

Dear Dr. Marinak,

Please find attached, the submission of Gippsland Community Legal Service to Parliamentary Joint Committee on Corporations and Financial Services Inquiry into Corporate Social Responsibility. The submission discusses the need for mandatory CSR reporting and recommends uniform reporting requirements along Global Reporting Initiative (GRI) guidelines. The submission further recommends Government should be required to impose standards on companies providing goods and services.

Please feel free to contact our service with any questions or comments regarding this submission. We would also welcome further information regarding the committee's progress.

Yours sincerely,

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# GIPPSLAND COMMUNITY LEGAL SERVICE

## SUBMISSION TO THE PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES

### CORPORATE SOCIAL RESPONSIBILITY AND THE *CORPORATIONS ACT 2001*

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SEPTEMBER 2005

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## **Gippsland Community Legal Service**

Gippsland Community Legal Service (GCLS) is an independent non-profit generalist legal service managed by Anglicare Victoria – Gippsland region.

The mission of GCLS is to ensure access to justice for all members of the Gippsland community by providing legal advice and advocacy, empowering individuals and groups through community education, and advocating for law reform to remove systemic injustice.

GCLS is a remote, rural and regional legal service, committed to representing and assisting members of it's community. GCLS provides service to the entire Gippsland region and maintains a regular presence and connection to the community across the catchment area. This submission calls upon the expertise of a Remote Rural and Regional (RRR) legal service with a focus on environmental issues.

GCLS is a member of the Federation of Community Legal Centres (Vic) Inc, and is funded by the Federal Attorney Generals' department.

### **Acknowledgement:**

GCLS acknowledges the invaluable and enthusiastic contribution of Ms. Kylie Sharp, volunteer, to this submission.

## **Introduction**

As we move into a future where society places a great emphasis on the protection of our environment and our people, companies are being urged to take responsibility for their actions and inaction. Corporate Social Responsibility (CSR) has become an important issue amongst companies. Many companies choose to incorporate CSR into their organisational structure so they may become socially and environmentally conscious and also to address the concerns of stakeholders. Presently there is no determined standard on how and what companies have to report on, in regards to their CSR.

The Global Reporting Initiative (GRI) produces globally applicable sustainable reporting guidelines, however it is not mandatory that corporations adhere to these criteria in their reporting. **We submit that it is necessary to implement mandatory guidelines to all public companies both listed and unlisted.** We believe this would make companies accountable for their actions and to have a higher regard for social and environmental issues. Companies can no longer look at sustainability in financial terms only, they need to have a strong focus on social and environmental issues.

In the absence of mandatory guidelines corporations may be able to produce highly favorable reports whilst omitting concerns which may need to be made public. A uniform approach will be of benefit to shareholders and stakeholders and ultimately to the reputation of the company itself.

Currently section 181 of the *Corporations Act 2001* (Cwlth) has a requirement that directors act in good faith, in the best interests of the company and for proper purpose. This duty should be amended so that directors are required to consider the interests of all stakeholders which would include taking into consideration social and environmental concerns when making corporate decisions.

This submission is presented with a focus on environmental issues, yet acknowledges the environment as just one component of Corporate Social Responsibility.

*“Civil society expects companies, especially the biggest ones, to manage the environmental impact of their operations and industrial risk, as well as to plan for and manage their direct and indirect social and societal impacts, wherever they are located”.*

**Thierry Desmarest: Chairman and Chief Executive Officer TOTAL**

## **Specifics of the Submission**

### ***Corporate governance measures***

Good corporate governance measures should embrace CSR principles. Companies are facing articulated expectations from customers, consumers, shareholders, stakeholders and the public regarding their contributions to a sustainable development. However, these expectations are not legislated as mandatory requirements for the companies to report upon.

#### ***Australian Stock Exchange Recommendations.***

Currently, companies which are listed on the Australian Stock Exchange (ASX) are required to comply with the ASX Corporate Governance Council's Principles of Good Corporate Governance and Best Practice Recommendations. The Recommendations require the company to adopt a code which considers responsibility to shareholders, clients, customers, employees, the community and individuals. These are not mandatory requirements and the company can opt out of disclosing but must state in its annual report why it has chosen not to do so. Through continuous disclosure obligations companies listed on ASX are required to report on anything which would have an effect on the price of its shares.

#### ***Corporations Act 2001 (Cwlth), Environmental Protection Biodiversity Conservation Act 1999 (Cwth) and the Environmental Protection Act 1970 (Vic)***

Legislation contained in section 181 of the *Corporations Act 2001* (Cwlth) has a requirement that directors act in good faith, in the best interests of the company and for proper purpose. Also s.299 (1)(f) requires the company to disclose in their annual directors report if their operations are 'subject to any particular and significant environmental regulation under a law of the Commonwealth or a state or territory'<sup>1</sup> and they are required to give details of their performance in relation to this environmental legislation.

This means that companies are required to disclose details of their performance under the *Environmental Protection Biodiversity Conservation Act 1999* (Cwlth) and the *Environmental Protection Act 1970* (Vic). These environmental laws give corporations environmental standards which they must adhere to or face the penalties for a breach of provisions.

