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Dr Anthony Marinac
Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Parliament House
CANBERRA ACT 2600

Dear Dr Marinac,

Please find attached the Australian Bankers' Association (ABA) submission to the Parliamentary Joint Committee on Corporations and Financial Services inquiry into corporate responsibility.

There are 26 banks that are members of the ABA. The ABA works with our member banks to advocate their views and contribute to the development of public policy on banking and other financial services. The ABA works to ensure the banking system can continue to deliver the benefits of competition to Australian banking customers. In preparing this submission, the ABA has collected views from across our member banks.

The ABA would be pleased to meet with the Committee to discuss our views further. In the meantime, if you have any queries regarding the issues raised in this submission, please contact me or the ABA's Director, Corporate & Consumer Policy, Diane Tate on (02) 8298 0410: dtate@bankers.asn.au.

Yours sincerely

David Bell

Parliamentary Joint Committee on Corporations and Financial Services Inquiry into Corporate Responsibility

11 October 2005

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PJC on Corporations and Financial Services
Inquiry into Corporate Responsibility

1. Executive summary

The Australian Bankers' Association (ABA) welcomes the opportunity to provide comments to the Parliamentary Joint Committee on Corporations and Financial Services inquiry into corporate responsibility.

Corporate responsibility is increasingly being placed on the public agenda as being a necessary part of good business management practice that should be a driving factor of corporate strategy. Concurrently, an increasing number of companies are recognising that corporate responsibility is an important part of their brand or corporate identity.

The banking industry in Australia is recognised for its leadership in the area of corporate responsibility. Many banks acknowledge corporate responsibility and have adopted programs and practices that demonstrate their commitment to social and environmental performance, as well as financial performance. Banks that have adopted corporate responsibility have recognised it as a driving factor for being able to distinguish themselves through effective forms of stakeholder engagement.

The high level of innovation, creativity and competition regarding corporate responsibility is reflected in many banks introducing internal programs and undertaking extensive external programs and some banks producing an annual CSR-type report, along with their annual report and financial statements. This voluntary commitment by Australia's banks reflects the growing importance of responding to the expectations of shareholders, customers and the community.

In relation to this inquiry, the ABA makes the following points:

1. The ABA believes that corporate decision makers already have the ability within the current legislative framework to have regard for the interests of shareholders and other stakeholders by exploiting corporate opportunities that are in the long-term interests of the company.

2. The ABA believes that directors should have regard for the short-term and long-term interests of the company to ensure sustainable economic growth and increased profitability for the company. However, corporate decision making should involve determining relevant interests, based on the nature of the business activities, the different business models and industry sectors, and the different operational issues impacting their stakeholders. Companies should be responsible for their decisions as they impact on stakeholders, as these decisions will inevitably impact overall financial and operational performance.

3. The ABA does not support Government intervention through additional regulation that prescribes that directors must take account of the interests of other stakeholders. Legislative amendment that prescribes a directors' duty requiring directors to take account of other stakeholders as part of their statutory duty to the company could confuse or dilute the role of directors. A statutory obligation could also have adverse consequences for innovation in corporate responsibility practices, and therefore is impractical, unnecessary and potentially counterproductive.

4. The ABA does not support codification of triple bottom line reporting requirements or a legislative amendment that prescribes a reporting framework. A prescribed reporting framework could limit the value of such disclosure as well as limit the company's ability to determine what best suits its reporting needs and the needs of its shareholders and stakeholders.

Corporate responsibility that reflects mere compliance does not promote responsible business practices, an ethical corporate culture or long-term sustainable performance. Mandating corporate responsibility will not necessarily result in better outcomes, as prescribing requirements in addition to the existing framework is likely to result in a 'tick the box' approach, which is not desirable and defeats the spirit and intent behind the concept of corporate responsibility.

The value of corporate responsibility is in the voluntary adoption of innovative business practices that reflect flexible and strategic business judgements by the Board in terms of financial considerations (such as allocating capital and other resources) and social and environmental considerations. It is important for the Board to retain discretion in assessing the interests of stakeholders to determine when, and to what extent, certain stakeholders in particular circumstances may be impacted by the decisions of the company.

Australia's banks have demonstrated that an important part of making corporate decisions and developing competitive advantage is about delivering shareholder value through business efficiencies and strategies that take account of broad shareholder and non-shareholder interests. Corporate responsibility represents a perspective on delivering value to shareholders, involving a corporate mindset that goes beyond current financial reporting and internally focused governance and risk management to generating long-term sustainable performance.

2. Background

2.1 What is corporate responsibility?

> *Corporate social responsibility is a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis*[1]*.*

There are many definitions of corporate responsibility, but the concept as expressed by the European Commission is widely recognised. Corporate responsibility means not just fulfilling legal obligations, but voluntarily adopting business practices that go beyond legal and regulatory compliance by integrating business activities with a balanced response regarding wider considerations for the environment, human and social capital.

Globalisation has created opportunities for companies, but has also placed increasing demands on company brand and business reputation, which play an important role in a competitive corporate environment. Consequently, shareholders and other stakeholders are seeking greater disclosure of information, financial reporting and management accountability; and companies are seeking greater knowledge, competencies, performance and competitive advantage.

Essentially, the concept of corporate responsibility involves:

- Corporate behaviour voluntarily adopted that goes beyond legal obligations because the decision makers have deemed that 'responsible' practices and behaviours can lead to improved long-term performance;
- Corporate practices intrinsically connected to sustainable development because businesses integrate financial, social and environmental considerations into their day-to-day activities; and

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[1] Some commentators refer to the concept of "corporate social responsibility". The ABA considers that arguably corporate social responsibility and corporate responsibility are interchangeable terms. Definition of corporate responsibility is contained in *Green Paper. Promoting a European framework for Corporate Social Responsibility.* Commission of European Communities. Brussels. (p6)
http://europa.eu.int/eur-lex/en/com/gpr/2001/com2001_0366en01.pdf

- Corporate culture incorporated into core business strategies because responsible management of financial and non-financial risks is in the long-term interests of the company as well as other stakeholders.

Companies that take account of stakeholder expectations and community attitudes in their forward looking strategies can be better placed to address business risks and take advantage of business opportunities that may arise. Australia's banks recognise that corporate responsibility is not merely in the domain of philanthropic activities, but is a concept that broadly covers a wide range of corporate-community-employee activities that deliver value to the community as well as returning value to the company and its shareholders.

2.2 What is triple bottom line reporting?

Triple bottom line reporting essentially captures a broader range of measures of organisational success – economic, environmental and social. Triple bottom line accounting considers not just financial performance, but also environmental and social performance. Triple bottom line reporting tends to be a qualitative summary of a company's economic, environmental and social performance over the previous year. In considering current performance, companies may be encouraged to also report qualitative and quantitative assessment of future trends, prospects and sustainability for the company. Triple bottom line and sustainability reporting is often an opportunity for companies to share with shareholders and other stakeholders information they already report under Federal and State laws or industry standards.

Various business groups in Australia have released a number of publications about how corporate Australia may introduce triple bottom line reporting[2]. In addition to guidance issued by business groups, CPA Australia and the University of Sydney have been provided with a $1 million grant from the Government to develop a framework for corporate reporting of non-financial information[3]. The Australian Accounting Standards Board (AASB) has also announced it is looking at developing a standard for triple bottom line accounting[4].

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[2] The G100 released *Sustainability: A Guide to Triple Bottom Line Reporting* in June 2003, highlighting the importance of aligning triple bottom line reporting with the business strategy. The Business Council of Australia (BCA) has released a number of documents on sustainable development and triple bottom line reporting, including *Towards Sustainable Development: How leading Australian and global corporations are contributing to sustainable development* (May 2001). The Institute of Chartered Accounts Australia (ICAA) has released its report *Environmental Management Accounting (EMA)* containing case studies conducted in conjunction with Environment Australia and EPA Victoria. The ICAA also has produced a number of articles and a regular Triple Bottom Line newsletter. CPA Australia has published a number of research reports, including *Triple Bottom Line: A Study of Assurance Statements Worldwide* and *Sustainability Reporting Practices, Performance and Potential*. CPA Australia is currently conducting a sustainability and triple bottom line project to examine 'responsible investment' portfolio performance, security market disclosure responses and corporate governance performance relationships.

