

22 March 2006

Ms Kelly Paxman  
Committee Secretary  
Parliamentary Joint Committee on Corporations  
and Financial Services  
Department of the Senate  
Parliament House  
Canberra ACT 2600

Business  
Council of  
Australia



By email to [corporations.joint@aph.gov.au](mailto:corporations.joint@aph.gov.au)

Dear Ms Paxman

### **INQUIRY INTO CORPORATE RESPONSIBILITY – QUESTIONS ON NOTICE**

During our appearance before the Parliamentary Joint Committee on Corporations and Financial Services on 23 February, we agreed to take two questions from the Committee on notice:

1. we undertook to provide additional information to the Committee on our suggestion that the Committee consider recommending a review of existing Commonwealth and State legislation and policies that may inhibit corporations engaging in socially responsible behaviour; and
2. the Committee sought additional information on the potential for companies to gain a competitive advantage from not pursuing corporate social responsibility (CSR) type activities.

### **Review of Government Legislation**

At the Committee hearings, the BCA suggested a number of options for the Committee to consider that would allow Government to encourage and assist continued uptake of CSR, without legislative intervention. One of these suggestions was that the Committee consider recommending a review of existing Commonwealth and State legislation and policies that may inhibit corporations engaging in socially responsible behaviour.

The BCA has subsequently asked a number of its Member companies to identify areas of Government legislation or policy that prevent or inhibit their ability to engage in CSR activities. We advise that this was not a comprehensive survey of BCA Member companies and that our prime concern was to identify a range of examples quickly to enable the Committee to consider this suggestion further. The examples given below should not therefore be considered exhaustive.

### *Childcare*

Many corporate employers are keen to provide childcare to employees, particularly to assist and encourage women to return to the workforce. Under current fringe benefits tax (FBT) law, employers are not required to pay FBT for employer-sponsored on-site childcare. Employer-sponsored childcare at third party facilities, however, attracts FBT. To avoid the FBT liability, corporations are therefore required to offer on-site childcare. This is only feasible where a substantial share of a corporation's employees are located in large, central offices. Where employees are spread across a range of locations, particularly in outer suburban, regional and rural locations, it is not feasible to offer all employees on-site childcare. It therefore becomes costly to offer equal access to employer-sponsored childcare for all employees, reducing the ability of corporations to assist their employees, particularly women, to return to work.

### *Insurance*

A common element of many CSR programs is an arrangement that allows employees to spend some of their company time volunteering with community organisations. This can raise some challenges, however, in terms of insurance cover for those employees. While recent legislative changes have given some protection to volunteers themselves, that protection is not extended to either the community organisation nor the corporate employer. There is therefore a danger of the corporate employers being found vicariously liable for any problems arising while its employees are working for a community group. Community organisations are usually not in a financial position to indemnify the corporation, nor might the corporation's own insurance cover it. A more detailed discussion of this issue can be found in Professor Myles McGregor-Lowndes, *'Managing corporate volunteers in light of recent civil liability reforms'*, October 2005, *Keeping Good Companies*, Chartered Secretaries Australia Vol 57 No 9.

### *OH&S*

A related problem can be uncertainty over whether a corporation is liable for occupation health and safety breaches that occur while an employee is volunteering with a community organisation. Corporations are obliged to provide safe working environments, but will have little direct influence over the working conditions of employees volunteering with community organisations. Corporations will be discouraged from allowing employees to volunteer through the company if they are uncertain of their OH&S obligations.

### *Taxation*

Another aspect of CSR can be the establishment of a corporate foundation for the benefit of the community. While a number of BCA Members have established such foundations, others have reported difficulties with taxation arrangements for their foundations, particular in relation to gaining Income Tax Exempt Charity Endorsement or the Deductible Gift Recipient Status for corporate foundations. These taxation complications act as a disincentive to corporations establishing foundations.

### *Black Hole Expenses*

Under current taxation law, many of the expenses incurred by a company after the end of the income generating life of a project are not tax deductible. For example, the expenses incurred in removing infrastructure after the end of petroleum production are not a deductible expense. This significantly increases the real cost of removing this infrastructure and acts as a disincentive for companies wishing to undertake environmental rehabilitation. While legislation has recently been introduced to address this problem (Tax Laws Amendment (2006 Measures No. 1) Bill 2006), the issue remains until this Bill is enacted.

### **Competitive Advantage**

The Committee has sought clarification on a point raised by the BCA during the hearing. The BCA indicated that, in some instances, some companies may see a competitive advantage from not adopting a CSR approach to their activities. In particular, this recognises that, in some cases, adopting a CSR approach can increase operating costs and therefore reduce price competitiveness in the market place. For example, some companies may elect to adopt standards for their products that are higher than those required by law, notwithstanding that the higher standards mean they need to charge more for their product. An example might be companies applying higher environmental standards to their product than those required by law.

Companies taking this approach will be adopting a strategy that assumes consumers will be prepared to pay a premium for more environmentally friendly products. A competitor may, however, adopt a strategy that assumes consumers are more concerned with price than with environmental credentials, and therefore only apply the legal minimum standard to its products. If this company is correct in its assessment, it may gain market share at the expense of the more environmentally friendly products.

Overall, however, most companies see stronger CSR performance as a competitive advantage. We note, for example, that this point was made by BHP-Billiton to the Committee and we believe would be confirmed by other leading Australian corporations.

It is also debateable whether any competitive advantage gained from a 'counter-CSR' strategy would be a sustainable advantage. As the BCA's submission to the Committee points out:

*Corporations operate within the community. For corporations to be sustainable and successful in the long term, they need to engage with the community and take account of community attitudes. Successful companies therefore factor into their forward strategies activities that manage the challenges and risks to the community and capture the opportunities that community engagement can bring.*

Finally, as indicated to the Committee during our presentation, even where a company may gain a transient advantage from not adopting CSR strategies, the BCA believes firmly that the market should be left to resolve these issues.

We would be happy to discuss any of these issues further with the Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read "Steven Münchenberg". The signature is written in a cursive style with a prominent horizontal stroke across the middle.

**Steven Münchenberg**  
Deputy Chief Executive