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Committee Secretary
Parliamentary Joint Committee on Corporations
and Financial Services
Department of the Senate
Parliament House
Canberra ACT 2600
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Dear Sir,

Inquiry into Corporate Responsibility

This submission primarily relates to parts (e) to (g) of the terms of reference of the inquiry:

(e) Any alternative mechanisms, including voluntary measures that may enhance consideration of stakeholder interests by incorporated entities and/or their directors.
(f) The appropriateness of reporting requirements associated with these issues.
(g) Whether regulatory, legislative or other policy approaches in other countries could be adopted or adapted for Australia.

1. Executive Summary

The growth and interest in corporate responsibility issues has in part stemmed from recurring examples of corporate irresponsibility which, while not new, are perhaps better publicized in the modern era. Voluntary efforts, have to date, been the overwhelming mechanism chosen to ensure that companies assume appropriate responsibility and transparency for various human rights and environmental obligations. But such voluntary efforts can serve as precursors to binding formal rules and the emerging public reporting requirements of companies in select jurisdictions – mandating variations of triple bottom line reporting - indicate a willingness of some regulatory agencies to adopt a more expansive modern view of what issues are considered material to a corporation's short and long term performance.

It is indisputable that the idea of corporate responsibility is becoming increasingly important to both domestic and transnational corporations but unless and until it is effectively integrated as a core concept within a company it will not be taken seriously. The primary role of the directors will always be to promote the success of the company but it is now the duty of directors to recognize (and be required to recognize) that success is more likely when the board takes a broad view of all the factors that influence such success. This is determined by consideration of factors such as the impact of social and environmental issues on a company's stakeholders, not just its shareholders. The focus of this paper is on examining the value and effectiveness of corporate public reporting - to whom, what and when should 'social and environmental' issues be disclosed – as a means of institutionalizing corporate responsible behaviour. The paper concludes that mandating the disclosure of social and environmental issues is a necessary step in integrating corporate responsibility issues as part of a company's core business strategies. Clear guidance must be provided to companies on what and when such issues should be disclosed or triple bottom line reporting runs the risk of engendering a movement that merely encourages the production of token reports that lack consistency, comparability and credibility.

2. Introduction

i. Overview of corporate responsibility

Corporate responsibility, corporate social responsibility, corporate accountability or corporate citizenship, however termed, is not a new concept but lacks a commonly agreed definition. The World Business Council for Sustainable Development defines it rather abstractly as "the commitment of business to contribute to sustainable economic development, working with their employees, their families, the local community and society at large to improve their quality of life".[1] Business for Social Responsibility, a U.S. based organization interprets corporate social responsibility as a means of addressing the legal, ethical, commercial and other expectations society has for business, and making decisions that fairly balance the claims of all key

[1] World Business Council for Sustainable Development, as stated in the KPMG International Survey of Corporate Responsibility, 2005.

stakeholders.[2] The key features of many definitions tend to be a focus on the long term impact of corporate practices and the principle that organisations owe an obligation to a broader set of stakeholders, beyond simply shareholders. The lack of clarity around the definition of corporate responsibility is indicative of the confusion and lack of consensus within the corporate responsibility movement itself.

For the purpose of this paper, corporate responsibility is assumed to refer to the process whereby a company considers and manages the long-term impact of its decisions on its stakeholders. The term stakeholder is also open to a multitude of definitions but the most comprehensive is that used in the recently formulated United Nations *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* ("the Norms").[3] The Norms define "stakeholder" to include stockholders, other owners, workers and their representatives, as well as any other individual or group that is affected by the activities of transnational corporations or other business enterprises. In addition to parties directly affected by the activities of business enterprises, stakeholders can include parties which are indirectly affected by the activities of transnational corporations and other business enterprises such as consumer groups, customers, governments, neighbouring communities, indigenous peoples and communities, non-governmental organizations, public and private lending institutions, suppliers, trade associations and others.[4]

ii. The importance of public reporting

Corporate responsibility has become closely associated with public reporting. The push for greater corporate accountability incorporates a demand for increased corporate transparency and is being responded to by some companies by publishing reports that take into account the environmental and social impact of their activities. The increasing importance of reporting on social and environmental issues is vindicated by the results of KPMG's most recent international survey of corporate responsibility.[5] KPMG reports that 64 percent of the top 250 companies of the Fortune 500 are now issuing corporate responsibility reports.[6] In Australia, the figure drops to 23% of companies producing such reports.[7] Corporate responsibility reporting, at least internationally, appears to be moving from the fringe to mainstream.

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[2] Business for Social Responsibility: www.bsr.org

[3] Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, U.N. Doc E/CN.4/Sub.2/2003/12/Rev.2 (2003); Para. I.22 (hereinafter 'the Norms').

[4] Also see the definition of stakeholder adopted by the World Business Council for Sustainable Development which includes shareholders, employees, business partners, suppliers, pressure groups, local communities and the enviroment; World Business Council for Sustainable Development, *Corporate Social Responsibility, The WBCSD's Journey* (2002), 2. This definition of stakeholder is used by the Australian government in the Department of Environment and Heritage's report, *Triple Bottom Line Reporting in Australia: A Guide to Reporting Against Environmental Indicators* (2003) and the Department of Family and Community Services' draft report, *Triple Bottom Line Reporting in Australia – A Guide to Reporting Against Social Indicators* (2004). Also see, Bryan Horrigan, 'Fault Lines in the Intersection between Corporate Governance and Social Responsibility', *UNSWLJ* Vol. 25(2) 2002, 515 at 520 for his definition of 'inner circle' stakeholders like employees, customers and creditors and 'outer circle' stakeholders like regulators, interest groups and the wider community.

[5] KPMG International Survey of Corporate Responsibility June 2005.

[6] Ibid at 4. This figure combines those companies issuing separate corporate responsibility with those issuing corporate responsibility information in their annual report.

[7] Ibid at 10.

That disclosure is a theme of the modern corporate regulatory system is undisputed[8] but as to whether current laws provide sufficient incentive or requirement for companies to report on the social (generally understood here to primarily encompass human rights and labour rights issues)[9] and environmental impacts of their activities is a more contentious issue.

