



ASX

AUSTRALIAN STOCK EXCHANGE

23 January 2006

Parliamentary Joint Committee on Corporations and Financial
Services
Department of the Senate
Parliament House
Canberra ACT 2600
Australia

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Dear Committee Secretary,

I attach ASX's submission to the Committee. Thank you for the opportunity to submit to the Inquiry at this late stage.

ASX's approach in this submission is to outline how ASX is approaching Corporate Responsibility for the companies listed on its markets and to briefly address each of the Inquiry's terms of reference. The views expressed in this submission are from ASX's perspective, but also include a description of the activities in this area being undertaken by the ASX Corporate Governance Council which ASX chairs.

Please let us know if you would like to discuss our submission further.

Yours sincerely,

Tony D'Aloisio
Managing Director & CEO
Australian Stock Exchange

ASX SUBMISSION

JPC INQUIRY INTO CORPORATE RESPONSIBILITY

ASX supports and has an established track record for supporting disclosure to the equity markets of matters which are important for investors and which add to the confidence in those markets.

ASX is supportive of using, where appropriate, its Operating Rules (e.g. Rule 3.1 on continuous disclosure) and the principles based corporate governance framework (e.g. ASX Corporate Governance Principles) to cover additional disclosures.

Corporate Responsibility (CR) Reporting deals with issues which, on their face, raise the need to consider additional disclosure. However, the subject of CR is still in its relatively early stages in Australia. There are uncertainties on what it means and/or what should be left to companies to voluntarily disclose and what should be the subject of suggested or mandated disclosures. Also, ASX believes further work needs to be done on the specific benefits to the markets of additional disclosure when weighed against the compliance costs of introducing more disclosure requirements.

ASX's position, on CR, therefore, is to work with the ASX Corporate Governance Council and engage member organisations and listed companies and investors to identify more clearly:

- What CR means;
- Which companies it should apply to;
- Which aspects should be left to the market (i.e. voluntary disclosure) and which aspects should be suggested or mandated (i.e. what any reporting framework should be);
- What the benefits to investors and the community and the markets will be and whether those benefits outweigh additional compliance costs.

This work has commenced and ASX is expecting results of this work by mid 2006.

We have provided this outline of where we are in our thinking on CR which, we hope, will enable the Committee to better understand our responses to each of the terms of reference.

A. The extent to which organisational decision-makers have an existing regard for the interests of stakeholders other than shareholders, and the broader community.

One measure of the current corporate regard for stakeholders is levels of CR reporting by companies. Sustainability issues are currently being addressed by many companies, either in a standalone report or in the company's Annual Report. Companies within the

ASX-top 150 are presently more likely than companies below the top-150 to produce a sustainability report.¹

ASX is currently undertaking its review of Annual Reports from the 2004 and 2005 reporting seasons. ASX has some 1800 companies listed on its exchange. What we are doing is to examine CR reporting (i.e. "sustainability" and "corporate social responsibility") to determine:

- The extent to which companies report;
- Whether the extent of reporting is increasing.

We will feed the results into the work we are doing with the ASX Corporate Governance Council and make them available on our website.

B. The extent to which organisational decision-makers should have regard for the interests of stakeholders other than shareholders, and the broader community.

There are uncertainties around what CR means. The terms "sustainability", "corporate social responsibility" (CSR) and "corporate responsibility" (CR) are used interchangeably, yet there is no uniform understanding of the matters to be addressed under each of these terms.

The information that each company considers relevant to its CR will also necessarily vary between companies (particularly those of different size and sector).

Part of the work we are doing is to get greater clarity around what CR means and what aspects are critical for disclosure to the market. That will then clear the way for an assessment on whether any additional disclosure should be voluntary, suggested or mandated.

Until there is greater clarity around these issues, it is not possible to answer this term of reference.

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.

ASX has not seen evidence that the current legal framework discourages companies from taking account of CR issues and reporting against their activity. ASX's experience to date has been that the current legal framework appears to accommodate directors' regard for all stakeholders.

CR is still a new and developing area (compared with financial reporting, for example). Most companies are at a relatively early stage of recognising these issues in a formal way. Developing sustainability practices against which companies can provide useful

¹ KPMG *International Survey of Corporate Responsibility Reporting*, 2005.

reporting requires substantial commitment and effort from the company in relation to cultural issues, operational practice, capture, measurement and reporting of relevant information.

