



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL
SERVICES

Reference: Corporate responsibility

THURSDAY, 23 FEBRUARY 2006

MELBOURNE

BY AUTHORITY OF THE PARLIAMENT

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **<http://www.aph.gov.au/hansard>**

To search the parliamentary database, go to:
<http://parlinfoweb.aph.gov.au>

**JOINT STATUTORY COMMITTEE ON
CORPORATIONS AND FINANCIAL SERVICES**

Thursday, 23 February 2006

Members: Senator Chapman (*Chairman*), Ms Burke (*Deputy Chair*), Senators Brandis, Murray, Sherry and Wong and Mr Baker, Mr Bartlett, Mr Bowen and Mr McArthur

Members in attendance: Senators Brandis, Chapman, Murray, Sherry and Wong and Ms Burke and Mr Bowen

Terms of reference for the inquiry:

To inquire into and report on:

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 Act.

WITNESSES

ANDERSON, Ms Gina Nancy McGregor, Chief Executive Officer, Philanthropy Australia	106
APPLE, Mr Nixon, Industry Investment and Policy Adviser, Australian Council of Trade Unions	32
BENNETT, Mr James, Policy and Research Officer, Finance Sector Union	32
BOWTELL, Ms Catherine, Industrial Officer, Australian Council of Trade Unions.....	32
COHN, Mr Philip Robert, Associate Director, Research, RepuTex Australia Pacific Pty Ltd	20
COUGHLIN, Mr Mark, National President, CPA Australia	75
EDWARDS, Ms Leanne, Senior Analyst, Business Council of Australia	89
ESLAVA, Mr Luis, Corporate Social Responsibility Adviser, Australian Council of Trade Unions.....	32
FAST, Mr John, Chief Legal Counsel and Head of External Affairs, BHP Billiton.....	44
GOSMAN, Mr Alex, Director, Government and Corporate Affairs, GlaxoSmithKline	44
LEE, Mr Graeme John, Chairman, RepuTex Australia Pacific Pty Ltd.....	20
MASSON, Mr Rod, Manager, Policy and Communications, Finance Sector Union	32
McDONALD, Mr Alex James, Senior Corporate Adviser, The Adidem Group, The Body Shop.....	2
MORAN, Mr Michael James, Research Analyst, RepuTex Australia Pacific Pty Ltd.....	20
MUNCHENBERG, Mr Steven, Deputy Chief Executive, Business Council of Australia	89
PURCELL, Mr John, Policy Adviser, CPA Australia.....	75
SIMPSON, Mr John, Director, External Affairs, Shell Australia Ltd	44
TATE, Ms Alison, International Officer, Australian Council of Trade Unions	32
VAN DER LEEST, Ms Amanda, Organisational Development Adviser, The Adidem Group, The Body Shop	2
WALLACE, Ms Louisa, General Manager, People and Performance, The Body Shop	2
WOLTHUIZEN, Ms Catherine Nicloe, Chair, Consumers Federation of Australia.....	63

Committee met at 9.10 am

CHAIRMAN (Senator Chapman)—Welcome to the public hearing of the Joint Committee on Corporations and Financial Services and its inquiry into corporate responsibility and relevant related matters. This is the third public hearing of the committee on this matter. Further hearings will be held here tomorrow and in Sydney next month, and possibly other hearings beyond that. The committee expresses its gratitude to the contributors to this inquiry, including those who will be appearing before us as witnesses today. Before we start taking evidence, may I reinforce for the record that all witnesses appearing before the committee are protected by parliamentary privilege with respect to evidence provided. Parliamentary privilege refers to the special rights and immunities attached to the parliament or its members and others necessary for the discharge of parliamentary functions without obstruction or fear of prosecution. Any act by any person that operates to the disadvantage of a witness on account of any evidence given by him or her before the parliament or any of its committees is treated as a breach of privilege. Unless I state otherwise, this is a public hearing, unless the witness requests and the committee decides to go in camera. Other than that, members of the public are welcome to attend.

[9.11 am]

McDONALD, Mr Alex James, Senior Corporate Adviser, The Adidem Group, The Body Shop

VAN DER LEEST, Ms Amanda, Organisational Development Adviser, The Adidem Group, The Body Shop

WALLACE, Ms Louisa, General Manager, People and Performance, The Body Shop

CHAIRMAN—Welcome. I invite you to make an opening statement, at the conclusion of which I am sure we will have some questions.