[3] Buffini, F (2005). *Reporting framework*. Australian Financial Review. 06 July 2005.

[4] Gettler, L (2005). *Making coming clean a standard practice*. The Age. 28 July 2005.

3. Australia's banks and corporate responsibility

Increasingly, companies are coming to the conclusion that businesses that take a broader view of managing business risks can shape a healthier, more productive corporate culture and thereby a sustainable and profitable company. Where a company understands how its activities may impact their key stakeholders and how their key stakeholders may influence their operations, this can be part of the way a company manages its internal and external governance. Where a company demonstrates its commitment to continuous improvement of its corporate culture and publicly discloses information about its operations and its responsiveness to solve problems, this can strengthen the company's bottom line.

Our commitment to corporate responsibility is a simple one - it is about doing the right thing; behaving in a responsible, ethical and trustworthy manner; while acknowledging our major impact on society and accountability to our stakeholders. This means ensuring we conduct our business in a way that meets our social, environmental and economic responsibilities in an appropriately balanced way.

Which is why underpinning our company's everyday activities with a rich set of business principles and commitments that ensure transparency, fair dealing and the protection of the interests of stakeholders is so important.

[Westpac]

However, how companies, including banks will adopt corporate responsibility will, and should, depend largely on their business model, their customers and other stakeholders. Similarly, what performance factors are of most relevance will, and should, depend on the operations of the company. Integrated corporate responsibility can be a strategic investment and an instrument for management to understand the relationship between the company and the shareholders and the relationship between accountability of directors and long-term shareholder value.

Many companies have suffered significant losses in market value because they did not anticipate or manage business risks. Comprehensive management of risks allows companies to better use information and knowledge about the environment in which they operate and therefore they will be better placed to prevent, minimise or recover from losses in shareholder value.

Increasingly, companies face increased risk that successful business strategies will quickly become obsolete, unless they are able to understand their operating environment and translate this into business performance and a clearly articulated corporate culture.

> *Creating an ethical culture means instilling and maintaining a commitment to doing the right thing, this time and every time - so much so that it becomes entwined in the essential DNA of the firm … The firm's leadership must, of course, set the right tone at the top, but this culture can't be limited to senior management, the compliance department, and the aspirational wording of a corporate mission statement. The culture must be learned, reinforced and shared by each and every employee[5].*

Some of the drivers of corporate responsibility for Australia's banks include:

- Enhanced governance to respond to business risks: profiling and managing risks and being able to anticipate and respond to emerging issues to improve operational performance;
- Improved ability to understand business performance: benchmarking market position and competitiveness against own targets and competitors to provide value to customers;

[5] *Speech by SEC Chairman: Remarks before the Bond Market Association*. William H Donaldson. Chairman Securities and Exchange Commission. 20 April 2005. http://www.sec.gov/news/speech/spch042005whd.htm

- Improved ability to attract and retain quality employees: enhancing employee recruitment, retention and motivation;
- Improved ability to conduct a dialogue with stakeholders: delivering innovative communications and managing investor and public relations;
- Better financial monitoring of resource allocation: categorising use of resources and identifying new business opportunities;
- Greater profile for raising capital: disclosing to shareholders and reducing market volatility in share price can translate into greater investor confidence and improved opportunities for managing capital; and
- Enhanced market reputation: integrating transparent and accountable business practices can translate into competitive advantage and better brand management.

From the banking industry perspective, corporate responsibility harnesses these drivers and is reflected in how banks set corporate objectives, manage day-to-day operations, align activities and behaviour with the expectation that banks will operate in a safe and sound manner (and in compliance with applicable laws and regulations), and meet the obligation of accountability to shareholders and other relevant stakeholders. It is in the interests of the bank to enhance internal and external governance. A systemic failure to respond to community expectations could translate into additional legal and regulatory obligations and increase costs of compliance.

> *The Commonwealth Bank Foundation seeks to encourage developments in education, in particular the financial literacy skills of young Australians and aims to create awareness, skill and understanding of the benefits of a more financially literate community.*
>
> *[Commonwealth Bank of Australia]*

Therefore, overall the benefit of corporate responsibility for Australia's banks is in the voluntary adoption of practices that reflect the banks' corporate culture and demonstrate how the bank seeks to engage with its shareholders and other stakeholders. If the voluntary nature of corporate responsibility were removed, the likely result would be corporate cultures that meet compliance obligations or make insincere commitments simply to demonstrate conformance. Conformance necessarily would replace performance.

> *We have made a public commitment to build trusted relationships with all of our stakeholders – our customers, our people, our shareholders, our regulators, our communities and our suppliers – as part of our corporate social responsibility strategy… This report is a tangible demonstration that we will continue to strengthen our business practices and lift the level of transparency and accountability of the National on issues that are important to our stakeholders.*
>
> *["Corporate Social Responsibility Report 2004", National Australia Bank]*

Corporate responsibility provides a way for companies to consider broadly their operational activities and how to best represent their corporate culture. Part of enhancing responsible business practices and promoting disclosure of financial and operating performance is to consider how best to communicate the prospects of the company; not just how the company has performed, but how it expects to perform over the long-term.

3.1 Do corporate decision makers have regard for the interests of stakeholders, and should they have regard for the interests of stakeholders?

Responsible management of a company inherently involves balancing short-term and long-term performance with regard for those factors that determine the sustainability of the company; such as consideration of the interests of shareholders and other stakeholders who can have a significant impact on the successful operations of the company. Australia's banks recognise the importance of shareholders, other stakeholders and the wider community in all aspects of the financial services business. Essential to the operation of the banking business are employees, depositors, investors and consumers of financial products as well as government and regulators that set the legal and regulatory regime for banks.

Banking businesses would not exist without customers, and therefore customer expectations can have a significant impact on the financial and reputational performance of the bank. Emerging business models and distribution across various types of products and services within the financial services industry means that without suppliers and distributors the business would also not exist. Competition within the financial services industry means that successful banks provide optimal conditions for their employees. Increasing legal and regulatory obligations placed upon the financial services industry means that relationships with Government are important. Few companies could disregard the interests of these internal and external stakeholders for very long and continue to be a viable and profitable business.

The banking industry is strongly committed to stakeholder engagement as a part of corporate behaviour. Therefore, the ABA believes that the current framework in Australia already permits corporate decision makers to have regard for stakeholders in addition to shareholders. Banks already have in place comprehensive corporate responsibility activities and stakeholder engagement programs that acknowledge the importance of their employees, customers, suppliers, the environment and the wider community.

The following provides a brief overview of some of these programs and activities.

<u>Employees</u>: Banks adopt people management principles that include career opportunities and performance evaluation; assessment of employment policies; labour laws (including equal opportunity and workplace diversity, occupation health and safety); training, learning and development; grievance processes; work-life balance and flexible working arrangements; competitive remuneration; protecting employee entitlements; work conditions that respect human rights and freedom of association.

<u>Customers</u>: Banks adopt customer service principles that include respecting customer privacy; product development and service delivery; equity and access to banking products and services (including adoption of Disability Action Plans, financial inclusion responses, etc); transparency of business; responsible marketing practices; customer advocacy, complaints and dispute resolution; and socially responsible investing.

<u>Suppliers</u>: Banks adopt supplier management principles that include supply chain management; sustainability performance; and human rights practices of third parties.

<u>Environment</u>: Banks adopt environmental management principles that include meeting or exceeding environmental standards; resource usage; environmental risk factored into lending practices; reporting on climate change, water and energy management; trading and market environmental solutions; and awareness raising campaigns.

<u>Community</u>: Banks adopt community service principles that enhance social contribution such as financial literacy; strategic partnerships (including with the community and welfare groups, not-for-profit and non-government organisations); community advisory panels; and philanthropic activities (including vocational training, support for socially and financially excluded people, sponsoring sport and cultural events, charitable donations).

* The ABA notes that this overview is an amalgamation of general stakeholder engagement programs and corporate responsibility activities and is indicative of practices across the banking industry; however, it may not reflect an individual bank's particular corporate responsibility practices.

