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Senator Grant Chapman
Chair, Parliamentary Joint Committee
on Corporations and Financial Services
Department of the Senate
Parliament House
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Dear Senator Chapman,

On 9 March 2006, the Australian Bankers' Association (ABA) appeared before the Parliamentary Joint Committee on Corporations and Financial Services and gave testimony to the inquiry into corporate responsibility. During the hearing, various Committee members requested further information from the ABA. Following are the ABA's responses to these particular questions.

Before the ABA provides responses to questions on notice, we take this opportunity to offer a point of clarification in relation to part of the discussion between Committee members and the ABA during the ABA's appearance before the Committee.

Point of clarification – current legal framework

The Committee questioned the ABA in relation to comments made in our initial submission that went to Terms of Reference points (c) and (d).

- c. *The extent to which the current legal framework governing directors' duties encourages or discourages them from having regard for the interests of stakeholders other than shareholders, and the broader community.*
- d. *Whether revisions to the legal framework, particularly to the Corporations Act, are required to enable or encourage incorporated entities or directors to have regard for the interests of stakeholders other than shareholders, and the broader community. In considering this matter, the Committee will also have regard to obligations that exist in laws other than the Corporations Act.*

It is the ABA's view that the current framework encapsulates not just the various duties imposed on directors as contained in the Corporations Act and other statutes, but also provisions that relate to company conduct and disclosure standards, which may or may not be prescribed by the law. This distinction is important; we believe that in considering whether the current law is adequate, it is essential to think of the current framework in its totality. The ABA's comments in our initial submission reflect this broader interpretation.

The ABA believes that the current framework enables and encourages directors to take into account shareholder and other stakeholder interests. While sections 180 and 181 of the Corporations Act requires directors to discharge their duties with due care and diligence, there are a myriad of other legal and regulatory obligations, market rules, industry standards, codes and industry practices that necessitate directors and companies having regard to shareholder and other stakeholder interests.

For example, section 299A of the Corporations Act contains the Management Discussion and Analysis (MD&A)¹ obligation requiring a director's report to include quantitative and qualitative information about operations and activities. 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. However, directors have discretion on how best to meet this obligation, thereby using their business judgement in terms of what and how information is disclosed.

In addition, Listing Rule 4.10 requires listed companies to provide a statement in the company's annual report disclosing the extent to which the company has followed the ASX Corporate Governance Council's *Principles of Good Corporate Governance and Best Practice Recommendations*. "Recognising the legitimate interests of stakeholders" (Principle 10) sets out that companies have a number of legal and other obligations to non-shareholder stakeholders. "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 financial and non-financial risk and inform investors of material changes to the company's risk profile.

These requirements are just two examples of provisions that impose obligations on directors and companies, but also encourage directors to give wider consideration to the operations and activities of the company. In practice, with the day-to-day management of the company, directors consider a wide variety of interests when making strategic and operational decisions. In the ABA's initial submission, we provided evidence to this effect, providing examples of how the banking sector is taking into account shareholder and other stakeholder interests in the day-to-day management of their businesses.

It is the ABA's view that 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. Therefore, the ABA considers that 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

¹ The ABA notes that the MD&A obligation is similar to the obligation on UK listed companies, which are required to discuss broad strategic and forward-looking issues in their annual report as part of the Operating and Financial Review (OFR). The OFR essentially seeks to promote an effective dialogue on key drivers of long-term company performance. However, while the OFR obligation is mandatory, in May 2005 the Accounting Standards Board issued a reporting standard for the OFR obligation, which enables directors to determine how best to structure their review, in the light of the particular circumstances of the company. The ABA also notes that the UK Government is considering removing the statutory requirement for listed companies to publish an (OFR). In the absence of a "safe harbour", directors may be exposed to shareholder litigation. Thornton, P (2006). *Ministers in U-turn over review aspect of corporate reporting rules*. The Independent. 3 February 2006; and Jopson, B (2006). *Directors need safe harbour on forward looking statements*. Financial Times. 9 February 2006.

business necessity means that directors and companies already take into account wider interests in making decisions about corporate strategy and actions.

See below for further comments specifically with respect to amending the law to contain either a mandatory or permissive provision.

Outsourcing/offshoring operations

1. *What operations have Australia's banks moved offshore?*

The Committee has requested that the ABA provide details of member banks' current offshore operations.

A number of member banks have limited operations located offshore, including in the United States, Ireland, New Zealand, India, Singapore and Philippines.

Some member banks have the following offshore operations:

- Information technology function, including software and system development, software enhancement, IT system support, IT administration, data management.
- Middle office functions, including application processing.
- Back office functions, including funds transfer, liabilities administration.

