



ASIC

Australian Securities & Investments Commission

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The Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Department of the Senate
Parliament House
Canberra ACT 2600
By email: corporations.joint@aph.gov.au

Dear Sir,

Inquiry into Corporate Social Responsibility

The Australian Securities and Investments Commission (ASIC) welcomes the Parliamentary Joint Committee on Corporations and Financial Services' inquiry into corporate social responsibility and appreciates the opportunity to contribute to the inquiry.

ASIC would like to make brief observations relevant to issues (c) and (d) of the Inquiry's terms of reference, that is:

- the degree to which the current legal framework permits directors to have regard to the interests of stakeholders, other than shareholders, and the broader community; and
- whether revision to the legal framework are required to enable or encourage companies or their directors to have regard to the interests of stakeholders, other than shareholders, and the broader community.

The Current Legal Framework

Australian corporations laws (that is, the *Corporations Act 2001* and relevant common law principles) do not prevent corporate officers from taking into account the interests of stakeholders other than shareholders. Corporate officers are entitled to take into account the interests of a wide group of stakeholders, provided that there is some benefit

to the company from doing so. (In this context, the company means the shareholders and, in certain circumstances, the creditors.)

Additionally, ASIC notes that laws other than corporations laws often require corporate officers to consider the interests of stakeholders other than shareholders (and creditors). For example, occupational health and safety legislation, consumer protection legislation and environmental protection legislation, require corporate officers to consider the interests of a range of important stakeholders in their decision-making.

Some Reform Implications

ASIC foresees potential practical difficulties were the Parliament to amend the *Corporations Act 2001* so that corporate officers were obliged, or explicitly encouraged, to take a wide range of stakeholders' interests into account. Depending on the precise nature and drafting of any such reform these practical difficulties might include:

- Difficulties in identifying and defining the various classes of stakeholders that might be considered to have a legitimate claim on the attention and resources of companies.
- Difficulties in establishing an appropriate hierarchy of stakeholders' interests to resolve conflicting stakeholder claims on the attention and resources of companies.

These potential difficulties would impact on ASIC's ability to successfully enforce the amended provisions. The more uncertainty that exists as to the precise nature of a duty and to whom it is owed, the harder it will be for ASIC to prove, to the requisite standard, that the duty has been breached. Where a duty is owed to a number of stakeholders with varying interests, it will be challenging to establish that a given action was a breach of the duty rather than the exercise of a difficult judgment based on the perceived merits of competing stakeholder interests.

The issues raised in this submission should not be taken as endorsement of the status quo. We raise these matters because we believe that it is important to consider the implications of revising the current framework regarding corporate officers' rights and obligations to pay regard to various stakeholders in their decision-making.

Thank you for the opportunity to make this submission.

Yours sincerely



Malcolm Rodgers
Executive Director, Regulation