In addition to these programs and activities, some banks are preparing specialised reports that align financial reporting with sustainability reporting to provide a more holistic view of the banks' economic, social and environmental issues as built into the banking business. Other specialised reports provide details on how banks are responding to shifting business demands, including changing workforce dynamics; accessibility of banking products and services for regional/remote communities, people with disabilities, households with low incomes, etc; increasing regulation of financial services; climate change; and socially responsible investing. Essentially, reporting on corporate responsibility acknowledges diverse stakeholder interests and how the banks are responding to these views.

> *ANZ is committed to enhancing the well-being and prosperity of the communities where our people live and work, and where our business operates. Our involvement is underpinned by a simple aspiration to earn community trust.*
>
> *["Our Performance 2004", ANZ]*

Australia's banks have been recognised internationally and domestically for their corporate responsibility leadership, as reflected in the high ratings against corporate responsibility performance of a number of indices, including the Dow Jones Sustainability Index, FTSE4Good Index, Governance Metrics International Global Governance Ratings, RepuTex SRI Index, St James Ethics Centre Corporate Responsibility Index. These indices seek to measure the performance of companies and their corporate responsibility practices.

Corporate responsibility can contribute to a company's competitiveness by enhancing management accountability, transparency and resourcefulness as well as improving business processes, procurement and distribution. However, while the ABA considers that the interests of other stakeholders are key to business performance, the degree to which a company may have regard for other stakeholders will depend on a number of factors; such as the nature of their business activities, the different business models and industry sectors, and the different operational issues impacting their stakeholders.

Therefore, it is reasonable that a company may, and should, have regard for the interests of stakeholders in different ways, reflecting the importance of particular business activities, the interests of shareholders and other stakeholders and the relationships between the company, its business practices and the wider environment in which it operates.

The primary duty of a director is to act in the best interests of the company and it is a matter for the Board to determine, when, and to what extent, stakeholder interests should be taken into account. In this regard, it is important for each company to consider: (1) to whom should the company be responsible, and (2) to whom should the company be accountable. Importantly, what is relevant and appropriate for a bank will be very different to what is relevant and appropriate for a mining company.

> *We are committed to making the communities in which we operate better. To this end, we have made significant contributions to financial education, youth education and community development in Australia.*
>
> *[Citigroup Australia]*

The ABA believes that:

- Corporate decision makers in Australia already have regard for the interests of stakeholders, as reflected in the wide range of activities in corporate Australia that can be described as "corporate responsibility". Therefore, the ABA disagrees with the sentiment that directors and companies are only interested in maximising short-term profits for shareholders at the expense of long-term performance and wider stakeholder interests.

- Generally companies can only be successful in the long-term if they broadly take into account their business impacts on their stakeholders. Companies should be responsible for their decisions as they impact on stakeholders, as these decisions will inevitably impact overall financial and operational performance.

It is the ABA's view that taking into account the interests of shareholders and other stakeholders is consistent with the existing statutory directors' duties. Corporate responsibility can attract customers, employees and investors as well as improve the integrity of the bank and the banking industry more generally. However, banks should have flexibility in how they determine to govern and manage themselves, disclose their operational activities to the market and endorse responsible business practices. The wide range of activities that banks are engaging in demonstrates that it is not possible to legislate a single response to corporate responsibility.

> *At St.George, we believe that everyone should have a chance to grow. That's why we strive to play a positive role in the community by supporting charities, the arts, sporting clubs, business programs and disaster relief initiatives. We also recognise our important community function as a major employer and financial services provider.*
>
> *[St George Bank]*

Appendix 1 provides a summary of two examples of corporate responsibility behaviour within Australia's banking industry: financial literacy and financial inclusion. Both these areas provide opportunities for banks to work in close partnership with welfare and community groups to deliver better accessibility to banking products and services, particularly for the more disadvantaged groups within the community.

The ABA notes that greater details on individual banks' stakeholder engagement programs, corporate responsibility activities and participation in various corporate responsibility ratings will be provided in ABA member banks' individual submissions to the inquiry.

3.2 Does the current legal framework encourage or discourage directors to have regard for the interests of stakeholders, or should revisions be made to the legal framework to require, enable or encourage directors to have regard for the interests of stakeholders?

The objective of the law should be clear and without unnecessary burden that can stifle corporate innovation, business opportunity and economic growth. The law should also be responsive to today's business and community needs and be capable of being flexible towards tomorrow's business and community expectations. The ABA believes the current framework of legal and regulatory obligations, market rules, industry standards, codes and industry practices in Australia enables and encourages directors and companies to have regard for shareholders and other stakeholders.

Under both the Corporations Act and common law, directors have a duty to act in the best interests of the company. In addition, to duties based on a directors' fiduciary relationship with the company, companies must also meet a wide range of Commonwealth, State and Territory statutes regarding occupational health and safety, anti-discrimination, industrial relations, equal opportunity, consumer protection and environmental impact as well as adhere to international covenants.

> *Australian courts have successfully applied directors' duties to different circumstances and adopted the law where appropriate (for example, gradually increasing the standard of care and diligence expected of directors as community expectations have increased). Importantly, the existing law allows directors to consider the interests of stakeholders other than shareholders … A fundamentally important issue is how directors balance the interests of various stakeholders in the company and the role of the law in this process[6].*

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[6] Ramsay I (2005). *Directors' Duties and Stakeholder Interests.* Company Director. 21 May 2005.

In March 2003, *ASIC v Rich*, the New South Wales Supreme Court held that a court's role in determining the liability of a defendant for their conduct as director is to articulate and apply a standard of care that reflects contemporary community expectations. Therefore, directors' duties involve exercising care, skill and diligence in the best interests of the company, that being the company as a whole, reflecting wider expectations.

3.2.1 Corporations Act

Under section 180(1) of the Corporations Act 2001 a director must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise. In addition, under section 181 a director must exercise their powers and discharge their duties in good faith in the best interests of the company and for a proper purpose.

Section 180(2) provides that a director meets their duty of care and diligence where they make a business judgement that is in good faith for a proper purpose (i.e. without material personal interest), that they inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate, and that they rationally believe the judgment is in the best interests of the company.

Business judgment means a decision to take or not take action in respect of a matter relevant to the business operations of the company. The "business judgment rule" was introduced to protect directors in the exercise of their duties and to give directors confidence to engage in entrepreneurial or informed decision-making that takes into consideration the wider interests of the company and the company's long-term performance.

What does it mean to act in the best interests of a company?

A commonly held view is that acting in the best interests of a company is to act in the best interests of the owners of the company (i.e. the shareholders). However, the statutory obligation is that directors are to act "in the best interests of the company". In fulfilling their duty to the company, arguably directors must consider the interests of both existing and future shareholders, and this means the long-term sustainability, not just short-term profitability of the company. Broadly, this requires directors to balance the short-term and long-term interests of the company as well as to consider the internal and external governance of the company.

It is the ABA's view that directors may make decisions in good faith and for a proper purpose that substantially benefits the community, consumers and the environment. Where there is lack of regard for the company or where no attention is paid to the interests of the company's shareholders, then this would likely be a breach of the duties of the Board. However, to ignore the interests of other stakeholders would also likely not be acting in the best interests of the company, as disregard is likely to expose the company to business risks.

Do directors feel constrained in corporate decision making?

Acting in the best interests of a company does not restrict directors from focusing beyond maximising short-term profits and shareholder wealth when making corporate decisions. Indeed, taking a broader view that is not inconsistent with the interests of the company that creates long-term value is indeed acting in the best interests of the company. Failure to manage wider stakeholder interests may create adverse harm for the company. Therefore, the ABA considers that the duties of directors to exercise reasonable business judgement can enable and encourage directors to discharge a standard of care that takes into consideration the interests of shareholders and other stakeholders.

Is a legislative amendment to the directors' duties provisions necessary?

A redefinition of directors' duties is problematic. In determining how such a provision might look, two fundamental questions need to be considered.

1. Is it appropriate for directors to be required to comply with regulations that guide what are appropriate social causes for their companies?