Mr McDonald—Thank you for allowing us to come here today. We are definitely pleased to be here. We are also definite novices at being before a parliamentary committee. We are excited to be here today, not just at being able to talk about corporate social responsibility but about being able to be part of a parliamentary process that contributes to our community. I want to go through who the Body Shop is, what we believe corporate social responsibility is and recap on some of our recommendations and why we made the recommendations we did.

Most people know the Body Shop here in Australia. It is an organisation with a long-held belief that economic success is not the only indicator of business success. The Body Shop is part of the Adidem Group. We operate not only Body Shop stores in Australia but also a chain of retail stores called Accessorise plus a restaurant, if you are ever in Melbourne, called Manchester Lane—it has good jazz.

The Body Shop is a manufacturer and retailer of personal care products. For the purposes of this inquiry, please consider that the names of the Adidem Group and the Body Shop are interchangeable. The Adidem Group is a privately owned company, which is an important point when considering the ability to balance shareholder and stakeholder interests. This is often overlooked. It is operated in Australia, and has been the Australian franchisee of the Body Shop International since 1983. Our Australian commitment is to three equally important company goals—economic success, stakeholder fulfilment, and positive social and environmental change. The interconnectedness of the three company goals forms our company logo and illustrates our commitment to those goals. We believe that it is necessary to focus on these outcomes as interlinked, symbiotic factors, all of which impact upon each other. The communities in which we operate are our stakeholders and we need their acceptance to be viable long term. As Don Argus pointed out a number of years ago, there needs to be both a legal licence and a social licence to operate.

We believe that a desire to run a socially and environmentally responsible business is not mutually exclusive from the ability to make a profit, and I dare say actually adds to it in the long run. It is just a way of making organisations sustainable both economically and socially. Our business embeds its commitment to working on all three areas in totality and then everything flows from that. Importantly they are goals, not statements of achievement and we constantly seek ways to improve our performance.

In our submission we defined corporate responsibility as being about a moral dimension to the way business is done, of doing the right thing, not just by shareholders but by all stakeholders. It is about a business morality that requires an interactive relationship with the community which positions people, not commodities, at its heart. Primarily it is about building strategic partnerships between business and society in order for innovative solutions to local and regional issues so that both parties prosper.

The focus is not just about improved economics; there is an increasing awareness of the need for business, community and government to work out new ways of working together. We believe that the main challenge of corporate social responsibility is how business, government and society can work more closely together for the long-term social and economic gain of all parties. Corporate social responsibility can complement government and community roles in providing social support and it can offer new perspectives to addressing social issues. Social environmental problems are far too big for any one sector to solve.

As we see it, there is much debate around present welfare dependency, and the negative impact of this on communities, and on long-term unemployed families and individuals. Indeed, we have been part of the debate in Cape York with Westpac and Boston Consulting Group as well as Indigenous development corporations. We know that as a community we need to constantly ask: is this the best we can do? Is there a better way? But most importantly: whose role is it to take risks and develop brave new models and paradigms for social change and developments? Is it the government's role, who must constantly view efforts through a prism of voter acceptability? Is it the welfare sector's role, who must view all ideas in the light of funding restrictions in already underfunded and overstretched support programs? Or is it the corporate sector, who must consider all activities currently within the borders of a shareholder responsibility and corporate regulation? I do not know for certain who owns the task but we must keep striving for new answers and constantly evolve new ways of supporting those in need in our society and community in general or we face the real prospect of further social isolation of individuals, and community and social unrest.

Overall, we believe there is no one agency who will achieve the creation of new support programs. We believe that it is in corporate social responsibility that the real benefits flow to communities, and it is important to consider how the corporate community can best be encouraged to go further and support new and continued investment. The key is to ask: how can we encourage further corporate social responsibility and engagement with the community? The philosophy of our privately owned organisation has allowed the Adidem Group to take social development risks and to make these commitments to the community. This is indeed a unique process within Australia. There are a few other privately held companies who are able to likewise do the same thing. But how do we make it easy for all companies, public and private, to do the same? We believe that there is a powerful role for government to create an enabling environment both through legislative change or new innovations to give corporations permission to take risks to grow our community.

