 16 (2008): http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1295682.

Specifically, the Australian case study is designed to explore the role that the characteristics of Australia's political economy play in shaping a national regulatory regime and scoping its responses to international changes in governance of financial markets. In particular, the causes and consequences of the enactment of stringent US legislation on corporate liability, the Public Company Accounting Oversight and Investor Protection Act (2002) which is more commonly referred to as Sarbanes-Oxley (SOX).[16] SOX has emerged as a piece of domestic legislation that has implications for many jurisdictions other than the US, in particular for overseas firms that elect to list on US exchanges and thus must meet US listing requirements, including the more stringent innovations (discussed below) that have arrived as part of the SOX regime. Before discussing these provisions and Australian reactions to them, it is necessary to consider why SOX emerged in the way and shape that it did.

Enron, dirty washing and SOX

SOX was a specific US response at a particular time to what was widely perceived as a crisis in the governance standards of contemporary corporations following the collapse of Enron and WorldCom. As the Enron saga unfolded, or (should that be?) imploded, it was a moment in time when the "dirty washing" of US corporate life was hung out for all to see. The demise of Enron in December 2001 was sudden, a year earlier it had been the seventh largest company in the US with assets valued at almost $US70bn.[17] As late as September 2001, Axiss Australia[18] published an interview with Paul Quilkey, managing director of Enron Australia, in which it stated that "Enron is succeeding in its primary task – to always make money."[19] Less than three months later, Enron was in bankruptcy amid allegations of fraud for its use of special purpose entities in dubious off-balance-sheet accounting practices. These practices later led to convictions for its chief executive Jeffrey Skilling (imprisoned for 24 years), its chief accountant Richard Causey (seven years), its chief financial officer Andrew Fastow (10 years), and its external auditor, global accounting behemoth Arthur Anderson, ceased to exist as a substantial commercial entity.[20] These were severe sentences and prompted some academic analysis of whether SOX had altered sentencing contexts in relation to white-collar crime in the US.[21] There is a large literature that has dissected the Enron and WorldCom scandals[22] and considered not only what the core causes were, but also the likely value of regulatory responses – especially SOX – to

16 Sarbanes-Oxley Act 2002, Public Law No 107-204, 116 Stat. 745.

17 L Collins, "Death of a titan – biggest collapse in US corporate history", *Australian Financial Review*, 30 November 2001, p. 20.

18 Axiss Australia (now part of the Australian Trade Commission – Austrade) was established by the Australian Commonwealth government to act as a one-stop reference point for information on Australia's financial services industry, see www.austrade.gov.au.

19 Axiss Australia, "The energiser – Enron the commodity and financial futures dynamo" (September 2001) *Markets Perspective* 4–8, at p. 4.

20 A Barrionuevo, "Enron scandal stalks Skilling", *Australian Financial Review*, 25 October 2006, p. 68.

21 For example, P J Henning, "The changing atmospherics of corporate crime sentencing in the post Sarbanes-Oxley Act Era" (2008) 3(2) *Journal of Business and Technology Law*; C S Lerner and M A Yahya, "'Left behind' after Sarbanes-Oxley" (2007) 44(4) *American Criminal Law Review*.

22 See, for example, F Partnoy, *Infectious Greed: How deceit and risk corrupted the financial markets* (New York: Henry Holt & Company 2004); K Vasatka, "WorldCom scandal: a look back at one of the biggest corporate scandals in US history", *Associated Content*, 8 March 2007.

them.[23] Bainbridge offers a five-year overview of SOX since its inception and a pragmatic description of how SOX impacts upon the directors and managers of publicly held corporations that are subject to SOX provisions.[24]

The substantial academic literature which has grown around the advent of SOX and its associated academic discourse regarding the relative legitimacy and efficacy of SOX has in some case been quite heated. For example, Ribstein and Butler perceive SOX as a costly mistake, in fact a debacle, which in their opinion has been a colossal failure, poorly conceived and hastily enacted during a regulatory panic.[25] Fisch and Rosen argue that the legislative reaction to Enron and its associated US business culture problems, as epitomised by SOX-driven corporate governance reform, has been flawed and that there should be a greater emphasis on demand-side approaches which better align incentives with promoting good corporate governance.[26] Perino also is critical of SOX arguing that it adds little to the deterrence capabilities of US laws and regulators.[27] In one of the most strident and early critiques of SOX, Romano labels the legislation as *quack corporate governance* and a policy blunder which should be stripped of its mandatory provisions.[28]

However, not all the reaction by academe to SOX was negative, especially, and interestingly so given the focus of this article, from those commentators who placed a greater emphasis on the capacity of norms transfer to be affected by regulatory intervention. For example, Brown refutes Romano's claim that SOX is *quack corporate governance* and, instead, argues that it has stimulated improvements in US corporate governance processes.[29] Fanto believes that SOX was a symbolic expression of outrage by the community against misconduct by some members of the elite in the 1990s, which sought to reassert the need for the social value of professionalism in capital markets, and thus was "fundamentally a reassertion of social values against the socially destructive aspects of the self-interest ideology in the US which views individuals solely as profit-maximisers".[30] Frankel also sees positive potential in SOX and argues that it presents an opportunity to reward truthful corporations and their management.[31]

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23 See W W Bratton, "Enron, Sarbanes-Oxley and accounting: rules versus principles versus rents" (2003) 48(4) *Villanova Law Review* 1023; D M Branson, "Enron – when all systems fail: creative destruction or roadmap to corporate governance reform?"(2003) 48(4) *Villanova Law Review* 989; J N Gordon, "Governance failures of the Enron board and the new information order of Sarbanes-Oxley", *Columbia Law and Economics Working Paper* No 216, *Harvard Law and Economics Discussion Paper* No 416 (2003), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=391363.