2. What limitations would need to be imposed to ensure that shareholders and investors are not discouraged from placing their capital with corporates?

Whether directors' duties should continue to be defined in terms of the best interests of the company or whether duties should be statutorily widened to other stakeholders with potential for redress if their interests are not being served must be considered in terms of existing business practices by corporate Australia within the current legal and regulatory framework.

The ABA makes the following points:

- While in law it may be that directors' duties are to the company (the existing and future shareholders), in practice with the day-to-day management of the company, directors are already considering a wide variety of interests when making strategic and operational decisions.

- If the proposition that shareholder interests can only be served by maintaining a standard of care that reflects "contemporary community expectations" and taking into account relationships with other stakeholders, then managing financial and non-financial risks and disclosing the company's consideration of its prospects for performance means that directors and companies already have regard for the interests of other stakeholders and have available mechanisms for disclosing their responsible business practices to the market.

The ABA believes that company law affords ample latitude for directors and companies to act responsibly *vis-à-vis* the environment and society generally. There are also other legal and regulatory obligations, market rules, industry standards, codes and industry practices that necessitate directors and companies having regard to stakeholder interests as part of their duty to act in the best interests of the company. The long-term performance and sustainability of the company requires prudent management of a wide range of business risks. Failure to measure and manage financial and non-financial risks will inevitably damage the company. Certainly as part of corporate decision making, the Board should contemplate the business risk of not considering how the company may impact on its internal and external stakeholders.

Would a legislative amendment confuse or dilute directors' duties?

It is important for directors' duties in company law to be drafted so that it balances providing directors with certainty regarding their obligations, yet allows the law to respond to changing business and community needs. It is the ABA's view that section 181(1) of the Corporations Act is broad enough to allow directors to have regard for the interests of shareholders and other stakeholders, yet is clear in that it provides that a director has a duty to act in the best interests of the company. Amending directors' duties to incorporate a direct duty to wider stakeholders may result in directors being unable to make efficient and effective corporate decisions and may unduly restrict the way in which corporate decisions are made, to the detriment of shareholders and other stakeholders. It is also important for the courts to interpret the provisions to reflect the nature and effect of the principles upon which the duties are based.

Would a legislative amendment change company behaviour?

It is uncertain whether a different legal provision will lead directors to making decisions differently to the decisions they make now. Creating a legal requirement to take account other stakeholder interests creates a risk that the legitimate decisions of the Board and management of the company may be challenged by small minority interests that are not in the interests of the company or its primary responsibility. There is a risk that directors will be distracted by vexatious litigation instead of concentrating on managing the company in the interests for which they have been given permission to do so by their owners. A statutory obligation may in fact narrow the focus of the Board and management of the company creating inefficiencies in company operation and management; ultimately to the detriment of shareholders and other stakeholders.

The ABA does not support an amendment to the directors' duties to include a duty to also act in the best interests of other stakeholders. Nor does the ABA support an amendment that explicitly permits directors to take account, where appropriate, of the interests of other stakeholders. Such a general response is likely to have a number of significant unintended consequences:

- Diluting responsibility rather than clarifying responsibility of directors;
- Stifling corporate innovation rather than encouraging 'enlightened shareholder value';
- Confusing adoption of progressive ways of managing diverse shareholder and stakeholder interests; and
- Generating conformance rather than performance.

3.2.2 Principles of Good Corporate Governance and Best Practice Recommendations

> *The best practice recommendations are not prescriptions. They are guidelines, designed to produce an efficiency, quality or integrity outcome. This document does not require a 'one size fits all' approach to corporate governance. Instead, it states aspirations of best practice for optimising corporate performance and accountability in the interest of shareholders and the broader economy*[7].

Beyond the mandatory statutory obligations on corporate governance, pursuant to Listing Rule 4.10, companies listed on the Australian Stock Exchange (ASX) are required to comply with the ASX Corporate Governance Council's *Principles of Good Corporate Governance and Best Practice Recommendations* by providing a statement in their annual report disclosing the extent to which they have followed the best practice recommendations during the reporting period. Importantly, the best practice recommendations focus on an "if not, why not" approach; where companies must identify the recommendations that have not been followed and give reasons for not following them.

"Recognising the legitimate interests of stakeholders" (Principle 10) sets out that companies have a number of legal and other obligations to non-shareholder stakeholders. It also recognises that increasingly, the performance of companies is being scrutinised from a perspective that recognises other forms of capital, such as natural, human and social capital. This being the case, the ASX Corporate Governance Council has determined that it is important for companies to demonstrate their commitment to appropriate corporate responsibility practices. Companies are required to establish and disclose a code of conduct to guide compliance with legal and other obligations to legitimate stakeholders.

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[7] *Principles of Good Corporate Governance and Best Practice Recommendations.* ASX Corporate Governance Council. (p5). http://www.shareholder.com/shared/dynamicdoc/ASX/364/ASXRecommendations.pdf

Furthermore, it suggests that directors have a responsibility to set the "tone and standards of the company" and to oversee adherence to these standards. A code of conduct, which states the values and policies of the company, can assist the directors in taking into account the interests of stakeholders as well as complement the company's risk management practices. Importantly, the best practice recommendations refer to "legitimate" stakeholders. Not all stakeholder interests will be relevant in all circumstances, and therefore it is reasonable for directors to retain the discretion to determine how best to balance the particular stakeholder interests.

In addition to Principle 10, the best practice recommendations identify the importance of identifying and managing risk. "Recognise and manage risk" (Principle 7) sets out that companies should establish a sound system of risk oversight and management and internal control to identify, assess, monitor and manage risk and inform investors of material changes to the company's risk profile. The risk profile of a company should be a description of the material risks facing the company, including financial and non-financial matters. A structure for managing risks can enhance the environment for identifying and capitalising on opportunities to create value and as such the concept of managing risk takes on a wider perspective than merely managing financial risks, to also managing operational risks. Importantly, the best practice recommendations refer to financial and non-financial risk management, and that these risks will vary across different companies and different industries.

The ABA believes that the best practice recommendations explicitly and implicitly require listed companies to have regard for the interests of other stakeholders as demonstrated by the conduct of the business, its operational activities and its risk management practices as part of its corporate governance framework. Considering the breadth of financial and operational risks inherently must involve a consideration of how the company interacts and engages with its shareholders and other stakeholders.

3.2.3 Australian Standards on corporate governance and responsibility

The Charitable Foundation was established in 1981. Each year the Adelaide Bank donates a percentage of its profits to the Charitable Foundation after tax and dividend payments. The Bank also covers all salary and administration costs. The Charitable Foundation raises additional funds from staff, corporate supporters, individual donors and by staging fundraising events and activities.

[Adelaide Bank]

In addition to corporate governance standards that apply to listed companies as contained in the Corporations Act or ASX Listing Rules, Standards Australia has published a series of Australian Standards to assist all companies develop and implement effective corporate governance practices. The Australian Standards are non-prescriptive and have been designed to apply across company-type; small or large, public or private, profit or not-for-profit. AS 8003 was published in July 2003 and provides guidance on corporate social responsibility.

In addition, Standards Australia has published a number of other standards for business, including risk management, compliance programs, OH&S, environmental management, security management, organisational codes of conduct, etc, to assist companies to meet their legal obligations as well as implement more broadly corporate governance structures and responsible business practices.

3.2.4 Additional voluntary (and mandatory) standards on corporate governance and responsibility for banks

For banks, the Corporations Act not only contains fiduciary duties for directors, but also a statutory duty for the bank to ensure that its services are provided in an efficient, honest and fair manner pursuant to section 912(A). Banks have additional conduct of business obligations pursuant to their Australian Financial Services Licence and must have adequate organisational capacities, competent responsible officers and risk management systems to comply with the conditions of the licence and the financial services laws. Obligations to

manage conflicts of interest also mean that banks must avoid, control or disclose any conflicts of interest pursuant to section 912(A). Licensed financial service providers that have a fiduciary relationship must act in the best interests of their clients. A similar obligation to act in the best interests of clients is also contained in the *Superannuation Industry (Supervision) Act 1993*.

