Senate submission on TBL and the community services sector

The Committee will inquire into Corporate Responsibility and Triple-Bottom-Line reporting, for incorporated entities in Australia, with particular reference to:

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

In inquiring into these matters, the Committee will consider both for profit and not-for-profit incorporated entities under the Corporations

Relevance of ethics to Corporate Social Responsibility (CSR)

The collapses a few years ago of some large corporations and the problems others have with their reputations (eg Andersens, Clayton Utz , Nike, HIH in Australia and Enron in the USA) raise some serious questions about ethics and how organizational cultures affect corporate structures and governance. These added to increasing political and consumer pressures on both commercial and non commercial organizations and corporations for greater accountability and transparency.

I have been working for some time on measuring aspects of corporate cultures which may indicate capacities for ethical decision making and practices. These should perform the dual function of offering outside and inside stakeholders measures they can use to assess and or ensure the organisations are aware of their own capacities for doing the ‘right’ thing in terms of their core business.

There is a growing body of material which looks at the relationship between developing ethical cultures and overall performance of organisations. Recent work by the NSW Independent Commission Against Corruption ICAC summed up the research in a !998 paper ‘Ethics: the Key to Good Management’ by stating ‘the ethical tone does impact upon: efficiency and effectiveness, decision making processes, staff commitment and job satisfaction, staff stress (and) staff turnover.’ They conclude ethical processes affect group dynamics which are important as individuals will bow to group norms; there are dangers in highly cohesive groups unless they allow diverse views and those whose values do not fit will leave.

The focus on organisational cultures is not to be confused with the current vogue for programs that equate good corporate citizenship and corporate social responsibility with setting up relationships with reputable community groups through donations or by branding products through such partnerships. While businesses have always had some involvement with communities, they have recently been subjected to political pressure to increase the involvement between the for-profit and not-for-profit sectors. This approach also is seen as useful to reputation management but presents problems when there is no connection between the ethics of its core corporate functions and its community relationships programs.

These latter types of activities on their own often may allow corporations short term good public relations but should not be seen as evidence of their other functions and should in no way replace their obligation to audit their own internal functions and stakeholder relationships as indicators of good corporate citizenship. They may also put stress on community groups trying to meet the corporate needs rather than their own constituencies.

For the purpose of this project on ethical corporations, I want to make a clear separation between the organisations' actual core business functions and any extra mural involvements. The primary core of corporate citizenship should therefore be based on how effectively an organisation performs as employer, producer, marketer, neighbour or whatever other roles it has with stakeholders. Its generosity in other areas may be an integrated outcome of its internal and intrinsic functions and therefore valued by the organisation as part of its general functions, as it is in The Body Shop but it is not to be counted as stand alone evidence of good corporate citizenship.

Ethical cultures are important because members and employees of organisations may feel inhibited about asking questions or raising problems as this may be seen as forms of troublemaking. As recent corporate collapses show, the results of poor ethical processes may be major problems for all stakeholders. With the recent emphasis on the primacy of competitive efficiency in companies, community groups and public services there has often been too little attention to developing the ethos/cultures of organisations.

However, this is changing as some businesses are increasingly recognising that there are costs in loss of reputation, credibility and trustworthiness. There has been an increasing focus on new types of credibility measures: social and ethical auditing, social accounting and good reputation indexes. These are beginning to be used to validate claims of good corporate social responsibility, and citizenship, offering a more appropriate measure of the organisational competence and capacity than donations and cause related marketing

The concept of an ethical organisation may increasingly be a factor in deciding on the types of relationships people may want to sustain, maintain or develop with organisations. There is some evidence that, as shareholders, consumers and/or workers (paid and unpaid), people are choosing to develop ongoing relationships with organisations that match their values and are seen as trustworthy.

Corporate social responsibility is defined in the EU's Green Paper as meaning 'not only fulfilling legal expectations, but also going beyond compliance and investing more into human capital, the environment and with stakeholders.' (AccountAbility 2001). Simon Zadek, CEO of AccountAbility (UK), in his book on 'The Civil Corporation' (Earthscan 2001), defined such organisations as taking 'full advantage of opportunities for learning and action in building social and environmental objectives into its core business by effectively developing its internal values and competencies'.

Some of the strategies in this area are being sold by stating there is a business case for ethical behaviour. While this tack may be useful as an entry point to discussions with those firmly attached to the single bottom line, it carries some risks and confuses messages about the merit of being intrinsically ethical.The risks in selling such strategies as primarily being good for business are that the corollary is that if ethics has a net cost to the bottom line, it is not worth doing.