The starting point is to ask why companies should report at all with respect to social and environmental issues (often typecast as 'non financial' matters)? What is or should drive business to report on these matters? In some cases, regulatory developments mandating reporting are driving companies to integrate reporting on social and environmental issues into financial reports. [10] The aim is to foster transparency and establish a baseline for future information sharing with stakeholders. The increasing prevalence of ethical investing is another factor influencing the increase in corporate responsibility reports. Interest in socially responsible investing (SRI) has intensified in recent years evidenced by both the estimated increase in the size of SRI funds and the increase in shareholder resolutions concerning social and environmental issues.[11] Other factors driving increased reporting on social and environmental issues include attempts to preserve corporate reputation, risk management strategies, fostering competitive advantage in recruitment and the increasing use of targeted action by vigilante consumer and non governmental organizations (NGOs). These factors are all separate but connected drivers which are increasing the pressure to make corporate practices more transparent and answerable to a broader class of stakeholders beyond simply the company's shareholders. The uptake of corporate responsibility reporting is perhaps indicative of a growing realisation that in asking the question 'Is it good for shareholders?' cannot be answered in isolation from considering the relevance of a particular issue to the company's broader class of stakeholders.[12]

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[8] Current disclosure requirements involve the provision of information by companies to the public in a variety of ways For example, Australian Stock Exchange (ASX) Listing Rule 3.1 (given legislative force by s.674 of the *Corporations Act)* is the foundation of the 'continuous disclosure' regime for public companies. It requires that once an entity 'becomes aware of any information concerning it that a reasonable person would expect it to have a material effect on the price or value of the entity's securities, the entity must immediately tell the ASX that information' (subject to certain exceptions).

[9] For further discussion on what social issues should be disclosed see below Section 3(ii).

[10] See discussion below at Section 3(ii) 'Current and Emerging Regulatory Initiatives'.

[11] Social Investment Forum, *2003 Report on Socially Responsible Investing Trends in the United States* (2003) available at http://www.socialinvest.org/areas/research/trends/sri_trends_report_2003.pdf. The 2003 report notes that a total of $2.16 trillion in assets was identified in professionally managed U.S. portfolios using one or more of the three core socially responsible investing strategies – screening, shareholder advocacy, and community investing. It estimates that more than one out of every nine dollars under professional management in the United States today is involved in socially responsible investing (p. 4). The report also notes that between 2001 and 2003, shareholder advocacy activity increased by 15 percent, growing from 269 resolutions filed in 2001 to 310 in 2003. The report notes that this is indicative of international trends. In Australia, it is estimated that SRI in 2003 amounted to at least $21.3 billion representing a significant increase in recent years. See, Ethical Investment Australia, *Socially Responsible Investment in Australia 2003* (October 2003), 4.

[12] Many debates attempt to define a corporate responsibility model by referencing the distinction between the shareholder and stakeholder primacy views as determinative of the purpose of a corporation. The arguments in this paper adopt the middle ground that recognises that the primary role of directors is to promote the success of the company for its members but that this can not be done without specific consideration of the interests of its stakeholders and that taking into account material social and environmental issues is a necessary part of such deliberations. The debate over the role of the corporation will not be further discussed in this paper but see generally; Bryan Horrigan, 'Fault Lines in the Intersection between Corporate Governance and Social Responsibility', *UNSWLJ* Vol. 25(2) 2002, 515 and for an alternate view see, Samuel Gregg, 'Stakeholder Theory: What it means for Corporate Governance', *Policy* Winter (Jun-Aug) 2001 where it is argued that stakeholder theory is an incoherent and implausible guide to how corporations should act.

To broaden the scope of corporate reporting beyond pure financial issues means, in many cases, attempting to replace 'single bottom line' (i.e. profit based) thinking and practices with 'triple bottom line' processes (i.e. where a company examines the social, environmental and economic effects of its performance on the wider society, and reports publicly on progress). Triple bottom line reporting aims to highlight the view that a company's consideration only of financial matters as an indicator of its success is inadequate.[13] Company reporting should also reflect the social and environmental impacts of its activities.[14] Triple bottom line reports reflect this broader process by attempting to find meaningful ways of weighing short term tangible economic factors with more elusive factors, such as human rights and environmental sustainability concepts.

The existence or requirement for companies to disclose relevant social and environmental issues will not by itself prevent all acts of corporate irresponsibility but it may at times act as a deterrent. Disclosure is not an end in itself but a process for comparing corporate performance and institutionalizing a corporate culture which more readily accepts the value of triple bottom line reporting. Without transparency there is no accountability, and without accountability there is no responsibility for change. Public disclosure of corporate practices may lead to increased community empowerment, greater corporate accountability, increased management attention to social issues and ultimately, improved environmental and social performance.[15] Reporting alone is not a panacea but is one increasingly valuable tool for ensuring corporate ownership of the broader impacts of business operations on the community and the environment.

3. The materiality of 'social and environmental' disclosures

One of the fundamental questions about corporate responsibility is that of its limitations. It is never easy, outside the letter of the law, to define that for which a company is responsible and to whom. A balance has to be found between a minimal approach, doing nothing more than a strict reading of the law requires, and the opposite approach that would cause the company to take on responsibilities beyond what may be called, its 'sphere of influence'.[16]

Fuzzy notions of corporate responsibility guided by ethics or good corporate citizenship will not suffice. In order to practically integrate social and environmental concepts with the financial, a link needs to be established in the corporate decision

[13] Sarre, Rick, "Responding to Corporate Collapses: Is there a role for corporate social responsibility?" (2002) *Deakin Law Review* 1 at 6.
[14] See Section 3(ii) below.
[15] The jury is still out on definitively linking the benefits of reporting with performance but this is much of the reasoning behind the International Right to Know legislation being pursued in the US which would require businesses incorporated in the US or listed on the US Stock Exchange to report to the public their environmental, human rights and labour practices abroad: www.irtk.org. Also see Dhooge, Lucien J. 'Beyond Voluntarism: Social Disclosure and France's Nouvelles Regulations Economiques' 21 *Ariz. J. Int'l & Comp. Law* 441 at 459-460.
[16] The term 'sphere of influence' is used but not defined in both the UN Norms and the UN Global Compact. The Norms above note 3 at Para. A.1. The UN Global Compact asks "companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment, and anti-corruption".

making process that illustrates the significance or materiality of these issues to a company's operations. KPMG's 2005 corporate responsibility survey indicates that this mode of thinking is already well underway in some companies.[17] 74 percent of the companies surveyed by KPMG indicate that the reason why they are reporting on and attempting to integrate social and environmental concepts into their business is attributed to 'economic considerations'. The economic reasons were expressed as either directly linked to increased shareholder value or market share or indirectly linked through increased business opportunities, innovation, and reputation and reduced risk.[18] In 2004, *The Economist* acknowledged the growing importance of non financial disclosure in the overall assessment of a company's risk profile but argued that greater discipline and clarity needed to be brought to bear on clarifying to whom, what and when social and environmental issues should be disclosed.[19]

i. Materiality to whom?

