CHARTERED SECRETARIES
AUSTRALIA
Leaders in governance

15 September 2005

Dr Marinac
The Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Suite SG.64
Parliament House
CANBERRA ACT 2600

Dear Dr Marinac

Inquiry into corporate responsibility

Chartered Secretaries Australia (CSA) welcomes the opportunity to comment on issues of corporate responsibility in response to the Parliamentary Joint Committee's inquiry into such matters.

CSA is the peak professional body delivering accredited education and the most practical and authoritative training and information on governance, as well as thought leadership in the field. We are an independent, widely-respected influencer of governance thinking and behaviour in Australia and an expert commentator on issues affecting governance and legislation. We represent over 8,500 governance professionals working in public and private companies, as well as in the public and not-for-profit sectors, who have a thorough working knowledge of the issues relating to corporate responsibility.

In preparing this submission, CSA has drawn on the expertise of the members of our two national policy committees, all of whom are engaged with acting in the best interests of their companies. We would welcome the opportunity to meet with the Committee to discuss any of our views in greater detail.

Yours sincerely

Tim Sheehy
CHIEF EXECUTIVE

CHARTERED SECRETARIES AUSTRALIA LIMITED ABN 49 008 615 950
LEVEL 10, 5 HUNTER STREET, SYDNEY NSW 2000, GPO BOX 1594, SYDNEY NSW 2001 **TEL** +61 2 9223 5744 **FAX** +61 2 9232 7174 **EMAIL** info@CSAust.com
www.CSAust.com

CHARTERED SECRETARIES AUSTRALIA

Leaders in governance

Chartered Secretaries Australia (CSA)

Submission to the Parliamentary Joint Committee on Corporations and Financial Services in relation to the inquiry into corporate responsibility

Parliamentary Joint Committee on Corporations and Financial Services
Inquiry into corporate responsibility

One of the challenges in commenting on corporate responsibility is the difficulty of developing commonly accepted terminology and definitions. Terms such as corporate social responsibility (CSR), corporate responsibility (CR), sustainable development, socially responsible investments (SRI) and triple bottom line (TBL) reporting have become synonymous in the minds of many corporate directors, managers, investors and academics.

Definitions

To clarify how the various terms interrelate, it is useful to look at the definitions of individual terms:

Sustainable development

The generally accepted definition of this term is that used in the Brundtland Report in 1987: ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs’.[1] Four moral concepts underpin this definition: equity today; environmental justice; intergenerational equity; and stewardship.[2]

Socially responsible investment (SRI)

SRI is the integration of personal values and societal concerns with investment decisions. ‘SRIs provide a link between those individuals or institutions that hold investment capital and corporations that report on their social and environmental performance. The link is provided in a way that brings the activities and results achieved by the corporation into line with the investment mandate.’[3]

Triple bottom line (TBL) reporting

TBL reporting to stakeholders focuses on the economic, social and environmental aspects of corporate activities. Information on the approach and performance of companies in managing the environmental and social impact of their activities, as well as financial data, is released by a corporation, to obtain a holistic view of the state of affairs within the corporation. Financial data is one indicator of the success of performance, but may mask systemic risks. The triple combination of reporting the social and environmental outcomes, as well as the financial aspects of a corporation’s activities, provides information on the expertise of management and the potential risks associated with the operations of the corporation.

These concepts are inextricably intertwined, yet separate and distinct from each other.[4]

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1 World Commission on Environment and Development, *Our Common Future*, Oxford University Press, Geneva, 1987

2 Durie, A, ‘The writing on the wall: the CSR imperative’, *Keeping good companies*, Vol 56, No 7, August 2004, p 402

3 Social Investment Forum, *2003 Report on Socially Responsible Investing Trends in the United States,* SIF Industry Research Program, December 2003, p i notes that in the USA in 2002, a particularly bad year for stock market investments, socially responsible investment funds had a net inflow of $1.5 billion, compared to all other funds, which experienced a net outflow of $10.5 billion

4 Durie, A, ‘The writing on the wall: the CSR imperative’, *Keeping good companies*, Vol 56, No 7, August 2004, p 403

Corporate social responsibility (CSR), or corporate responsibility (CR)

CSR is often interchangeable with CR. Some companies use sustainability or corporate citizenship instead of CSR. Some argue that the 'social' in CSR detracts from the business-related responsible activity by focusing on its social impacts (typically in the community area) while not giving due regard to the importance of ensuring the company's operations are run ethically and responsibly.

