

Submission to  
**Parliamentary Joint Committee on Corporations  
and Financial Services**

## **INQUIRY INTO CORPORATE RESPONSIBILITY**



### **Consumers' Federation of Australia**

Secretary: C/- Consumer Law Centre of Victoria  
Level 9, 91 William Street  
Melbourne. Vic. 3000

Contacts for this Submission:  
Carolyn Bond, Chair – 03 9370 5088  
Fiona Guthrie, Deputy Chair – 0402 426 835

September, 2005

## Table of Contents

<b>1.</b>	<b>INTRODUCTION.....</b>	<b>1</b>
<b>2.</b>	<b>OVERALL COMMENTS.....</b>	<b>1</b>
<b>3.</b>	<b>TERMS OF REFERENCE.....</b>	<b>2</b>
<b>3.1.</b>	<b>SOCIAL RESPONSIBILITY – CURRENT VERSUS IDEAL.....</b>	<b>2</b>
<b>3.2.</b>	<b>THE LEGAL FRAMEWORK FOR SR.....</b>	<b>4</b>
<b>3.3.</b>	<b>OTHER MECHANISMS FOR ENCOURAGING SOCIAL RESPONSIBILITY.....</b>	<b>5</b>
<b>3.4.</b>	<b>REPORTING REQUIREMENTS.....</b>	<b>6</b>
<b>3.5.</b>	<b>OTHER JURISDICTIONS – WHAT CAN WE ADAPT?.....</b>	<b>7</b>

## 1. INTRODUCTION

The Consumers' Federation of Australia (CFA) is the national peak body for consumer groups in Australia. CFA's 100 members include community legal centres, health rights groups, local consumer organisations and public interest organisations. Our membership groups cover almost the entire gamut of consumer issues.

CFA's role is to put the view of its member organisations to government and industry and to advocate on behalf of consumers. Established in 1974, our focus is primarily on advancing the interests of disadvantaged and vulnerable consumers.

More information is available on our website – [www.consumersfederation.com](http://www.consumersfederation.com)

## 2. OVERALL COMMENTS

CFA is a strong supporter of the need for organisations to embrace the principles of social responsibility (SR). We believe that every organisation owes a duty, not just to shareholders, but to the broader community. Why? Because first and foremost, we are a community. We share the same goal of improving the quality of life for our generation and those of our children.

It is the community ultimately that gives organisations a “licence to operate”. In return for this community confidence, organisations need to act to benefit the community.

The concept of social responsibility underpins much of our advocacy. This is because our market-based system can fail low income and vulnerable consumers. As a society we are all diminished when we allow disadvantage to continue.

A good example of CFA's advocacy in relation to SR concerns banks and other financial institutions. We have argued that these institutions have a social responsibility to provide fee-free bank accounts to people on low incomes (usually referred to as a “basic” bank account). Access to a transaction account is fundamental to participation in our society, particularly given that all government pensions are paid by direct credit.

We have had some success with basic bank accounts, with all the major banks offering such a product (although many of the products are still too limited in our view). The same arguments however also apply to other sectors of the economy, such as utilities and telecommunications companies, where industry is providing a service critical to ensuring that all consumers are able to participate in our society. As such, these industries have a responsibility to provide services that people can afford and can access.

**The general principle however is that all organisations owe a social responsibility to their communities in which they operate.**

### 3. TERMS OF REFERENCE

#### 3.1. Social Responsibility – Current versus Ideal

This section addresses the following 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
- b. The extent to which organisational decision-makers should have regard for the interests of stakeholders other than shareholders, and the broader community.

---

The call for organisations to acknowledge SR and act in accordance with it, has been growing. Various organisations however have responded in quite different ways, falling somewhere along a continuum as outlined below:

- **Ignore it** – some organisations pretend SR does not exist; they ignore it. If they even debate the issue, it is only to point out that the law requires only a duty to shareholders;
- **Lip Service** – some companies make a show of tripe-bottom line reporting for example, but their involvement is window-dressing only. There is no real analysis of the impact of decisions on community or specific groups of stakeholders. The environment movement for example talks of “greenwashing” when referring to sustainability reports that are, in reality, simply an exercise in public relations;
- **Bottom Line Focus** – Many Australian companies embrace SR because it is seen as good for business. Charles Allen of the Allen Consulting Group for example, describes SR as “enlightened self-interest”. In our view, many Australian companies have adopted SR for this reason.