In addition to conduct of business obligations, a bank must also meet certain prudential requirements to be authorised to carry on banking business pursuant to the *Banking Act 1959*. Part of these prudential requirements is to meet certain corporate governance and risk management standards. Directors and senior managers are also to meet certain fitness and propriety standards. The Basel capital framework sets out a comprehensive risk management methodology for retail and commercial banking business. Banks must have adequate systems for managing credit risk, market risk and operational risk as well as adequate capital to protect the business from these risks. The Basel Committee on Banking Supervision has provided guidance on sound practices for managing and supervising operational risk as well as sound corporate governance practices (based on the OECD *Principles of Corporate Governance*).

Managing business risk, by having regard for internal and external risks, and maintaining a prudent governance structure by having in place robust and transparent operational practices, is an integral part of the day-to-day management of a bank. Reputational risk is increasingly important for banking business. Effective governance practices are essential to sustaining public trust and confidence in the banking system, which are critical to the functioning of the banking sector and economy as a whole. The ABA considers that banks are obligated to have regard for managing all risks to the business as part of their prudential management and conduct of business. Understanding financial and operational risks is part of a sound risk management system.

Code of Banking Practice

The ABA's *Code of Banking Practice* was first published in August 2003, with revisions subsequently made in May 2004. The Code is voluntary[8] and sets standards of good banking practice when dealing with people, who are, or who may become, individual and small business customers. The Code includes key commitments, general obligations, principles of conduct and disclosures. The banking industry is dedicated to continuously work towards improving the standards of practice and service in the banking industry. Within the Code is a commitment to act fairly and reasonably towards customers in a consistent and ethical manner.

> *Good community is good business. We believe our business can only thrive in healthy communities and we are therefore committed to improving the prospects of the communities we serve. Our preferred approach is to talk to local leaders about their aspirations and concerns and see if we can use our skills to improve their community's prospects … Often this centres on the provision of banking and financial services, but we have also been able to develop a range of initiatives designed to help communities reach their potential.*
>
> *[Bendigo Bank]*

Each member bank will maintain its own corporate culture and customer service protocols. Banks have Customer Service Charters, and some banks have more specialised procedures, such as Disability Action Plans, for addressing particular customer needs. However, a customer-focused culture can generally be demonstrated by principles of:

- Respecting and knowing customers;
- Understanding customer's needs and offering suitable solutions;
- Delivering consistently high standards of service;

[8] Details of the 13 banks that have subscribed to the ABA's *Code of Banking Practice* are on the ABA website. http://www.bankers.asn.au

- Working to build relationships with stakeholders (including customers, investors, financial advisers, business partners and the community); and
- Acting honestly and prudently and complying with legal and regulatory obligations.

Acting fairly and reasonably towards customers in the banking industry is essential in securing the long-term viability of the business. Therefore, acting in the best interests of customers is consistent with being accountable for corporate actions in the broader environment and community.

In addition to the *Code of Banking Practice*, member banks are also subject to the *Uniform Consumer Credit Code* and, as applicable, IFSA's *Blue Book – Guidelines on Corporate Governance for Fund Managers and Corporations*.

The ABA believes that:

- Current statutory obligations and industry standards encourage directors to have regard for the interests of shareholders and other stakeholders, where it is determined that such interests are also in the interests of the company.
- Corporate decision makers are not constrained by the existing framework. The law does not impede directors or companies from taking account of the interests of other stakeholders. Fostering relationships with shareholders and other stakeholders is an integral part of the existing legal, regulatory and corporate governance framework in Australia.
- Legislative amendment to prescribe a duty to require directors to take account of other stakeholders as part of their statutory duty to the company could confuse or dilute the role of directors, resulting in less efficient decision making to the detriment of shareholders and other stakeholders.
- Government intervention could have adverse consequences for innovation and creativity in corporate responsibility practices, and therefore is impractical, unnecessary and potentially counterproductive.

The ABA does not believe there to be a systemic failure of corporate Australia to address market and social forces by giving due consideration to the broader interests of the company as part of corporate decision making. Legislative intervention is not required, nor desirable, to enable or encourage directors and companies to have regard for the interests of other stakeholders. Modern governance, commercial practices and business necessity means that directors and companies already take into account wider interests in making decisions about corporate strategy and actions.

Importantly, Australia's existing framework appropriately ensures that the approach to practices and reporting is scalable to company-type. Ultimately, attempts to prescribe corporate responsibility will either be too high level to provide practical guidance across the various industry sectors and various companies, and therefore unenforceable, or will be too complex and prescriptive engendering a compliance based response that is likely to narrow innovation in corporate responsibility.

> *The Suncorp Group has a long history of supporting the communities it serves by sponsoring events and providing much-needed assistance and support to charities. As well as direct company support, Suncorp staff give freely of their time and expertise to help charities such as the Youth Enterprise Trust, the Hear and Say Centre, the Queensland Cancer Fund and the Salvation Army. This culture of helping and giving strengthens the bonds of goodwill between Suncorp and the community.*
>
> *[Suncorp]*

Australia's banks have played a significant role in leading developments with corporate responsibility developments; in a voluntary capacity. The high level of corporate responsibility activity by Australia's banks demonstrates that Government intervention or legislative amendment is unnecessary in order to promote responsible business practices and responsible disclosure of those business practices.

3.3 What alternative mechanisms, including reporting requirements, may enhance consideration of stakeholder interests? Should approaches in other countries be adopted or adapted for Australia?

There are a number of triple bottom line or sustainability reporting frameworks; whether that is a social impact report, stakeholder and community report, environmental impact report, CSR report, sustainability report, etc. The Global Reporting Initiative (GRI) Reporting Framework presents reporting principles and specific content indicators to guide a company's thinking about their sustainability performance and in the preparation of sustainability reports[9]. The GRI guidelines are becoming the most commonly adopted set of guidelines for reporting on corporate sustainability and are widely recognised with a number of banks taking into consideration the GRI guidelines in their annual performance reporting. The GRI guidelines also provide finance sector specific guidelines.

HSBC is deeply conscious of its responsibilities to the environment, believing that the needs of today's society should not be fulfilled at the expense of future generations, and that sustainability is paramount. Executives and members of staff at all levels are responsible for seeing that we can contribute to the ethos of sustainability.

[HSBC Bank (Australia)]

Notwithstanding the wide recognition of GRI, the ABA believes that it is impractical to prescribe particular requirements for companies to report against the triple bottom line. It is reasonable to expect that companies will determine that some aspects of economic, social and environmental reporting will provide a view of the operations of the company in its totality. However, it is unreasonable to suggest that all companies will have governance practices to report against all possible criteria, nor responsibilities to all possible stakeholders.

It is important to recognise that for companies to deliver greatest value for all stakeholders, a "one size fits all" approach does not adequately recognise the diverse and complex needs of all stakeholders. A "one-size-fits-all" approach to corporate responsibility or sustainability will not work due to the uniqueness of each business and the variation in strategic approach across companies. The dynamics of the relevant industry, market sector, operating environment, product or service means that each company is different. The real and comparative influence of, and priority assigned to, varying stakeholder interests will be different.

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[9] The Global Reporting Initiative (GRI) was established through the United Nations Environment Program (UNEP) with the objective of enhancing the quality, rigour and utility of sustainability reporting. It is a multi-stakeholder process and independent institution whose mission is to develop and disseminate globally applicable Sustainability Reporting Guidelines. These Guidelines are for voluntary use by organisations for reporting on the economic, environmental, and social dimensions of their activities, products, and services. The GRI principles include transparency, inclusiveness, auditability, completeness, relevance, sustainability, accuracy, neutrality, comparability, clarity and timeliness; and the GRI content includes vision and strategy, corporate profile, governance structure and managements systems, performance (economic, environmental and social) indicators. The GRI incorporates the active participation of representatives from business, accountancy, investment, environmental, human rights, research and labour organisations from around the world. Started in 1997, GRI became independent in 2002, and is an official collaborating centre of the UNEP and works in cooperation with UN Secretary-General Kofi Annan's Global Compact and is consistent with the OECD Guidelines for Multinational Enterprises. http://www.globalreporting.org/.