Traditionally, the principles governing corporate disclosure have been cached in terms of 'what the reasonable investor would want to know'. For example, Cooke J in *Coleman v Myers*[20] refers to the seminal United States decision of *TSC Industries v Northway Inc*[21] in seeking guidance in defining materiality. While highly context specific (dealing with proxy solicitation) it nevertheless gives a general normative approach as to how materiality has traditionally been considered in corporate law. *TSC Industries* noted that:

> An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote…[If there is] a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available. (p.449)

The emphasis in this instance in defining materiality is on the reasonable investor whose concerns are generally interpreted narrowly as being focused primarily on the financial aspects of corporate performance. However it is logical to assume that the 'reasonable investor' may also have an interest in the social performance of the company and thus the requisite materiality of facts should be interpreted more expansively.[22]

This broader notion of what type of information might be considered material and to whom has been under discussion as part of the United Kingdom's company law review process and has signalled an adoption of a more expansive interpretation as to whom disclosure is directed.[23] In its most recent White Paper examining company

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[17] Note 5 above.
[18] Ibid at 18.
[19] 'Leaders: Corporate Storytelling; Non-financial reporting' *The Economist* Nov. 6 2004, Vol. 373, Iss 8400, 13.
[20] 1977 2 [NZLR] 225 at 336
[21] 1976 426 US 438
[22] Cynthia Williams, 'The Securities and Exchange Commission and Corporate Social Transparency' (1999) 112 *Harvard Law Review*, 1197 at 1277 where she argues that it is unlikely that people are either pure economic investors or pure social investors as a company's financial position can be affected by its social and environmental performance.
[23] In July 2002 the U.K. Government published its White Paper "Modernising Company Law". This represented the first part of the Government's response to the final report of the Company Law Review (CLR) published in 2001. The Government gave its support to many of the CLR proposals including one to require British quoted

law reform the government calls for clarification of reporting requirements and the responsibilities of directors in this regard.[24] In particular, it emphasises that while directors must "promote the success of the company for the benefit of its members, 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 the environment."[25]

Further to this continuing review process and efforts to increase the transparency of British companies, the United Kingdom introduced a new requirement for directors of all quoted companies to prepare an operating and financial review (OFR) for financial years which begin on or after 1 April 2005.[26] The OFR is designed to provide a balanced and comprehensive assessment of the business's performance and the main trends and developments affecting the performance and position of the company now and in the future. The guidance notes to the OFR state that directors are primarily addressing the OFR to shareholders but explicitly states that information in the OFR will also be of interest to "other stakeholders including: employees, suppliers, customers, regulators and other users of reports and accounts such as those particularly interested in the environment and broader community."[27] The requirement to prepare an OFR is an opportunity for directors to present a clear and balanced analysis of the strategic position and direction of their business that incorporates a far broader focus than concentrating purely on financial issues of primary relevance to the shareholders. By mandating this new form of reporting, the British government recognises that in a modern economy, those who run successful companies need to develop relationships and provide greater transparency of information to key stakeholders such as employees, customers, suppliers and others in the broader community.[28]

Thus the company law review process underway in the United Kingdom explicitly recognizes that issues that are of significant interest to customers, to employees, to suppliers and to society more widely are, or very likely will become matters of concern for shareholders too. When considering to whom relevant corporate disclosures should be directed, it is logical in the modern economy to now move beyond the stereotype of only focusing on the concerns of the 'reasonable investor'.

ii. Materiality about what?

Guidance in terms of what should be disclosed can be gained from both current and emerging social and environmental regulatory disclosure requirements as well as the development and influence of 'soft law' in this area gleaned from international guidelines, declarations and codes of conducts among other sources.

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companies to prepare an Operating and Financial Review (OFR) that would cover a number of issues, including a company's impact on the community and environment. See discussion at note 26 below. It's most recent White Paper, "Company Law Reform" March 2005 includes details on the proposed Company Law Reform Bill: www.dti.gov.uk/cld/review.htm

[24] Department of Trade and Industry, *Company Law Reform* March 2005; www.dti.gov.uk/cld/review.htm

[25] Ibid at 16.

[26] The U.K. *Companies Act 1985 (Operating and Financial Review and Directors Report etc) Regulations* 2005 [S.1. 2005/1011] came into force on March 22, 2005. A quoted company is a British company whose equity share capital: is included in the official list (Part 6 of the Financial Services and Markets Act 2000); or is officially listed in a EEA state; or is admitted to either the NY Stock Exchange or Nasdaq.

[27] Department of Trade and Industry *Guidance on the OFR and changes to director's reports* (April 2005)

[28] *Company Law Reform* note 24 above at 10.

Current and emerging regulatory initiatives

A number of jurisdictions have begun to make inroads into regulating reporting on social and environmental issues and this section provides a brief overview of recent and emerging initiatives in Australia, the United Kingdom, France and South Africa regulating various forms of triple bottom line reporting.

a. Australia

The 'disclosure' mantra is a major theme of modern company law and although primarily focused on issues that are traditionally viewed as having a direct financial impact on the value of a company,[29] has been expanded in Australian corporate law in two specific instances to include limited consideration of environmental and social issues.[30]

Section 299(1)(f) Corporations Act 2001 (Cth)

With the introduction in July 1998 of section 299(1)(f)[31] Australian public companies and certain proprietary companies (that exceed certain thresholds) are required to include within their annual report, a directors' report that states:

> If the entity's operations are subject to any particular and significant environmental regulation under a law of the Commonwealth or of a State or Territory – give details of the entity's performance in relation to environmental regulation.