The trouble with the bottom line or enlightened self-interest approach is that SR is not embedded in the way the organisation goes about its business. Wider social needs are soon forgotten when they conflict with profit or cost-cutting.

A company for example, that pollutes the environment in a developing country because it can get away with it, may suffer no reputational or share price damage if the pollution remains undetected. But it may act with “enlightened self-interest” back in its country of origin and espouse strong SR views and implement strategic SR initiatives.

- **Values-Based** – Ultimately SR rests on corporate values. SR should inform every decision made by the organisation. And in some cases, taking a wider view of potential choices may mean that a less profitable course of action is taken. In CFA’s view there are only a couple of companies in Australia that have embraced SR in a meaningful and authentic way.

As set out in Section 2, CFA’s position is that all organisations should have regard for the broader community when making decisions. The interests of the community should be equal to those of shareholders.

If companies are serious about SR, then SR principles must permeate everything they do. Board papers, for example, would not just include a heading such as “risk management” or “financial impact” to assist in decision-making, but also explicitly consider the ramifications of a decision on the community, the environment and specific interest groups.

In practice the majority of large corporations in Australia address SR as “enlightened self-interest” taking a bottom-line focus. Some of their SR programs might benefit the community, but SR is not accepted as core to the business. For example, donations to various charities or support of certain events are good things per se, but they do not necessarily reflect a strong commitment by the entities concerned to SR.

SR requires organisations to act ethically and fairly in all their dealings. It is much more than making an annual donation to a charity, or the odd involvement of staff in a charitable program.

Notwithstanding our general scepticism about SR in Australia, there are some organisations that are demonstrating some commitment to more than just self-interest, at least in parts of the business. Examples include:

- Research commissioned by the ANZ Bank into financial literacy and later financial exclusion. This research was ground-breaking in Australia. ANZ’s MoneyMinded program, a consumer education initiative, has also been well received. ANZ is also trialing a saving product designed for low income earners – the Savers Plus program, and has begun research into micro-finance issues;
- The National Australia Bank has a “step up” loan, a pilot program to make small loans to consumers;
- AAMI’s consumer charter was the first effective charter of its kind in Australia. AAMI is also funding some research into the needs of low income consumers for insurance products;
- Insurance Australia Group is involved in crime prevention programs.

We do not think that corporations will adequately address their obligations to the community unless they are explicitly required to assess all of their decisions against a social responsibility yardstick.

### 3.2. The Legal Framework for SR

This section addresses the following Terms of Reference:

- 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.
- 

It is important in this debate to understand the history of the corporation. This is because some of the people arguing against the concept of companies having a social responsibility do not understand why the corporation structure emerged in the first place. When placed in its proper, historical context, it can be argued that obligations toward the broader community actually underpin the “company”.

The first “corporations” were set up by government for the public good.

Incorporation of business enterprises began in England during the Elizabethan era ... This was an age that gave overriding regulatory powers to the state, which sought to ensure that business activity was consonant with current mercantilist conceptions of national prosperity. Thus, the first joint-stock companies, while financed with private capital, were created by public charters setting down in detail the activities in which the enterprises might operate<sup>1</sup>.

Citizens later became disillusioned with the way in which some of these enterprises were operating. One famous example is the South Sea Company in England set up in 1720, a scheme that converted war debt to equity. The “south sea bubble” as it became known saw the ruin of many investors.

The early history of the corporation is summarised in the two extracts below:

“The early corporation was a child of the state, and can be considered as an extension of its narrow mercantile interests, and, as such, it enjoyed monopoly privileges. Eventually this gave rise to state abuse of the corporation to extract wealth from its citizens. Consequently, the corporation evoked political and

---

<sup>1</sup> Encyclopedia Britannica, Historical Background of the Limited Liability Company

legal hostility that hindered its development. Once the corporation became associated with competition, companies gained freedom to incorporate.”<sup>2</sup>

“The limited-liability company, or corporation, is a relatively recent innovation. Only since the mid-19th century have incorporated businesses risen to ascendancy over other modes of ownership<sup>3</sup>.”

The modern corporate era needs to be seen within this evolving context. The concepts of “limited liability” and the separate personality of the corporation, developed in order to further the needs of the state and broader community. We seem to have forgotten this history, so that organisations are now seen as only having obligations to their shareholders. This view shows a fundamental misunderstanding of why organisations exist.