Another common strategy is developing codes of practice and values statements without any commitments to changing the organisational cultures they supposedly relate to. The development of ethical processes/procedures within organisations requires culture changes not just documentation. Codes of conduct can be useful but are limited where these attempt to specify behaviour which may not be owned or practiced. Sometimes these documents may be unknown to the organisations, others may be seen as either too ambitious or not practical, others may be too specific and therefore failing to give wider guidance. Setting up expectations of respect, good relationships and fair practices offer a more sustainable and resilient model, with codes and possible sanctions as a safety net rather than a driver.

Defining issues and ethics

Definitions of organisational ethics have tended to be limited to main products and various human rights standards such as adherence to ILO conventions and compliance with equal opportunity requirements. These are usually ascertained by policy commitments or official documentation, rather than any assessment of organisational processes. Ethical organisations should therefore be defined as those whose policies and processes consider their effects on stakeholder needs and which conscientiously seek out the best possible solution for all concerned.

Measures for doing ethical audits need to be based on how corporations/organisations act, rather than just what they sell or produce. Obviously the definitional issues will be shaped by the nature of the organisations and their roles but certain principles would be evident. Forms of dishonesty, concealment of errors, negative discrimination, bullying and dishonesty are obviously unacceptable anywhere, but other ethical judgements may be specific to the objective of the organisation.

The objectives of ethical organisations may also vary: eg in the context of a school, the outcomes may involve enhancing the social capacities and confidence of the student body through their experiences of ethical processes in schools. A commercial/sales operation would have different stakeholders but still enhance relationships through good practices in marketing and acquisition of goods. In both organisations there would be areas of overlap, eg in employee relationships. Both would derive benefit from processes that created resilience and trust through recognisable ethical cultures with their various stakeholders

Ethical processes are defined as making decisions, encouraging relationships and taking actions which can both achieve the purposes of the organisation and take into consideration:

> the sometimes conflicting needs of stakeholders,
> their differential access to power;
> and questions of the common good.

This formulation recognises that there are likely to be winners and losers but that these should be minimised and tested against principles of fairness. So for a commercial business making good products and profits for shareholders are obviously still important but the needs of workers, suppliers and other stakeholders need to be factored in as well. Similarly, a community or welfare group needs to respond to client needs, funding body demands or member expectations but this does not obviate responsibilities to the broader community and to its own employees and volunteers. Government bodies have particular sets of legal and constitutional requirements as well as the sometimes difficult conflicts between political, bureaucratic and public needs and responsibilities. All organisations also need to factor in their contribution to the common good as an overarching standard to be considered. .

Another part of identifying and defining an ethical organisation is that their processes are transparent and accountable. Therefore they can be seen to incorporate their principles in their actions and ensure that their performance can be audited so that others can see that they operate fairly. Using a social and ethical audit process is therefore useful as a management tool as it offers measures of good practices, by setting goals, ongoing auditing of their performance encourages continuous improvement. This approach recognises the diversity of functions that organisations may need to covers so any measures of ethical processes need to be flexible and situationally responsive.

I have been increasingly concerned about a sometimes inadvertent and often deliberate confusion between how corporations run their core businesses and their claims for social brownie point because of their involvements as donors, volunteers or partners in the wider community. Already there are those who are decrying philanthropy as inappropriate use shareholders' money and this may signal a backlash against views, often pushed by the Prime Minister, that corporations should do more in this area. This may also undermine the push towards promotion of corporate social responsibility as part of core functions. The latter is actually cause related marketing.

I realise that this would be seen as heresy but requires some discussion on the lack of any necessary relationships between being seen publicly as generous and how the company works in its core business. At present, the two are confused and social reporting of many companies is primarily focused on their donor roles. This covers up the lack of or limits to any reporting on their other functions as responsible and ethical employers, suppliers, marketers, purchasers, and profit makers.

This confounding is often quite deliberate with community involvement being used to increase its good image both internally and externally. So companies' decisions to become involved in matching employee fundraising, donor programs, volunteering support and other parts of the community partnerships are often based on their marketing or human resource needs and have little with benevolence.

There is nothing wrong with cause related marketing or using volunteering to keep workers happy. These can be a win-win situation and ought to be encouraged as being about management of reputation. They can then be counted as part of the marketing costs with advertising and PR, but not as the core of a social audit. Then they can also be assessed and monitored as would all other expenses in these areas by departmental heads accountable for their cost structures.

