

OutQUORUM  
LGBTQ+ Board  
Diversity Guidelines:  
Australia







## Todd Sears

### CEO & Founder, Out Leadership

*What isn't measured doesn't count.*

When Out Leadership started the LGBTQ+ board diversity conversation nine years ago, LGBTQ+ identity wasn't only not measured, it wasn't even on the map. Remarkably, only two Fortune 500 companies included LGBTQ+ in their board diversity policies. So, as is our practice at Out Leadership, we identified the problem and built a solution.

Companies told us they didn't have LGBTQ+ inclusive diversity policies, so we wrote them for them. Those policies, strategically paired with advocacy and advice, have resulted in extraordinary change across the business community in the United States. Today, 112 Fortune 500 boards include LGBTQ+ in their board diversity policies. From two to 112 is great progress, but we still have 388 companies to go.

Soon after we wrote the first policy, we approached some of the largest pension funds in the United States (New York City, New York State, CalPERS, and CalSTRS) and helped them integrate LGBTQ+ board diversity standards into their investment mandates, roughly three trillion dollars of pension fund assets. Next, we turned to the Nasdaq, and helped them build LGBTQ+ diversity into their listing requirements - a profound win born out of this report's findings. We even helped them with their SEC filing, which was approved in December 2021, impacting 3,300 companies across the entire Nasdaq. That process even led to us working with Congress on three different bills, and I testified in Congress before the House Financial Services Committee under Congresswoman Maxine Waters later last year.

That's progress. It requires patience and pragmatism, and it is at the core of OutQUORUM and all of Out Leadership's initiatives around the world. We meet every business, every CEO, every Board Chair, wherever they are in their board diversity journey, and help bring them along. We help companies get there. One step at a time, one business at a time, we're helping companies change the world.

We are now taking all of these learnings that we have had over the last eight years in the United States, and helping Australia do this at lightning pace. It's taken the United States eight years for 100 companies to change. Imagine if Australia could change 200 ASX companies by next year's Sydney Mardi Gras. 200 companies in one year. It's an ambitious goal, but together we can make it happen.

I look forward to doing it with you, and let's change Australia for the better together!

Todd G. Sears



# Board Demographics Reporting: The Business Case

For 13 years, Out Leadership has been helping companies identify and uplift LGBTQ+ leaders at every level of their company by building the tools companies need to advance equality. Through our work, companies across the United States have changed their policies to include LGBTQ+ leaders at the board level and support a pipeline of emerging talent to fill those senior leadership roles. And now we want to bring those best practices and successes to Australia so that we can change the face of the boardrooms across Australia as well.

**Diversity on corporate boards is good for business**, and stakeholders are increasingly seeking transparency and engagement with regard to the demographic composition of the board. Global and US investors such as BlackRock<sup>1</sup>, CalPERS<sup>2</sup>, CalSTRS<sup>3</sup>, New York City Employees' Retirement Systems (NYCERS), and State Street Global Advisors<sup>4</sup> actively encourage portfolio companies to improve board diversity, and are using their proxy voting power to engage with companies on this topic. BlackRock's Head of Investment Stewardship team told the Australian Institute of Company Directors, "we tell companies that if they don't respond to our engagement with them on diversity, or if they dismiss our concerns, we will vote against the re-election of directors on the nomination committee"<sup>5</sup>.

Australian companies typically disclose the age and gender of directors but not other diversity factors in their annual reports.<sup>6</sup> This is reflective of the limited diversity-related disclosure requirements in the current Australian regulatory and legal landscape. However, stakeholders such as superannuation funds, proxy advisors and investment managers are increasingly engaging with investee and portfolio companies on board diversity.