The current law however does not reflect this history, nor indeed community expectations as to how the corporation should behave.

In the view of CFA, the Corporations Act requires amendment to allow Directors and others in a corporation, to explicitly take into account a broader range of factors other than the bottom line in their decision-making. These factors would include social, environmental, human rights or employee concerns.

### **3.3. Other Mechanisms for Encouraging Social Responsibility**

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

---

Public opinion and changing social mores are the strongest drivers of change in this area. For example, the Prime Minister John Howard, supports SR:

While I am concerned to deepen the quality of our community life, I fully understand the pressures on business in highly competitive environments to achieve an appropriate return on capital invested. Because of this I believe that a case for corporate social responsibility can be made which satisfactorily accommodates all strands of the corporate philosophical position.

I do not seek to draw distinctions which separate one opinion of corporate social responsibility from another but rather to find common ground in the view that business can do well by doing good.

---

<sup>2</sup> Hickson, C.R & J.D. Turner “Corporation or Limited Liability Compnay”, Entry in Encyclopedia of World Trade since 1450, Editors: John J. McCusker, Stanley Engerman, Lewis R. Fischer, David J. Hancock, Kenneth, L. Pomeranz, New York: Macmillan Reference, 2005.

<sup>3</sup> Encyclopedia Britannica, Historical Background of the Limited Liability Company

Being a good corporate citizen, building trust, engaging with and supporting communities can add value to the bottom line in a variety of ways<sup>4</sup>.

Similarly the Reputex ratings of triple bottom line company performance are increasingly driving a greater acceptance of SR<sup>5</sup>.

In our view, our politicians and community leaders are simply recognising what the community is saying – we want our companies to act ethically.

In some circumstances, voluntary Codes of Practice are also mechanisms for corporations to exercise their social responsibility. Examples include the Code of Banking Practice and the Insurance Code of Practice. Both Codes set out obligations on Code members that go far beyond what the law requires. However, these Codes are the exceptions, rather than the rule – in most industries, the pre-requisites for the adoption of an adequate Code do not exist<sup>6</sup>.

Our overriding view however is that voluntary mechanisms alone are not sufficient for the adoption of SR. As set out above, changes to the Corporations Law are required.

### **3.4. Reporting Requirements**

- f. The appropriateness of reporting requirements associated with these issues.

---

A number of companies voluntarily report on the triple bottom line, their social responsibility or their environmental performance. The CFA sometimes receives these reports and as one would expect, they can be of variable quality.

The voluntary Australian Standard on Corporate Social Responsibility (AS 8003) recommends that a corporate social responsibility program be subject to “some form of independent third party verification”<sup>7</sup>. The Standard did not go as far as recommending an independent audit.

The most well known sustainability reporting format is that of the Global Reporting Initiative (GRI) available at [www.globalreporting.org](http://www.globalreporting.org) This is a comprehensive set of indicators and descriptions.

---

<sup>4</sup> Howard, The Hon. John, “The 1999 Corporate Public Affairs Oration” presented to the Center for Corporate Public Affairs, 26/3/99

<sup>5</sup> [www.reputex.com.au](http://www.reputex.com.au)

<sup>6</sup> See for example ASIC Policy Statement 183 on Codes and the Taskforce on Industry Self-Regulation, 1999. In our view, Codes may work where: there is a strong industry association, strong support for the Code by industry members, few players in the Industry, reputational issues, effective enforcement and a willingness to go beyond the law.

<sup>7</sup> Section 5.3.3 and 5.3.7



It would seem attractive on the surface, to recommend that organisations prepare audited SR statements, possibly using the GRI format. However, we think at this point in Australia, it is preferable for the current arrangements to continue. Corporations are still adapting and improving their reporting formats. We expect that SR will continue to gain acceptance within Australia and as such, reports will improve.

A prescriptive approach to reporting may not add much value.

Standards Australia might be able to provide some guidance in this area at a later date.

### **3.5. Other Jurisdictions – What Can we Adapt?**

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

---

SR is clearly far better understood and followed in Europe than in Australia. However, our organisation does not have sufficient resources to undertake any research in this area. It would be helpful if the Inquiry was able to put some resources into this, as it may shed a great deal of light on the debate in Australia.