Markers of good corporate citizenship should be clearly derived from the functions that corporations undertake in pursuing their core business. These include taking into account the effects of decisions and minimising harm to stakeholders eg by good employment practices, levels of accountability and transparency, responsible sourcing and purchasing. Somewhere within these, donor functions will emerge as part of overall strategies and be assessed as whether these are of good value to the stakeholders, including recipients. I like the idea that marketing and human resource policies can also add to wider community well being.

However, there needs also to be clarity about the quite substantial difference in intention, of for profit and not for profit corporations, which should be reflected in their various structures and accountability processes and be clearly delineated. While there are different forms of incorporation for not for profit organisations, the ways in which they are run and set their goals are now generally modelled on those in the business sphere. Given the moves over the past decades by publicly owned corporations to mimic the private sector models, it means that this corporate model is dominating the organisational governance field. These models have been based on providing often short term increases in shareholder value as CEO tenures have decreased and share ownership has shifted from long term private owners to funds managers.

At the same time as this shift occurred, the flaws in the above system raised many questions on whether that model of corporate governance worked well even for corporations. The particular model of corporation's law in Anglophone countries privileges shareholders over other possible stakeholders. This may lead to very narrow interpretation of the responsibilities of boards and reduce attention to other areas such as environmental and ethical issues.

The assumption was that these models were efficient and comes from neo-liberal claims that markets are the most efficient distributor of resources. This ignores the possibilities that how you deliver services may be the key to both effectiveness and efficiency and limiting it to financial terms was the wrong way to go. The private sector, in fact, has over the past decade started looking at other issues including social responsibility and ethics because they were damaging both themselves and the societies they supposedly served by their adherence to particularly savage market models. They seem to be moving towards a less market oriented model of working but with varying levels of commitment and sophistication. The growth of the movements for corporate social responsibility (CSR), triple bottom line (TBL) auditing and other moves towards stakeholder models of accountability signal changes in the corporate sector.

Unfortunately, those who shifted the public sphere and community services to market models have often not yet recognised these changes. They continue to prate the mantra of business efficiency as though it is the only way to go, and fail to recognise that the business model they promote is being revised by the smarter business managers who realise that reputation is an asset and assists with corporate sustainability, staff turnover, customer satisfaction and in most cases, the financial bottom line.

Were one to start from another presumption of accountability, it would be possible to look at how the roles of corporations, both commercial and non commercial, could take on responsibilities to act ethically, not just legally. This is an interesting legal point because the Corporation Acts are specifically designed to give the institutions the legal rights and protections of human beings, but not to expect from them the social responsibilities and consciences we expect from those humans we admire. Interestingly, few would argue for legal requirements to prevent people from acting generously or from doing what they saw as right, even if it were to impact on their wealth.

So starting from the proposition that all types of corporations/organisations should be good, ethical citizens as well as conforming to the laws of the land raises some interesting issues for businesses run for commercial profits. When do their responsibilities as good corporate citizens over-ride their drive for profits? How do they deal with financial risks in negotiating ethical management processes and outcomes for workers, clients, suppliers and the community, as well as shareholders?

It raises even more interesting issues for those organisations who are not set up to make a profit. If ethics are to be valued, even under the present system, then these agencies could be assumed to offer possible leadership in how to incorporate ethics into one’s structure and daily operations. This has not happened, even with the shift to interest in this are because even the community well-being oriented part of the not-for-profit sector are too closely mimicking the business model to explore what they may be doing better. This often arises from attacks on their legitimacy from groups such as the IPA and the models of funding currently in play in many government programs which assume the commercial model works best.

The rest of this submission relates to primarily not–for-profit agencies. The material I am drawing on for this comes from a decade plus work I have been doing on social cohesion and social connectivity in organisations and their relationship to ethics. My basic assumption is that we work, live and care for others much more effectively if there is mutual trust. This is in part based on accepting the legitimacy of institutions, such as community groups, government and business that distribute most of the resources.

There is a model of society[1] I often use of three distributive systems for goods and services: the state, the market and the community. In a classic model, the state delivers legal and mandated services; the market offers choices and risks; the community promotes its passions and commitments. Government (public) activities, industry (market forces) and community organisations interacting create a dynamic mix and tensions that complement each other and limit each other's power. All need to operate independently but also act as critics/controls on the others, as too much power for any one sector can be problematic.