Fundamentally, CSR, or CR, is about relationships between the company and its stakeholders and building trust. CR is about how companies manage the business processes to produce an overall positive impact on society.

As noted in an article by Ann Durie published in CSA's journal, *Keeping good companies*, 'The aim of sustainability reporting is to report on this relationship of trust in a way that is believable. The only way to make the reporting credible is to *be* credible… For an organisation, being credible is about first determining with whom it has an interdependent relationship. The corporation is primarily responsible to those within its direct sphere of influence. The recognition of a tangible interrelationship with contextual parameters enables some form of qualitative or quantitative measurement.[5]

While the wording varies from one definition to the next, the elements remain fairly constant. The elements involve determining those individuals or groups with whom an organisation has a relationship of interdependence, that is, stakeholders.

Stakeholders

A stakeholder is an individual or a group that can affect the organisation, or is affected by the organisation's activities at any time, either now or in the future. This definition can include employees, suppliers, local communities, single issue groups, government and the wider society, as well as shareholders. As noted in the *ICSA Corporate Social Responsibility Handbook*[6], 'A similar, but more explicit definition of a stakeholder came from a conference in London and was quoted in the media column of *The Financial Times* on 14 September 2004 as: "Anyone that can bugger up your business"'.

Ann Durie further comments that, 'In a study in 1998, Warticke and Wood defined the power bases from which stakeholders operate.[7] Those holding voting rights have formal power and are the traditional stakeholders, such as shareholders and directors. The groups able to affect revenue flows, such as employees, suppliers, creditors and customers, wield economic power. Pressure groups, the community, activists and governments hold political power. The sustainability reporting tools in current use determine stakeholders to be any of those from within these groups.'[8]

Reporting

Although a number of social, environmental and ethical accountability tools are available in the public domain, there is no definitive reporting methodology for CSR, or CR. This may have contributed to the lack of acceptance of the inevitable need to adopt systematic standards for reporting on externalities and their impact on corporate operations.

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5 ibid

6 Hoskins, T, *The ICSA Corporate Social Responsibility Handbook*, The Institute of Chartered Secretaries and Administrators, London, 2005, p 181

7 King, D, *Corporate Citizenship and Reputational Value: The Marketing of Corporate Citizenship,* The Hawke Institute, University of SA, 2000, p 39

8 Durie, A, 'The writing on the wall: the CSR imperative', *Keeping good companies*, Vol 56, No 7, August 2004, p 404

Response to inquiry terms of reference

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

(i) Current frameworks in place

The values of CR sit at the heart of good governance. The OECD, in its introduction to its report *Principles of Corporate Governance*[9], states that, from a company's perspective, corporate governance is about:

> Maximising value subject to meeting the corporation's financial and other legal and contractual obligations. This inclusive definition stresses the need for boards of directors to balance the interests of shareholders with those of other stakeholders – employees, customers, suppliers, investors, communities – in order to achieve long-term sustained value.

The benefit of this approach towards corporate governance is that it recognises the broad objective of maximising shareholder value, while acting fairly in the interests of other stakeholders with an interest in the company's affairs.

(ii) Legislation and standards that exist relating to the individual components of CR

Corporate governance
Australian Stock Exchange Corporate Governance Council (ASXCGC) guidelines
The ASXCGC released its *Principles of Good Corporate Governance and Best Practice Recommendations* in 2003. These guidelines recognise the legal and other obligations that companies have to non-shareholder stakeholders such as employees, clients/customers and the community as a whole. Recommendation 10.1 notes that companies should establish and disclose a code of conduct to guide compliance with legal and other obligations to legitimate stakeholders. See below for information on reporting against this recommendation.

Standards Australia
AS 8003 Corporate Social Responsibility was launched by Standards Australia as part of its Corporate Governance suite of Standards in July 2003. The Standard, a world-first, provides guidance to organisations on how to integrate social responsibility into their culture and systems. It sets out the elements of an effective social responsibility policy, how to identify social responsibility issues, as well as describing practical operating procedures and review mechanisms.