The Governance Guidelines published by the Australian Council of Superannuation Investors (ACSI)<sup>7</sup> (which includes many of Australia's largest superannuation funds and institutional investors) recommend that in selecting directors, the board considers a range of diversity factors that could add value to board decision making by bringing different perspectives to bear, such as gender, age, education and professional experience, ethnicity, and overall board tenure. The Guidelines encourage companies "to disclose how they take **all facets of diversity** into account, **along with information on the diversity of the board (across all areas)**". The Guidelines also provide that *when formulating recommendations on director election or re-election proposals, ACSI*

*"This decision is rooted first and foremost in our conviction that **companies with diverse leadership perform better**. Consider this: since 2016, US companies that have gone public with at least one female board director outperformed companies that do not, one year post-IPO. But in addition to the real commercial benefits, it's clear that **changing the stereotypes associated with corporate decision-making will have many positive effects for society as a whole.**" -David Solomon, CEO of Goldman Sachs, February 2020*

*considers factors such as progress on the board's diversity, and in relation to board composition, "how the director fits within the board's skills matrix and diversity considerations (for example, gender)". In relation to gender diversity, ACSI recommends its members vote against the boards of ASX300 companies with poor gender diversity.<sup>8</sup>*

Some Australian proxy advisors, investment managers and superannuation funds also publish diversity-related voting policies. At present, these policies are typically directed at gender diversity or framed broadly without reference to specific facets of diversity.

For example, AustralianSuper identifies diversity as a strategic theme of its investment decision-making and stewardship activities.<sup>9</sup> AustralianSuper has implemented a board gender diversity voting approach for companies in the S&P/ASX 200 index, under which it will vote against certain directors (including the Board Chair, Nomination Committee Chair, or longest serving member of the Board or Nomination Committee) eligible for re-election where the company has fewer than two female directors and has not made a commitment to rectify the issue within a reasonable timeframe.<sup>10</sup>



*According to the 2023 OutQUORUM report, only seven ASX 200 companies included LGBTQ+ identity in the board diversity guidelines published in their 2022 board diversity policies. That's only 3.5% of companies in the ASX 200.*

The Australian Shareholders' Association (ASA) has developed voting and engagement guidelines for ASX 200 companies which note that ASA expects companies to avoid homogeneity of director's geography, ethnicity, age and industry, and provide sufficient information to allow shareholders to assess diversity.<sup>11</sup> CGI Glass Lewis similarly states in its Policy Guidelines that companies should incorporate policies for board diversity and related disclosures in their annual reports or in any other prominent public disclosure.<sup>12</sup>

Australian investment manager FutureFund published its Environmental, Social and Governance Policy which notes that it will exercise ownership rights, including voting rights, in accordance with the fund's corporate governance principles, including the principle that companies should compose diverse boards of directors.<sup>13</sup> Investment banks are also following this trend. In its "Guidance on Enhancing Gender Diversity on Boards", State Street Global Advisors noted, "in the event that companies fail to take action to increase the number of women on their boards, despite our best efforts to actively engage with them, **we will use our proxy voting power to effect change** — voting against the Chair of the board's nominating and/or governance committee or the board leader in the absence of a nominating and/or governance committee, if necessary."<sup>14</sup>

In an open letter to corporate board chairs, State Street Global Advisors asks companies in its portfolio to provide information about "...diversity characteristics, including racial and ethnic makeup, of the board of directors."<sup>15</sup>

Citing the positive impact of diversity on share price performance, Goldman Sachs announced in early 2020 that **it will no longer underwrite an IPO for a company in the US or Western Europe unless it has at least one woman or other diverse member on its board.** Goldman's IPO requirement increased to two diverse directors in 2021, one of which must be a woman.<sup>16</sup>

While regulatory requirements and stakeholder engagement on board diversity remain relatively nascent in Australia, Australian stakeholders and regulators are likely to be influenced by the requirements adopted in overseas jurisdictions. Following the recent introduction of the Nasdaq's Board Diversity Rule, companies listed on Nasdaq's US stock exchange are required to publicly disclose board-level diversity statistics annually using a standardised template (the Board Diversity Matrix<sup>17</sup>), and have, or explain why they do not have, diverse directors. Operating companies with boards of more than five members can satisfy the diversity objective with one female director and one director who is an underrepresented minority or LGBTQ+.<sup>18</sup>

