Corporate Groups in Australia: State of Play

Sandra van der Laan & Graeme Dean

While a number of studies and reports (for example, CASAC 2000; Clarke and Dean 2007; Ramsay and Stapledon 1998; 2001) have identified the importance of corporate groups on the commercial landscape, both in Australia and internationally, little is known about the nature, incidence, composition or rationale for commercial enterprises to adopt specific types of group structures. Understanding the differences in the accounting for each separate company within a group and the process of consolidated group enterprise data used in most empirical works is a prius for researchers undertaking large-scale empirical work. It underpins the ability to generalise about findings based on samples of publicly listed companies, arguably randomly selected from the population of listed corporate groups.

This paper reports findings of an extensive empirical study using 2007 data in order to illuminate the current situation in relation to the nature, incidence and composition of corporate groups in Australia. It adopts a similar structure to that used by Ramsay and Stapledon (1998; 2001). The current data will allow tests of stability regarding the way corporate groups are structured.

Today, patterns of economic and social relationships are institutionalised in a variety of corporate forms. The structures are becoming more complex and frequently decentralised. Indeed, the regulation of corporate groups is one of the most complex areas of corporate regulation (McCahery et al. 1993). Yet, little is known about the nature, incidence, composition or rationale for commercial enterprises to adopt specific types of group structures. Adoption of a group structure provides management with great flexibility and, as such, concerns have been raised in respect of the accountability of corporate groups (Clarke and Dean 2007; Hadden 1993). Central to corporate accountability is the notion of control, particularly in a group context.

Corporations employ varying concepts of control to structure their corporate group; that is, to establish control or not to control subsidiaries in order to meet the needs of their particular circumstances, and to control what information is presented in respect of the related entities. Reasons for structuring in a particular way are numerous. They could be:

- to limit liability by invoking the benefits of the corporate 'veil'
- to minimise taxation
- for financial (non-)reporting considerations
- in relation to business acquisitions and the costs of acquisition
- for investment reasons (CASAC 2000; Dean and Clarke 2005; Ramsay and Stapledon 1998; 2001).

While some description has occurred in Australia about the structure of corporate groups, it is dated, and generally, there is still little in the way of well-developed theoretical explanations about why commercial activities are undertaken by corporate groups. As noted, what does exist is little more than unsubstantiated propositions about the importance of using groups of entities for risk minimisation, for financing and tax efficiencies, and so on. To move to a more systematic explanation of why commerce is conducted through group structures requires an empirical mapping of how corporate groups conduct their commercial affairs. And of interest is whether there is stability in corporate group use – in

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other words, are those operations similar to a decade earlier. This paper is thus preliminary – it provides summary data about how groups are structuring their affairs in Australia in 2007, enabling a comparison with Ramsay and Stapledon's earlier 1997 work.

Ramsay and Stapledon (1998; 2001), in setting the scene for their earlier work examining 'Corporate Groups' in Australia, referred to events germane to what would become known as the '1998 Australian waterfront dispute'. That saga precipitated a flurry of interest in the nature, significance and regulation of corporate groups in Australia in the late 1990s (CASAC 2000; Ramsay and Stapledon 1998; 2001; Dean and Clarke 2005). A decade on, somewhat similar concerns have again been raised concerning asset shuffling, complex financing arrangements and the structuring (and restructuring) of corporate groups to achieve strategic aims. Consider high-profile cases such as the James Hardie affair (Clarke and Dean 2007; Moerman and van der Laan 2007) and the financial dilemmas evident at Allco, Centro and (say) Sons of Gwalia. This has led to corporations law, especially 'in Anglo-Saxon countries grappl[ing] with the conflict between the recognition of a company as a separate legal entity and the contiguous tendency (especially by accountants) to give some legitimacy to a group entity' (Clarke and Dean 2007, p. 129). And while the doctrine of the separate legal entity generally prevails (Austin and Ramsay 2007), the commercial reality of the notional corporate group is acknowledged to some extent under Australian corporate law.

Ramsay and Stapledon's earlier work identified the following features of Australian corporate groups: 89% of the Top 500 companies in 1997 adopted a group structure with an average of 28 controlled entities (or subsidiaries) of which, a large proportion were wholly owned. At that time a significant proportion (65%) of the entities controlled were incorporated in Australia, and the remaining proportion were incorporated in some 122 foreign jurisdictions.

Corporate Groups

The rights and obligations of corporations in law were first developed when they could not hold the stock of other corporations. However, from the late nineteenth century in the United States (US), they could hold shares in other corporations or create or acquire subsidiaries heralding the emergence of the corporate group (Blumberg 1985). No such prohibition existed in the United Kingdom (UK); however, corporate groups appeared to emerge around the turn of the twentieth century and later in other parts of Europe, as well as Japan, Canada and Australia (Hadden 1993).

Despite the existence of corporate groups in many jurisdictions for more than 100 years and the abundance of law relating to such groups,[1] for the most part this legislation does not directly 'address the issue of groups as such' (Prentice 1993, p. 372).

> The traditional concept of the corporation as a separate juridical unit clashes violently with reality when applied, not merely to simple corporations with shares owned by individual investors, but to corporations that are members of a corporate group. In such cases, the corporation and the enterprise are no longer identical. The enterprise is no longer being conducted solely by a single corporation but collectively by the coordinated activities of numerous interrelated corporations under common control. Thus the law asserts that [large corporations such as] Mobil Oil Corporation consist of hundreds of separate and distinct corporations while the economic reality is that it is a single enterprise. (Blumberg 1990, p. 326)

'Many businesses in Australia are conducted not by one company standing alone but as a group structure of several companies over which a parent company has control' (Austin and Ramsay 2007, p. 139). It is common for corporations to structure themselves in complex groups with networks of majority and minority holdings (Hadden 1992; see also Ramsay and Stapledon 1998; 2001) and as such, the expression 'corporate group' has evolved into a broad concept that embraces a large number of varying manifestations of corporate combinations (CASAC 2000).