The environment
Companies are subject to various state-based environmental legislation. Refer below for further information on companies' obligations in relation to mandatory environmental reporting under federal legislation.

The workplace
Companies are subject to legislation regulating relationships with employees and occupational health and safety (OH&S) standards, both at the state and federal levels.

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9 OECD, *Principles of Corporate Governance*, first published 1999; revised 2004, Paris, OECD

The marketplace: customers and suppliers

Trade Practices Act

The objective of the *Trade Practices Act* is to enhance the welfare of Australians by promoting competition and fair trading and providing for consumer protection. It covers, among other things, anti-competitive practices, unconscionable conduct, unfair practices, product safety and information, conditions and warranties, actions against manufacturers/importer and product liability.

IFSA Blue Book - Guidelines on Corporate Governance for Fund Managers and Corporations

In 1995, the Investment and Financial Services Association (IFSA) published the first edition of the *Blue Book*, which, among other things, provided guidance to IFSA members in determining their approach to corporate governance, including voting on issues proposed by public companies in which they invest.

The community

Consumers are protected under the *Trade Practices Act.* The tort of negligence enables an individual to sue a corporation for a civil wrong caused by the actions of the corporation.

(iii) Legislation that exists or is proposed that relates to the reporting of CSR

CLERP 9

The *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act* 2004 (commonly known as CLERP 9) commenced on 1 July 2004. It contains 13 schedules containing amendments to the *Corporations Act* and the *ASIC Act*. These amendments address key areas, including audit reform, financial reporting, proportionate liability, enforcement (including protection for whistleblowers), appointment and remuneration of directors and executives, continuous disclosure and shareholder participation and information.

The financial reporting schedule (Schedule 2) deals with CEO and CFO declaration, management discussion and analysis (MD&A) and the new Financial Reporting Panel. The MD&A requirement is set out in the new s 299A. This section ensures that a listed public company directors' report includes information that members would reasonably require to make an informed assessment of the company's operations, financial position, business strategies and prospects.

If the annual or half-year financial reports contain additional information provided in accordance with s 295(3)(c) (or s 303(3)(c)) in order to give a true and fair view, the directors' annual and half-year reports must:

- set out the reasons why the inclusion of that information was necessary to show a true and fair view and
- specify where that information can be found in the financial report.

Australian Stock Exchange Corporate Governance Council (ASXCGC) guidelines

Under ASX Listing Rule 4.10, companies are required to provide a statement in their annual report disclosing the extent to which they have followed the best practice recommendations in the last financial reporting period, including Recommendation 10.1 (see above). Where companies have not followed this recommendation, they must provide their reasons for not following it (the ‘if not, why not’ approach to good governance).

Section 299(1) Company Law Review Act 1998 (Cth) (mandatory corporate environmental law reporting)
A new section, s 299(1)(f), was introduced into the Corporations Law by the *Company Law Review Act 1998* (Cth), in an attempt to encourage greater accountability and transparency in a company's environmental performance. The first year of reporting was the 1998/99 financial year. The number of companies reporting on their environmental performance where their performance is subject to environmental regulation is increasing. Furthermore, there are voluntary industry codes in place. For example, the resource sector developed the Minerals Industry Code in 1996, and 43 companies are currently signatory to this voluntary environmental management code.[10]

(iv) Legislation in other jurisdictions that affects Australian companies

Sarbanes-Oxley Act
The Sarbanes-Oxley Act, signed into law by President George W Bush in July 2002, applies to public companies in the US and those serving the companies, such as audit committees, auditors and attorneys. It also affects foreign firms with secondary listings on the New York Stock Exchange. The Act's stated purpose is 'to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes.'.[11] [1] The Act's relevant aspect in relation to CR is:

> The Act requires that CEOs and chief financial officers (CFOs) submit written certifications that their company's annual and quarterly Stock Exchange Commission (SEC) reports do not contain any false statements or omissions and that the financial statements are a fair representation of the financial condition of the company. Certification of the procedures for preparing and disclosing this information are also required.

As mentioned above, financial data is capable of manipulation and may mask systemic risks. Including information on environmental and social outcomes provides a more holistic view.