The ASX has also recognised the importance of diversity on boards, acknowledging that *"diversity is increasingly seen as an asset to listed entities and a contributor to better overall performance"*.<sup>19</sup> The ASX Corporate Governance Council's Corporate Governance Principles and Recommendations<sup>20</sup> set out the Council's recommended corporate governance arrangements for entities listed on the ASX. Entities are required to report against the Principles and Recommendations on an "if not, why not" basis in their annual corporate governance statements, to ensure the market is appropriately informed of an entity's governance arrangements.<sup>21</sup> Recommendation 1.5 sets out that listed entities should have and disclose a diversity policy, set and disclose measurable objectives for achieving gender diversity in the composition of its board, and disclose the respective proportions of men and women on the board. The ASX Council also recommends that if the entity is in the S&P/ASX 300 Index, the measurable objective for achieving gender diversity in the composition of its board should be to have not less than 30% of its directors of each gender. The Council also recommends that boards of listed entities consider:

***"Other facets of diversity in addition to gender when considering the composition of the board. In particular, having directors of different ages, ethnicities and backgrounds can help bring different perspectives and experiences to bear and avoid groupthink or other cognitive biases in decision making".***<sup>22</sup>

Comprehensive data on board demographics is not easily obtained from most publicly-listed companies' reporting, and is even more difficult to gather from privately-held and venture-backed companies. Director biographies include some demographic data – for example, in the form of gendered pronouns, surnames or accompanying photographs – that allow investors to make assumptions about board diversity across a few dimensions. However, drawing superficial conclusions is not a reliable way to assess diversity and major gaps in reporting make it difficult to discern the full picture.

In 2021, 63% of ASX 200 entities (and only 53% of the ASX 201-500) entities disclosed measurable objectives in line with the ASX Corporate Governance Principles and Recommendations. A study by KPMG noted that reporting on the proportion of specific demographic groups beyond gender among employees (let alone boards) is almost non-existent for ASX listed entities. Across all

three categories of entities (ASX 200, 201-500, 501+), only 5% report statistics on those who identify as LGBTQ+ in the workplace.<sup>23</sup>

Given there is currently no regulatory requirement or corporate governance recommendation to address sexual orientation or diverse gender identities in board diversity reporting, it is likely the number of companies incorporating LGBTQ+ in their definitions of board diversity in Australia would be similarly low. The KPMG Report indicated that ASX-listed entities do not focus exclusively on gender in diversity disclosures with respect to their workforce, and that the overwhelming majority of entities now include race/ethnicity, religion, age, sexual orientation and disability in their diversity definition. However, there is little visibility about whether that definition extends to the boards of those entities.

The lack of director demographic information reported by companies in their public reporting and other investor communications has given rise to an inefficient and incomplete patchwork of workarounds, as investors seek this information from other sources. **By failing to report on boardroom demographics, companies miss an opportunity to communicate with their stakeholders about their commitment to boardroom diversity,** and stakeholders are frustrated in their efforts to understand the governance priorities of companies in which they have invested or may invest.

Enhanced disclosure enables companies to explain how their directors are qualified to serve, and to demonstrate the demographic diversity of their boards, without asking investors to make assumptions based on incomplete data, or to waste resources sourcing demographic information from third parties.





## Board Demographics Reporting: Options

1. We encourage companies to consider providing information to their stakeholders about the demographic composition of their boards (on an aggregate basis), **at least annually**, including in relation to gender and gender identity, sexual orientation, cultural background, age, and lived experience of disability.
2. We recommend **a matrix format for disclosure of board demographic information** such as the example on the following page, which was adapted from the format used by the Nasdaq (a matrix Out Leadership helped create).