The ABA believes that Australia's framework is already broad enough to allow directors and companies to have regard for the interests of other stakeholders and therefore encapsulates corporate governance standards, corporate responsibility objectives and good business practices that other jurisdictions are currently proposing or implementing to enhance existing frameworks.

In the United Kingdom, the Company Law Reform Bill 2005 is currently being debated by Parliament. This Bill seeks to introduce a concept of 'enlightened shareholder value'. If the Bill is passed it will introduce a duty for directors to have a primary obligation to benefit shareholders, but explicitly states that this can be achieved by taking due account of other stakeholder interests.

In Australia, the current directors' duties already reflect the principle of acting in the best interests of the company, and as discussed above, the ABA considers that the existing provisions already enable directors to exercise discretion in relation to other stakeholders. It is the ABA's view that the draft UK legislation seeks to implement practices for directors that are already generally contained in the Corporations Act.

Furthermore, in the United Kingdom, listed companies are required to discuss broad strategic and forward-looking issues in their annual report as part of the Operating and Financial Review (OFR). The mandatory OFR obligation seeks to promote an effective dialogue on key drivers of long-term company performance. The Accounting Standards Board issued a reporting standard for the OFR obligation in May 2005, which enables directors to determine how best to structure their review, in the light of the particular circumstances of the company.

> *Our community investment strategy focuses our community efforts on assisting young people – the nation's future. In keeping with this policy, we have formed community partnerships in five major youth areas: education, health, welfare, the arts and the environment … We also have a range of staff initiatives to support our staff's involvement in the community, and we give our shareholders the opportunity to support charities through our dividend donation program.*
>
> *[Bank of Queensland]*

In Australia, as introduced under the CLERP 9 amendments, an annual director's report as contained in the company annual report must include general information about operations and activities. The new Management Discussion and Analysis (MD&A) obligation requires directors to include quantitative and qualitative information about the operations and activities of the company pursuant to section 299 of the Corporations Act. The MD&A must contain information that shareholders would reasonably require to make an informed assessment of the operations of the entity during the reporting year; the financial position of the entity and any significant changes in the activities and the nature of the activities during the reporting year; and the entity's likely operational developments and the prospects of those operations in future financial years.

The introduction of this additional disclosure requirement is designed to maximise the usefulness of annual reports to all users, particularly people who are unfamiliar with reading and understanding financial reports, and is similar to the Review of Operations and Activities disclosure that is required by ASX Listing Rule 4.10.17. The MD&A obligation aims to ensure greater transparency and accountability within the company's operations and greater opportunity for all shareholders to take an informed role in the company business and other stakeholders to take an interest in the business operations of the company. In terms of reporting of financial and operational performance, it is the ABA's view that the existing MD&A obligation, coupled with other corporate governance disclosure requirements, provides adequate scope for directors and companies to report their operational and financial performance.

The ABA notes that CPA Australia and the AASB have both indicated that they are considering triple bottom line accounting standards for listed companies in Australia. Any Government intervention or legislative amendment that pre-empts the findings of the triple bottom line accounting discussions would be amiss. The ABA considers that it is preferable to allow reporting to evolve rather than mandating format and timing of reporting through legislation.

Appendix 2 provides a snapshot of some approaches and thinking regarding corporate responsibility in other jurisdictions.

Notwithstanding, the ABA believes there may be an important role for the Government and the business sector to further develop responsible business practices across Australia.

The ABA suggests the role for Government could be threefold:

- Endorsement and adoption of international covenants to further promote human rights, social welfare and environmental management in the interests of Australia's participation in the global community;
- Encouragement of corporate responsibility among Australian and foreign companies operating in Australia through business and community forums in the interests of raising awareness of how corporate responsibility may be relevant across industry sectors; and
- Facilitation of 'good for business' messages about corporate responsibility by conducting research into the contribution of corporate responsibility to long-term sustainability and competitiveness of companies as well as sponsoring awards programs to recognise excellence in corporate responsibility practices.

Corporate responsibility is not simply the space of large corporates or listed companies – it is about responsible business practices; "business responsibility". A corporation is only one way a business can structure itself. Indeed, corporate governance should also be "business governance". Therefore, it is important for the Government to endorse, encourage and facilitate responsible practices across all businesses, considering the nature and scale of their business operations.

The ABA suggests the role for the business sector is to work to bring consistent recognition of corporate responsibility across their industry through competitive market driven responses to shareholder and other stakeholder interests. For example, a number of Australia's banks are involved in the United Nations Environment Program Finance Initiative (UNEP FI), a global partnership between the United Nations Environment Programme (UNEP) and the private financial sector. UNEP FI works with over 200 financial institutions who are signatories to the UNEP FI Statements, and a range of partner organisations to develop and promote linkages between the environment, sustainability and financial performance.

The ABA notes that an Australian bank is the current Chair of the UNEP FI Steering Committee. Its current work program is working on a number of key projects, including:

- Climate Change: focusing on carbon finance, national and international policy and regulation debates, and renewable energy.
- Investment: exploring how material social, environmental and governance considerations can best be incorporated into investment practice.
- Sustainability management and reporting: developing GRI Financial Services Sector supplement (environmental performance); building the business case for sustainability management and reporting in emerging economies.

In addition, to enhance dissemination of information about responsible business practices and to promote assessment of practices adopted by listed companies, the ABA suggests that a similar initiative to the London Stock Exchange's Corporate Responsibility Exchange may provide a mechanism for the consistent collection and dissemination of information about financial and non-financial performance of listed companies in Australia.

While this may assist smaller companies, it should be noted that the banking industry currently discloses information about stakeholder engagement programs and corporate responsibility activities on individual banks' websites and in various corporate reports. However, an alternative mechanism for the collection and dissemination of corporate responsibility information may supplement existing dissemination practices. This market driven approach may also give greater credibility and rigour to benchmarks of corporate responsibility practices.

> *Macquarie has provided support to community programs … it does so in the simple belief that, as a company is a member of the society in which it operates, it follows that one of its important duties is to work for the betterment of that community. We focus our resources on the core areas of education, health care and research, welfare, the environment and the arts. Within these areas, we look for opportunities that are innovative, genuinely responsive to the community's needs and that also enable us to contribute our time and expertise, as well as our financial support.*
>
> *[Macquarie Bank]*

The ABA would envisage that this mechanism would complement existing reporting and disclosure practices and would not impose additional regulatory burdens on listed companies. Experience in the UK suggests that indeed this approach has reduced the burden on companies that receive many requests for information from market analysts, benchmarking researchers, etc.

The ABA believes that:

- It is not possible to codify all expectations that other stakeholders, including the wider community, may have of business, especially as these change over time. It is not practical to codify or legislate a triple bottom line reporting framework.
- Additional regulatory measures that may impose additional compliance costs on companies without delivering tangible value are unnecessary. Creating opportunities for companies to be "good corporate citizens" needs to be reflected in a framework that balances targeted restrictions in specified statute with flexibility to exploit opportunities for governance and transparency.
- Australia's framework that governs the behaviours of companies is already in place. Indeed, this framework balances restrictions that are in the public interest and flexibility for company's to promote unique value propositions, create competitive advantage and generate economic growth.
- Australia's framework is arguably in advance of some other major jurisdictions, which may be currently looking towards Australia's approach regarding statutory directors' duties and corporate governance standards. Some regimes are proposing and implementing changes that more closely align company law and market rules with the approach already adopted in Australia.

The ABA believes there are already adequate mechanisms for considering the interests of stakeholders, including such mechanisms as legal and regulatory obligations, market rules, industry standards, codes and industry reporting practices. Australia's framework provides a mix of voluntary and mandatory measures to promote responsible business practices and consideration of wider stakeholders interests.

4. Conclusion

The ABA believes the existing framework of legal and regulatory obligations, market rules, industry standards, codes and industry reporting practices enables directors and companies to take into account the interests of shareholders and other stakeholders in their corporate decision making. Therefore, the ABA does not believe that it is necessary for the framework to be amended in Australia.