Triple bottom line (or sustainability) reporting

2. *As a matter of principle, should there be a consistent framework against which companies across a range of sectors can assess and report their broader performance and provide information to the market?*

In Australia there are mandatory and voluntary measures that promote responsible business practices and consideration of wider stakeholders interests, including statutory and non-statutory corporate reporting requirements. Australia's banks currently disclose information to shareholders and other stakeholders through annual reports, financial statements, market announcements, product disclosure statements, financial services guides, press releases, market presentations and other documents, including CSR reports.

As a matter of principle, the ABA believes that a reporting framework would assist companies in providing information on social and environmental performance to the market. However, at this stage, we consider that there are a number of practicalities that need to be resolved with any such reporting framework, before the benefits of a consistent framework could be realised.

In the ABA's initial submission, we acknowledge the evolution of the *Global Reporting Initiative (GRI) Sustainability Reporting Guidelines*. The GRI guidelines are becoming the most commonly adopted set of guidelines for reporting on corporate sustainability and are widely recognised. A number of member banks use the GRI guidelines as part of their annual performance reporting. The GRI guidelines provide finance sector specific guidelines and also allow companies to select indicators in a systematic manner. The ABA notes that the market is driving the evolution of the GRI guidelines. Indeed a number of member banks are involved in the United Nations Environment Program Finance Initiative (UNEP FI) Steering Committee which, among other projects, is developing GRI Financial Services Sector supplement indicators focusing on environmental performance.

However, due to the early stage of development of triple bottom line reporting², there are still some issues to be resolved with reporting indicators, including:

- Lack of standardised performance criteria or imprecise reporting indicators;
- Lack of guidance on reporting intangibles; and
- Lack of comparability of company performance.

A significant challenge for sustainability reporting is ensuring that reporting is relevant to the company, its shareholders and its other stakeholders. The GRI guidelines are a substantial reporting framework that contains many performance criteria and reporting indicators; not all these criteria or indicators are going to be relevant to all businesses. It is important that any reporting framework enhances disclosure and transparency to the market, and does not generate 'information overload'. It is also important that any reporting framework evolves and reflects not just the disclosure needs of both the business and the community but also the changing nature of commercial operations.

Some larger member banks have indicated that a reporting framework would not impose additional obligations on their businesses. However, some of the smaller members have indicated that imposing a reporting framework requiring external assurance would have significant resource and cost implications. This highlights the importance of ensuring a flexible reporting framework where reporting indicators are not restricted and where external reporting assurance is not mandated. It is important for companies to be able to select reporting indicators and assurance processes that reflect the realities of their business as well as the expectations of their shareholders, stakeholders and the wider community.

It is the ABA's view that a "one-size-fits-all" approach to corporate responsibility and sustainability reporting will not adequately reflect the diverse and complex needs of all businesses and all stakeholders. 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.

The ABA considers that rather than mandating a reporting framework, it is important to encourage market driven measures that enhance dissemination and comparability of corporate responsibility information and greater sustainability reporting by listed companies.

Enhancing dissemination of information

An initiative similar 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

² The ABA notes that the third generation of the GRI guidelines is currently being developed and are due to be finalised later this year.

driven initiative is likely to also give greater credibility and rigour to benchmarks of corporate responsibility practices.

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

Enhancing comparability of information

The GRI is an evolving process. A number of member banks support the GRI; these banks are involved as the framework allows flexibility to tailor to suit business needs. Notwithstanding, the ABA believes that it is too early to mandate performance criteria or reporting indicators. However, there is a need for mechanisms like the GRI guidelines to allow analysts to compare and benchmark performance against a commonly accepted reporting framework.

Initiatives, such as XBRL, may be useful in promoting greater comparability through electronic communication of business and financial data³. The ABA also notes that the GRI is considering digitising reporting, which would allow information to be delivered to analysts in a format that would allow information to be more readily compared. The ABA considers that reporting mechanisms that assist with comparability of financial and operational information should be further investigated. This market driven initiative is likely to make corporate responsibility reporting more accessible.

In summary, despite the wide recognition of the GRI guidelines, the ABA believes that it is premature to prescribe a reporting framework for companies to report against the 'triple bottom line' and specific reporting indicators. Notwithstanding, the ABA observes that the market is increasingly demanding reporting against performance indicators that are consistent with those contained in the GRI guidelines.