> The reality of modern public companies is that they are managed and controlled at a group level . . . the group structure can be complex. (Justice Owen 2003, p. 129)

And while no specific definition of what constitutes a corporate group is defined in the *Corporations Act 2001* (Cth), Australian courts have acknowledged a legal concept of a corporate group as far back as the 1970s. The High Court noted:

> [t]he word 'group' is generally applied to a number of companies which are associated by common or interlocking shareholdings, allied to unified control or capacity to control.[2]

So, while a corporate group is not specifically defined in law, the law does acknowledge two corporate group concepts:

1 holding, subsidiary and related companies; and
2 parent companies and controlled entities. (Austin and Ramsay 2007; CASAC 2000)

The common understanding of what characterises a corporate group is a set of corporations with common ownership or control. However, given the possible

levels of cross, circular, direct and indirect ownership, understanding and defining both ownership and control becomes problematic (Considine 1994). This gives rise to the central issue of concern in relation to corporate groups; namely, the determination of the liability for debts of members of corporate groups in cases of insolvency, particularly in light of the spectacular corporate collapses over recent decades in which group structures were implicated (CASAC 2000; Clarke and Dean 2007; Clarke et al. 2003). Notwithstanding that concern, corporate groups continue to be a prominent feature on the Australian commercial landscape.

A group of companies may be considered a single economic unit, or an economic entity, and have users dependent on their financial reports, and so be viewed as a reporting entity. However, the initial position in law is that each company within the group is a separate legal entity. Drawing on Austin and Ramsay (2007, p. 139), the implications of the separate legal status of each member of the group include the following:

1 each member is responsible for its own debts
2 contracts made by a member with a third party cannot be treated as though the contract was made with the parent
3 profits of other members cannot be taken into account when one member is ascertaining its profits available for distribution
4 groups can be structured so that legal liability will fall on a particular member.

As outlined above, *control* is the central criterion for determining the existence of a corporate group in law and the *Corporations Act 2001* (Cth) utilises varying concepts of control 'to regulate different aspects of corporate groups and their operations' (Ramsay and Stapledon 1998, p. 13). In fact, in some cases the Act uses a concept of control that is broad and based on the accounting standard of control (for example, in related party provisions), and in other circumstances (such as in insolvent trading provisions) it uses the narrow legal definition (Austin and Ramsay 2007; Ramsay and Stapledon 1998; 2001; see also CASAC 2000, esp. pp. 6–8).

Corporations employ varying concepts of control to structure their corporate group; that is, to establish and control or not control subsidiaries, and to meet the needs of their particular circumstances. Reasons for structuring in a particular way could be: to limit liability by invoking the benefits of the corporate veil; to minimise taxation; for financial reporting considerations; in relation to business acquisitions and the costs of acquisition; or for investment reasons (CASAC 2000; Dean and Clarke 2005; Ramsay and Stapledon 1998; 2001).

This leads to many manifestations of corporate groups and raises issues in relation to directors' recourse to the integrity of the corporate veil in relation to corporate groups (see Clarke and Dean 2007, especially chapters 7 and 8). It is noted that both legal and accounting rules, practices and conventions acknowledge particular forms of corporate groups for certain purposes. Examples of groups created in this manner are the well-understood consolidated group, as well as, via a uniquely Australian regulation, the 'closed group' and more recently, the 'tax consolidated group'.

Closed Groups

Adding a layer of complexity to the corporate group phenomenon is the closed group created by the take-up of a regulatory administered Class Order Deed of Cross Guarantee (DXG). While the origins of the DXG (and its antecedent Deed of Indemnity) were in reducing regulatory compliance costs and providing some relief, the administrative burden for corporate groups, DXG usage appears to be intentional, strategic and selective:

> Closed groups frequently appear to be careful constructions that potentially quarantine assets from creditors. Moreover, when need or opportunity have arisen apparent obligations under the Deeds have not been called in – the Deed covenants have not been crystallised. Financial benefits accruing from the Deeds look to have flowed primarily to members of the corporate groups, without commensurate benefits to creditors. (Dean and Clarke 2005, p. 300)

Under current regulatory arrangements, a closed group is established by group companies entering into a registered[3] DXG under the Class Order 98/1418. The parties to a DXG are relieved from certain accounting and auditing requirements, in return cross-guaranteeing the debts of each party to the DXG.

The current DXG evolved from an instrument introduced by the National Companies and Securities Commission (NCSC), under the leadership of chairman Henry Bosch. Joining the NCSC as chairman in 1985, Bosch had a business background and a belief in market mechanisms for regulation. Bosch's early agenda was for an organised program of deregulation using the considerable discretionary powers granted to the NCSC (Bosch 1990). Bosch (1990, p. 68), in his autobiographical account of his time at the NCSC, recalls:

> . . . we [the NCSC] systematically reviewed the Acts and regulations for which we were responsible to find requirements which had become obsolete or counterproductive as a result of social and economic changes and to find requirements which had been

> designed to meet perceived needs that experience had shown to be ineffective or to have unforseen side effects.

The requirement for wholly owned subsidiaries to publish accounts and have those accounts audited fell within the ambit of the review. By the end of 1985 the NCSC had ruled that where a holding or parent company was prepared to guarantee the debts of a wholly owned subsidiary, the subsidiary could be relieved of the requirement to publish accounts and have those accounts audited. This was formalised in a Class Order Deed of Indemnity in 1986 (NCSC Release 633) (Bosch 1990; Clarke et al. 1995).