For publicly listed companies in Australia, this disclosure might be included in the annual report or corporate governance statement, perhaps as an extension of (or alongside) the board skills matrix recommended by the ASX Corporate Governance Council.<sup>24</sup> Just as disclosing the board skills matrix gives useful information to investors and helps to increase the accountability of the board in ensuring it has the skills to discharge its obligations effectively and to add value, so too can a matrix of demographic data. Frontier Advisors suggests that expanding the skills matrix to encompass identity characteristics and non-skills criteria may provide additional useful insight for investors, albeit the appropriate balance between diversity mapping and privacy should be considered by companies.<sup>25</sup>

For privately-held companies, disclosure may be included in their annual reports, information statements distributed to shareholders (if applicable) or other communications.

Companies should also consider disclosing this information in the governance section of their corporate websites.

## Board Diversity Language: Examples

### Goldman Sachs

*"Our Governance Committee considers a number of demographics and other factors, including race, gender identity, ethnicity, sexual orientation, culture, nationality and work experiences (including military service), seeking to develop a board that, as a whole, reflects diverse viewpoints, backgrounds, skills, experiences and expertise."*<sup>26</sup>

### American Express

*"Diversity is also a key consideration in our nomination and succession planning processes. Our Corporate Governance Principles provide that the Board should be diverse, engaged and independent. When reviewing potential board nominees, the Nominating, Governance and Public Responsibility Committee considers the holistic diversity of the Board, including gender, race, ethnicity, age, sexual orientation and nationality, and does not discriminate on any basis."*<sup>27</sup>





# Board Matrix

	Number of directors who identify as any of the categories below
<b>BOARD SIZE</b>	
Total number of directors	
<b>GENDER AND GENDER IDENTITY</b>	
Cisgender Male	
Cisgender Female	
Non-Binary	
Transgender Male	
Transgender Female	
<b>SEXUAL ORIENTATION</b>	
LGBQ+	
<b>AGE</b>	
<30	
31-40	
41-50	
51-60	
61-70	
70+	
<b>CULTURAL BACKGROUND</b>	
Aboriginal and/or Torres Strait Islander	
Anglo-Celtic	
European	
Non-European	
<b>DISABILITY</b>	
Identify as a person with a disability and or experience of chronic illness	

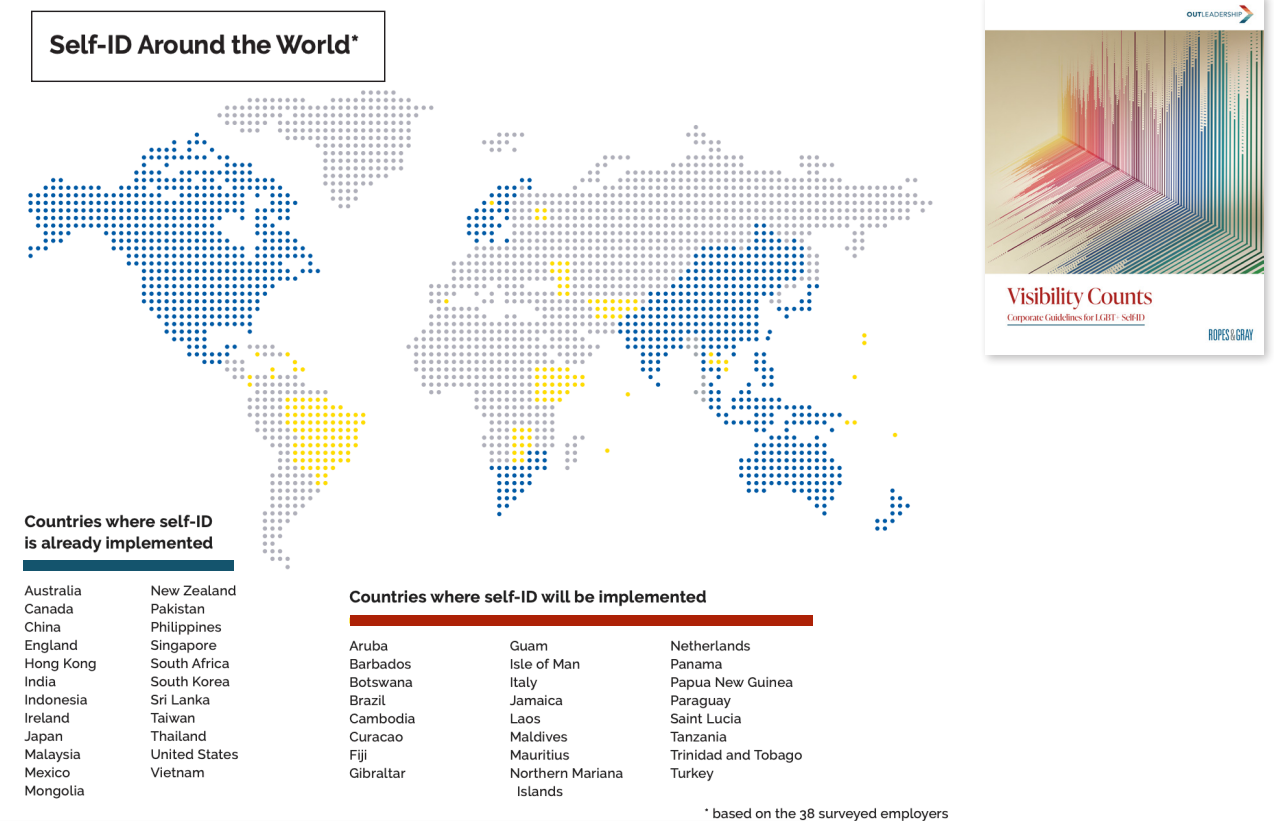
# Collecting Information Regarding Board Demographics

