

SUBMISSION TO THE PARLIAMENTARY JOINT COMMITTEE ON  
CORPORATIONS AND FINANCIAL SERVICES:

INQUIRY INTO CORPORATE RESPONSIBILITY

I welcome the Parliamentary Joint Committee's inquiry into corporate responsibility. For reasons that I shall set out, this seems to me to be an issue of great and increasing importance to all Australians. As a philosopher with a strong interest in public affairs, I should like to comment on some of the more philosophical issues raised in the terms of reference of your inquiry. I refer particularly to:

b) the extent to which organisational decision-makers should have regard for the interests of stakeholders other than shareholders, and the broader community, and under d) and e) to

(i) the need for a strong legal framework to enable and encourage incorporated entities and their directors to have regard for the interests of stakeholders other than shareholders, and the broader community, and

(ii) some plausible mechanisms for enhancing consideration of stakeholder interests by incorporated entities and/or their directors.

I begin with the premise that every society that is ruled by consent has a *de facto social contract*. By this I mean an historically generated settlement concerning the nature and structure of the society, how it is governed, how rights and responsibilities are distributed, what the proper ways of doing things are, and what values it upholds. Some of the social contract is contained in legislation, or is written in the constitution, some of it has been determined by case law in the civil or criminal courts, but much of it remains just a vague understanding of what would be right and proper.

My second premise is that corporations are *important social and moral agents* in our society. They have a major impact on the lives and wellbeing, not only of their shareholders, but also on most of their stakeholders, and on the broad community. Moreover, their influence, for good or ill, is increasing, and it is plausible to suppose

that their power to influence people's lives is now second only to that of government. It is important, therefore, that our society should attempt to define the rights and responsibilities of corporations, and attempt to exercise legal control over the kinds of influences they can have.

The lives of individuals are, quite properly, regulated by law. It is not enough to rely on people's goodwill, or sense of fair play, to regulate their behaviour. Individuals are just not universally so well-intentioned, and, in the absence of regulations to the contrary, are more likely to act in their own interests than in those of the community at large. The same naturally applies to most corporations. Business corporations normally act in ways they consider to be in the financial interests of their shareholders, unless they are bound by law to act otherwise.

According to free market purists, this is as it should be. For free market economies are evidently the most efficient producers of goods and services. But we do not live for the goods and services that our corporations are able to produce, and, beyond a certain point, our disposable incomes add very little to our wellbeing<sup>1</sup>. Our family and friends, our lifelong interests, and our sense of belonging are what really count most<sup>2</sup>. Therefore, if we want to live in a society that promotes our wellbeing, we had better seek to regulate the corporations to ensure that

- (i) they do not hinder the development of good family and friendship relationships, and
- (ii) they allow their employees wide scope to develop their independent interests.

Legally, corporations are persons. Therefore, they have formally the same rights and obligations as persons. They can own property, trade in goods or services, employ people, relocate, and do many of the things that ordinary people can do. On the other hand, they can commit crimes, be sued for negligence, avoid taxes, embezzle retirement funds, or otherwise behave badly.

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<sup>1</sup> Clive Hamilton and Richard Demiss, *Affluenza* (Allen and Unwin, 2005), Chapter 4.

<sup>2</sup> Richard Layard, *Happiness; Lessons from a New Science* (Penguin, Allen Lane), Chapter 5.

This is all well and good. However, our civil and criminal laws are not well-adapted to controlling corporate misbehaviour.

(i) There is no effective way of punishing a corporation. You can fine it or confiscate its assets. And, if the fines are large enough, they can be crippling. But crippling a corporation might well involve hurting a lot of innocent people. It might put some people out of work, damage the economy of the region (or even the nation), lose money for individual shareholders, or lead to general increases in the prices of goods and services. It is unlikely, however, to affect the directors seriously.

(ii) It is enormously difficult, under present legislation, to convict corporate directors of crimes other than the personal ones, (such as insider trading). If a corporation is, by executive decision, involved in fraud, tax avoidance, reckless disregard for human health or wellbeing, or environmental pollution, the corporate directors are unlikely to be held personally responsible. Certainly convictions of directors for such offences are very rare. Yet, legislation concerned with wrongdoing of such a serious nature clearly needs to be backed by a real threat of imprisonment if it is to be effective. The financial temptations to commit corporate crimes are much too great to be handled with kid gloves.

To deal with the legal problem of corporate regulation, I suggest a strategy that is at once sympathetic to the needs of business, educative, and appropriately coercive.

(i) Businesses need to know that the regulatory system will be effective in controlling the activities of all of their competitors, so that, in complying with the regulations they will not putting their own businesses at a competitive disadvantage.

(ii) Businesses need to be clearly informed of what is expected of them. Their rights and obligations must be clearly spelt out.

(iii) Business directors need to be held personally accountable for the moral conduct of the corporations they direct. It must not be possible for them to hide behind their assistants, accountants, or advisors, or plead ignorance. They must be assumed to be responsible in virtue of their position, and the onus

must be on them to prove that they were not responsible for what the corporation has done.

To implement this strategy, I suggest the following:

- (i) Every business corporation trading in Australia should have an Australian branch whose directors are directly responsible to the Australian government for the conduct of its affairs.
- (ii) The business corporations trading in Australia should all have charters approved by the Governor in Council defining their rights and obligations *vis-a-vis* their shareholders, the State and Federal Governments, their workforces, the training of future workers, research and development, the environment, and any other matters that may be considered to be appropriate for the kind of business in question.
- (iii) The directors of the various corporations should be required to sign off on these charters, and be held personally responsible for upholding them.