The ABA considers that measures that enhance dissemination and comparability of corporate responsibility information will assist companies to "push" information into the market as well as engage investors to "pull" information from companies. The ABA envisages that as shareholders, non-shareholders and companies continue to push-and-pull corporate responsibility information, market driven initiatives will deliver improved sustainability reporting frameworks.

The ABA believes that there is benefit in companies being able to assess and report information in a manner that enables users of the information to compare company performance within and across sectors. Therefore, the ABA supports in principle, a reporting framework that gives companies the flexibility to assess and report information on their non-financial performance. The ABA notes that the ASX Corporate Governance Council is currently reviewing its *Principles of Good Corporate Governance and Best Practice Recommendations*. The ABA understands that the Council is due to release a paper on non-financial risk reporting and sustainability reporting.

³ XBRL (Extensible Business Reporting Language) is an XML-based standard for financial information, reporting and analysis. It has been jointly developed by over 200 global companies and organisations. XBRL Australia is a member of XBRL International Inc. and is a joint venture of the Institute of Chartered Accountants in Australia and CPA Australia. It currently allows tags to be applied to financial data so that information can be easily handled by computer software. <http://www.xbrl.org.au/>

In light of a number of market driven initiatives, the ABA considers that there is no need for the law to mandate full GRI compliance. The ABA considers that it is preferable to allow reporting to evolve rather than mandating format and timing of reporting through legislation.

Promoting the benefits of corporate responsibility

3. *What initiatives could government pursue to promote the benefits of companies adopting a corporate responsibility approach?*

A commercial approach to corporate responsibility emphasises that it is likely to be in the short-term and long-term interests of a company to take into account the environmental and social context in which the business operates. 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.

The ABA considers that there is a role for business, government and community in partnership to further promote the benefits of corporate responsibility to enhance adoption of corporate responsibility practices across various industry sectors. However, the ABA suggests a distinct role for Government is threefold:

1. 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;
2. 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
3. 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.

1. Endorsement and adoption of international covenants

Where international covenants have been endorsed by Australia and are in the interests of Australian companies, the Government could encourage Australian companies to align their domestic and international practices with international covenants aimed at enhancing workplace standards.

A number of member banks have adopted practices as part of their principles of doing business that are aligned to global initiatives that promote responsible business practices, such as the UN Global Compact, UN Declaration of Human Rights, ILO Declaration on Fundamental Principles and Rights at Work, and OECD Guidelines for Multinational Enterprises. Some member banks also require suppliers tendering contracts to meet local legal requirements relating to the environment, human rights and other work practice standards.

2. Encouragement of corporate responsibility

The Government could promote corporate responsibility by Australian companies, and foreign companies operating in Australia, by facilitating business-community-government forums highlighting the long-term benefits of corporate responsibility practices.

A number of member banks have been vocal supporters of, and advocates for, corporate responsibility and sustainable business practices by Australian companies. For example, a number of banks' CEOs have given public speeches on, or made public statements regarding, their corporate behaviour, such as how they feel about CR and how they are implementing it in their own company. These statements demonstrate how they feel about their behaviour within the corporate and social-community environment.

Some of the key messages expressed by member banks include:

- The growing pressure for companies to understand and act on a widening range of risks across the business;
- 'Corporate responsibility' provides a means by which companies can better understand and manage financial and other business risks, including social and environmental risks;
- Innovation and creativity are critical to the long-term sustainability of any business; and
- The effective management of social and environmental risks presents business opportunities.

The ABA notes that the Hon. Chris Pearce MP, Parliamentary Secretary to the Treasurer in a recent speech acknowledged a number of member banks for their commitment to corporate social responsibility, in particular in the area of their financial literacy activities⁴.

These public commitments can foster greater awareness of corporate responsibility within and across industry sectors. The Government could also take a leadership position on corporate responsibility by identifying best practice case studies and speaking about its own approach to responsible business practices.

3. Facilitation of 'good for business' messages

The Government could conduct research into the contribution of corporate responsibility to long-term sustainability and competitiveness of companies as well as sponsor awards programs to recognise excellence in corporate responsibility practices.

In the ABA's initial submission, we outlined a number of drivers or benefits of corporate responsibility as identified by our member banks, including:

- *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;

⁴ "Effective Partnerships in Consumer Affairs". Speaking notes for the Third National Consumer Congress. 17 March 2006. <http://parlsec.treasurer.gov.au/cjp/content/speeches/2006/008.asp>

- *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 more systematically to identify new business opportunities;
- *Greater profile for raising capital:* disclosing financial and non-financial information to shareholders can reduce market volatility in share price and translate into greater investor confidence and improved opportunities for managing capital; and
- *Enhanced market reputation:* integrating transparent and accountable business practices can build long-term value and translate into competitive advantage and better brand and reputation management.