Operational and Financial Review (OFR)
All quoted companies in the UK, regardless of size, are required to prepare an OFR for financial years commencing on or after 1 April 2005. This is an expanded fair review of their business in their directors' report. In fulfilling this requirement, directors need to consider whether it is necessary to provide information on a range of factors that may be relevant to the understanding of the business, including, for example, environment, employee and social and community issues.

While the OFR will be required to be part of a UK quoted company's annual report, the UK has a similar annual reporting regime to Australia, in that companies can prepare a summary financial statement (similar to our concise annual report) which goes to the vast majority of shareholders instead of the annual report. Under the OFR regulations, UK quoted companies will not be required to include the OFR in their summary financial statement. All they will need to do is put the OFR on their website and refer to the location of it in their summary financial statement.

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10 Bubna-Litic, K, Mandatory corporate reporting: Does it really work?' *Keeping good companies*, Vol 56, No 10, November 2004, p 616
11 <www.sarbanes-oxley.com/pcaob.php?level=1&pub_id=Sarbanes-Oxley>

(v) The quasi-regulatory areas that have influence (but are not mandatory) on companies to operate within their guidelines

- UN-led directives such as international labour standards, UN Universal Declaration of Human Rights, OECD principles, UN Global Compact, Earth Summits, UN Global Reporting Initiative
- Global Sullivan Principles
- World Business Council for Sustainable Development
- Reporting Standards – SA8000 (Social Accountability International), AA1000 (Institute for Social Accountability)

(vi) Examples of CR initiatives in place in Australia

Numerous Australian companies already have CR initiatives in place under the existing corporate legislative regime. Members of CSA, in both listed and unlisted entities, can point to a range of CR initiatives within their organisations. Based on information provided by the companies of some of our members, a few examples follow.

Listed companies

National Australia Bank (NAB)

The NAB participates in the Carbon Disclosure Project, a global assessment by 85 institutional investors on the extent to which the Financial Times (FT) 500 most valuable companies are taking carbon risk and climate change risk into consideration as part of their core business. A further initiative is becoming a signatory to the Statement for Financial Institutions (UNEP FI) in 2002. The UNEP FI is a collaboration between the United Nations and 240 financial institutions globally working together for improved outcomes through lending and investment. As a member of the UNEP FI/Global Reporting Initiative (GRI) working group, NAB is working to develop the environment indicators for the Environmental Finance Sector Supplement to the Global Reporting Initiative (GRI – see later in the submission). The supplement includes the development of key performance indicators for direct and indirect impacts, including lending and asset management. In 2004, NAB became a member of a global working group, which consists of seven international banks that are working together to develop the global best practice management toolkit for measuring and reporting direct impacts of finance institutions. This benchmark standard is called VfU.

NAB Australian businesses have facilitated an External Stakeholder Forum. The External Stakeholder Forum has representatives from prominent environment, community service and consumer groups, and indigenous and rural communities and has influenced the establishment of programs and facilities that seek to address financial services for low or vulnerable income members of the community.

NAB also supports the Total Environment Centre Green Capital Programs in Australia. The program aims to stimulate debate and raise awareness in Australia between environmental groups, community groups and business on environmental consequences of business operations and legislation. The NAB also designed its new building, National @ Docklands, with sustainability as a key design theme.

Caltex Australia Limited

Caltex Australia Limited undertakes contributions and sponsorship programs as part of its partnership with the community. The program is operated at three distinct levels: corporate sponsorships, that is, support for projects in the areas of welfare, the arts and education; regional sponsorship, which takes place with organisations in communities near Caltex's major company facilities such as their two refineries; and local support with individual service station operators and distributors responsible for handling sponsorship in their immediate areas. Caltex will support environment research, including community education, air quality, community volunteers, conservation, marine ecology, wetlands and endangered species; public information and policy research, including engineering, economics, petroleum industry, social policy, business analysis and research; education in engineering, finance, management, information systems and science and activities supporting the development and employment of young people; health and safety preventative measures and research, including health promotion, safety projects and emergency services; community support, including family support, volunteering, job creation and equal employment opportunity; support of the performing arts; and charity aimed at building a better community, including education programs supporting self-help.