The provisions of the original class order have persisted in various guises to the present, resulting in the proposed introduction into corporations law as part of amendments to the *Corporations Act 2001* (Cth) under the 2007 *Simpler Regulatory System* proposals. Granting legal status to the provisions of the class order would, arguably, have granted legal status to the closed group.[4] This (unrealised) possibility occurred against a backdrop of an assumed commercial benefit for companies employing DXGs, but without any systematic evaluation of the primary claims that underpinned the introduction and support for the continued existence of the class order.

While the issue of the costs and benefits associated with DXG usage is still unresolved, this article seeks to inform such research by providing empirical evidence as to the incidence and pattern of DXG usage.

Tax Consolidated Groups

Tax consolidation for corporate groups was introduced in Australia in 2002. Tax legislation allows for groups (a head entity and at least one wholly owned entity) irrevocably to elect to consolidate for tax purposes and thereby lodge a single tax return. To repeat, unlike forming a closed group, once the head entity elects to consolidate for tax purposes, all wholly owned entities domiciled domestically are captured in the arrangement and the decision is not revokable (Greenwoods and Freehills 2005).

The tax consolidation regime was regarded as a watershed in the taxing of corporate groups in Australia. Requiring more than 400 pages of legislation, the regime repealed existing grouping ('roll-over') provisions and allows entities entering a group to bring in losses and imputation attributes, and for those to remain on an entity's exit from the group. Most importantly it allows for establishment of the tax costs of assets by the asset model[5] on an entity's entry into or exit from the group (Greenwoods and Freehills 2005).

Lowry (2003) suggests that entering tax consolidation arrangements can improve a corporate group's tax profile due to the ability under the regime to increase tax deductions and improve the utilisation of tax losses. However, the regime has significant implications on financing structures, and imposes a significant risk on members of the group if the head entity fails to pay a tax liability on time. If an entity were a member of the tax consolidated group for any part of the period to which the liability relates, the entity will be jointly and severally liable (Allens, Arthur, Robinson (AAR) 2002).

Empirical Study

Sample selection

A study similar to that reported here was conducted by Ramsay and Stapledon (1998; 2001). It was based on the Top 500 companies (by market capitalisation) listed on the Australian Stock Exchange (ASX) as at 30 June for the reference year 1997. Our study will provide more comprehensive information as it examines the population of companies listed on the ASX in the reference year 2007. The final sample size of 1526 companies was achieved by excluding companies that:

1. were delisted during the year or prior to producing the relevant annual report, which meant no relevant information was available
2. had a reporting period for other than one year (that is, companies listed during the year or companies that changed their year-end date)
3. were incorporated overseas (foreign companies)
4. were listed managed investments.

Consistent with Ramsay and Stapledon (1998; 2001) overseas-based companies were excluded as their disclosure rules relating to subsidiaries[6] are not consistent with Australian disclosure rules. Similarly, listed managed investments (LMIs)[7] are by their nature different to companies and generally do not have subsidiaries or controlled entities, and as such are considered inappropriate for inclusion in the study. Companies having a reporting period other than 12 months were also excluded for consistency.

Methodology

The 2007 annual report information was gathered from a variety of sources.[8] Not all listed companies have a 30 June reporting year-end. If the company did not do so, the annual report published for the period immediately preceding 30 June 2007 was used (that is, if the reporting period end was on 31 December, then the annual report for 31 December 2006 was used). Under the Australian Accounting Standard AASB 127, the notes to the consolidated financial statements for all Australian companies (including those listed on the

ASX) are required to disclose certain information about each 'subsidiary' (paragraphs 40–42). Interestingly, the detail of the mandated information on subsidiaries has diminished over time (see Ramsay and Stapledon 2001, p. 22). Current disclosure requirements for subsidiaries when the sample data were collected, comprised:

1 the identity or name of the subsidiary
2 its country of incorporation or residence
3 information relating to changes in ownership of subsidiaries
4 the proportion of ownership interest
5 information relating to whether or not control exists.

Information relating to the DXG was obtained from a database compiled by researchers over a number of years and held in the Discipline of Accounting at The University of Sydney. This database includes all Deeds of Cross Guarantee (ASIC Form 351), as well as identifying the holding company and trustee of the DXG. Companies assumed by way of an Assumption Deed (ASIC Form 352) or revoked by way of a Revocation Deed (ASIC Form 355) are also recorded in the database. Also, companies disposed of by way of Notice of Disposal (ASIC Form 353) are recorded. Source data for the database were obtained from purchased copies of records held by the corporate regulator (first the Australian Securities Commission (ASC) and then the ASIC) who registered the DXGs and associated information in the period included in this study (February 1992[9] until June 2004).[10] Additionally, data on DXGs and tax consolidation were also hand collected from annual reports.

Data as to market capitalisation, Global Industry Classification System (GICS) codes and whether entities were foreign, listed managed investments or stapled securities were obtained manually from information published on the *Australian Financial Review* website[11] or the ASX website.[12]

Data regarding tax consolidation were hand collected directly from annual reports. Tax consolidation information is disclosed in the notes to the financial statements. Companies with no disclosure regarding tax consolidation were considered as not having adopted the tax consolidation regime.

Results

Company statistics

Companies listed on the ASX represent only a small proportion of the total companies registered in Australia. However, in terms of economic activity, listed companies dominate the corporate landscape. To place this assertion in some perspective, on 30 June 2007 the total market capitalisation of the ASX was $1 597 794 million.[13] This figure was more than 1.93 times the 2007 gross domestic product (GDP) of $827 610 million.[14] The ASX is also the seventh largest in the world (ASX 2007) and represented approximately 2.4% of the capitalisation of global markets in 2005 (Hanrahan et al. 2006). Table 1 shows that as at 30 June 2007 there were over 1.5 million companies registered in Australia, yet as can be seen in Table 2 there were only just over 2000 entities[15] listed on the ASX.