These drivers reflect feedback from our member banks. It is likely that other industry sectors will identify different drivers. By further exploring the motivations of companies that have adopted a corporate responsibility approach, the Government could better understand why other companies and industry sectors may not be as advanced in their corporate responsibility approach, thereby understanding how to target 'good for business' messages that appeal across companies and industry sectors.

Some questions that the Government could include within a further research study include:

- Why have Australia's banks embraced corporate responsibility?
- What is the 'enlightened self-interest' that drives banks to adopt corporate responsibility?
- Why have other companies/industry sectors not embraced corporate responsibility, or alternatively, been unable to identify the competitive advantage that corporate responsibility can deliver the business?
- What underlying factors might lead some companies to pursue "short-termism" rather than long-term performance and wider stakeholder interests?
- What relationship does the company have with its customers? Are the customers also the wider community, or are they other companies? What impact does the customer-base have on how corporate responsibility may be viewed strategically?
- What is the impact of public perception and brand reputation as a driver for corporate responsibility?

The ABA also suggests there is a role for the Government to further promote responsible business practices across Australia by acknowledging the efforts of corporate Australia that work with community and welfare groups to deliver value for the community. For example, the Prime Minister's Community Business Partnership acknowledges business-community partnerships through the 'Awards for Excellence' program. The 2005 national award for large business was given to the *Millers Point Youth and Employment Partnership*, which is a collaboration between 12 organisations, including Westpac. In addition, Citigroup Australia, in partnership with YWCA NSW, won the 2005 multi-state award for their *Finance First* project and National Australia Bank, in partnership with Good Shepherd Youth and Family Services, won the 2005 Victorian award for large business for their *Step Up* program.

Overall, the ABA believes that the role for public policy in enhancing corporate responsibility across industry sectors is in promoting the transparency of credible corporate responsibility practices across business and the wider community.

Directors' duties: mandatory or permissive provision

4. *Should the law be amended to contain a mandatory or permissive provision that would require or allow directors to take into account the interests of stakeholders, other than shareholders?*

In the ABA's initial submission, we provided some comments regarding the current statutory directors' duties and how the courts are interpreting these provisions. We also provided comments on what we believe "acting in the best interests of the company" involves.

The ABA does not support revising the Corporations Act to oblige or explicitly allow directors to take into account the interests of other stakeholders. The ABA considers that the current legislative framework already permits corporate decision makers to have regard for stakeholders in addition to shareholders. Furthermore, a statutory obligation could have adverse consequences for innovation in corporate responsibility practices, and therefore is impractical, unnecessary and potentially counterproductive.

The Committee has requested that the ABA consult with other business sector representatives, such as the Business Council of Australia (BCA), the Australian Institute of Company Directors (AICD) and the Law Council, and give closer consideration to the legal interpretive issues associated with an amendment to the directors' duties provisions. The ABA supports comments made by the BCA and the AICD to the Committee with respect to the existing directors' duties.

The ABA takes this opportunity to offer some further commentary on some of the public policy objections we hold in relation to amending the directors' duties contained in the Corporations Act.

ABA supplementary comments on directors' duties

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. It is the ABA's view that clearly identifiable minimum standards are best dealt with in these particular statutes, particularly as the minimum standards then apply across the business sector and not just to corporates.

Further, 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.

The matter of a mandatory or permissive provision for directors' duties was considered by the Senate Standing Committee on Legal and Constitutional Affairs. The report of the Committee noted that:

If company law were to impose new and, at times, contradictory duties (such as looking after interests which may be directly opposed to those of the [shareholders]) directors' fiduciary duties could be weakened, perhaps to the point where they would be essentially meaningless.⁵

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. Directors should have the ability to balance competing interests from time to time.

The ABA believes that 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. A legislative amendment that creates a multi-fiduciary duty is likely to confuse the role of directors, resulting in less efficient decision making to the detriment of shareholders and other stakeholders.

Mandatory provision

A *mandatory provision* would *oblige* directors to have regard for the interests of groups other than shareholders in making decisions.

Amending the Corporations Act to contain a mandatory provision may:

- Unduly restrict the way in which corporate decisions are made, to the detriment of shareholders and other stakeholders; and
- Result in a compliance approach to corporate responsibility; a 'tick the box' approach, which is not desirable and defeats the spirit and intent behind the concept of corporate responsibility.

Permissive provision

A *permissive provision* would *explicitly allow* directors to have regard for the interests of groups other than shareholders in making decisions.