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[29] Australian Stock Exchange (ASX) Listing Rule 3.1 (given legislative force by s.674 of the *Corporations Act)* is the foundation of the 'continuous disclosure' regime for public companies. It requires that once an entity 'becomes aware of any information concerning it that a reasonable person would expect it to have a material effect on the price or value of the entity's securities, the entity must immediately tell the ASX that information' (subject to certain exceptions). However there are suggestions that materially significant environmental risk is currently under reported by ASX companies (see Ernst & Young; *The Materiality of Environmental Risk to Australia's Finance Sector* (2003) and submission of Monash Sustainability Enterprise (March 24, 2003) to Treasury on the Exposure Draft-Corporations Amendment Bill 2002. This would be consistent with similar findings in the United States where a 1998 study by the Office of Planning and Policy Analysis, within the EPA's Office of Enforcement and Compliance Assurance, found that 74% of companies did not adequately disclosure environmental issues per SEC rules. Further see, an October 2002 survey by Friends of the Earth indicating that companies were providing inadequate disclosure (in SEC filings) to investors with respect to climate risk (www.foe.org/new/releases/902secsurvey.html) and a 2004 report by the UK Environment Agency detailing the environmental disclosures of companies on the FTSE All Share Index which argued that the vast majority of reports lacked depth, rigour or quantification and that guidance on key performance indicators would help companies decide which environmental disclosures are necessary; www.ethicalcorp.com/content_print.asp?ContentID=2453. Also see The Allen Consulting Group, *Triple Bottom Line Measurement and Reporting in Australia,* (2002).

[30] Also relevant with respect to disclosure of material items are: s.412 (When companies enter into schemes of arrangement to reconstruct their businesses the explanatory statement sent to members or creditors must set out 'information that is material to the making of a decision by a creditor or member whether or not to agree to the compromise or arrangement, being information that is within the knowledge of director's); s.636 (A bidder's statement for a takeover must include details of 'the future employment of the present employees of the target' and 'any other information that: (i) is material to the making of a decision by a holder ; and (ii) is known to the bidder's); and s.710 (If a company is raising funds from the public the prospectus content rules require disclosure of 'all the information that investors and their professional advisers would reasonably require to make an informed assessment of… the assets and liabilities, financial position and performance, profits and losses and prospects of the body').

[31] *Corporations Act* 2001 (Cth). See Frost G. and English L., *Mandatory Corporate Environmental Reporting in Australia: Contested Introduction Belies Effectiveness of its Application* (Nov. 2002), (http://www.econ.usyd.edu.au/drawingboard/digest/0211/frost.html) for a summary of the passage of s.299(1)(f) which notes that it was an unintended outcome of the Federal Government's Corporate Law Economic Reform Program and was a political compromise.

The open ended text of s.299(1)(f) has been criticised as being vague and unclear.[32] The provision does not require disclosure of the financial impact of an environmental issue and as such does not specifically allow for the application of traditional accounting concepts of materiality. Under the current framework, directors are able to use high levels of subjectivity in determining what they should and should not disclose. Despite this lack of clarity, studies indicate that the introduction of s.299(1)(f) significantly improved overall reporting by Australian companies on their environmental performance.[33]

Section 1013D(1) Corporations Act 2001 (Cth)

Section 1013D(1) of the *Corporations Act* requires limited disclosure of environmental, social and ethical factors. Although applying only to financial products it may be influential over time in mainstreaming corporate responsibility issues into the broader corporate arena. In March 2004, a requirement that institutions offering financial products with an investment component disclose (in their product disclosure statements) "the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realization of the investment" became mandatory.[34] The investment products covered by the Australian provision include superannuation products, managed investment products and investment life insurance products. During preparation of the legislation, parliamentarians acknowledged that the new provision was inspired by the 1999 amendments to the UK Pensions Act 1995 discussed below.

This disclosure requirement includes an obligation to disclose if such matters are not taken into account at all.[35] However, if a financial product issuer does claim to incorporate social and environmental considerations in their investment decisions, two disclosure obligations ensue: (1) outlining those issues that it considers constitute labour or environmental, social or ethical considerations, and (2) explaining the extent to which those matters are taken into account in the selection, retention or realization of the investment.

The *ASIC s1013DA Guidelines*[36] do not provide specific guidance on the relevant issues to be considered but suggest that the disclosure statement must include such information 'as a person would reasonably require for the purpose of making a decision, as a retail client, whether to acquire the financial product'.[37] It would be beneficial for companies to receive further guidance than is provided in this rather vague document. However the Guidelines do suggest that the disclosure statement should mention measurement criteria upon which the financial institution relied in assessing the relevance of such issues. For example, if the product issuer claims to only invest in companies with good labour relations, they must demonstrate how they

[32] Parliamentary Joint Statutory Committee on Corporations and Securities, *Report on Matters Arising from the Company Law Review Act 1998* (tabled on 18 December, 2000).
[33] Frost G. and English L., note 31 above at 5.
[34] *Corporations Act* 2001 (Cth), s. 1013D(1) (inserted by the Financial Services Reform Act 2001 (Cth).
[35] *Corporations Regulations* 2001, Clause 7.9.14C
[36] Australian Securities & Investment Commission, *Section 1013DA disclosure guidelines; ASIC guidelines to product issuers for disclosure about labour standards or environmental, social and ethical considerations in Product Disclosure Statements (PDS),* December 2003; http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/s1013DA_finalguidelines.pdf/$file/s1013DA_finalguidelines.pdf
[37] Ibid at 11.

measure compliance with this goal (e.g. number of strike days, above award conditions etc). The Guidelines provide no detailed guidance on exactly what standards should be used but (in its background commentary) suggests the Global Reporting Initiative, standards devised by Standards International and International Labour Organization and United Nations Declarations are relevant in assisting with triple bottom line reporting requirements.[38]

This legislation, while still relatively open ended, at least cements the legitimacy of incorporating social and environmental considerations in investment decision-making. The question as to what are the relevant standards and considerations on how to incorporate them appears to be being left largely to be determined by the market, which now in a broad sense extends beyond the ethical investment and mainstream investment markets, to incorporate community expectations with respect to the relevance and legitimacy of labour or environmental, social or ethical considerations.

b. United Kingdom

Company Law Reform Bill

The proposed *Company Law Reform Bill* aims to clarify the general duties which directors owe to the company in the context of more accurately reflecting modern business needs and wider expectations of responsible business behaviour.[39] In considering the general duty of directors to promote the success of the company for the benefit of members, the Bill requires directors (where relevant and so far as reasonably practical) to take account of the long and short term impact of such decisions having regard to the interests of its employees and its ability to foster its business relationships with its suppliers and customers, and to consider the impact of its operations on the community and the environment.[40] This explicit integration of social and environmental concerns into the decision making purview of the company directors recognises the material nature of these issues to business operations.