Currently, research and development programs and taxation developments and concessions exist that seek to encourage investment by corporate Australia in the development of new technologies, new process innovations, investments in medicine, bioengineering et cetera. We believe that strong consideration should be given to developing or extending the taxation regime with concessions that will encourage investment and research into the development of projects to

strengthen our community. We believe that there are enormous financial and social pay-offs in being able to do something like that. Further, this may encourage business to be more willing to act on the ideas that represent thinking outside the square and provide benefit to the community in a measurable and sustainable way. We believe that it is with enabling strategies such as this that opportunities will be maximised.

CHAIRMAN—Thanks very much. In your submission you state that you have three equally important company goals: economic success, stakeholder fulfilment and positive social and environmental change. Has the company ever found itself in a situation where there is a conflict between one or other of those goals and it has had to make a choice and, if so, how does it manage that conflict?

Mr McDonald—We have. It is really quite difficult, and there is conflict at a number of levels. We did a major national campaign on reconciliation, which people may remember. We decided that, for a four-week period, we would devote our stores to promoting the idea of reconciliation within Australia. That did create some conflict internally and externally. To be honest, we had staff who pushed back very strongly against that and said: ‘I don’t want to be part of this. I have my notions about Indigenous Australia,’ et cetera. We had to put in place internally a very large training program. I am happy to say that 99 per cent of our staff were actively engaged and very positive about that program.

The same thing happened within the community. We got push-back from the community. People rang up and said: ‘You know, this isn’t something that I thought you guys would be involved in. We don’t agree with you.’ At the end of the program, however, we felt that there was a much greater awareness in the community. Reconciliation was embraced by Australians all over. We were pleased to be part of that, our staff were pleased to be part of that and, in general, our customers were pleased to be part of that. Our responses from the community in general were pretty good. I do not know whether that answers your question, but conflict does occur across a whole range of levels.

CHAIRMAN—In your submission, you talk about embedding a commitment to social and environment responsibility in the company. How have you gone about achieving that?

Ms Wallace—Perhaps the most important thing is to be clear about the essence of the organisation. It is important to understand that each of those three company goals has equal importance and we make it very clear through the recruitment process, when they come on board and when we induct them. We have well-resourced training programs that all staff must attend. The commitment to the three goals—financial success not being the only one—is talked about and referred to constantly. So that is how you embed it.

In our job descriptions there is a requirement that staff do 16 hours of community work a year, and people are performance managed accordingly. We run reports to measure that actively, not so that we can counsel people if they do not do it but, as you have pointed out quite correctly, so it is embedded in the organisation. It is not something that we hang out there and say that it would be lovely if people did it. We require it to be done and we say it up front as part of the contract of employment.

CHAIRMAN—Leading on from that: is executive and management remuneration linked to corporate responsibility targets in any way?

Ms Wallace—In terms of performance management and expectations, yes. As an organisation we are rather unique in that we do not have performance targets against which people are remunerated. It is more an expectation of how we operate in society. For instance, we are not going to monetarily reward people for ensuring that their team does community projects—it is just an expectation because it is the right thing to do.

CHAIRMAN—I notice in your submission a reference to your projects in Fiji and Samoa. They cost the company about \$10,000 per annum. Does that mean the staff actually volunteer some of their leave time to undertake the projects?

Mr McDonald—No, they go out as staff members.

CHAIRMAN—So you are not taking their salaries into account in that \$10,000?

Mr McDonald—No, we are not taking their salaries into account. We donate them. The interesting thing is that it may be seen that this does not bring a large benefit to the organisation; however, it does benefit our employment brand as a retailer. People may understand that retail is a very difficult environment to get good staff, but our employment brand as a retailer is enhanced significantly by the fact that people can achieve as individuals in their job. This allows us to attract high-quality applicants to what is at times a very difficult job.

CHAIRMAN—Have you done any cost-benefit analysis of your commitment to corporate responsibility?

Mr McDonald—No.

Ms Wallace—Mainly because it is the right thing to do, and it comes through in our submission. We are very fortunate that we have a philosophy at the executive level that reinforces that and allows it to happen. I guess internally we have enabling strategies that are very firm and very fixed. We wish that more organisations had the courage to do that too.