Perhaps of more significance to directors' regard for stakeholders than the legislative framework is the commercial framework within which listed companies operate.

As noted above, many (particularly larger) companies are already responding to market demand for both engagement in and reporting against issues of sustainability and corporate responsibility. Examples of this response include information on:

- Employee recruitment, motivation and retention;
- Learning and innovation;
- Reputation management;
- Risk profile and risk management;
- Competitiveness and market positioning;
- Operational efficiency;
- Investor relations and access to capital
- Environmental issues
- Licences to operate

Companies are choosing to respond to the demand from investors and others (e.g. employees) for this type of information. This would seem to indicate that market forces (e.g. company reputation) are working to produce more disclosures.

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 unclear that additional legislation is necessary to enable the interest of stakeholders to be considered. Reporting from those companies who have sought to meet this demand for information indicates that they consider the company and its directors to be able to legitimately take account of stakeholder interests under existing legislation.

ASX Corporate Governance Council Principles and Recommendations

As indicated above ASX is currently considering market needs in relation to CR disclosure through its Chairmanship of the ASX Corporate Governance Council ("ASX Council").

ASX Council was formed in August 2002, with 21 member organisations. At the time, it described its mission, *"to develop and deliver an industry-wide, supportable and*

*supported framework for corporate governance which could provide a practical guide for listed companies, their investors, the wider market and the Australian community."*²

At the time of development, the purpose of ASX Council's Principles and Recommendations was stated to be threefold:

1. to serve as a central reference point for companies to understand stakeholder expectations and in order to promote and restore investor confidence;
2. to develop recommendations which reflect international best practice,
3. to form a focus for companies to re-examine their corporate governance practices.³

A continuing objective of ASX Council is to promote disclosure of corporate governance practices against guidance issued by the Council.

ASX Council's Principles and Recommendations

ASX Council developed 10 Principles, and 28 Recommendations, which it released in March 2003. The Principles are internationally accepted statements that underpin corporate governance frameworks. The Recommendations reflect generally accepted market practice and structures that support the Principles.

Although the Recommendations are not prescriptive, they trigger disclosure in relation to a company's governance structures and practices.

ASX Listing Rule 4.10.3 requires disclosure of the extent to which an entity has followed Council's Recommendations. If the entity has not followed a Recommendation, it must give reasons for its non-adoption ("if not, why not" regime).

Benefits of disclosure-based regime

ASX Council has developed a disclosure based regime which provides companies with the flexibility to adopt practices appropriate to their circumstances, while providing relevant information to investors.

ASX Council's governance regime is intended to provide the structural framework to promote improved governance behaviours within a company. It is not intended either to prescribe those frameworks, or to prescribe the behaviours that may result from the implementation of such structures.

The benefits of the "if not, why not" disclosure based regime are broadly as follows:

- Companies may adopt practices appropriate to their circumstances, while providing relevant information in relation to these to investors;

² ASX Corporate Governance Council, *Principles of Good Corporate Governance and Best Practice Recommendations*, Sydney, March 2003, foreword.