Operating and Financial Review

As discussed above, the new requirement for certain British companies to produce an Operating and Financial Review (OFR), represents a step forward in improving corporate reporting and transparency and in promoting broader dialogue with a company's stakeholders. It is instructive to reflect on the deliberations of the OFR Working Group on Materiality when considering what type of information companies should disclose. The Group noted that:

> Information will be material to the OFR if failure to disclose it clearly, fairly and unambiguously might reasonably be expected to influence member's assessment of the company and hence the decisions they may take, either directly or indirectly as a result of the significance that the information has for other stakeholders and thus the company. Information that is material to the OFR may be *quantitative or qualitative; and may relate to facts or probabilities, and to past, present or future events and decisions*. [Emphasis added][41]

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[38] Ibid at 16.

[39] See text at note 23 above and Ch. 3.3 of the White Paper on this Bill.

[40] *Company Law Reform Bill* 2005 note 24 above, Part B, Ch. 1 B.3.

[41] *OFR Working Group on Materiality, A Consultation Document*, para. 20. http://www.dti.gov.uk/cld/ofrwgcon.pdf

The OFR Working Group definition acknowledges the difficulty of reporting on some of the more amorphous social and environmental concerns but makes it clear that the difficulty of quantifying and reporting them does not disqualify the need for such disclosure.

In terms of what issues should be disclosed the OFR refers to information about environmental matters, company employees and social and community issues.[42] Ultimately it is up to the directors to provide a sufficient amount of information on such issues "to the extent necessary" to comply with the objectives of the OFR; that is to provide a balanced and comprehensive analysis of business strategies including a description of the principal risks and uncertainties facing the company.[43] Directors will need to make judgments about what data and analysis to include and the level of appropriate detail but what the OFR does make clear is that such social and environmental issues are intrinsically linked to business operations so as to likely constitute a material item for disclosure.

Pensions Regulations: SRI

The extent to which stock markets are major factors in promoting corporate responsibility is still open to question[44] however legislation such as that introduced in the United Kingdom in 1999 - Occupational Pension Schemes (Investment, and Assignment, Forfeiture, Bankruptcy etc.) Amendment Regulations (1999)[45] – is likely to be influential in advancing the prominence of corporate responsibility issues. This Regulation requires trustees of occupational pension funds (as of 3 July 2000) to disclose on the Statement of Investment Principles (a) the extent (if at all) to which social, environmental or ethical considerations are taken into account in their investment strategies and (b) their policy (if any) in relation to the exercise of rights (including voting rights) attached to investments. Legislation such as this and the Australian legislation discussed above, forces fund managers who may not previously have considered these issues to now, at least stop and acknowledge that such concerns have not been taken into account in their decision making process.

c. France

The New Economics Regulations (NRE) was adopted in May 2001 by the French Parliament and came into force on January 2002.[46] The NRE is an attempt to modernize France's company law framework and predominantly deals with financial issues (such as the transparency of takeover bids, improving corporate governance and strengthening antitrust regulation) but also legislates for the reporting of a company's triple bottom line performance. Article 116 mandates disclosure of social

[42] *The Companies Act* 1985 *(Operating and Financial Review and Directors Reports etc) Regulations* 2005. Schedule 7ZA (4).
[43] Ibid at (1-3).
[44] The ethical investment market is gaining mainstream acceptance in Australia with institutions like Westpac and Rothschild now offering 'ethical' products. While in 2002 ethical funds represented just over 1% of funds managed in Australia (($1.3 billion) this figure is forecast to rise to $40 billion by 2020. Fitzgerald S, *Corporate Accountability for Human Rights Violations in Australian Domestic Law (2002)* unpublished, copy on file with author.
[45] Regulation 11A of the Occupational Pension Schemes (Investment) Regulations (1996) UK (inserted by Occupational Pension Schemes (Investment, and Assignment, Forfeiture, Bankruptcy etc.) Amendment Regulations (1999) requires trustees of occupational pension schemes in preparing their statement of investment principles under section 35 of the Pensions Act 1995 (UK) to take into account the factors noted above.
[46] Law No.2001-420 Nouvelles Regulations Economiques (New Economics Regulation) Article 116

and environmental issues in annual reports and accounts. It requires all companies listed on the “premier marche” (those with the largest market capitalizations) to report against a template of social and environmental issues, including those related to human resources, community issues, and engagement and labour standards, and health, safety and environmental standards. The new law aims to provide baseline sustainability reporting standards that French corporations can voluntarily build upon and institutionalizes the concept of triple bottom line reporting.

Notably the law is silent as to perimeters (geographical or otherwise) of the reporting requirement and does not specify if the regulation affects the subsidiaries, business partners, joint venturers etc of the company. While identifying the principal subject areas for disclosure, the law does not set out the specific indicators by which a corporation must report on the relevant issues and thus handicaps its aim to promote harmonization and standardization of non-financial reporting.[47] Significantly, the law also fails to provide any sanctions for non-compliance with the disclosure requirements. However, Article 116 represents a milestone in triple bottom line reporting by attempting to enumerate the relevant social and environmental issues that affect business. The NRE is significant in institutionalising corporate responsibility issues beyond their relevance purely to the ethical investment community and recognises the indivisibility of business activities and social and environmental concerns including the relevancy of information relating to their interaction to investors and other stakeholders.[48]

d. South Africa

As of September 1, 2003 all companies listed on the Johannesburg Stock Exchange (JSE) are requested to comply with codes created in 2002 by second King Report on Corporate Governance for South Africa, the so called King II Report.[49] These codes not only address core corporate governance issues, such as director independence but also require the use of Global Reporting Initiative (GRI) guidelines for disclosing social and environmental performance. King II’s Code of Corporate Practices incorporates a provision on Integrated Sustainability Reporting, which states that:

> Disclosure of non-financial information should be governed by the principles of reliability, relevance, clarity, comparability, timeliness and verifiability with reference to the Global Reporting Initiative Sustainability Reporting Guidelines...[50]