The value of corporate responsibility is in its voluntary nature, lifting best practices across the business sector. Attempts to codify or regulate will only stifle innovation and creativity of companies in balancing the interests of various stakeholders. A prescribed obligation will not encourage companies to adopt the 'spirit of the law', but merely comply with the black letter of the law. In addition, the value of reporting on social and environmental performance, as well as financial performance, is in the ability for a company to determine what best suits its reporting needs and the needs of their shareholders and stakeholders. Existing disclosure frameworks allow flexibility for companies to report those aspects of the business of interest to shareholders and other stakeholders as reflecting the relationships they have with their shareholders and other stakeholders.

The ABA suggests that the role for public policy in enhancing corporate responsibility across industry sectors is in promoting the transparency of credible corporate responsibility across business and the wider community. Disclosure of responsible business practices means that companies are accountable for the way they operate, how they manage corporate resources, and how they interact within the economy. Companies are part of the community; therefore their long-term sustainable operation enhances shareholder value and community value. Furthermore, it is the ABA's view that that a director that is not responsive to the broader interests of the company will expose the company to a number of business risks.

However, the over-emphasis on conformance, rather than performance, is already evident with the significant changes recently made to the corporations and financial services laws. Further regulation of companies or ambiguity for directors can actually impede the benefits of corporate responsibility; that is, the flexibility to deliver real outcomes that are relevant to the all stakeholders of the company.

Building shareholder value through defined corporate strategies and by making voluntary commitments that go beyond regulated corporate requirements, may not just contribute to a better society, but can also lead to innovative practices for sustainable economic growth, increased profitability for companies and enhanced investor confidence. Australia's banks recognise the importance of corporate behaviour that reflects responsible business practices, corporate accountability and transparency and thus are recognised for their leadership in corporate responsibility amongst corporate Australia.

Australian Bankers' Association
11 October 2005

5. Appendix 1: Examples of corporate responsibility within Australia's banking industry

5.1 Financial literacy

Financial literacy is the ability to make informed judgements and effective decisions about the use and management of money[10]. Australia's banks are responding to issues of financial literacy in various ways, ranging from research into the level of adult financial literacy in Australia, development of financial literacy education for school-age children and partnerships with financial counsellors and community groups to deliver financial literacy training to low income families.

Some banks financial literacy programs include:

- An adult financial education workshop program facilitating training for financial counsellors and community educators to assist people, particularly low-income households, to build their financial skills and knowledge and make informed decisions about their money. The program was developed in collaboration with a number of financial counseling groups.
- A student banking program providing fee-free banking accounts to encourage young people to save. The program is conducted in partnership with schools and teaches young people the principles of banking and sound money management. A website facility also offers young people objective and unbiased financial management information on a range of important money management topics, including saving, budgeting, borrowing, lending, jobs and money. The facility features a number of interactive tools to enable more informed financial decisions.
- A student education program providing a resource for teachers to use as part of their teaching modules to improve young Australians financial literacy. The program is mapped to every state's curriculum. It also includes a grants program for schools and a national assessment tool for students so that they can identify aspects of their financial knowledge that could be improved.
- A financial literacy curricula resource package providing support and assistance to teachers to improve the knowledge, skills and understanding of their students in the area of financial literacy. The curriculum resources apply across primary school-aged and high school-aged students and have been developed with the assistance of the NSW Department of Education and Training and community groups.
- An education workshop developing understanding of employees, customers and members of the community around basic financial matters and advice. The workshop includes information on basic financial literacy but specifically looks at how to apply critical thinking to financial decisions, including activities on budgeting, ways of paying off debt and the advantages and disadvantages of various credit, store and charge card options, and where to go for help when they get into financial difficulty.
- An Indigenous community financial literacy program enhancing self-sufficiency through developing family income, resource funds and business management skills. This program has been introduced in collaboration with Government, local community and Indigenous community groups.

Other financial literacy programs provided by banks include guides on using credit cards, managing finances online and making banking easier for small business and older Australians.

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[10] Definition of "financial literacy" from the UK National Foundation for Educational Research, 1992.

The ABA's financial literacy program involves three key areas:

- Information dissemination program: objective to enhance distribution and delivery of existing and new materials in collaboration with partners.
- Awareness and Access program: objective to increase awareness and access to ABA and banks' own financial literacy materials and programs.
- Materials development program: objective to continue to develop generic materials and resources to promote 'responsible spending leadership'.

This program seeks to build on the work of ABA member banks and advocate the importance of financial literacy within the banking industry. Some highlights of the program include the 'Broadening Financial Understanding Workshop' and the 'Smarter' booklet series ('Smarter Banking: Making the most of your money'; 'Smarter Banking: Make credit work for you'; and 'Smarter Super: Make the most of your retirement').

In addition to individual financial literacy initiatives, the ABA and some member banks are working closely with the Government's Consumer and Financial Literacy Foundation.

5.2 Financial inclusion

Financial inclusion aims to address financial exclusion, which is the lack of access faced by the most needy members of the community to low-cost, fair and safe financial products and services from mainstream financial services providers[11]. Financial inclusion programs seek to assist low-income consumers address issues such as low savings levels, unsustainable levels of personal debt and financial stress. Australia's banks are responding to issues of financial exclusion in various ways, including research on the size and nature of financial exclusion (seeking to address the needs of those excluded from mainstream financial services) and development of programs that assist low income consumers save, manage their debt obligations and deal with financial hardship.

Some banks financial inclusion programs include:

- A matched savings program to assist low income families save money for their children's education by matching every dollar saved for the purpose with $2, up to a maximum of $2000. The program was developed in conjunction with a welfare organisation and has been extended through an additional welfare organisation partnership.
- Micro-credit schemes and no interest loan schemes pooling resources and returning to the community to assist people on low incomes. A number of banks have developed programs in partnership with Government, welfare organisations, community groups and consumer groups. For example:
  - Community development finance programs involve small loans for enterprise development.
  - Micro-credit schemes involve making loans of between $300 and $1000 to disadvantaged people to obtain access to funds for essential personal and household goods (e.g. white goods). In addition, the scheme provides people with basic financial planning and budgeting advice.

[11] Definition of "financial inclusion" from research conducted by Chantlink Associates for ANZ, 2004.

- A "Low Interest Loan" program involves making loans of between $800 and $3000 to low income consumers at a fixed rate. These loans provide affordable credit for the purchase of essential household goods and services. In addition, the program assists consumers to establish a credit rating and gain entry into the mainstream credit system. Loans are tailored to the needs of people on low incomes who are currently using 'payday' lenders and other fringe credit providers. Successful applicants for the low interest loan program are monitored by dedicated officers that, throughout the loan process and repayment period, offer support and access to information and referral services.

- An Indigenous community and regional banking program assisting local community representatives to help community members in opening bank accounts to receive financial entitlements. The program has been designed to support individuals with limited English ability and has been implemented in partnership with Indigenous community groups. The program has also conducted research investigating lending on communal land. The program seeks to assist with strategic management of Indigenous land assets in a culturally appropriate manner to generate sustainable financial outcomes for the local community.

- Low fee basic bank accounts and low interest credit card products involve providing access to banking products and services that minimise the impact of transaction costs for disadvantaged and low income households.

Banks stakeholder engagement programs and corporate responsibility activities aim to help build social capital and empower local communities. Activities designed by banks to assist in addressing problems with financial exclusion are break even products seeking to make a difference for people that may otherwise not be able to access credit for household necessities. Importantly, these programs have been able to progress and evolve in a competitive banking sector environment.

For further information on the ABA's financial literacy program and member banks financial literacy activities and stakeholder and community programs, see http://www.bankers.asn.au or individual banks' websites.

6. Appendix 2: Snapshot of corporate responsibility in other jurisdictions

The following outlines some recent developments in other jurisdictions in relation to corporate responsibility. The ABA believes that generally Australia already has in place a framework that is comparable with the principles of these other jurisdictions. Indeed, in some respects these other jurisdictions are looking to Australia's framework.