BHP Billiton
BHP Billiton undertakes a range of activities in relation to CSR issues throughout the world and reports comprehensively on these activities each year in accordance with the UN GRI. BHP Billiton's 2005 Sustainability Report is available on its website. It is recommended that representatives of the Committee visit the website and review this report to gain an appreciation of the importance which BHP Billiton places on CSR..

Unlisted companies
Zurich Financial Services Australia Limited runs Community Connections,. The program supports and encourages employees to engage with the community through the donation of their time and money. It is undertaken in partnership with United Way, a national not-for-profit organisation that supports a number of community organisations that make a difference in the lives of those in need at a local level. The program supports and encourages employees to engage in the community by:

- taking a day's paid leave to volunteer at a community organisation of their own choosing
- participating in a team volunteering day
- donating money from their fortnightly pay, matched dollar for dollar by Zurich.

Zurich also recently launched a national Green Office initiative that encourages its offices to be more environmentally responsible. The program will initially focus on reducing the use of paper, energy and water, as well as introducing a comprehensive recycling system in a number of its offices.

Flinders Ports Pty Ltd sponsors the South Australian Maritime Museum, and funds the education program 'A Day at the Port' through the South Australia Investigator Science Centre. This program is targeted at primary school children and educates them about the workings of a port and the link with import and export trades. It also concentrates on local community programs, including the funding of travel for children in regional centres to attend events in the city of Adelaide.

(b) The extent to which organisational decision makers should have regard for the interests of stakeholders other than shareholders, and the broader community

CSA believes that organisational decision makers should have regard for the interests of stakeholders other than shareholders, and the broader community. The information provided by CSA members above reflects our members' view that CR sits at the heart of good governance. The evidence available to us suggests that the decision makers in many companies in Australia are already having regard to the interests of other stakeholders and regard these interests as integral to their business.

CSA acknowledges that others believe that ‘it is difficult for directors to balance the interests of shareholders with their responsibilities under specific statutes regarding OH&S, environmental impact and trade practices, but if, in addition, directors also had to 'constantly balance the interests of shareholders with those of other stakeholders, it would often be impossible for them to reconcile their duties.'[12]

However, CSA does not believe that regard for the interests of stakeholders other than shareholders places additional burdens on directors or companies. CSA believes that such a regard provides companies with a competitive advantage (see below).

(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

As it stands, the law generally links the corporate interests to those of the shareholders, and only derivatively with those of the community, consumers, employees and other stakeholders. Nonetheless, a flourishing debate on CR has promoted the idea that corporate management should take into account interests beyond the corporation's formal legal constituents, to that group known as stakeholders — employees, the community, government, distributors, consumers and creditors.

With the increasing privatisation of public services, the expanding power of multinational corporations and the perceived diminution in the role of governments in the economy, the community increasingly looks to corporations as the provider of public goods and services. Companies may complain that the process is simply about politicians shedding costs from their balance sheets, while governments protest that they are behaving with probity, trusting to the efficiency and equity of markets to ensure limited resources go further. In between sits the community, clear in its belief that *someone* needs to be accountable for the provision of the common weal and keen to see those responsible uphold the rigorous trustee standard of disinterested service.

In light of this sociological revolution, many have questioned whether the law and community expectations sufficiently coincide, given that the law generally only *derivatively* links the corporate interests to those of stakeholders other than shareholders.

(i) Are shareholder interests the same as the interests of the company?

The *Corporations Act* states, in s 181(1), that:

> A director or other office of a corporation must exercise their powers and discharge their duties:
> (a) in good faith in the best interests of the corporation; and
> (b) for a proper purpose.

It is important to clarify that the legislation does *not* state that directors and other officers must exercise their powers and discharge their duties in the best interests of shareholders, although it appears that case law has tended to grant primacy to shareholders' interests. It is a common misapprehension to believe that the legislation foregrounds shareholders' best interests and rights. It does not. It foregrounds the best interests of the company, which *generally* coincide with the best interests of shareholders.