Table 1 Total number of companies registered in Australia as at 30 June 2007

State of incorporation	Companies
New South Wales	533 788
Victoria	490 667
Queensland	263 995
South Australia	87 088
Western Australia	143 328
Tasmania	16 951
Northern Territory	8 195
Australian Capital Territory	28 042
Total	1 572 054

Source: ASIC Registration Statistics.
Note: Available at <www.asic.gov.au>. Accessed 27 March 2008.

Table 2 Listed entities on the ASX as at 30 June 2007[a]

Domestic	Foreign	Total	All
1892	82	1974	2089

Source: ASX Market Statistics.[b]
Notes: [a]The number of all listed entities is larger than the total as it includes:
1 stapled securities
2 corporations with no quoted securities
3 temporary duplications arising from mergers and takeovers.
[b]Available at <www.asx.com.au>. Accessed 27 March 2008.

Statistics on controlled entities

As noted above, the sample of listed entities on the ASX was reduced to a sample size of 1526 relevant companies. Table 3 on page 126 reveals that, on average, each listed company in the sample had 12 controlled entities. The finding is significantly less than the 28 from the Ramsay and Stapledon (1998; 2001) study based on 1997 data; however, it can be accounted for largely by the diluting effect of the more comprehensive sample in this study.[16] Companies reporting greater than 200 controlled entities were Harvey Norman Holdings Limited (1355), Foster's Group Limited (256), Westpac Banking Corporation (251), Futuris Corporation Limited (211) and Toll Holdings Limited (202). However, as noted earlier, reporting in relation to controlled entities has altered in the decade since Ramsay and Stapledon completed their study and a number of very large companies have adopted an approach whereby they only report

Table 3 Statistics on controlled entities for sample ASX-listed companies

	Mkt cap. ($m)	Total CE	100% CE	50–99% CE	<50% CE
Total	1 312 493.8	18 958	17 369	1 476	113
Mean	860.1	12.42	11.38	0.97	0.07
Median	416.3	4	4	0	0

Legend
Mkt cap market capitalisation
Total CE total number of controlled entities
100% CE the number of entities in which the listed company has a 100% interest (wholly owned)
50–99% CE the number of entities in which the listed company has at least 50%, but less than 100% interest
<50% CE the number of entities in which the listed company had a controlling interest of less than 50%

Table 4 Number of controlled entities by industry type (GICS code) for sample ASX-listed companies

GICS code	Classification	No. of companies	Mkt cap. ($000s)	Average mkt cap. ($000s)	Total CEs	Mean CEs
1010	Energy	182	104 480 012	574 066	1 291	7.09
1510	Materials	521	332 088 672	637 406.3	2 957	5.68
2010	Capital Goods	101	57 591 470	570 212.6	1 708	16.91
2020	Commercial & Prof. Services	59	40 316 146	683 324.5	1 354	22.95
2030	Transportation	15	24 310 348	1 620 689.9	416	27.73
2510	Automobiles & Comp.	10	1 239 736	123 973.6	103	10.3
2520	Consumer Durables & Apparel	22	5 690 236	258 647.1	261	11.86
2530	Consumer Services	39	32 153 570	824 450.5	531	13.61
2540	Media	41	37 698 485	919 475.2	1 049	25.59
2550	Retailing	37	18 769 199	507 275.6	1 772	47.9
3010	Food & Staples Retailing	8	58 999 081	7 374 885.1	435	54.38
3020	Food Beverage & Tobacco	43	34 212 768	795 645.8	984	22.88
3030	Household & Personal Prod.	1	13 916	13 916	2	2
3510	Healthcare Equip & Services	67	21 080 355	21 080 355	1 016	15.16
3520	Pharmaceuticals & Biotech.	76	23 407 100	23 407 100	310	4.08
4010	Banks	15	266 464 639	17 764 309	592	39.47
4020	Diversified Financials	83	66 174 182	797 279.3	1 038	12.51
4030	Insurance	8	88 674 967	11 084 370.9	574	71.75
4040	Real Estate	42	14 643 043	348 643.9	876	20.86
4510	Software and Services	80	15 460 569	193 257.1	815	10.19
4520	Technology H'ware & Equip.	32	1 348 803	42 150.1	249	7.78
4530	Semiconductors & Semi Equip.	3	1 857 395	619 131.7	16	5.33
5010	Telecommunication Services	28	49 045 512	1 751 625.4	280	10
5510	Utilities	13	16 773 624	1 290 278.8	329	25.31
Total		**1 526**	**1 312 493 828**		**18 958**	**12.42**

'material' or 'significant' subsidiaries (for example, BHP Billiton and the National Australia Bank). The company reporting most subsidiaries in 1997 according to Ramsay and Stapledon was News Corporation, which at that time had 778 controlled entities. As News Corporation is now domiciled in the US and considered 'foreign' it was not included in this study; however, in the reference year (2007), if it had been included in the study it would have reported the highest number of controlled entities (1398).

Table 3 also reveals that the vast majority (over 91%) of controlled entities are wholly owned (17 369 out of a total of 18 958). A small percentage (7.8% or 1476) are majority (greater than 50%) owned and a very small percentage (0.06% or 133) are considered controlled entities by virtue of the ability to exercise control over decision-making (as per s. 50AA of the *Corporations Act 2001* (Cth) and Accounting Standard AASB 127 para. 13), yet not with greater than 50% ownership interest.