24 S M Bainbridge, *The Complete Guide to Sarbanes-Oxley* (Avon, Mass: Adams Media 2007).

25 H N Butler and L E Ribstein, *The Sarbanes-Oxley Debacle – What we've learned: how to fix it* (Washington: American Enterprise Institute Press 2006).

26 J E Fisch and K M Rosen, "Is there a role for lawyers in preventing future Enrons?", *Fordham School of Law Pub-Law Research paper* No 21, *Villanova Law/Public Policy Research Paper* No 2003-15, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=367661.

27 M A Perino, "Enron's legislative aftermath: some reflections on the deterrence aspects of the Sarbanes-Oxley Act of 2002", *Columbia Law and Economics Working Paper* No 212 (2002), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=350540.

28 R Romano, "The Sarbanes-Oxley Act and the making of quack corporate governance", *NYU Law and Econ Research Paper* 04-032; *Yale Law and Econ Research Paper* 297; *Yale ICG Working Paper* 04-37; *ECGI Finance Working Paper*, 52/2004; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=596101.

29 J R Brown Jr, "Criticising the critics: Sarbanes-Oxley and quack corporate governance", *U Denver Legal Studies Research Paper* No 07-11; (2006) 90 *Marquette Law Review* 209, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=959443.

30 J A Fanto, "A social defense of Sarbanes-Oxley" (2007/08) 52 *New York Law School Review* 517–32, at p. 532.

31 T Frankel, *Trust and Honesty: America's business culture at a crossroad* (Oxford: Oxford UP 2006).

Despite these disagreements about the merits or otherwise of SOX, and whether it deserves such a derogatory label as *quack corporate governance*, both supporters and critics of SOX agree that it was enacted extremely swiftly by US standards. Romano believes that the SOX legislative process proceeded in an atmosphere of crisis following spectacular accounting frauds at several large public corporations. These frauds fuelled what Romano terms:

> a media frenzy . . . From January to July 2002, 471 of 613 business-related stories on the major network evening news were on corporate scandals, compared to 52 of 489 business stories in the same period the previous year . . . over eighty per cent of those news stories looked to government to solve the perceived problem . . . The confluence of spectacular financial scandals, a declining stock market, waning public confidence in business, and a media frenzy in an election year resulted in a restrictive legislative debate and progressively more lopsided votes in support of greater regulation.[32]

The demand in the media for a swift and significant legislative response was driven partly by the political connections that Enron and some of its senior executives had to the White House administration of President George Bush. For example, over a period of 10 years, Enron and its CEO had contributed more than $US1bn to various Bush political campaigns.[33] A combination of intense media scrutiny and the need for Congress to be seen to be making specific and strong responses to widespread community disquiet about prevailing ethical standards in US corporate life ensured that the votes in the US Congress certainly were overwhelming numerically, 423:3 in the House of Representatives[34] and 99:0 in the Senate.[35]

So, SOX was passed in mid-2002 and there has been disagreement ever since about whether its provisions and its application have been beneficial to US interests, and in particular whether the additional SOX-related costs that have had to be borne by US firms have been justified. There is uncertainty about the cost-effectiveness of the SOX reforms. For example, the 2008 survey of US financial executives by Oversight Systems Inc. found that only 29 per cent of its sample had confidence that the SOX reforms would help to reduce financial fraud (a drop from 40 per cent in 2005).[36] However, there is no uncertainty on the issue of whether SOX has led to increases in the costs of regulatory compliance which have raised the costs bottom-line for US firms. Bainbridge notes that meeting SOX requirements has resulted in audit costs across the board for US firms being estimated to have risen by up to 30 per cent and that some of the largest firms pay annual fees as high as $2m to help fund the SOX-established Public Company Accounting Oversight Board (PCAOB).[37] Similarly, the 2007 Financial Executives International (FEI) Survey found that for companies with a market capitalisation above $75m the annual costs for compliance with SOX provisions was $1.7m.[38]

32 R Romano, "Does the Sarbanes-Oxley Act have a future?", *Yale Law School, John M Olin Center for Studies in Law, Economics and Public Policy Research Paper* No 385 (May 2009), pp. 11 and 13, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1404967.

33 L Collins, "Enron: the fallout, UBS lands energy trading deal", *Australian Financial Review*, 14 January 2002, p. 7.

34 148 Cong. Rec. 5544-48, H4580, daily edn, 25 July 2002.

35 148 Cong. Rec. S7365, daily edn, 25 July 2002.

36 Oversight Systems, *The 2008 Oversight Systems Financial Executive Report on Sarbanes-Oxley* (2008), www.oversightsystems.com/collateral/2008OversightSOXReport4.pdf.