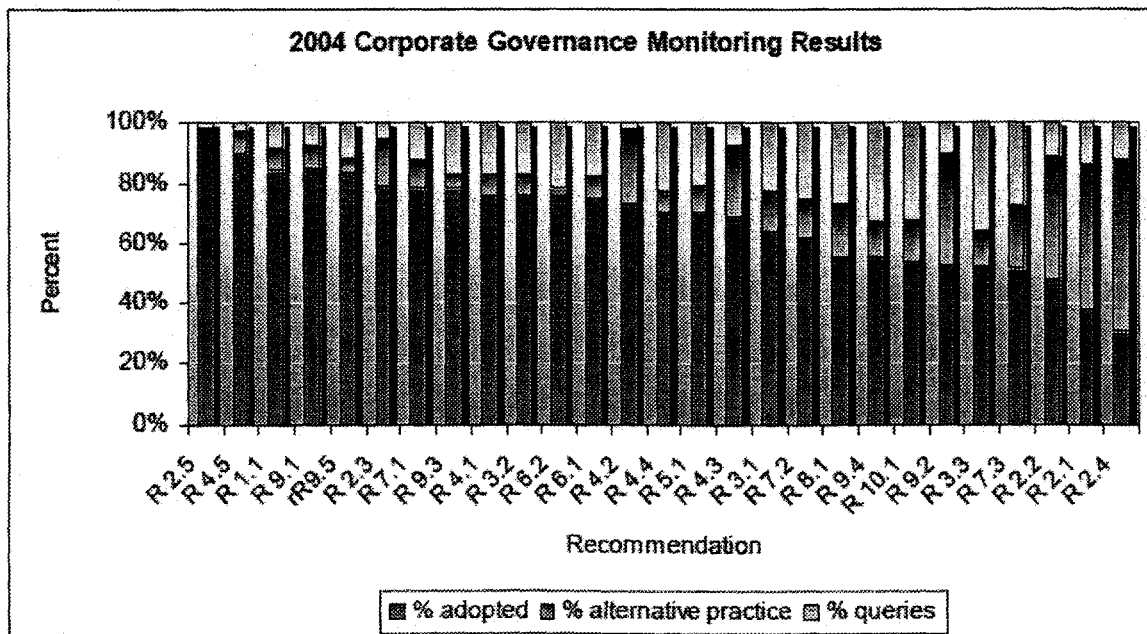
³ ASX Corporate Governance Council, *Principles of Good Corporate Governance and Best Practice Recommendations*, Sydney, March 2003, p.5.

- Prescription along the lines of the American Sarbanes-Oxley model is generally seen as unworkable across the broad range of companies on the Australian market;
- The Sarbanes-Oxley approach has been criticised for creating a huge compliance burden;
- The disclosure model requires a company to disclose its practices, thereby creating an incentive for a company to review and (where relevant) reform its structures, policies and procedures;
- This transparency and accountability will over time lead to a general improvement in governance standards, particularly as companies aspire to those governance standards and behaviours seen to be adopted by other companies.

2004 Reporting

ASX monitored corporate governance disclosure in the 2004 reporting season. It is currently reviewing reporting for the 2005 season. Disclosure has broadly been excellent to-date. In 2004:

- the average adoption rate for all ASX Council Recommendations for the whole market was 68%;
- for the top-500 companies, the adoption rate was almost 85%;
- alternative practices were adopted and disclosed by another 16% of the whole market and by another 7% for the top 500; and
- the majority of the top 200 companies disclosed that they already had practices broadly in line with the ASX Council's Recommendations at the time they were introduced.



ASX Council current CR activities

In September 2005, Senator Ian Campbell, Minister for Environment and Heritage, asked ASX Council to consider the development of a voluntary reporting framework for sustainability reporting.

Following the request by Senator Campbell, ASX Council set up a working group to consider how best to encourage greater CR reporting.

The working group reported to ASX Council in December. ASX Council has agreed to prepare a consultation document to capture industry views. This document will address:

- What CR means;
- Which companies it should apply to;
- Which aspects should be left to the market (i.e. voluntary disclosure) and which aspects should be suggested or mandated (i.e. what the reporting framework should be);
- What the benefits to investors and the community and the markets will be and whether those benefits outweigh additional compliance costs.

Overview of Principles 3, 7, and 10

Certain of the ASX Council Principles and Recommendations relate (at least partially) to issues of sustainability. These are:

- Promote ethical and responsible decision-making (Principle 3.) This covers codes of conduct clarifying standards of ethical behaviour for directors and executives, and share trading policies for employees.
- Establish a sound system of risk oversight and management and internal control (Principle 7). This relates to the processes within a company designed to identify, manage, measure and report on risks.
- Recognise legal and other obligations to legitimate stakeholders (Principle 10). This relates to the code of conduct that a company should develop to guide its engagement with non-shareholder stakeholders.

Any additional disclosure which may come out of the further work we are doing may be reflected within these principles.

E. Any alternative mechanisms, including voluntary measures that may enhance consideration of stakeholder interests by incorporated entities and/or their directors.

See comments above.

F. The appropriateness of reporting requirements associated with these issues.

See comments above.

G. Whether regulatory, legislative or other policy approaches in other countries could be adopted or adapted for Australia.

ASX Council has reviewed international approaches to CR reporting. Its research is broadly in line with the extensive materials produced by CAMAC in its November 2005 Discussion Paper, *Corporate Social Responsibility*. ASX can forward its research if the Inquiry feels it would be of benefit.