To enhance the description provided by the survey, the data set was reorganised in a number of ways. The sample companies were parsed both by size (market capitalisation in deciles) and industry (GICS classification). Table 4 reports information relating to controlled entities by industry classification. The findings here are also consistent with the 1997 data with the insurance (4030) and banks (4010) classifications still having a small number of very complex[17] companies listed on the ASX. Both the Food & Staples Retailing (3010) and Retailing (2550) classifications results are somewhat skewed by the presence of dominant companies in those categories. Harvey Norman with 1355 controlled entities increases the average in the Retailing classification. The Food & Staples Retailing classification only includes

Table 5 Number of controlled entities by size (mkt cap.) of holding/parent company for sample ASX-listed companies

Decile	No. of companies	Mkt cap. ($000s)	Average mkt cap. ($000s)	Total CEs	Average no. of CEs	Median no. of CEs
1	153	1 178 024 551	7 699 506.87	9 538	62.34	33
2	153	70 493 269	460 740.32	2 769	18.10	10
3	153	29 451 270	192 491.96	1 613	10.54	6
4	152	14 313 985	94 170.95	1 130	7.43	5
5	152	8 204 916	53 979.71	994	6.54	4
6	152	5 079 853	33 420.09	722	4.75	3
7	152	3 150 628	20 727.82	685	4.51	3
8	153	1 948 201	12 733.34	552	3.61	3
9	153	1 237 776	8 090.04	470	3.07	2
10	153	589 379	3 852.15	485	3.17	2
Total	**1 526**	**1 312 493 828**	**860 087.70**	**18 958**	**12.42**	**4**

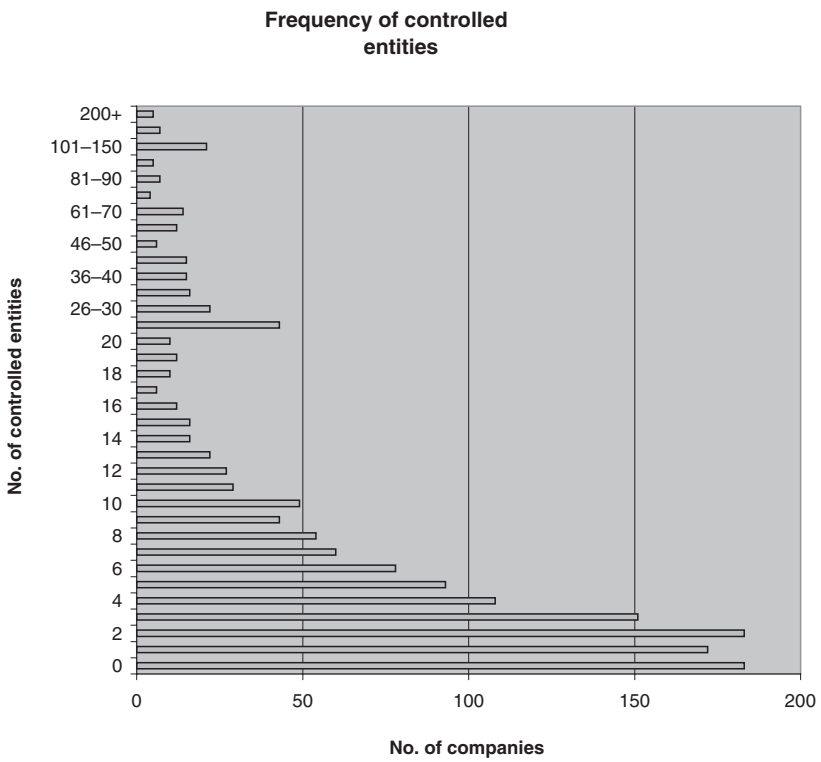

Figure 1 Frequency of controlled entities for sample ASX-listed companies[19]

eight companies and included in that classification is Woolworths Limited with 141 controlled entities and Coles Group Limited with 94.

Dividing the sample data into deciles demonstrates clearly that the larger the company as measured by market capitalisation the more complex (as proxied by number of subsidiaries) the company. Table 5 reports the results of this division by size and market capitalisation. The average number of controlled entities in each section is informative with results as expected. The top 150 companies are markedly more complex than even the second decile, despite the fact that some of these companies only report 'material' controlled entities and smaller companies (deciles 8, 9 and 10) vary little in relation to the average number of controlled entities and are generally not complex corporate structures. The median figure has also been calculated to adjust for the skewing effect of the few very large companies and, at the other end of the scale, skewing due to many companies not adopting a group structure. The results of this analysis again are broadly consistent with the 1997 Ramsay and Stapledon data, despite the reporting limitations noted earlier and the larger sample size for this study.

Figure 1, based on the survey data, confirms the claim that corporate groups 'dominate' the corporate landscape in Australia, particularly for ASX-listed companies. It shows the number of companies that

Table 6 Top 35 countries of incorporation of controlled entities for sample ASX-listed companies

Country of Incorporation	No. of subsidiaries	% of total
Australia	13 769	72.63
US	919	4.85
New Zealand	825	4.35
UK	604	3.19
Singapore	311	1.64
Hong Kong	226	1.19
Malaysia	191	1.01
South Africa	165	0.87
China	144	0.76
Canada	113	0.60
Germany	102	0.54
Indonesia	90	0.47
British Virgin Islands	87	0.46
Netherlands	77	0.41
Philippines	72	0.38
Thailand	70	0.37
Papua New Guinea	56	0.30
France	50	0.26
Mexico	47	0.25
India	47	0.25
Mauritius	44	0.23
Ireland	44	0.23
Brazil	44	0.23
Chile	38	0.20
Cayman Islands	37	0.20
Namibia	32	0.17
Tanzania	31	0.16
Ghana	31	0.16
Bermuda	30	0.16
Japan	29	0.15
Fiji	28	0.15
Sweden	26	0.14
Switzerland	24	0.13
Italy	23	0.12
Spain	21	0.11
Others	511	2.70
Total	**18 958**	**100.00**

structure as a corporate group by the size of the corporate group. For example, of the sample of 1526 companies, less than 12% or 183 are not a corporate group (that is, they have no controlled entities). Overwhelmingly, listed companies are likely to have less than 10 controlled entities (77% of the sample set) and less than 5% (or 75 companies) have more than 50 controlled entities.[18]