37 S M Bainbridge, *The Complete Guide to Sarbanes-Oxley* (Avon, Mass: Adams Media 2007), p. 3.

38 Financial Executives International, *FEI Survey: Average 2007 SOX Compliance Cost $1.7 Million* (2007), http://fei.mediaroom.com/index.php?s=43&item=204.

There are numerous provisions of SOX that have sought to bring about transformative change in the norms of US business culture. Section 301 requires all listed companies to have audit committees comprised entirely of independent directors. Section 304 requires the forfeiture of bonus, incentive and equity compensation for a firm's chief executive officer and chief financial officer if there is a material restatement of the company's financials due to misconduct. Section 406 requires a company to disclose if it has a code of ethics for its senior financial officers and if not, why not. Section 802 provides for criminal penalties for violation of SOX that can be as high as 20 years' imprisonment. Section 1107 provides for penalties including possible imprisonment of up to 10 years for retaliation against whistleblowers.

However, it is s. 404 which has created the most controversy and attracted the most ire from critics of SOX. Section 404 requires each company's annual report to contain: 1) a statement of the management's responsibility for internal control structures and financial reporting; 2) management's assessment each year of the effectiveness of these control structures and reporting processes; and 3) a report by the auditors regarding the above assessments by management. With the potential sanction of substantial gaol terms, SOX in general, and s. 404 in particular, sought to sheet accountability for any misstatement of company financials at the apex of corporate structures in efforts to avoid future Enron-type scandals. Unsurprisingly, when those at the top of an organisation may face punishment for mistakes/deceptive behaviour lower down the corporate food chain, a stronger and more costly organisational emphasis on regulatory compliance emerges. So, something of a growth industry around s. 404 has emerged in the US and this has inevitably increased operational costs to companies subject to SOX provisions. Maher and Weiss found that the annual SOX compliance costs range on average from 0.298 per cent to 0.618 per cent of sales in each of the first four years after SOX was enacted.[39] In a survey of Fortune 500 firms in the US (n = 206), Kipperman et al. found general support for the proposition that the specific effects of SOX had reduced the perceived value of the firm.[40]

One of the more contentious and contestable issues surrounding the effects of SOX and its perceived impact on US economic interests is whether it has made firms less likely to opt for a listing in the US, especially in relation to the compliance costs associated with s. 404, which is generally accepted as being the most onerous section of the Sarbanes-Oxley Act. For example, one strident critic of SOX has been the Committee on Capital Markets Regulation, a group of 22 US experts from the investment community, business, finance, law, accounting and academia which was formed due to concerns about US financial actors becoming less competitive. The committee claimed that the reductions in global financial market share suffered in recent years by US financial markets, for example only seven per cent of the value of global Initial Public Offerings in 2007, compared to 58 per cent 10 years earlier was due largely to the effects of an increasing regulatory burden, especially SOX. In its report the committee made a series of recommendations which included scaling back some of the SOX reforms, especially in relation to s. 404.[41] The committee was specifically concerned about the US losing business to the UK and the chair of the London Stock Exchange had been quoted previously as saying that "the hard rules of Sarbanes-Oxley

39 M W Maher and D Weiss, "Costs of complying with the Sarbanes-Oxley Act", *UC Davis School of Management Research Paper* No 10-08 (2008), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1313214.

40 F Kipperman, R P McAfee and N Vakkur, "Non-pecuniary costs of Sarbanes Oxley", *RAND Working Paper* No WR-554-CCEG (2008), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1312090.

41 Committee on Capital Markets Regulation, *The Competitive Position of the US Public Equity Market* (2007), www.capmktsreg.org/pdfs/The_Competitive_Position_of_the_US_Public_Equity_Market.pdf.

made the US far less attractive and welcoming to foreign issuers".[42] Kamar et al found that SOX induced small firms to exit the US public capital market.[43] However, Bartlett's study suggested that non-SOX factors were the major motivation for buyouts commonly evoked as evidence that SOX has harmed the competitiveness of US capital markets.[44]

So, it would seem that the evidence on this issue is mixed and, as yet, there is no compelling case that Sarbanes-Oxley definitely has led to a reduction in the numbers of companies choosing to list in the US. It is under this canopy of uncertainty regarding the utility and effects of SOX that the Australian case study was conducted as part of a broader project, managed by Queen's University Belfast and funded by the ESRC, which sought to gauge the influence of SOX in a number of jurisdictions around the world.[45]

Did SOX travel well? Evidence from Australia

The Australian case study draws on a series of semi-structured interviews (n=14)[46] with senior personnel of: accounting firms; business organisations; consumers; financial exchanges; government; institutional investors; investment banks; law firms; private investors; professional associations; and regulators.