Companies should consider potential approaches to collecting this information carefully.

1. One simple approach to collect demographic data about board members is through a voluntary (and anonymous) self-identification questionnaire. Board members are typically familiar with questionnaires which they may complete for the purposes of preparing the company's skills matrix, in relation to director independence, and for the purposes of board evaluation.
2. Example demographic questions are shown on the following page, and may be customised by each company. The cultural background categories included in the example questions align with the categories recommended by the Australian Race Discrimination Commissioner.

*Companies are asking for LGBTQ+ individuals to self-identify at the employee level. They need to also be asking at board level.*

Findings from Visibility Counts report, by Out Leadership and Ropes & Gray, 2019





# Example

## Demographic Questions

(1) At our Company, diversity and inclusion are a part of our values. Your voluntary responses to the following questions help us to understand and report to our stakeholders on the diverse backgrounds, skills, and experiences that our directors bring to the Company.

(a) **Cultural Background**<sup>28</sup> — Please indicate all that apply to you. Do you identify as:

- Indigenous<sup>29</sup>
- Anglo-Celtic<sup>30</sup>
- European<sup>31</sup>
- Non-European<sup>32</sup>
- Prefer not to say

(b) **Gender** – Do you identify as:

- Cisgender Female
- Cisgender Male
- Non-Binary
- Transgender Male
- Transgender Female
- Prefer not to say

(c) **Sexual Orientation** — Do you identify as a member of the lesbian, gay, bisexual, or queer (LGBQ+) community?

- Yes
- No
- Prefer not to say

(d) **Age**

- <30
- 31 - 40
- 41 - 50
- 51 - 60
- 61 - 70
- >70
- Prefer not to say

(e) **Disability** – Do you identify as a person with a disability and/or lived experience of chronic illness?

- Yes
- No
- Prefer not to say

(f) Please describe components of diversity that apply to you which are not covered by the questions above.<sup>233</sup>

## FAQ's

### **Will board members be uncomfortable if asked to provide their demographic data?**

Public companies may ask directors provide certain information for compliance, corporate governance and other purposes from time to time. In addition, since companies routinely collect demographic data from their employees, many directors will be familiar with this data collection from their executive roles. Nevertheless, some board members might be uncomfortable self identifying, and for this reason, companies might wish to consider inviting board members to provide the data on a voluntary and anonymous basis, and/or including options to certain questions such as 'prefer not to say'.