Table 6 lists the top 35 countries of incorporation. It demonstrates the dominance of Australia as the country of incorporation for controlled entities (over 72%), having increased somewhat since the 1997 study (64.9%). However, the extension of the sample in the survey or the slight shift in country of origin of manufactured imports over the last decade has resulted in some minor adjustments to the list reported by Ramsay and Stapledon (1998; 2001), with China and Mexico being the 'big movers' up the list. This survey also reveals that controlled entities are incorporated in some 143 foreign jurisdictions. The list may also reflect the fact that certain jurisdictions require foreign companies to operate through domestic companies (for example, mining operations in certain countries in Africa are required to operate through companies domiciled locally).

Closed groups

As noted earlier, closed groups are formed by companies entering the arrangements under the ASIC Class Order Deed of Cross Guarantee. Once a DXG is executed, controlled entities are not required to produce separate audited financial reports, purportedly resulting in reduced auditing and administration costs for the group. These benefits are allowed on the basis that the holding company produce a full set of consolidated economic group accounts, augmented by a set of closed group

Table 7 Deed of cross-guarantees (all companies)

Year (to 30 June)	No. of deeds (351)	No. of companies in deed (351 deeds)	No. of companies assumed (352 deeds)	No. of companies revoked (355 deeds)	No. of companies disposed (353 deeds)	Total companies in a DXG	Annual growth (%)
1992	235	2942	35			2 977	
1993	269	2436	151	115	9	5 440	82.7
1994	83	763	215	180	60	6 178	13.6
1995	76	508	514	240	53	6 907	11.8
1996	49	345	642	350	48	7 496	8.5
1997	54	417	190	273	66	7 764	3.6
1998	50	339	188	141	128	8 022	3.3
1999	77	579	366	187	96	8 684	8.3
2000	36	359	544	595	192	8 800	1.3
2001	75	494	301	241	41	9 313	5.8
2002	64	404	311	327	48	9 653	3.7
2003	71	538	232	335	33	10 055	4.2
2004	67	548	227	286	42	10 502	4.4
Total	**1 206**	**10 672**	**3 916**	**3 270**	**816**	**10 502**	

Note: In 1992 and 1993 the old NCSC Deed of Indemnity was replaced by the new ASC Deed of Cross Guarantee.

Table 8 Sample ASX-listed companies with a deed of cross-guarantee as at June 2007 by size (market capitalisation)

Decile	No. of companies	Mkt cap. ($000s)	Ave mkt cap. ($000s)	No. of companies with DXG	% of companies with DXG
1	153	1 178 024 551	7 699 506.87	86	56.21
2	153	70 493 269	460 740.32	42	27.45
3	153	29 451 270	192 491.96	31	20.26
4	152	14 313 985	94 170.95	16	10.53
5	152	8 204 916	53 979.71	20	13.16
6	152	5 079 853	33 420.09	12	7.89
7	152	3 150 628	20 727.82	8	5.26
8	153	1 948 201	12 733.34	6	3.92
9	153	1 237 776	8 090.04	7	4.58
10	153	589 379	3 852.15	7	4.58
Total	**1526**	**1 312 493 828**	**860 087.70**	**235**	**15.40**

Table 9 Sample ASX-listed companies with a deed of cross-guarantee by industry

GICS code	Classification	No. of companies	Mkt cap. ($000s)	Ave mkt cap. ($000s)	No. of companies with DXG	% of companies with DXG
1010	Energy	182	104 480 012	574 066	14	7.7
1510	Materials	521	332 088 672	637 406.3	36	6.9
2010	Capital Goods	101	57 591 470	570 212.6	33	32.7
2020	Commercial & Prof. Services	59	40 316 146	683 324.5	17	28.8
2030	Transportation	15	24 310 348	1 620 689.9	9	60.0
2510	Automobiles & Comp.	10	1 239 736	123 973.6	4	40.0
2520	Consumer Durables & Apparel	22	5 690 236	258 647.1	7	31.8
2530	Consumer Services	39	32 153 570	824 450.5	10	25.6
2540	Media	41	37 698 485	919 475.2	15	36.6
2550	Retailing	37	18 769 199	507 275.6	17	45.9
3010	Food & Staples Retailing	8	58 999 081	7 374 885.1	5	62.5
3020	Food Beverage & Tobacco	43	34 212 768	795 645.8	17	39.5
3030	Household & Personal Prod.	1	13 916	13 916	0	0.0
3510	Healthcare Equip & Services	67	21 080 355	21 080 355	10	14.9
3520	Pharmaceuticals & Biotech.	76	23 407 100	23 407 100	6	7.9
4010	Banks	15	266 464 639	17 764 309	3	20.0
4020	Diversified Financials	83	66 174 182	797 279.3	7	8.4
4030	Insurance	8	88 674 967	11 084 370.9	0	0.0
4040	Real Estate	42	14 643 043	348 643.9	6	14.3
4510	Software and Services	80	15 460 569	193 257.1	8	10.0
4520	Technology H'ware & Equip.	32	1 348 803	42 150.1	3	9.4
4530	Semiconductors & Semi Equip.	3	1 857 395	619 131.7	1	33.3
5010	Telecommunication Services	28	49 045 512	1 751 625.4	5	17.9
5510	Utilities	13	16 773 624	1 290 278.8	2	15.4
Total		**1 526**	**1 312 493 828**		**235**	**15.4**

accounts in the notes to their financial statements, as well as each company party to the DXG cross-guaranteeing the debts of the other parties to the DXG. But importantly, these cross-guaranteeing covenants only crystallise on liquidation.