The first question posed to respondents focused on their perceptions of SOX's effect in the US from the perspective of an Australian observer. None of the respondents felt that the label *quack corporate governance* was appropriate, but all saw SOX as a political reaction (over-reaction in the minds of some), to business scandals. Rather, the general view was that SOX should be seen as "reactive governance" – a particular type of response to a particular set of corporate collapses such as Enron and WorldCom – "a very US solution" as one corporate governance professional put it. Respondents agreed that attitudes towards SOX in the US were mixed, with business groups by and large being more negative towards SOX and regulators having more positive views. One should not assume from this that Australian regulators in the study were absolutely positive about SOX because they did feel that some of the US criticism of SOX "had traction". In particular, a sense that although the principles underlying SOX were largely sound its provisions were too prescriptive, engendering excessive compliance costs. This reflects the Australian context in which, compared to the US, there is less emphasis on black letter law and more reliance on principles/best practice guidelines emphasising an "if not, why not" culture. However, as one regulatory professional noted, it is difficult to argue against some of the SOX reforms which addressed obvious conflicts of interest such as looking at auditors doing a variety of non-audit work for clients, establishing audit committees, requiring top executives to certify

42 L Taylor, "Sarbanes-Oxley gives UK an edge", *Australian Financial Review*, 24 December 2002, p. 13.

43 E Kumar, P Karaca-Mandic and E Talley, "Going-private decisions and the Sarbanes-Oxley Act of 2002: a cross-country analysis" (2009) 25(1) *Journal of Law, Economics and Organization* 107–33.

44 R P Bartlett, "Going private but staying public: reexamining the effect of Sarbanes-Oxley on firms' going-private decisions" (2009) 76(1) *University of Chicago Law Review* 7–44.

45 The interviews for this Australian case study were conducted in 2007/2008 by Gilligan and his Monash colleague, Associate Professor Ken Coghill. Similar case studies took place in Ireland, South Africa, South Korea, Turkey, the United States and the United Kingdom. All the case studies were part of the project Regulatory Regime Change in Financial Markets, which was coordinated by the Institute of Governance at Queen's University Belfast and funded by the Economic and Social Research Council (UK), with additional funding to help support the Australian case study supplied by the Department of Business Law and Taxation and Department of Management at Monash University. The author would like to acknowledge the support not only of all those mentioned above, but also the valuable contributions of the respondents who participated in the interviews.

46 Prior to the interviews the respondents were sent the discussion topic questions contained in the Appendix to this article, thus heightening the level of focus for the individual interviews and permitting a greater level of consistency across them as a grouping.

accounts, and giving whistleblowers more protection if they reported any suspicions of fraud. In particular, several of the respondents stressed that repeated failures by regulators and business to deal with the issue of conflicts of interest were crucial in explaining why SOX emerged in the way that it did.

The specific knowledge of SOX amongst the respondents was high. Most emphasised that a number of the SOX provisions are similar to existing Australian regulatory requirements under the Corporations Act and ASX Corporate Governance Principles and Recommendations of 2007.[47] For example, the certification under SOX s. 302 is comparable in many ways to certifications made under s. 295 of the Corporations Act and in response to ASX Recommendations 7.2 and 7.3. Also, the disclosures regarding the code of ethics required by SOX s. 406 are comparable to ASX Recommendation 3.1. Several respondents were of the view that to a large extent, other than for SOX s. 404, the corporate governance practices in SOX are consistent with leading corporate governance practices and requirements in Australia. The provisions of s. 404 did draw specific attention from respondents, not only because of both the absence of an equivalent requirement under the Corporations Act or the ASX Corporate Governance Principles and recommendations, but also because of the relatively high cost associated with compliance. Respondents felt that the underlying intent of s. 404 – that a company should report on the effectiveness of its internal control over financial reporting – is sound. However, the prevailing view was that the costs of meeting this obligation have been unnecessarily inflated because of insufficient upfront guidance from the Securities Exchange Commission (SEC), and the influence of PCAOB Auditing Standard No 2 on both registrants and their external auditors. However, several respondents felt that this issue had been redressed by subsequent guidance from the SEC and the issue of Auditing Standard No 5, which have helped to produce more efficient and effective assessment programmes.[48]

When asked whether SOX has been a positive innovation for the US or not, respondents perceived SOX as generally not a bad thing, but as one said, "it was a very American response to problems in the US". A notable exception was the fund manager interviewed who felt that SOX was neither positive nor innovative, perhaps reflecting the views of some of his US business counterparts. The broad view held was that SOX's main effect has been to "functionalise" codes of conduct processes and build more structure into the US corporate governance context in its efforts to counter those firms operating in the greyer zones of compliance.

Unsurprisingly there was a belief across the respondents that a major part of the problem in evaluating SOX is the inability to specify the major evaluative criteria. Respondents felt that instances of financial statement fraud or restatements – or the absence thereof – should not be directly attributed only to SOX. Any criteria for evaluating SOX must be derived in the impact that SOX has had on attitudes and behaviours – within the business community, among the members of audit committees, and of stakeholders. There were assorted prickly variables thrown up by respondents that might be added into the SOX evaluative mix. For example, how does one judge and measure market confidence? Or, has SOX mitigated the harmful effects of the current "bear market"? Or does SOX contribute to a more precise capability to predict corporate failure? Or have

47 Corporations Act 2001; ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations* 2nd edn, (Sydney: Australian Stock Exchange, 2 August 2007).

48 PCAOB, Auditing Standard No 5: "An audit of internal control over financial reporting that is integrated with an audit of financial statements and related independence rule and conforming amendments", 12 June 2007, Washington DC, www.pcaobus.org/Rules/Docket_021/2007-06-12_Release_No_2007-005A.pdf.

improved SOX internal controls and disclosure brought gains in terms of costs to shareholders or cost of capital? These are thorny and complex issues that merit substantive research in their own right.