### **Will expanded disclosure of board demographics add litigation risk for companies?**

We encourage companies to consult with their corporate secretary and external counsel in connection with market and other disclosures. Companies should consider, for example:

- How any gaps identified in the demographics of the board will be dealt with, for instance by including a narrative alongside any demographic matrix explaining why the board is of the view that the current composition of the board is suitable to the needs of the company.
- How it will report the data where certain board members decline to self report their demographic data (in relation to one or more categories).
- The applicability of Australian federal and state anti-discrimination provisions. Information collected about a person's sexual orientation or in respect of other demographic categories might be considered as relating to a 'protected attribute' for the purposes of that legislation, meaning the company would need to demonstrate it is collected in good faith and for a lawful purpose. Further, the individuals whose information has been collected must not be treated unfairly, or less favourably, because of the information provided. To mitigate the risk that the information is used for a discriminatory purpose, it is best practice to collect the data anonymously notwithstanding the absence of a requirement to do so.
- How it will comply with the Privacy Act 1988 (Cth) in its collection and retention of the demographic information, given information as to a person's sexual orientation and gender is likely considered 'sensitive information', to which certain requirements apply (including the requirement to provide a privacy collection notice).



## FAQ's

### ***How can institutional investors help?***

Institutional investors can engage with the management teams and boards of their portfolio companies and encourage companies to consider reporting on the demographic diversity of their boardrooms. Investors could also formally recommend that companies report on the demographics of their boards. For example, CalPERS' Governance and Sustainability Principles specify:

*Boards should annually disclose their demographic information including race, ethnicity and gender. Ideally, companies should disclose their Employer Information Report, known as the EEO-1 report, or similar workforce demographic data to enable shareowners to assess the board's diversity relative to its workforce and compare companies in similar industries.<sup>34</sup>*

Investors could also encourage certain disclosure formats, such as the example given in this document (adapted from the Nasdaq example matrices<sup>35</sup>).

### ***How can general counsel, corporate secretaries and law firms help?***

External and in-house counsel are a vital source of advice for boards on corporate governance matters. Nominating committees and boards will look to their legal department leaders and to external law firms for guidance regarding disclosures, and often rely on law firms' "best practice" approaches.

*We encourage law firms to:*

- Update their example annual reports and corporate governance statements to reflect these suggestions.
- Discuss with clients the opportunity to provide enhanced disclosure of board demographic diversity in annual reports, corporate governance statements, and other documents.

*We encourage general counsel and corporate secretaries to:*

- Discuss emerging trends in board demographic diversity disclosure with their boards and committees.
- Consider including board members in diversity and inclusion demographic data collection initiatives (such as surveys) which employees are encouraged to participate in.
- Provide context and advice to board members to encourage them to consider self-identification for the purposes of expanded disclosure.

### ***How can employee networks help?***

Operating within their companies, employee networks representing under-represented communities can:

- Review their companies' board demographic disclosures, and encourage enhanced reporting (whether on an aggregate or individual basis).
- Collaborate with other employee networks to encourage improved demographic disclosures.





# About Out Leadership

Out Leadership is the world's premier global platform used by businesses to drive LGBTQ+ equality through talent development, advocacy, research, thought leadership, and networking, working closely with almost 100 of the world's greatest companies.

Get involved: [info@outleadership.com](mailto:info@outleadership.com)

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## OutQUORUM SPONSORS



# Out Leadership Members



# Acknowledgements



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## AUSTRALIA BOARD DIVERSITY GUIDELINES SPONSOR



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32. 'Non-European' encompasses all other cultural backgrounds, including South-East Asian (e.g. Vietnamese, Malaysian), North-East Asian (e.g. Chinese, Japanese, Korean), Southern and Central Asian (e.g. Indian, Sri-Lankan, Afghani), Latin American (e.g. Mexican, Colombian), Middle Eastern and North African (e.g. Egyptian, Turkish), Sub-Saharan African (e.g. Nigerian, Zimbabwean) and Oceanic and Pacific Islander (e.g. Maori, Tongan).
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