CHAIRMAN—Do you believe that the current Corporations Law is sufficiently permissive as far as directors' duties are concerned to allow directors to take account of stakeholders other than shareholders? Some argue that it is. Some—as in the case of James Hardie—argue that it is too narrow and directors should only be taking account of shareholders' interests.

Mr McDonald—I am sure you have heard both sides of the equation, and it is one that we debate all the time as well. The directors' duties and the Corporations Law do provide a framework in which people have to operate. We need that framework. However, I often find myself debating whether, if we took, say, an accrual-accounting type scenario—we do not accrual account for social impact and environmental impact within the financial statements—there would not be so much to distribute to the shareholders. It is always a debate, saying, 'Let's maximise shareholder value and then the shareholder can decide what they want to do with that money.' If you have James Hardie shares, you may choose to donate to victims of asbestosis or

whatever. If you have RZT shares in the copper mine in Bougainville, maybe you can put some of that money back into Bougainville. Maybe that is the right of the shareholder.

The directors' responsibility is to maximise the return to the shareholder. But then again, the shareholder does not see the social impact. You are not privy to what the company does and the impacts of that. You are divorced from that. If there was more openness about what the social impacts are of companies then maybe we should be saying, 'We accrual account for them in a financial sense before distributing money to the shareholder.' It is a difficult question. I am the director of some companies myself and I understand the obligations there. I also know that the shareholders do not have all the information; nor will they ever because your operations may be in an area where the shareholder does not see, and will never see, the social impact.

Senator BRANDIS—It is not for directors to take a paternalistic view of what shareholders should and should not know, is it?

Mr McDonald—No, I would agree with that. But there is so much information. How does the shareholder get hold of that? If you are operating a mine in Cannington and your shareholder is in Bunbury, words do not convey the impact that your operation may have—both social and environmental—in that region. The shareholder may not understand the skewing of the economic power in that area or the environmental impact very easily. It is very difficult to get that information across.

Senator WONG—As I understood what you were saying, there is information that directors may have that shareholders simply do not have access to.

Mr McDonald—Yes and, not being paternalistic, there is just so much information. How do you convey that? Particularly in a rather large organisation, say like Origin Energy, where they have upstream and downstream operations, how do you get all of that across to the shareholder and say: 'Do you realise the impact we are creating? We do some social good because we provide gas'—or whatever. There are some other things, like you do not know that the people in the Maranoa region are really upset about gas pipelines because they cannot get their cattle through the area or whatever. How are you going to convey that to a shareholder?

Senator BRANDIS—What is socially good or socially harmful is always going to be a contestable proposition. What some people will find socially harmful other people may find socially beneficial. So why is it for the directors to sit in judgment? Why is it not merely for the directors to ensure that their company operates according to the law, including, if you like, the environmental standards set by the various levels of government, allowing the shareholders the sovereign right to make their decisions about whether or not that is a good investment? If they want to agitate the matter, they can take it up at the general meeting.

Mr McDonald—I think that is the proposition that is contained in directors' duties of responsibility. I do not have the concrete answer to that, other than to say that directors are closer to the information and can deal with it, or have the opportunity, but the shareholder may not. Also, shareholders may be such minor shareholders that they really do not have any power to do much.

Senator BRANDIS—Yours is a private company, so that consideration does not really apply so much in your case, does it?

Mr McDonald—Yes, and that is what I was trying to highlight. Private companies do have the ability that public companies do not. In Australia 40 or 50 years ago there were many more privately held companies, so there was more community good, if you like. But that has been phased out. Public companies are owned by public companies. More than half the shares in a public company will be owned by, say, AMP or other public companies. So it just goes on down the line. You are easily able to pass the buck, because maybe it is that group, maybe it is another group. And each one uses the Corporations Act to say, ‘I am just doing my duty.’ It is a cascade effect and the person with the shares may not know where the money is invested. AMP shareholders—I am one—may ask: ‘Where does AMP invest my money? How can I tell the social impact of my shares?’ If I have got shares in goldmining in Brazil, how can I know whether that is doing enormous social damage? How can I get that information? I will never know that.

Senator BRANDIS—Come back to my question, then, Mr McDonald: how do you know it does enormous social damage in Brazil? According to some people’s opinions, it might do environmental damage. It might also create employment opportunities and training opportunities that were not there. So these propositions about what is harmful or beneficial are contestable propositions.