Respondents were unanimous that there has been something of a push-back against SOX in the US, which, given prevailing political realities and the worsening economic climate both domestically and globally, has acted as a restraint on further regulatory innovation by US politicians and regulators in relation to business activity. However, the views of the respondents diverged regarding the intensity of any backlash or the degree to which this acted as a brake on regulatory innovation. Some respondents felt that "backlash" was too strong a term, viewing SOX more as an expected "human nature response" to poor behaviour by corporate actors and a sense of "crisis" in the values of business in the US. A longer-term issue mentioned by several respondents and which has implications for non-SOX jurisdictions is the "brain drain of directors" because the risk–reward matrix regarding governance expectation and potential liability may be moving out of kilter, so that successful directors are particularly pressured in this regard. This issue is a growing concern in many jurisdictions, not just a SOX-affected US.

Respondents felt that resentment against SOX in the US has largely been directed at s. 404. The volume of this resentment has been somewhat reduced subsequent to the recent SEC guidance and issue of PCAOB Auditing Standard No 5, particularly from larger US corporate organisations that have now established more efficient and effective assessment programmes. However, respondents felt that there is still discontent among smaller US corporate organisations that are now implementing and operating assessment programmes without the resources available to larger companies.

Whether SOX had an effect on their own organisation's activities obviously varied according to occupational role, with some respondents affected directly and others only indirectly. Certain Australian regulatory actors were directly affected as they have to be able to exchange information and work with US regulatory agencies such as the SOX-created PCAOB, and, unsurprisingly, it has been s. 404 which has had the most significant effect. Overall, the effects of SOX have been limited, with those responsible for the supervision of markets and industry professionals always conscious of the need for the highest possible levels of integrity regardless of reforms in the US or elsewhere. Interestingly, some of the private-sector respondents have felt the impacts of SOX in particular ways. For example, it has made tasks such as corporate restructuring much more difficult because, under SOX rules (especially on conflicts), different people in organisations will have different levels of knowledge and this can make managing a restructure quite cumbersome.

When asked about the most significant changes in the regulatory regime of Australia in the period immediately coincidental with the advent of SOX, the general view was that the CLERP (Corporate Law Economic Reform Program) 9 legislation[49] and the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations are the most significant changes in Australia following SOX. The Corporate Governance Principles also draw on the UK Combined Code,[50] particularly the "if not, why not" approach, as well as the OECD Corporate Governance Principles and represent a very different approach to SOX. As CLERP 9 emanated largely from the HIH Royal

49 The CLERP (Audit Reform and Corporate Disclosure Act) 2004, which came into effect on 1 July 2004.

50 Financial Reporting Council (FRC), *The Combined Code on Corporate Governance*, June 2006, London (the UK Combined Code).

Commission,[51] timing of these changes with SOX was felt by respondents to be largely coincidental, rather than a specific regulatory reflex action across borders. Nevertheless a couple of the respondents were of the view that there is generally an increasing influence of US law and regulation in Australia, with Australian courts increasingly been persuaded by some of the developments in US law.[52] Also, some respondents pointed to some of the unexpected consequences of SOX, such as the conflicts of interest and large chartered firms issue, prompting a substantial growth in small firms specialising in corporate restructures being established by ex-partners of the major global accounting firms, for example, KordaMentha.

Question 3 focused on the influence of Australian domestic factors relative to SOX's capacity to transfer governance norms. There was universal agreement that the spate of collapses and fraud instances in the late 1990s and early 2000s in Australia (e.g. HIH, One-Tel) confirmed that the factors leading to SOX were not unique to the US and that a local response was necessary. Also, there was a broad view among respondents that these factors were situational rather than structural in Australia. Certainly, these influenced the types of reforms included in the CLERP legislation and were also an important factor that led to the formation of the ASX Corporate Governance Council in August 2002. All concerned were keen to avoid the "black letter" approach taken in SOX and for this reason the council worked on putting out a series of flexible principles and recommendations which are backed up by the Listing Rules 4.10.3 and 12.7. The first set of Corporate Governance Principles was developed in six months and before the CLERP 9 legislation. Respondents directly involved in that process confirmed that the council was conscious at the time that, if it did not arrive at a market-based solution quickly, legislation was highly likely. The second set of principles was developed more slowly with the benefit of broad public consultation – and involved much more of an evolutionary journey. This is an important point from the perspective of transference of legal norms because there was a strong sense amongst respondents that corporate governance in Australia has been on an evolutionary path, so that, for most companies, implementation of corporate governance regulation has been a slower process of formalisation and improvement rather than an outright transformation.