Amending the Corporations Act to contain a permissive provision may:

- Not change corporate behaviour or lead directors to make decisions differently to the decisions they make now; or
- Alternatively, result in directors being unable to make efficient and effective corporate decisions to the detriment of shareholders and other stakeholders.

In practice, it is difficult to envisage how a provision obliging or explicitly allowing directors to take into account the interests of other stakeholders as part of their statutory duty to the company, would actually look.

⁵ Senate Standing Committee on Legal and Constitutional Affairs (1989). *Company Directors' Duties: Report on the Social and Fiduciary Duties and Obligations of Company Directors*. November 1989. (para 6.51)

If the law was amended to introduce a broad provision, mandatory or permissive, there is a risk that the wide interests would confuse the role of directors and stifle innovation rather than encourage 'enlightened shareholder value'. Indeed, a broad provision may result in directors becoming less accountable, because their duty is too general, and the law becoming more difficult to enforce.

Alternatively, if the law was amended to introduce a narrow provision that identifies particular stakeholder groups, then there is a risk that a company does not have the capacity to take account of other interests that are not specifically included within the provision, regardless of whether these interests are relevant.

Creating a legal requirement to take into 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. A minority interest may not be in the best interests of the majority of stakeholders. Directors could 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. In addition, it may result in damaging investor confidence, thereby affecting the cost of raising capital and incorporation of companies in Australia, to the detriment of the economy as a whole.

Arguments supporting a 'pluralist' model assume that the law and corporate decision makers do not already value the relationships between the company and its stakeholders. In practice, 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. However, the introduction of a permissive provision would in effect introduce a mandatory provision for companies, as there is likely to be a time when a company is required to justify to the courts how the Board determined whether to have regard to the interests of certain stakeholders, therefore creating a legal requirement to have regard for the interests of other stakeholders.

It is the ABA's view that the existing directors' duties do not restrict the Board 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 adversely harm 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.

The ABA does not support an amendment to the directors' duties to include a mandatory duty to act in the best interests of other stakeholders. Nor does the ABA support an amendment that explicitly allows 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:

- Potentially diluting responsibility across a myriad of interests, rather than clarifying responsibility of directors;
- Stifling corporate innovation rather than encouraging 'enlightened shareholder value'⁶;
- Confusing adoption of progressive ways of managing diverse shareholder and stakeholder interests; and
- Generating conformance rather than performance.

In summary, the strength of the current statutory obligation is that it is not attempting to define society's expectations, but provide the opportunity for the courts to interpret the law to reflect the current expectations of society. The ABA believes that changing the law may undermine the existing provisions, rather than promote greater consideration of broad stakeholder interests.

The ABA understands that the Law Council is due to provide comments to the Committee that outlines some of the legal interpretative issues that have been touched on in this supplementary submission.

Concluding remarks

It is the ABA's view that Australia's existing statutory and non-statutory framework appropriately ensures that the approach to corporate responsibility 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.

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, the ABA believes that 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

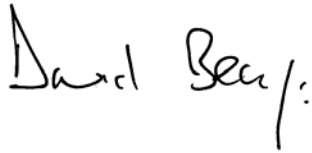
⁶ The ABA notes that clause 156 of the UK Company Law Reform Bill 2005 seeks to introduce a concept of 'enlightened shareholder value'. The Bill proposes to introduce a duty for directors to have a primary obligation to benefit shareholders, but explicitly states that this can be achieved by taking due account of other stakeholder interests. 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. The ABA also notes that debate within the UK Parliament is casting possible doubt as to whether this section of the Bill will proceed. Adams, C (2006). *Conservatives plan to water down company law reforms*. Financial Times. 1 February 2006.

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.

Finally, it is the ABA's view that directors are already directly and indirectly taking into account the interests of shareholders and other stakeholders in their corporate decisions. If the Committee has found that there are some that are uncertain as to whether the directors' duties are precluding activity in this area, then the Committee could state that there are no problems with the existing directors' duties; companies already have the ability to consider the interests of shareholders and other stakeholders within the existing broad framework; and there is no need for Government intervention. Such a statement would assist in promoting corporate responsibility more broadly across industry sectors. This view is also shared by the Business Council of Australia.

If you have any further questions regarding the information provided by the ABA in our initial submission, testimony and supplementary submission, please do not hesitate to contact me or Diane Tate, Director, Corporate & Consumer Policy on (02) 8298 0410: dtate@bankers.asn.au.

Yours sincerely

A handwritten signature in black ink that reads "David Bell". The signature is written in a cursive, slightly slanted style.

David Bell