The DXG is available to all companies (not just those listed on the ASX). Great flexibility is offered under the DXG arrangements. Once a DXG is in place, companies can be joined through an assumption deed or removed through a revocation deed. Companies sold or liquidated can also be removed by a disposal deed. Table 7 shows summary information on the DXGs executed and the number of companies involved from the inception of the DXG in early 1992 to 30 June 2004. In that time more than 1200 DXGs have been executed involving well over 10 000 companies.

For the 2007 sample of ASX-listed companies, 235 or 15.4% have a DXG in place (see Table 8). As noted earlier, listed companies are only a small proportion of total companies registered in Australia, yet they are economically very significant. And over half the top 150 companies have a DXG in place with this proportion reducing quickly as companies become smaller and less complex (see also Table 5). While Dean and Clarke (2005) conjecture that entering a DXG may relate more directly to management strategy rather than any

Table 10 Sample ASX-listed companies electing to tax consolidate as at June 2007 by size (market capitalisation)

Decile	No. of companies	Mkt cap. ($000s)	Ave mkt cap. ($000s)	No of companies	%
1	153	117 8024 551	7 699 506.869	141	92.16
2	153	70 493 269	460 740.3203	126	82.35
3	153	29 451 270	192 491.9608	97	63.40
4	152	14 313 985	94 170.95395	83	54.61
5	152	8 204 916	53 979.71053	64	42.11
6	152	5 079 853	33 420.08553	60	39.47
7	152	3 150 628	20 727.81579	62	40.79
8	153	1 948 201	12 733.33987	57	37.25
9	153	1 237 776	8 090.039216	34	22.22
10	153	589 379	3 852.150327	41	26.80
Total	**1526**	**1 312 493 828**	**860 087.6986**	**765**	**50.13**

Table 11 Sample ASX-listed companies electing to tax consolidate by industry

GICS code	Classification	No. of companies	Mkt cap. ($000s)	Ave mkt cap. ($000s)	No. of companies	%
1010	Energy	182	104 480 012	574 066	63	34.6
1510	Materials	521	332 088 672	637 406.3	164	31.5
2010	Capital Goods	101	57 591 470	570 212.6	72	71.3
2020	Commercial & Prof. Services	59	40 316 146	683 324.5	45	76.3
2030	Transportation	15	24 310 348	1 620 689.9	13	86.7
2510	Automobiles & Comp.	10	1 239 736	123 973.6	8	80.0
2520	Consumer Durables & Apparel	22	5 690 236	258 647.1	12	54.5
2530	Consumer Services	39	32 153 570	824 450.5	25	64.1
2540	Media	41	37 698 485	919 475.2	29	70.7
2550	Retailing	37	18 769 199	507 275.6	30	81.1
3010	Food & Staples Retailing	8	58 999 081	7 374 885.1	7	87.5
3020	Food Beverage & Tobacco	43	34 212 768	795 645.8	27	62.8
3030	Household & Personal Prod.	1	13 916	13 916	0	0.0
3510	Healthcare Equip & Services	67	21 080 355	21 080 355	32	47.8
3520	Pharmaceuticals & Biotech.	76	23 407 100	23 407 100	34	44.7
4010	Banks	15	266 464 639	17 764 309	13	86.7
4020	Diversified Financials	83	66 174 182	797 279.3	57	68.7
4030	Insurance	8	88 674 967	11 084 370.9	8	100.0
4040	Real Estate	42	14 643 043	348 643.9	34	81.0
4510	Software and Services	80	15 460 569	193 257.1	53	66.3
4520	Technology H'ware & Equip.	32	1 348 803	42 150.1	13	40.6
4530	Semiconductors & Semi Equip.	3	1 857 395	619 131.7	2	66.7
5010	Telecommunication Services	28	49 045 512	1 751 625.4	17	60.7
5510	Utilities	13	16 773 624	1 290 278.8	7	53.8
Total		**1 526**	**1 312 493 828**		**765**	**50.1**

effort to reduce reporting and administration costs, the arrangements offered by a DXG are clearly attractive to large and complex corporate groups.

Certain industries are shown to have a greater propensity to form a closed group than others. Table 9 demonstrates that corporate groups within the Food & Staples Retailing (3010) and Transportation classifications (2030) have more than 60% of companies within these categories structured as closed groups. However, both these classifications comprised less than 10 companies. The classifications that contain many companies with 'risky'[20] profit profiles such as Energy (1010), Materials (1510) and Pharmaceuticals & Biotechnology (3520) appear less inclined to take advantage of the benefits of the DXG. This could be attributed to the fact that companies in the classification also, on average, tend to have lower numbers of controlled entities.

Tax consolidated groups

At the time of writing, the only survey on the take-up of tax consolidation by corporate groups remains unpublished. However, it did find the take-up might not be as 'popular' as legislators envisaged (see Chang,

Herbohn and Tutucci 2006 in Arthur et al. 2007). Their study, based on a sample of listed companies for the year 2005, found 427 of the 1022 companies (or just under 42%) for which data were available elected to consolidate for tax purposes (Arthur et al. 2007, p. 115). While our survey suggests that the overall percentage of corporate groups electing to form a tax consolidated group is only slightly higher, on average (just over 50%), it does demonstrate that tax consolidation is very popular among large companies (see Table 10). These findings are consistent with larger companies also having more controlled entities and therefore they have a greater incentive to consolidate, if for no other reason than the reduction in the administrative burden. A final point worthy of note is if our sample were to include only eligible companies (that is, those that have a wholly owned Australian subsidiary), the percentage of companies electing to consolidate for tax purposes would increase to over 60%[21] (765 of a sample of a reduced sample of 1220).