All respondents agreed that the Australian response was consistent with a more principles-based approach: for example, the use of "if not, why not" disclosure in the ASX Corporate Governance Principles rather than mandating compliance. Continuous disclosure is a very Australian regulatory response and SOX interacts partially with Australian regulatory praxis, but its influence is limited. As one respondent put it, the strength of the development of corporate governance in Australia has been its emphasis on "functionality of governance". Certainly, as far as companies are concerned, respondents felt that Australia has struck the right balance between self-regulation and black letter law, and it was emphasised repeatedly that there was stakeholder input into the regulatory change process, for example, with regard to CLERP, which helped to reduce some of the angst levels of business in relation to the changes that were happening. This melded with a very strong view across all those interviewed that the standard of corporate governance in

51 Justice Neville Owen was appointed in August 2001 by the Commonwealth Government of Australia to lead a Royal Commission of Inquiry into the reasons for and the circumstances of the collapse of HIH Insurance. Justice Owen's report was tabled in April 2003 and was influential in shaping policy directions for corporate governance in Australia. See *Report of the HIH Royal Commission* (2003), www.hihroyalcom.gov.au/finalreport/index.htm.

52 For example, the Sons of Gwalia case which drew upon US case law and whose decision now allows the possibility under Australian law for the claims of shareholders to be ranked equally with unsecured creditors: *Sons of Gwalia Ltd* v *Margaretic*; *ING Investment Management LLC* v *Margaretic* [2007] HCA 1.

Australia appears very high, with Australian corporate law being firmer in some of the areas that SOX sought to strengthen in the US. This in itself reduced the need for specific SOX-type reform but, regardless, overwhelmingly in the view of respondents, local context will impact significantly on how a regulatory innovation like SOX travels.

Question 4 sought comment on how influential have changes in the global regulatory environment been upon Australian regulatory innovations. Respondents agreed that changes in international or regional regulatory regimes will always be influential in the sense that Australia looks to the way in which other jurisdictions deal with particular issues, such as corporate collapses or the role of the auditor. However, respondents all agreed that there is increased sensitivity towards corporate governance issues in general and that it is important that Australia responds to these changes in a way that is appropriate for Australian conditions, including appropriate levels of regulatory burden and compliance cost. On the issue of Company Boards, respondents perceived them as being increasingly sensitive towards education and compliance issues regarding corporate governance. For example, more Australian companies are heeding calls for increasing numbers of independent directors and there are a decreasing number of recalcitrant companies on this issue. Respondents noted that listed companies in particular are very sensitive to what investors want to hear, with board composition seen as especially important. Respondents delivered a comprehensive "no" on whether Australian regulatory innovation was a direct and coordinated response to the implementation of US regulatory regime policies. All believe that Australian factors have been more significant regarding corporate governance reforms in Australia, which highlights again the importance of subsidiarity factors when considering the issue of transference of legal norms across borders.

Question 5 considered how the legal approach to, and enforcement of, corporate governance may have changed. Respondents perceived the issues raised by this question as not so much how has the legal approach changed but more how "enforcement" of corporate governance has changed. For example, change can be seen in the original governance ASX Listing Rules which asked companies to describe their practices in fairly general terms as opposed to the more recent ASX Corporate Governance Principles which are quite detailed. Respondents noted that CLERP 9 has enacted certain specific corporate governance principles as law in the Corporations Act, thereby enabling increased regulatory enforcement. This has dovetailed with the approach of the ASX Corporate Governance Principles and Recommendations which, while not having the force of the Corporations Act, have driven a more consistent view of, and approach to, corporate governance practices. One respondent noted this synergy with evolution at the political level, in that in Australia there is now a Minister for Corporate Governance and Regulation (as part of the Ministerial Team at the Treasury), perhaps signalling a concerted move away from the "boom, bust, investigate, regulate cycle" and an increased emphasis from governments on market dynamics and corporate governance. A number of respondents also commented on the fact that there has been in Australia a growing media influence in the prosecution of corporate governance (following US trends in this regard, for example, a sharper focus on insider trading). This trend has been accompanied by an increasing use of the media by regulators themselves and this is an area of burgeoning influence which merits focused research.

Question 6 asked whether the government, the "governance profession" and business have different goals and, unsurprisingly, not only did respondents have mixed views on this issue, they also found it tricky to answer. As one respondent noted, co-objectives will be held by any entity or grouping whether it is labelled as "governance" or as some other category. Some felt that ultimately all these groups will have similar goals: deep liquid markets that are internationally competitive and a market that has the highest integrity, the right balance of regulation and which provides good returns to all investors. Other respondents felt that there were significant differences. For example, the goals of government include regulating the corporate governance practices of businesses in order to protect the integrity of capital markets and their participants; the goals of businesses include assuring shareholders and other stakeholders that the company is well governed; and the goals of the governance profession including assisting businesses to provide assurance to shareholders and other stakeholders about corporate governance practices (including compliance with relevant government regulation). Nevertheless, as one respondent (a senior commercial lawyer in private practice) stressed, there has been a "sea change" in relation to Corporate Social Responsibility (CSR) in Australia. No longer is lip service paid to this issue by Australian corporations, it is now a very important reputational risk management issue, with the corporate governance profession actively educating business in this area. He often uses the "Page 1" test when advising boards by asking: "How would you feel if this was on page 1 of a broadsheet newspaper?" If the board members are uneasy about this, then they are probably handling the issue incorrectly and so the issue of avoiding conflicts, for example, is now a commercial priority for many businesses in Australia. The combined effects of domestic factors mean that it has not required a dramatic SOX-type legislative bombshell to engineer this change in Australia, but a more evolutionary process.