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[12] Evans, R, 'CEO Report', *Company Director*, December/January 2004–2005 at p 4

In part, the misapprehension has grown from a belief that has held currency since the 1970s that a corporation's sole reason for existence is to increase its wealth. This can be traced to Milton Friedman's argument that: 'There is one and only one social responsibility of business: to use its resources and engage in activities designed to increase its profits'.[13]

This view of the corporation as a profit-seeking machine with a ruthless disregard for long-term consequences implies that social issues are peripheral to the challenges of corporate management. It claims that the sole legitimate purpose of business is to create shareholder value. Proponents of this view believe that any argument proposing that a company should mitigate its social impact is irrelevant.

(ii) The current legal framework

The view that has greater traction in the twenty-first century is that the relationship between business and society is an implicit social contract. Proponents of CR note that social issues are not tangential to the business of business but fundamental to it. This perspective holds that corporate managers holding onto a one-dimensional view of the corporation will not survive, nor will the companies they manage.

Supporters of CR note that those companies alert to the long-term impact of social issues and in a constant dialogue with their stakeholders are those with a competitive advantage. Shifts in social issues that ultimately feed into the fundamental drivers of corporate performance generate value-creation opportunities. 'Paradoxically, the language of shareholder value may, in this respect, hinder companies from maximising their shareholder value. Focusing on a 'business is business' approach can lead managers to emphasise short-term company performance, while neglecting longer-term opportunities and issues, including societal pressures, the trust of customers and investments in innovation and other growth prospects.'[14] For reasons of ethics and enlightened self-interest, companies need to tackle such issues, both with words and actions.'

CSA is of the opinion that the current legal framework governing directors' duties *does* accommodate directors having regard for the interests of stakeholders other than shareholders, as they must exercise their powers in the best interests of the company.

As noted by Bruce Cowley, in relation to the issue raised by the James Hardie case as to whether directors could be personally liable for being too generous in compensating victims:

> Ultimately, the question for directors and officers is whether they have carried out their duties as required by law. In theory, it is true that if directors and company officers are too generous with shareholder funds they can be personally liable. Their principal duties are to act with care and diligence and to exercise their powers in good faith in the best interests of the company and for a proper purpose. Excessive largesse in settling claims (of any kind) might be regarded as failing to act with care and diligence.
>
> However, directors and officers can argue the business judgment rule in defence of claims that they have failed to exercise the requisite standards of care and diligence. Under this rule, directors and officers will be deemed to have acted with reasonable care if they have made a decision in good faith and for a proper purpose about a matter in which they have no personal interest, a reasonable level of knowledge and a rational belief that the decision is in the best interests of the company….One would think that showing generosity to personal injury claimants might also constitute a proper purpose

[13] Friedman. M, *The New York Times*, 13 September, 1970

[14] Davis, I, 'What is the business of business?', *The McKinsey Quarterly*, 2005, No 3

> and be in the best interests of the company, especially if it impacts on the corporate brand.'[15]

The Parliamentary Joint Committee has asked whether the current legal framework encourages or discourages directors from having regard for stakeholders other than shareholders. CSA believes that it neither encourages nor discourages such a regard. CSA believes that the law as it stands *accommodates* a regard for stakeholders other than shareholders, which in turn provides for directors and companies to reveal through their activities how capable they are of generating the value-creating opportunities that open up as a result of engagement with stakeholders.

(d) Whether legal 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

CSA does *not* believe that revisions are required to the legal framework, particularly to the *Corporations Act*, to enable or encourage incorporated entities or directors to have regard for the interests of stakeholders other than shareholders and the broader community.

In Cowley's article cited above, he also noted that 'The position of company officers is not getting any easier and some of the more cutting-edge examples seem to be arising in relation to James Hardie and its associated entities. Without arguing for yet more law reform, it is clear that some of our recent corporate controversies have put existing laws under considerable duress.'[16]

CSA notes that, despite the duress our corporate laws have been under in relation to CR, those laws did nonetheless withstand the pressure.

CSA believes that those companies that ignore the long-term impact of social and environmental issues and that refuse to participate in a constant dialogue with their stakeholders are putting their long-term future at risk. Such behaviour does not necessarily fit the legal requirement for directors to exercise their power in the best interests of the company.