Companies are requested to report annually on the nature and extent of its social, transformation, ethical, safety, health, and environmental management policies and practices. It is expected that the use of GRI guidelines in reporting such issues will lead to greater standardization in disclosure practices. The Code specifically notes that it is the board of directors’ duty to present a balanced assessment of the company’s position and that the reporting should address material matters of significant interest

[47] Hoffman E., *Environmental Reporting and Sustainability Reporting in Europe,* (2003) (http://www.iges.or.jp/en/be/report7.html).
[48] Dhooge, Lucien J. note 15 above at 442. Also see ORSE ‘Assignment Report submitted to the government; Critical review of how companies are applying French legislation on social and environmental reporting’, April 2004.
[49] King Committee on Corporate Governance, March 2002, ‘Code of Good Governance’ can be accessed at www.iodsa.co.za
[50] Ibid at 35.

and concern to *all* stakeholders. The requirements of King II thus embody the broader concepts of materiality, stakeholders and directors' duties that are envisaged in the reform of the Uki's. company law. King II arguably paves the way for more responsive corporate disclosure framework by noting that 'reports and communications must be made in the context that society now demands greater transparency and accountability from companies regarding their non-financial matters'.[51]

International soft law developments and the influence of corporate practices

In addition to regulatory changes, materiality is also being redefined on the ground – by the continuing development of soft law initiatives linking business with social and environmental concerns, through pressure on business from wider civil society and through precedents established by company practice and reporting processes. Through these developments the definition of materiality is being practically extended to encompass information beyond simply traditional financial information.[52] Issues that are often categorized as non financial aspects are implicitly being taken to be material.[53] The challenge lies in folding in the emerging consensus on social (generally understood here to primarily encompass human rights and labour rights) and environmental concerns to a broader understanding of issues that are material to a company and thus require public disclosure.[54] Guidance on what are the key issues for corporate disclosure can be gained by a brief review of the relevant international law and guidelines as well as corporate practices in developing codes of conduct to guide responsible behaviour.

The Universal Declaration of Human Rights 1948 (UDHR) is the most widely accepted codification of universal human rights and as such acts as a road map indicative of the definitive human rights issues of the modern era. It encompasses a broad range of rights including the right to freedom of thought, conscience and religion, freedom of peaceful assembly and association, the right to just and favourable conditions of work and the right to an adequate standard of living. The preamble to the UDHR notes that it is:

> a common standard of achievement for all peoples and all nations, to the end that every individual and *every organ of society*…

It is arguable that the UDHR directly applies to companies as an 'organ of society' and that as such they are called upon to promote, respect and secure the recognition of

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[51] Ibid at 39.

[52] Westpac's annual report is an example of an expanded and reshaped annual report that reflects the needs of customers and the community to understand the wider impact of the company on society.

[53] "What a reasonable investor would need to know about a company to make financial and voting decisions won't change…but what reasonable investors and the public at large find important over time does change, so issues like global warming…human rights can be included in the purview of what's 'material'", quote by Michele Chan Fisher, Friends of the Earth, July 11, 2003 www.ishareowner.com/news/article.cgi?sfArticleId=1170

[54] For example see the US based Corporate Sunshine Working Group's list of 20 proposed expanded corporate disclosure items, which have been selected for their financial value-relevance, as well as their ability to enhance corporate governance and responsibility. http://www.corporatesunshine.org/proposedisclosure.pdf . Also see: Williams C 'The Securities and Exchange Commission and Corporate Social Transparency', *Securities Law Review* Annual 2000 v32 3-117, appendix I for models of expanded disclosure.

these rights, particularly those directly applicable to business. [55] However, while responsibility may be accepted by some companies[56] unanimity on the exact nature of those duties and the applicable rights, has not yet been achieved.

While the UDHR itself, as a declaration, is not legally binding, other documents produced by the United Nations which essentially codify the UDHR, do produce legally binding obligations on states (not directly on companies) that are party to them. The two key human rights covenants are the International Covenant on Economic, Social & Cultural Rights (ICESCR, 1966) and the International Covenant on Civil & Political Rights (ICCPR, 1966). Rights includes specific rights relevant to business such as the right to work, the right to a minimum wage, the right to form trade unions and the right to health.

There are also a number of non binding international declarations concerning environmental rights and sustainable development- the Declaration of the United Nations Conference on the Human Environment (Stockholm, 1972)[57] and the Rio Declaration on Environment and Development (1992)[58] - but in contrast to international human rights documents, a distinct lack of any binding universal standard. Guidance can also be found in a number of regional and multilateral plans which can be said to represent a global consensus of states,[59] such as Agenda 21[60], the Monterrey Consensus (on financing for development, 2002)[61] and the UN Millennium Goals for Development (2000). While not legally binding, and thus more aspirational than obligatory, these documents explicitly acknowledge the role that companies, along with governments, have in promoting environmental and human rights.[62] These treaties and documents, along with voluntary guidelines formed both at an international level and within individual companies as codes of conduct provide indicia for divining consensus on which social and environmental issues are relevant to business.

Since the 1970's a number of inter-governmental organizations have formed voluntary guidelines, declarations and codes of conduct to regulate the activities of corporations and all are of assistance in determining those social and environmental

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[55] International Council on Human Rights Policy, *Beyond Voluntarism; Human Rights and the developing international legal obligations of companies* (2002): 58-64, Sullivan R: Business And Human Rights Dilemmas And Solutions; 2003 at 15, Henkin, L., The Global Market as Friend or Foe of Human Rights: The Universal Declaration at 50 and the Challenge of the Global Markets, (1999) 25 *Brooklyn Journal of International Law* 17 at 25.

[56] For example, the Body Shop's charter explicitly aims to "balance the financial and human needs of its stakeholders: employees, customers, franchisees, suppliers and shareholders" and assumes an indirect role in protecting human rights (i.e. through collaboration with Amnesty International).

[57] UN doc A/CONF.48/14/Rev. 1 (1972)

[58] UN Doc/A/CONF.151/5/Rev.1 (1992)

[59] International Council on Human Rights, note 55 above at 65.

[60] Agenda 21, the Rio Declaration on Environment and Development, and the Statement of principles for the Sustainable Management of Forests were adopted by more than 178 Governments at the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro, Brazil, 3 to 14 June 1992. Agenda 21 is a plan of action to be taken globally, nationally and locally by organizations of the United Nations System, governments, and major groups in every area in which human impacts on the environment.