All respondents answered yes to question 7 on whether corporate governance should concern itself with stakeholder interests, but there was variance in what the intensity of concern should be. Some respondents emphasised the revised ASX Corporate Governance Principles which talk about stakeholders in two places in the context of Principle 3 (to "promote ethical and responsible decision-making") and the commentary to Principle 7 which talks about the need to consider risks relating to some matters characterised as CSR/sustainability when looking at the issue of risk. Other respondents commented on the almost inevitable tensions raised in a particular area of stakeholder interest, corporate governance regulation relationship, and it remains a source of debate in contemporary discourse on corporate governance in Australia.[53]

With regard to question 8 and whether there is a trade-off between shareholder and stakeholder interests, generally respondents felt that there may be competing objectives between shareholders and stakeholders, but these do not necessarily translate to differences in corporate governance objectives. For example, objectives relating to the reliability of financial reporting and effectiveness of related controls are relevant to all stakeholders, including shareholders. Of course, respondents recognised that in some contexts trade-offs are likely between shareholders (who emphasise returns/profits) and stakeholders (who want to ensure that they can get their money back and can operate in a relatively secure investment environment), but these may well vary across and between industries.

The interview's final question sought summary assessment of both the beneficial and adverse effects of the changes made by SOX and the contemporary Australian reforms. In terms of its positive effects, all respondents agreed that SOX has helped increase awareness of corporate governance in general and avoidance of conflicts in particular, and that these changes have been coupled with a rise in regulatory activity in the area of corporate

53 This can be seen most recently in the July 2009 report of the Corporations and Advisory Markets Committee (CAMAC), *Aspects of Market Integrity*. The report focused on: dealing by company directors in the shares of their company; spreading of false and misleading information – *rumourtrage*; and disclosure of information in the briefing of analysts. The report is available at www.camac.gov.au/camac/camac.nsf/byHeadline/Whats+NewMarket+Integrity+Report+June+2009?openDocument.

governance. Specific beneficial effects noted by respondents included: the increased rigour in relation to issues such as the independence of auditors; assurance in relation to financial statements; and a greater general consciousness of the importance of these issues. Listed companies do take these issues seriously, as is evidenced by the overall improvements in reporting levels in relation to corporate governance disclosures. There was consensus amongst the respondents that the main benefit of SOX was that it focused increased attention on areas that should have been the focus of attention anyway, especially for business organisations themselves. These areas included: improved business ethics; better disclosure; clearer relationships between risk management and financial management; and increased truth in auditing. As one respondent commented, corporate managers and executives in Australia benefit from the SOX reforms, because they can help to underpin some of their assertions about how a company should be run and increase the confidence of external actors in the financial reporting and other governance aspects of firms. However, several respondents pointed out that there is real difficulty in quantifying the benefits of the SOX reforms.

Respondents agreed that the negative effects of SOX largely centred on costs and the scale and industry of an organisation seems to be crucial in any decision-making matrix. One respondent estimated that the Big Four Australian banks would have had to invest $25m per year in order to be compliant with the initial s. 404 regime. Following those initial sunk costs and given the revised s. 404 regime as a result of the SEC changes annual costs of s. 404 compliance were probably less than $10m – probably about $8m per annum. Interestingly, that figure was viewed as tolerable to a large organisation like a Big Four bank because of the reputational protection that s. 404-type compliance can bring to a firm of such organisational scale which still maintains much of its revised governance arrangements (introduced as a direct result of s. 404 in SOX), and because it felt that the firm benefits from the changes. Big bank audit committees remain in favour of retaining many of the s. 404 changes. In the view of this particular respondent that is the "proof of the pudding" really – none of the Big Four banks in Australia are significantly scaling back their s. 404 changes, although some do tweak their internal governance systems to suit the firm's objectives. The banks are making rational actor cost–benefit and risk management decisions about the intrinsic value of an internal s. 404-type oversight and accountability system. However, other respondents were less well-disposed to the cost-benefit impacts of SOX, feeling that SOX flatters to deliver increased probity but in reality makes no difference and may even make the situation worse. One cryptically noted that just because there are more pages about corporate governance in an annual report does not mean that in reality there will be improved governance within a company or in general. As one put it, "SOX draws a very long bow between costs and complexity of impacts versus the problems being addressed." Several respondents felt that SOX was poorly drafted and that CLERP 9 in Australia was not only better drafted but better targeted. Another referred to SOX as "an unfinished symphony, too black-letter, in need of review in order to produce more codification, especially in the area of shareholder rights".

Conclusion

Overall, the findings from the study are that key stakeholders in Australia have taken notice of SOX and its effects in the US, but that the influence of SOX in specifically Australian contexts has been limited. The general perception in Australia seems to be that SOX has had some flaws in its inception and in its subsequent delivery in the US, but also that it has produced some positive outcomes. However, domestic factors and influences appear to be overwhelmingly more important in shaping how financial regulation and corporate governance evolve in Australia. All respondents agreed that SOX has helped produce an increased awareness of corporate governance in general and avoidance of conflicts of interest in particular, and that these changes have been coupled with a perceived rise in regulatory activism in the broader area of contemporary corporate governance.