Mr McDonald—I totally agree. Are we having those debates? Do boardrooms have those debates? Which side of the ledger do they fall on? I do not know. But I would suggest that there would be less time devoted to that than to the financials. Maybe it is giving permission to corporates to say, ‘It is okay to have that debate.’

Senator BRANDIS—Do you know? Have you ever sat on a board?

Mr McDonald—Yes, I have.

Senator BRANDIS—A board of a company that has made decisions of that magnitude?

Mr McDonald—Not of that magnitude.

Senator BRANDIS—Well, how do you know?

Mr McDonald—I can give a good example of a debate I was involved in that had large social consequences. It is to do with The Body Shop International in the UK. We were buying a particular oil from the Solomon Islands called ngali nut oil—which, interestingly, somebody from the US has taken a patent over—and we decided we would set a price that was above the market rate because we did not want to rip off the people who grew or manufactured or used the oil, because it was important. And we create jobs by this. So we started to buy the oil, which was great. The trouble was that we did not see the social impact, how things can really change. Because we were paying a price that was higher than we needed to pay, people were starting to sell it to us and not using it as a food for the local village. So young people were missing out on a staple food within their village. We had skewed the economic geography of the ngali nut market inadvertently by trying to do the right thing. We had a large debate, which I was part of,

asking: how do you change it and what is our responsibility? Are we creating jobs for one group, who said, 'We want you to continue, because this is a job and we are getting hard currency'? The villagers were getting no currency at all, because it was a tradable good, but not for cash, not in the cash economy. We fell on the side of backing down to the market in such a way as to minimise the damage on jobs. It was a really difficult debate to have.

Senator BRANDIS—I think you are making my point better than I could make it, Mr McDonald: when businesses whose principal focus—not coequal with any other thing, I would maintain—ought to be commercial start to engage in arguments about externalities, they risk doing more harm than good.

Mr McDonald—We backed out because of the social impact, not the financial impact. We could have made a lot of money; that was not the problem. There was no doubt that we wanted the work; it would have been great. We backed out because of the social impact.

Senator MURRAY—According to that proposition, we should bring back the slave trade.

Senator BRANDIS—That is not right, Senator Murray. That is a silly thing to say. Slavery is against the law.

Senator MURRAY—But the original proposition was that slavery was good for business.

Senator BRANDIS—That is not my proposition. My proposition is that businesses ought to observe the law.

Senator MURRAY—I am not suggesting that is your proposition. However, if you take your proposition too far, that is where you end up.

Senator BRANDIS—No, you misunderstand.

CHAIRMAN—Following up this particular issue that Senator Brandis has raised, can I just ask: had you simply paid them the going market rate in that situation, would you have avoided the social problems that arose? You got into trouble by—

Mr McDonald—Trying to do the right thing, yes.

CHAIRMAN—in your view, trying to do the right thing, rather than simply to leave it to the market, which may have benefited you and not caused social disruption.

Mr McDonald—We gave that a bit of consideration. If at first we had entered, it may have worked, but we may not have got enough supply to make the trade worth while. There are many factors in that, but it was very healthy for people to debate it. My point is that I think people liked to debate that. We are all human beings, whether or not we are on boards, and I think people like to know that they are doing the right thing. But, if it is not allowed to come into the boardroom, people do the wrong thing inadvertently. We should be debating those things, in my opinion.

Senator WONG—I will not get into the argument that Senator Brandis is putting to you, but it is interesting to look at what some people determine as an externality and who draws the line there. I would assume that there are occasions when it is quite easy to ascertain environmental costs, environmental degradation and, arguably, even some of the social impact from what you do and I presume you must have some process for doing that.

Just to get us focused back on the inquiry's terms of reference, the Body Shop is a rather different business model to probably most of the companies that we would see. Not only do you have your private structure but more particularly your business model and ethics clearly are ingrained in the company from the ground up. What is it that we can take from your experience to a more macro-level? Most companies do not come to the table with the same type of approach to business. As I think has been evidenced by the questions, people have a different view about this. What do you think government or the community can do to encourage this—and should they?