CSA also believes that performance pressures will encourage companies to have regard for the interests of stakeholders other than shareholders and that this does not need to be legislated. Indeed, if it were to be mandated, having regard for stakeholder interests other than shareholders would likely become a compliance-driven, box-ticking exercise, rather than an innovative, value-creating opportunity to improve performance.

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

CSA does not believe that the *Corporations Act* needs to be amended to expressly allow directors to have regard for stakeholders other than shareholders.

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[15] Cowley, B, 'Can directors be personally liable for being too generous in compensating victims?', *Keeping good companies*, Vol 57, No 1, p 36

[16] ibid, p 37

CSA *does* believe, however, that directors and other officers, and their organisations, should participate in active dialogue with stakeholders other than shareholders. This dialogue needs to emphasise that companies understand the competitive advantages that flow from working with stakeholders, and that engagement with stakeholders has the potential to alter the strategic future of corporations in fundamental ways.

Recommendation
Companies and stakeholders alike should be reminded that CR can be tailored to suit the company's circumstances by providing for it in the company's constitution. A clause can be included in a company's constitution permitting directors to take account of the interests of stakeholders other than shareholders, for example, 'for any purpose that the board sees fit'. CSA believes there is merit in the *Corporations Act* including such a provision as a replaceable rule. Shareholders would decide whether they wanted it, or a revised version of it, as an object in the constitution.

(f) Appropriateness of reporting requirements associated with these issues

Current reporting of CR
There is a large number of indices and surveys relating to CR, all of which replicate each other to some degree or other. The nearest to a common set of measures that meets the needs of governments and NGO bodies is the United Nations GRI (see below) and the expectation is that this will continue to drive greater conformity with CR performance measurement over the coming years. This has been reinforced with the support of the International Organisation for Standardisation (ISO), which announced in July 2004 that it is developing an international standard for CSR, aimed at providing guidance on implementing a CSR system to address social and environmental issues.

It is unlikely that there will be a worldwide-based survey questionnaire. Cultural differences are too wide as regards the interpretation of CR performance.

Durie notes that, 'To have relevance, a report should enable comparisons between historical data and the implementation of future technologies and strategies aimed at overcoming deficiencies in corporate responsibility and accountability. Further, investors need to be able to relate the performance of non-financial indicators to the financial aspects of enterprises. The major requirements, therefore, are comparison, replication and elements of practical implementation'.[17]

Industry-specific parameters can be determined and reported. This provides a gauge for outsiders, and the corporation itself, to assess its quality in relation to others within the same industry sectors. Identifying shortcomings and consequently determining strategies and setting goals for overcoming these is a vital element of the reporting process. Currently, companies report against the most appropriate index for their industry.

The United Nations Global Compact[18]
This Compact was established as an initiative of the United Nations Secretary-General. It seeks to add new dimensions to good corporate citizenship by creating a platform, based on 10 general principles in the areas of the environment, labour standards, human rights and anti-corruption, to encourage innovative new initiatives and partnerships with civil society and other organisations. Practical guidelines have been devised to assist companies to incorporate the Global Compact Performance Model in their business practices.

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[17] Durie, A, 'The writing on the wall: the CSR imperative', *Keeping good companies*, Vol 56, No 7, August 2004, p 405

[18] <www.unglobalcompact.org>

The GRI[19]
The GRI is a multi-stakeholder process and independent institution whose mission is to develop and disseminate globally applicable Sustainability Reporting Guidelines The GRI 2002 Sustainability Reporting Guidelines, the UN Global Compact and the OECD Guidelines for Multinational Enterprises[20] are complementary. The Guidelines are for voluntary use by organisations for reporting on the economic, environmental and social dimensions of their activities, products, and services. The GRI incorporates the active participation of representatives from business, accountancy, investment, environmental, human rights, research and labour organisations from around the world.. The GRI has an objective to demonstrate that the Guidelines can be used by small organisations and set a best practice example for NGO reporting.

The AccountAbility AA1000 series[21]
The AccountAbility AA1000 framework is a measurement tool devised by the Institute of Social and Ethical AccountAbility to complement and build upon the GRI Reporting Guidelines. It is designed to improve accountability and performance by learning through stakeholder engagement. The series builds on the core principle of inclusivity and is based on three propositions: stakeholder engagement, which remains at the core of the framework; accountability, or the extent to which an organisation takes action on the basis of stakeholder engagement; and the capacity of organisations to learn and innovate effectively on the basis of stakeholder engagement.