[61] See http://www.un.org/esa/sustdev/documents/Monterrey_Consensus.htm

[62] See Agenda 21, Chapter on Business and Industry, and see also, The Beijing Declaration and Platform for Action, adopted by the Fourth World Conference on Women, Beijing 4-15 September, 1995, which puts specific responsibilities on the private sector with respect to preventing violence against women, (paras. 125 and 126), strengthening women's' economic capacity (para. 177) and promoting work and family compatibility (para. 180).

issues considered most relevant to business. The most notable of these voluntary agreements are:

- Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises (revised 2000)[63]
- ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (1977)[64]
- ILO (1998) Tripartite Declaration on Fundamental Principles and Rights at Work
- UN Global Compact (2000)
- UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (2003)

The OECD Guidelines and the ILO Tripartite Declarations were revolutionary in the sense that they explicitly focus on outlining the obligations of companies with respect to protecting human and environmental rights but they are subject to severe limitations. Apart from the fact that they are non binding, their implementation mechanisms are extremely weak, the duties outlined are broad and lack details.

More recently the United Nations established the Global Compact (2000), whereby UN Secretary General Kofi Annan called on world business leaders to voluntarily "embrace and enact" a set of ten principles relating to human rights, labour rights, the protection of the environment and corruption, in their individual corporate practices.[65] The labour and human rights standards reflect those accepted norms as laid out in the ILO's Tripartite Declaration on Fundamental Principles and Rights at Work and the UDHR, but the Compact does little to advance the debate toward clarifying what the key environmental issues are for business.[66] The principles cited in the Global Compact do not constitute a sufficient basis for designing enforceable standards, even though they may provide overall guidance and are beneficial more from the point of view of acting as yet another indicator of the relevance of international human rights and environmental norms to business.[67]

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[63] (2000 revision), adopted 27 June 2001. The OECD Guidelines are part of the OECD Declaration on International Investment and Multinational Enterprises, OECD document no. DAFFE/IME/WPG(2000)15/FINAL The Guidelines were first adopted in 1976 and revised in 2000.

[64] The Declaration can be seen as providing guidance for how corporations should implement the fundamental ILO conventions. The overarching obligations with respect to labour rights are set out in the eight fundamental conventions of the International Labour Organization: Forced Labor Convention (No. 29); Freedom of Association and Protection of the Right to Organize Convention (No. 87); Right to Organize and Collective Bargaining Convention (No. 98); Equal Remuneration Convention (No. 100); Abolition of Forced Labor Convention (No. 105); Discrimination (Employment and Occupation) Convention (No. 111); Minimum Age Convention (No. 138) and Worst Forms of Child Labour Convention, 1999 (No. 182). These conventions are legally binding on those states that have ratified them. Obligations then exist at a national level to ensure enforcement of these rights by corporations; they do not directly bind companies.

[65] Originally launched in 2000 with nine principles, the tenth relating to corruption was added in June 2004 at the Global Compact Leaders Summit available at www.unglobalcompact.org

[66] Principles 7,8 and 9 of the UN Global Compact encourage businesses to support a precautionary approach to environmental challenges; undertake initiatives to promote greater environmental responsibility; and encourage the development and diffusion of environmentally friendly technologies: www.unglobalcompact.org

[67] See criticisms of the Global Compact by the Lawyers Committee for Human Rights (now Human Rights First), Human Rights Watch, Oxfam International and Amnesty International: http://www.humanrightsfirst.org/workers_rights/issues/gc/index.htm

The most promising initiative to emerge recently is the United Nations *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* (2003) (the Norms).[68] In August 2003, the UN Sub-commission on the Promotion and Protection of Human Rights adopted this comprehensive set of international norms specifically applying to transnational corporations and other businesses (thus applying to any business entity regardless of its international or domestic nature). [69] The Norms are based not only on international instruments and non binding declarations and guidelines adopted by multilateral organizations, but also on industry initiatives, framework agreements between corporations and workers' organizations, corporate codes of conduct and non-governmental organisations (NGOs) and union guidelines. The Norms and the accompanying interpretative Commentary, while not 'black-letter law', constitute the most authoritative interpretation to date of the duties and responsibilities owed by business with respect to human and environmental rights.

The Norms provide a new benchmark against which companies will be increasingly be assessed. They cover a broad range of issues and include the most fundamental and basic rights that have been agreed as accepted standards for nation states and individuals for decades. The Norms should be used as a base from which to determine those issues most relevant for social and environmental disclosure.

Key issues referenced in the UN Norms as relevant to business:

- Right to equal opportunity and non discriminatory treatment
- Right to security of persons (including no engagement in or benefit from war crimes, crimes against humanity, genocide, torture, forced disappearance, forced or compulsory labour, hostage taking, extrajudicial, summary or arbitrary executions.
- Rights of workers (including forced or compulsory labour, child labour, safe and healthy working environment, remuneration, freedom of association and collective bargaining)
- Respect for national sovereignty and human rights (including prohibitions against bribery and corruption and respecting rights of indigenous people and use of intellectual property, right to development, adequate food and water, highest attainable standard of physical and mental health, adequate housing, education, freedom of thought, conscience and religion and freedom of opinion)
- Consumer protection (including fair business practices, marketing and advertising)

[68] U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003): http://www1.umn.edu/humanrts/links/norms-Aug2003.html

[69] In April 2005 the United Nations Commission of Human Rights following up on the development of the Norms, called on the U.N. Secretary General to appoint a Special Representative on the issue of business and human rights for an initial period of two years to investigate further the legal responsibilities of business for social and environmental issues; E/CN.4/2005/L.87 15 April 2005. The vote in support of the resolution was 49-3. The 3 states who voted against the resolution were the United States of America, Australia and South Africa (although South Africa's vote signalled dissatisfaction with the weakened compromised language of the resolution). The Commission on Human Rights' resolution provides the Special Representative with a mandate to: clarify the standards of corporate responsibility; elaborate on the role of States in regulating business; define concepts such as 'complicity' and 'spheres of influence', develop methodologies for human rights impact assessments of the activities of business; and compile a compendium of best practices. On 28 July 2005 the UN Secretary General appointed Professor John Ruggie as the UN Special Representative. Professor Ruggie previously served as UN Assistant Secretary-General and senior adviser for strategic planning from 1997 to 2001. He was one of the main architects of the United Nations Global Compact. The Special Representative is due to hold broad-based consultations and issue two reports, an interim one in 2006 and a final one in 2007.