However s.299 (1) (f) has been criticised as being vague and unclear. This section fails to require a disclosure of the financial impact of an environmental issue. Current framework allows directors a great degree of subjectivity in determining what they should and shouldn't disclose.<sup>2</sup> Thus, mandatory reporting guidelines are necessary.

The introduction of section 299(1)(f) into the *Corporations Act 2001* (Cwlth) has demonstrated a shift towards a consideration of environmental and social issues as opposed to matters of financial impact. The publication of the GRI guidelines in 2000, has also shown a move towards the importance of environmental and social issues. However these are merely guidelines and may be used by an organisation on a voluntary basis.

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<sup>1</sup> *Corporations Act 2001* (Cth) s.299 (1) (f)

<sup>2</sup> Nolan, Justine. 'Human Rights , the Environment, What Corporate Lawyers need to know'., *Law Society Journal* . July 2004. Pp. 66-68

Companies have an obligation to their shareholders to uphold environmental sustainability. By ensuring a mandatory reporting on the corporations environmental measures, it will make the company accountable to its shareholders and more responsible in their consideration of environmental factors. It is definitely in the company's best interests to report on environmental factors for the sake of their reputation amongst stakeholders and shareholders.

Simply reporting compliance with the *Environmental Protection Act* could possibly mean the company is merely meeting a minimum set of core standards. Activity that is legal may still impact on the environment or be potentially damaging to the environment.

## **Companies should be required to report on their CSR performance**

We recommend that public companies both listed and unlisted should be mandated to report on their CSR performance. The report should be uniform and in keeping with GRI guidelines.

The aim of the GRI guidelines is to develop and distribute globally applicable standards for companies to use when reporting on their sustainability. Currently companies can choose to use the 2002 GRI guidelines however they wish. They can strictly adhere to them or use them as a guide or perhaps not use them at all.

### **The benefits of a mandatory GRI reporting system are.**

- Companies will hold greater regard of environmental sustainability issues and be in touch with shareholders, stakeholders and community concerns and needs.
- Companies will be assisted to strengthen relationships between shareholders, stakeholders and community and to build a culture of trust and openness.
- Problem areas and environmental issues will be identified early and plans and strategies can be implemented for better environmental sustainability.
- Helps access corporations contribution to natural, human and social capital.<sup>3</sup>

The reporting requirements under the *Corporations Act 2001* (Cwlth) and the ASX Recommendations only demand a limited amount of disclosure in terms of the company's CSR. The implementation of mandatory reporting annually by GRI guidelines would enable a comprehensive assessment of the company's CSR performance. We suggest that annual reporting on CSR should be released with the company's annual report each year to ensure stakeholders, shareholders and members of the community have access to CSR information.

In the absence of mandatory reporting requirements a company is able to present CSR reports simply as a Public Relations exercise. Without guidelines, there is a risk of companies not meeting requirements for a sustainable future to the benefit of everyone.

As a method of ascertaining information that is available and accessible to members of the public, we examined the websites, Annual Reports and CSR Reports of various companies. We found CSR reports to be quite diverse, in some cases appearing as a series of projects or case studies. We would argue that a CSR report needs to incorporate more than case studies, and that mandated guidelines would encourage more complete CSR reporting.

The implementation of mandatory reporting guidelines would also avoid the propensity for companies to use CSR reports as a de facto public relations report. CSR includes levels of corporate conduct such as, compliance, sustainability, responsibility to stakeholders, and social activism, and is as much about identifying and limiting negative impacts as it is about positive outcomes. Reporting guidelines, such as GRI would expedite the individual's access to a company's CSR information, as well as providing more accurate comparison to the CSR performance of other companies. Annual reporting would also mean up-to-date information would be made available for shareholders, stakeholders and the general community.

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<sup>3</sup> Sustainability Reporting Guidelines, GRI 2002. Boston , USA; Global Reporting Initiative: 2002.



## **Government should impose standards on companies providing goods and services to Government**

Governments are uniquely placed to lead by example. As CSR is becoming an increasingly important issue to both stakeholders and the community, the government needs to be committed to ensuring GRI guidelines are followed.

Therefore we recommend that the Government impose standards on companies providing goods and services. This could be initiated by the acceptance of tender bids only from companies who provide a CSR report along GRI guidelines. Consequently, the Government only need consider bids from companies who have demonstrated a compliance with disclosure standards once these standards have been established.

It is important that the Government sets an example for companies that annual reporting based on GRI guidelines is essential for good CSR.

## **Summary of Key Recommendations**

- Mandatory reporting for listed and unlisted companies in compliance with GRI guidelines.
- Reporting to be made on an annual basis in conjunction with the company's annual report.
- Companies adhere to reporting annually along guidelines or face penalties under The *Corporations Act 2001* (Cwlth). Under the Act the director may be personally liable for the companies failure to report with regards to the GRI.
- Government must impose GRI annual reporting standards to companies which provide them with goods and services.

## **Bibliography**

*Corporations Act 2001* (Cth) s.299 (1) (f) and s.191

Nolan, Justine. '*Human Rights , the Environment, What Corporate Lawyers need to know*', Law Society Journal . July 2004.  
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