Reporting by CSA members
Research conducted by CSA shows that CSA members in listed companies report against a number of indices, including the global index GRI. Other indices CSA members report against include RepuTex, GovernanceMetrics International (GMI), Institutional Shareholder Services (ISS), FTSE4Good, Dow Jones Sustainability Index (DJSI), Centre for Australian Ethical Research, BT Financial Group (whose research is undertaken by Monash Sustainability Enterprises), Corporate Monitor, Sustainable Asset Management (AuSI), Carbon Disclosure Project, Dutch Sustainability Research, The Ecumenical Council for Corporate Responsibility, and Ethical Investment Research Service (EIRIS), as well as multiple specialised financial information services and investment advisory firms assessing corporate performance on environmental, social, and strategic governance issues.

For example, the NAB reports against the key performance indicators of the GRI. It also reports against indicators from EPI (environment performance indicators for the finance industry), SPI (social performance indicators for the finance sector) and VfU (direct environmental indicators).

BHP Billiton participates in a number of key external benchmarking initiatives that attempt to measure the company's sustainable development performance against others in the sector. These include the Dow Jones Sustainability Index, and Storebrand in Norway, among others.

Small and medium-sized enterprises (SMEs)
It is sometimes argued that CR is difficult for SMEs. This is partly because providing the relevant information to demonstrate a company’s responsible approach towards its society and environment can be perceived to be costly, especially if that company is not already recording such information for its management purposes. It is also partly because owner-managers are already participating in responsible approaches, although they may not describe them as being part of CR. Equally, it is accepted that the nature of CR in an SME can be significantly different from CR in a large company.

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19 <www.globalreporting.org>
20 <www.oecd.org/daf/investment/guidelines/index.htm>
21 <www.accountability.org.uk/>

SMEs are not only undertaking their own forms of CR. The reporting of CSR by larger companies in Australia note that they are beginning to encourage SME suppliers, through their supply chain, to become more CR-active. The challenge is to ensure that the practices suitable in larger companies can be modified to be suitable for SMEs also.

The challenge for SMEs has been to adapt and narrow the broad citizenship concepts implicit in the global reporting initiatives so that they have relevance for the CR agenda of those enterprises with either a less significant global profile or none at all.

CSA believes that mandating reporting adds a significant layer of additional costs to the operations of small listed and unlisted entities. Given that there is no evidence that small listed and unlisted entities are necessarily having significant impacts on the environment or the community, CSA does not believe that such a regulatory cost can be justified. CSA strongly supports the continuation of voluntary reporting, with education provided to SMEs to communicate the value-creating opportunities inherent in CR activity.

For example, in the extracting industry, smaller companies are seeking to attract capital and be competitive. If they do not voluntarily report against CR indices on environmental issues, their capacity to attract capital and remain competitive will be hindered.

(g) Whether regulatory, legislative or other policy approaches in other countries could be adopted or adapted for Australia

Research conducted by CSA of members in listed companies showed that 79 per cent of such members have external bodies and organisations assessing and rating their organisation's CSR or asking the organisations to report on their CSR activities. Those same members note that 68 per cent of these reporting mechanisms do not share similar methodologies and measurement processes.

Members note they would like to see Australia consider examples of overseas jurisdictions such as the UK, where the London Stock Exchange has developed the Corporate Responsibility Exchange (CRE), which is an online tool that acts as a platform for companies to publish non-financial information, and for fund managers and research agencies to access it. Over half the FTSE100 companies now use the CRE and our members would welcome similar voluntary moves in Australia.

Conclusion

CSA does *not* believe that revisions are required to the legal framework, particularly to the *Corporations Act*, to enable or encourage incorporated entities or directors to have regard for the interests of stakeholders other than shareholders and the broader community.

CSA believes that companies and stakeholders alike should be reminded that CR can be tailored to suit the company's circumstances by providing for it in the company's constitution. CSA believes there is merit in the *Corporations Act* including such a provision as a replaceable rule. Shareholders would decide whether they wanted it, or a revised version of it, as an object in the constitution.