My short handed illustration is that too much state gives you Stalinism, too much market is the Mafia and too much community creates Bosnia or Ruanda. If anyone sector loses its independence and voice, it may put in jeopardy the whole democratic process. This may be particularly risky when the community sector is weakened in its capacity to represent the very diverse and sometimes contradictory demands of its multiple interest groups and those who want to make society better. So I want to look at how this sector functions and whether the current assumptions are undermining the necessary advocacy and independent functioning the social system needs.

The range of services, groups etc in the not for profit sector is as diverse, if not more so, as the market sector and contains a range of organisations, only united in their inability to distribute profits to members/owners. Some agencies offer very good services, some may work for the wellbeing of others, both deserving and less deserving in general judgements; others may work for their own members needs, even at the expense of others and some set out to undermine the well being of those they see as the enemy.

In the midst of this chaotic range of organisations there are the types of organisations that most people have in mind when they are talking about civil society. These are the organisations that claim public approval because they are there to do 'good'. These include everything from major charities that are as big as some complex large commercial firms to small unfunded groups who pool resources to help themselves or others. This is the part of the sector who want to do the right things by both their constituencies and by the wider society.

There are many people of good will who are involved in community organisations who do both paid and unpaid work with a firm commitment to making the world a better place. But my questions today ask, how do these organisations know they are both doing good and doing it well? As their legal, and often socially ascribed, role is not to make a profit, nor to deliver legally mandated services and social control, the mission of such

[1] Claus Offe social capital debates 1997 Sydney.

agencies is presumably doing good, however defined. This gives such groups the possible 'competitive advantage' of presenting themselves as do-gooders and therefore worthy of public support. This can be via funding, donations, purchasing of services or other forms of public and member interactions, and may often deliver such services in apparent competitions with commercial and even public service providers. However, the sector is not looking carefully at its functions because it is caught up with a range of government contracts and private sector partnerships which may undermine its capacity to decide its own functions. Combined with exhortations to be 'business-like', there is a diminished sense of the potential different functions of this type of organisation.

This pressure seems to have undermined even debate on what improvements can be made to NGO management. If you search the websites, most of the management advice offered is lifted from the business models and often older ones, so little of the debates on the limits of efficiency seem to appear in these training exhortations. The many political pressures on NGOs add to this form of management conservatism creating another aspect of the problem.

My first question is whether there is and ought to be a different ethos/ethic about organisations that are set up to do the right thing by members and communities? Is it wrong or inappropriate assuming that what works for small businesses works for small agencies and, similarly, for large agencies and big businesses? Social entrepreneur rhetoric starts with their core statement that they offer 'business methods for social objectives'. This begs the question of whether business models are appropriate for achieving social objectives.

Were there more demands for the implementation of social and ethical auditing for both NGOs and other corporations, this would assist both sectors to determine how ethical their operations are ie whether they can act in ways that meet their responsibilities and aims. I have been trying to raise the question of ethics in NGOs for some time and run up against assumptions that as agencies are in the doing-good industry and offering services to people in need, they don't need to question their ways of doing things.

This ignores how some agencies, particularly some large ones, have become big businesses in all but their capacity to distribute profits. I am not going to canvass the whole social and ethical audit arguments but suggest that agencies that fail to be clear about their functioning and stakeholder responsibilities, to more than their funding bodies, they risked failing their basic values.

So I want to suggest that community groups need to be very clear about what their purpose is and who are their stakeholders?. While commercial organisations are primarily there to make money, as well as to deliver product or services, what is the role of an NGO? How clear are agencies about their core responsibilities and basic intentions and how easy or difficult is it to be seduced by the availability of funds in other area? Are the particular skills and goals of NGOs at serious risks of being undermined as they become dominated by their partners or funders needs, as opposed to the needs of their constituencies. What happens to their independence and their advocacy roles?

This is a shift between accountability and responsibility. Agencies often become so accountable to their funders and donors that they lose their ability to determine their own priorities and ways of working. Accountability in these terms is imposed as parts of contracts by the more powerful of so called partners, whether this is government or business. The membership, client group, local community has little capacity to influence this process and boards tend to go with the need to meet financial goals, rather than social ones. I recognise that without funding services cannot be delivered but there needs to be ways of assessing the net gains or losses of such relationships.

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Therefore I would like to see groups in the NGO sector accept the need to look at their social responsibilities, adopt some specified objectives they want to meet and undertake some forms of social and ethical audit to see if these benchmarks are being met. They would then be better prepared to defend their operations. If an organisation has clear guidelines about the ways it makes decisions, a process of involving their stakeholders and a willingness to ask these how they were meeting their stated goals, they would be able to assess their performance.