There were specific SOX-related beneficial effects noted by respondents. For example, the increased rigour in relation to issues such as the independence of auditors. Similarly, respondents drew comfort from what they saw as raised levels of assurance in relation to financial statements and the greater general consciousness of the importance of these issues. All the respondents agreed that listed companies take these issues seriously, as evidenced by the overall improvements in reporting levels in relation to corporate governance disclosures. Also, there was consensus amongst the respondents that the main benefit of SOX was that it focused increased attention on areas that should have been the focus of attention anyway, especially for business organisations themselves. These areas included: improved business ethics; better disclosure; clearer relationships between risk management and financial management; and increased truth in auditing. However, it is important to emphasise that several respondents pointed out that there remains a real difficulty in quantifying the benefits of the SOX reforms.

The US regulatory influence is obviously most strong upon those Australian firms who have chosen to remain in the US as Foreign Private Issuers. Nevertheless, there was widespread agreement amongst the respondents that, on balance, the level of influence that US regulatory activity has on Australian regulatory structures and processes is appropriate. Australia notes and takes into account US trends but does not slavishly take the lead from the US – the CLERP 9 process and the ASX Corporate Governance Council activities demonstrate this regulatory reality. Respondents also agreed that, given that the US is the dominant market globally, international investors expect Australia to have comparable governance standards to the US, or they would consider Australia to be a sub-par regulatory environment. So, SOX is seen as merely accelerating an ongoing process across the world which had been kick-started by the Cadbury reforms in the UK. One respondent commented specifically that some people can be too quick to say that Australia is on a US bandwagon – CLERP 9 shows that Australia has been very much following its own way in terms of corporate governance reform.

The results of the Australian case study confirm the need to take into account the importance of local cultural influences in governance which is an issue that is stressed by Kirkbride et al.[54] Similarly, Cunningham notes in what he perceives as the clumsy global reach of SOX, that national conceptions of corporate purpose differ around the world and inevitably this will shape the choices a jurisdiction makes regarding its corporate governance tools, how these tools are described and how they are applied.[55] This seems to be a sensible and legitimate summary about how legal norms may travel across national and cultural boundaries. This perspective appears to have been borne out in this Australian case study as there was universal agreement amongst the respondents that Australia does strive to achieve "global best practice" and so inevitably is influenced by regulatory developments in the US in particular, but also Europe. However, the degree of US regulatory influence was seen as largely benign and SOX was not perceived as signifying in any substantive way a regulatory hegemony emanating from the US that determines financial market regulation or the evolution of corporate governance in Australia. Different jurisdictions have different

54 J Kirkbride, S Letza, X Sun and C Smallman, "The boundaries of governance in the post-modern world" (2008) 59(2) *Northern Ireland Legal Quarterly* 161–75, at p. 174.

55 L A Cunningham, "From convergence to comity in corporate law: lessons from the inauspicious case of SOX" (2004) 1(3) *International Journal of Disclosure and Governance* 269–98, at p. 272.

perceptions about what are their respective legitimate interests and appropriate regulatory strategies. This political reality reflects in our current era of networked governance, as in previous eras, that successful regulation is at heart an issue of balance.

Appendix – Topics used to guide the semi-structured interviews

Regulatory regime change in world financial markets – Australia

Guide to semi-structured interview questions.

1. Perceptions of Sarbanes-Oxley's (SOX's) effect in the US from an Australian observer
   a. SOX has had mixed reviews in the US amongst academe, business, media and politics. One prominent academic (Romano: 2004) has labelled SOX "quack corporate governance". Do you think such a view is justified?
   b. Do you think SOX has been a positive innovation for the US or not, and in your view what should be the major criteria for evaluating SOX?
   c. Do you perceive that currently there is a backlash against SOX in the US, and if so, do you think that this is acting as a restraint on further regulatory innovation by US politicians and regulators in relation to business activity?
2. SOX & you.
   a. Has SOX had an effect on your/your organisation's activities and if so, in what way?
   b. What do you see as the most significant changes that have occurred in the regulatory regime of Australia in the period immediately coincidental with and following changes in the US regulatory regime (i.e., Sarbanes-Oxley)?
3. What domestic factors have determined and shaped regulatory regime changes in Australia relative to SOX?

   In your view to what extent were those changes attributed to local structural conditions (e.g., historical regulatory policy patterns) or situational factors (e.g., local scandals or political upheaval/turmoil)?
4. How influential have changes in the global regulatory environment been upon Australian regulatory innovations such as CLERP 9? Specifically, to what extent are the changes related to:
   a. Changes in international or regional regulatory regimes
   b. Changes in prevailing dominant corporate behaviour norms
   c. A direct and coordinated response to the implementation of US regulatory regime policies?
5. How has legal approach to, and enforcement of, corporate governance changed?
6. Do government, the "governance profession" and business have different goals?
7. Should corporate governance concern itself with stakeholder interests?

8. Is there a trade-off between shareholder and stakeholder interests?
9. Assessment of effects
    a. In summary then, what is your assessment of,
        i. firstly, the beneficial effects and
        ii. secondly, the adverse effects of the changes made by
            a. SOX
            b. the subsequent Australian reforms?
    b. Do you feel that the SOX story to date shows that the levels of influence that US regulatory activity has on Australian regulatory structures and processes are appropriate or not?