There is a clear industry effect in the adoption of tax consolidation. Table 11 reveals that some industries have a high propensity to consolidate for tax purposes that correlate with the larger number of controlled entities in the industry. The two industries that had, on average, the greatest number of controlled entities or the most complex corporate structures, Insurance (4030) and Banks (4010), also have the highest rate of tax consolidation. This is an interesting observation in light of the additional scrutiny these industries are subject to under prudential regulatory requirements.

Conclusion

Corporate groups are an important feature on the corporate landscape. In the wake of several decades of high-profile corporate misdemeanours, financial commentators have become increasingly critical of the application of a simplistic entity model in relation to corporate groups. Traditional legal treatment of entities in such groups, particularly in relation to involuntary unsecured creditors, has been found inadequate. Major regulatory reforms related to corporate groups were suggested by CASAC in their 'Corporate Groups Final Report' in 2000. Despite this increased scrutiny of corporate structures, little is known about the nature and extent of corporate groups domiciled in Australia.

This paper has illuminated the situation by reporting findings of an extensive survey of ASX-listed companies in Australia, providing descriptive information on the nature, composition and incidence of corporate groups. The paper reports the 'state of play' of corporate groups in Australia as at 30 June 2007. It reveals that nearly 88% of the sample companies structure as a corporate group. Of the sample over 15% were party to a DXG and over 50% elected to consolidate for tax purposes. While it may not be reasonable to assume that these figures are representative of company structures and complexity across all 1.5 million companies registered in Australia, it can be argued that due to the economic significance of ASX-listed companies that these manifestations of corporate groups and their effects on business and the wider community ought to be scrutinised more closely.

Understanding the differences in the accounting for each separate company within a group and the process of consolidated group enterprise data used in most empirical works is a prius for researchers undertaking large-scale empirical work. It underpins the ability to generalise about findings based on samples of publicly listed companies, arguably randomly selected from the population of listed corporate groups. Commercial enterprises purportedly structure as corporate groups either by acquisition or by design to minimise some risk. Further research into the regulation and rationale for commercial enterprises to structure as corporate groups could provide insights into managerial motivation for structuring in particular ways.

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Notes

1 For example, there are laws relating to the consolidation of accounts, disclosure, taxation, directors' duties and insolvency where there is explicit acknowledgement of groups of companies.

2 *Walker v. Wimbourne* (1976) 3 ACLR 529 at 532.

3 The requirement at the time of writing is that to obtain relief the Deed must be in the prescribed format and registered with the Australian Securities and Investments Commission (ASIC).

4 This would have paralleled the situation with consolidated groups. Accounting standards define and prescribe the circumstances when consolidation is required. Conformity with accounting standards is required under the *Corporations Act 2001* (Cth).

5 This model specifies that 'the cost of equity held by the head company should be pushed down to the assets held by subsidiaries on entering consolidation and the cost of assets of subsidiaries should be pushed up to equity in a subsidiary on exit from consolidation' (Greenwoods and Freehills 2005, p. 1).

6 The terms 'subsidiary' and 'controlled entity' are used interchangeably. Subsidiary is the term favoured by the Australian Accounting Standards, whereas the *Corporations Act 2001* (Cth) favours controlled entity. This study, however, finds that the use of the term 'controlled entity' is more prevalent than 'subsidiary' in the statutory accounting reports of listed companies.

7 Listed managed investments (LMIs) are 'unit trusts' that own investments or a 'share' of an investment (predominantly property or shares). While these entities have a superficial resemblance to a company in function, they are listed on the ASX primarily to facilitate secondary trading in their units (Ramsay and Stapledon 2001).
8 Data were obtained in the first instance from the Aspect Huntley DatAnalysis database. Missing or incomplete data were then obtained directly from annual reports. Annual reports were obtained from the Connect 4 database, or then through the company websites or the ASX website.
9 While the first Class Order *Deed of Cross Guarantee* (91/996) was issued in 1991, the first companies to have their Deeds processed by the ASC did not occur until February 1992 (see Clarke et al. 1995).
10 Researchers compiling the database found a number of errors (presumably originating from transcription error), duplications and anomalies in the data held by the regulator (*ASCOT* database). Over time the researchers at The University of Sydney have made every effort to correct these problems in their own database. However, at the time of writing a small number of problems still exist in the database.
11 <www.afrsmartinvestor.com.au>.
12 <www.asx.com.au>.
13 Source: <www.asx.com.au>.
14 GDP can be measured in a number of ways. The figure cited here is GDP as final consumption expenditure sourced from the OECD (2009).
15 Note that the figure from the ASX is for listed entities, and the type of entity this paper is concerned with is a company. While figures on controlled entities contain trusts and other vehicles, the survey data collected excluded those entities that were not companies.
16 A better comparison with the Ramsay and Stapledon study would be to take the top 3 deciles in Table 5. On average the top 459 companies in this sample had 30 controlled entities, which is consistent with the findings of Ramsay and Stapledon (2001).
17 The number of subsidiaries is considered a proxy for the complexity of the entity.
18 Please note the change in scale for the number of controlled entities (*x* axis).
19 Only 2% (or 33) have more than 100 controlled entities.
20 The term 'risky' here means volatile consistent with finance literature (see, for example, Brealey and Myers 2003). These classifications tend to have companies that are involved in research and exploration activities, and as such tend to have volatile reported annual profits.
21 In deciles for the reduced sample of eligible companies (1220) by market capitalisation, the percentages would be: deciles 1–10 respectively – 91.8%; 87.7%; 82.0%; 61.5%; 54.9%; 56.6%; 49.1%; 55.7%; 36.9%; 36.9%.

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