6.1 European Union

The European Commission published its Green Paper *Promoting a European Framework for Corporate Social Responsibility* in July 2001. Following, the European Commission issued the basis of the European Strategy *Corporate Social Responsibility: a business contribution to Sustainable Development* in July 2002. As part of the strategy a multi-stakeholder forum was established in October 2002 to promote transparency and convergence of CSR practices and instruments. A report is expected containing results and recommendations for further action.

In addition, on 28 October 2004, the European Commission announced a number of amendments to the EU's Accounting Directives to establish the responsibility of directors for financial and key non-financial information and to require listed companies to publish an annual corporate governance statement. The Commission considers that companies that perform well tend to be well-governed and that investors need transparency on corporate governance to make informed investment decisions.

6.2 United Kingdom

Under company law in the United Kingdom, directors are explicitly instructed to consider the interests of the company's employees, as well as its members. A listed company in the United Kingdom may be subject to a number of statutory and voluntary corporate governance requirements.

The original UK best practice guide to corporate governance was published in 1992 following the 'Cadbury Report'.[12] This was revised with amendments, such as by Greenbury (executive and director compensation) and Turnball (internal controls and risk management) and most recently Higgs[13].

The *Combined Code on Corporate Governance* first became effective for listed companies reporting in 1999. In July 2003, the Code was amended to incorporate some of the recommendations of good practice contained in the 'Higgs Report'. In particular, the Code sets out a requirement for the Board to set the company's values and standards and ensure that its obligations to its shareholders and others are understood and met. The London Stock Exchange (LSE) considers that while the Code does not directly refer to corporate responsibility, it falls squarely within the principle that the board should set values and standards to ensure obligations to others (non-shareholders) are met.

Listed companies in the United Kingdom are required to discuss broad strategic and forward-looking issues in their annual report as part of the Operating and Financial Review (OFR). The mandatory OFR obligation seeks to promote an effective dialogue on key drivers of long-term company performance. Operating and financial reporting elements of

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[12] *Report of the Committee on the Financial Aspects of Corporate Governance.* Committee on the Financial Aspects of Corporate Governance. ("Cadbury Report"). 1992. London.

[13] *Review of the Role of Effectiveness of Non-Executive Directors.* ("Higgs Report"). 2003. London. http://www.dti.gov.uk/cld/non_exec_review/pdfs/higgsreport.pdf
Internal Control: Guidance for Directors on the Combined Code. ("Turnball Report"). 1999. London. http://www.icaew.co.uk/viewer/index.cfm?AUB=TB2I_6342&tb5=1

the OFR include performance in the period, returns to shareholders, dynamics of the business, investment for the future, capital and treasury policy, cash flows, current liquidity and going concern.

In November 2004, the Accounting Standards Board issued an exposure draft of a reporting standard. The proposals involve a principles-based standard, which in particular makes it clear that the OFR shall reflect the directors' view of the business. The objective is to assist investors assess the strategies adopted and the potential for those strategies to succeed. Information in the OFR is intended to be useful for investors and other users. Regulations issued have been designed to expand the OFR obligation by making specific reference to including relevant information on employees, customers, suppliers, environmental matters and social and community issues as issues that support long-term value creation. The Accounting Standards Board issued its reporting standard in May 2005.

Importantly, the Accounting Standards Board's reporting standard sets out a framework of the main elements that should be disclosed in an OFR, leaving it to directors to consider how best to structure their review, in the light of the particular circumstances of the company and the range of factors that may be relevant. The reporting standard does not specify any specific performance indicators that companies should disclose, nor how many, on the grounds that this is a matter for directors to decide. For example, the reporting standard sets out that the OFR shall focus on matters that are relevant to the interests of members of the company.

> *Members' needs are paramount when directors consider what information shall be contained in the OFR. Information in the OFR will also be of interest to users other than members, for example other investors, potential investors, creditors, customers, suppliers, employees and society more widely. The directors will need to consider the extent to which they shall report on issues relevant to those other users where, because of those issues influence on the performance of the business and its value, they are also of significance to members. The OFR should not, however, be seen as a replacement for other forms of reporting addressed to a wider stakeholder group[14].*

In March 2005, the UK Government released a White Paper *Company Law Reform*, which sets out proposals for improving regulation, making it easier to run a company and ensuring flexibility of the law. The Company Law Reform Bill 2005 contains a concept of 'enlightened shareholder value', which seeks to promote decisions based on longer-term views of the company, not just immediate return.

Currently, the general duties that directors owe to a company are found in case law. It is suggested that there be a statutory duty for directors reflecting wider expectations of responsible business behaviour. The basic goal of directors should be the success of the company for the benefit of the members as a whole and that this goal should take a properly balanced view of the implications of decisions over time and foster effective relationships with employees, customers, suppliers and the community more widely. 'Enlightened shareholder value' is likely to drive long-term company performance and maximise overall competitiveness and wealth and welfare for all[15].

The Bill proposes to make it clear that directors must promote the success of the company for the benefit of its members, but that this can only be achieved by taking due account of longer-term performance and wider interests, such as the interests of employees and the impact of the company's operations on the community and on the environment.

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[14] *Reporting Standard 1: Operating and Financial Review*. Accounting Standards Board. London (p11). http://www.frc.org.uk/asb/technical/standards/pub0796.html

[15] *White Paper: Company Law Reform*. Department of Trade and Industry. Corporate Law and Governance. London. (p20). http://www.dti.gov.uk/cld/WhitePaper.pdf

Importantly, the other stakeholder interests are only relevant if the director considers them so, and may otherwise be excluded from the report.

In October 2004, the LSE launched the Corporate Responsibility Exchange (CRE), an online disclosure tool for non-financial company information. As of June 2005, 125 companies use the CRE, including half of the UK's FTSE100. The CRE has been designed to deliver relevant non-financial information to investors and provide added-value information and research on the connection between financial and non-financial performance.

6.3 United States

In the United States, many States have passed laws that either permit or require consideration of a range of non-shareholder interests in the exercise of directors' duties.

The *Sarbanes-Oxley Act 2002*, which came into force in July 2002, introduced significant changes to the regulation of corporate governance and financial practice in the United States. The purpose of the Act is to improve the accuracy and reliability of corporate disclosures, made pursuant to securities laws. For example, under section 406, the Securities and Exchange Commission (SEC) is directed to issue rules requiring a company that is subject to the reporting requirements of Section 13(a) or 15(d) of the *Exchange Act 1934* to disclose whether or not the company has adopted a code of ethics for its senior financial officers that applies to the company's principal financial officer and controller or principal accounting officer, or persons performing similar functions.

The Act further directs the SEC to require companies that have not adopted such a code of ethics to explain why they have not done so. In addition to requiring the disclosure mandated by section 406, the SEC has adopted rules to require disclosure as to whether the company has a code of ethics that applies to its principal executive officer.

In addition, pursuant to section 404 of the Act, listed companies are required to publish information in their annual reports concerning the scope and adequacy of the internal control structure and procedures for financial reporting. This CEO/CFO statement or certification should assess the effectiveness of such internal controls and procedures. The Sarbanes-Oxley Act applies to foreign companies with listings on the New York Stock Exchange (NYSE) (therefore some of Australia's banks are subject to these requirements).

In February 2002, the SEC asked the NYSE to review its corporate governance listing standards. In November 2003, the SEC approved changes to the NYSE and NASDAQ listing requirements. These changes focused mainly on Board independence, audit committee composition and codes of business conduct and ethics. In particular, section 303A of the NYSE's corporate governance listing standards provide that listed companies must adopt and disclose their corporate governance guidelines. Instead of applying a prescriptive approach, the NYSE recognises that no single set of guidelines would be appropriate for every listed company. However, given the importance of corporate governance, each listed company's website must include its corporate governance guidelines and committee charters. In relation to codes, the NYSE requires that any waiver of the code for executive officers or directors may be made only by the Board or a board committee and must be promptly disclosed to shareholders.

Finally, an MD&A requirement has been in operation in the United States for a number of decades. In December 2003, the SEC issued an information release providing further guidance regarding MD&A disclosure, emphasising that the MD&A is not simply a reiteration of the financial statements in narrative form, but that it should be a top-level management discussion about future trends and possible future events. Such discussion is designed to be forward-looking by considering longer-term prospects of the company.