- Environmental protection (particularly including bioethics, and the precautionary principle and sustainable development).

Complementary to the international development of broad based multilateral guidelines guiding corporate responsibility has been the growth, particularly in the last fifteen years, of codes of conduct developed by companies, trade organizations, NGOs and multi-stakeholder bodies largely aimed at delineating business's responsibilities with respect to human rights and environmental issues. Levi Strauss & Co. led the way in the early 1990's followed soon after by a raft of companies such as Gap Inc., Nike, Shell and BP Amoco, notably principally representative of the apparel/footwear sector and extractive industries. These codes, while often content and sector specific do indicate some consensus on the relevant social and environmental issues of concern to business. Many were drafted in a reactive manner as a response to public criticism of specific business practices but nevertheless reflect issues which companies, consumers, workers and others were motivated to address in a very public manner.[70]

The growth and influence of the socially responsible investment market also provides a forum for divining emerging consensus on the social and environmental issues most relevant to business.[71] The Dow Jones Sustainability Index (launched in 1999)[72] and the FTSE4Good (launched in 2001 by the Financial Times Stock Exchange)[73] aim to establish a baseline of "challenging but achievable" standards for corporate responsibility. Both emphasize environmental sustainability, labour rights and human rights with the Dow Jones Index taking a noticeably more detailed approach to defining environmental sustainability by particularly valuing corporate performance with respect to issues such as energy consumption, greenhouse gas emissions, water usage, waste generation and climate strategies. Other popular code issues such as corruption and bribery and security practices are also emphasized.

This growing sense of convergence of issues, most recently evidenced by the development of the Norms, suggests that at some level, it is both possible and necessary to begin to define those issues most relevant for corporate disclosure. By tracking the development of these soft law and corporate initiatives along with the emerging regulatory reporting requirements it is now possible to develop a basic checklist of the principal social and environmental issues of concern to business. As

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[70] See generally, Posner M. and Nolan J. 'Codes of Conduct and Workers Rights?' in Flanagan, R. and Gould IV, W. (2003) *International Labor Standards: Globalization, Trade and Public Policy*, Stanford, Stanford University Press. Also see, Gordon K. and Miyake, M. "Deciphering Codes of Corporate Conduct: A Review of their Contents" Working Papers on International Investment, Number 1999/2. Organization for Economic Co-operation and Development. November 1999. This OECD study was the result of an investigation of 246 voluntary codes collected "from business and non-business contacts which OECD Member governments helped identify" (at 8.). Out of this set of codes, they found that 118 or 49% of them where issued by individual companies (mostly multinationals), while 34% were industry and trade association codes, 2% issued by an international organization, and 15 % by partnership of stakeholders (mainly NGOs and unions) (at 9). Also see *Strengthening Implementation of CSR in Global Supply Chains,* World Bank Group, CSR Practice (October 2003) which noted that "while codes themselves have in many ways converged in content and form, inconsistent interpretation and application of the provisions presents the greatest source of confusion". The study was limited to the agriculture and apparel sectors.

[71] Note 11 above.

[72] http://www.sustainability-index.com/

[73] The FTSE4Good is not itself an SRI fund but is a tool that can be used by fund managers to assess the social, ethical and environmental 'worth' of a company. http://www2.ftse.com/ftse4good/FTSE4GoodCriteria.pdf

to the appropriate level of detail such issues are reported on depends on their relevance to the specific company. As such it is important when encouraging or mandating increased levels of social disclosure for regulatory agencies to not only provide guidance on those particular social and environmental issues most relevant to business but also direction as to when such disclosure is necessary.

iii. What drives materiality: when is disclosure necessary?

Whether or not a particular piece of information is material for disclosure will depend on a number of factors; equally relevant to the preparation of financial statements as to the disclosure of social and environmental issues. Two principal factors determinative of *when* disclosure is required necessitate consideration of both the short and long term impact of the issue on a company's performance and are:

- **The nature and, where relevant, the size and effect of the item concerned judged in the particular circumstances of the case.** This requires the item to be assessed individually but also in the broader context of other disclosures. The item by itself may not appear material but when combined with other factors impacting the business may take on greater significance. The OFR Working Group on Materiality summarised the test as being "whether the information, were it to be omitted, misstated or inadequately described, would change or influence an understanding of other matters reported upon and thus, potentially, influence decisions".[74]

- **The significance of the issue to business now *and* in the future.**[75] This could be judged in a number of ways including consideration of:

    1. the short term and long term financial impact of the issue on business operations;
    2. the recognition awarded to the issue by the company whether evidenced through policy statements, board discussions or other means;
    3. the significance of the issue to business peers;
    4. the relevance of the issue to stakeholders; and
    5. whether the issue is reflective of current societal norms.[76]

[74] OFR Working Group on Materiality, note 41 above at 19.
[75] Ibid at 20.
[76] Accountability (Institute of Social and Ethical Accountability), *Redefining Materiality* (June 2003) at 27. Societal norms may be reflected through the processes highlighted above in Section 3(ii) dealing with the influence of soft law developments and corporate practices.

4. Conclusion

> Neither organisations nor individuals are likely to take corporate social responsibility seriously as part of their core business unless it is effectively integrated within corporate governance.[77]

Mandating triple bottom line reporting with clear guidance as to when social and environmental issues are material and thus require disclosure is a necessary step in institutionalizing corporate responsibility. The primary role of the directors will always be to promote the success of the company but it is now the duty of directors to recognize (and be required to recognize) that success is more likely when the board takes a broad view of all the factors that influence success. This includes a company's relationship with its stakeholders; that is its shareholders, other owners, workers and their representatives, as well as any other individual or group that is affected by the activities of the company. Triple bottom line reporting runs the risk of tokenism unless and until regulatory agencies are willing to mandate its requirement for a significant number of companies and provide specific guidance as to what and when social and environmental matters should be disclosed. International developments are outstripping the speed at which Australian companies are adopting corporate responsibility practices. It is time for Australian regulatory bodies to keep pace with these economic, social and environmental developments.

Yours sincerely,

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[77] Horrigan B, note 4 above at 521.