Ms Wallace—I think briefly—Alex might want to add to this—we have talked about government being the enabler, almost like allowing marriages of community groups and businesses to work in. As Graeme, our owner, often says, we are the business experts; we can provide a commercial skill base to a proposition and allow it to self-seed and to grow. We have a couple of examples. One is the *Big Issue*, which we helped to develop. Initially—Alex knows more of the detail of this than I do—we could not get funding, but we believed enough in the model to fund it ourselves. However, the aim was never to have them totally and forever dependent on us. These models have to become self-sustainable. After five years, this model became self-sustainable and it now operates on its own. We have been able to remove most of our management energy and focus on to other programs. To answer your question, it is the commercial skills that a business has that can be brought to the fore and really help the community.

Senator WONG—I guess my question was more a couple of steps back from that: what would you say to companies, which have a very different view, to encourage them perhaps to engage in greater social responsibility?

Ms van der Leest —In addition to what you are saying, I guess it gets back to how it is embedded in the company and it starts at a grassroots level. As you would have gathered, we are very much about the 'doing', and I think we have used that word quite frequently. It is about letting people at the coalface have voices about social responsibility and the types of things they would like to see us as a company doing. It is about listening to those voices in the company and of our customers—the types of feedback they give us. That is how we become embedded and then engage with the community on social responsibility issues.

Senator WONG—Do you think the approach the company takes has given you benefits in terms of staff retention and the attraction of good staff?

Mr McDonald—It most definitely does. We have a very high proportion of the people who work in our stores with some kind of higher education degree after high school. But the thing that I would really say in terms of what I would say to other companies is quite simple: corporate social responsibility and economic responsibility are not mutually exclusive. To our mind, we are successful in the long run and not in a short-term type of environment. If you want short-

term hits, you go and put ads on TV or radio or whatever. But a company that has a long-run economic success will be embedded within the community.

I work with a number of people on the boards of major institutions around Australia who are either on boards with me or on things like the *Big Issue*. They firmly see that and they are not able to drag their organisations along that way. It is really quite interesting. People do see that you can have both. I do not think that they are mutually exclusive at all. In fact, one builds upon the other. They are totally symbiotic. So what I would be saying to people is, 'You can have both.' Our recommendation was simply about tax office change. There may be others. We are not au fait enough with the corporate legislation to recommend this or that; however, if you create an enabling environment where company boards and organisation boards can actually invest in real change without damage to the shareholder, I think people will really go for it. I think organisations will really do it.

There are people on, as I said, boards of large organisations in this country who come to us all the time and who I work with who actually want to do good things but are prevented at present. They would love to have their organisations involved. Let just give them a way to do that legitimately without damage to the shareholder and you will get a lot bigger response from corporate Australia; I have no doubt about that. All the people on those boards are human beings too and they really want to do good by their community.

Ms BURKE—Just moving on from Senator Wong's question about staff retention, hasn't your approach also generated customers and business to you?

Mr McDonald—Yes.

Ms BURKE—The actual approach you are taking has been beneficial at the shopfront, and people come and buy from you because of the corporate stance you are taking. So, in a business sense, it has been exceptionally beneficial to you as well.

Mr McDonald—That is exactly right. But that is why I was talking about the long run; it does not happen overnight. You have to build an organisation, you have to build a reputation. You do not build a reputation in a day. You can destroy a reputation in a day, as we have seen people do, but you cannot build one in a day. You have a long time to do that. A way to build a reputation is to really be there for your community, for your customer and for your shareholder. It just does not happen overnight. There is no short-termism in it, to our mind.

Senator MURRAY—Mr McDonald, I was being a little provocative earlier. Isn't Senator Brandis exactly right: the law prevents you being an economic, social or environmental ratbag and, if you want to be a good corporate citizen, there is nothing in law or business practice which prevents you being so? So isn't it true that there are businesses which make it a positive virtue, which you are expressing to us today, and there are also businesses which do not do things which are bad for their business? Let me give you an example. If you are an alcohol company, you are engaged in trying to minimise the negative effects of alcohol because it is bad for your business if you are not. If you are a car company, you are engaged in road safety issues because it is bad for your business if you are not—and so on and so forth. Whilst there are exceptions to this, is there any real need for governments to do more than facilitate a climate of good corporate behaviour? Is there much need for legislative or regulatory change?

Mr McDonald—From my mind, no. I do not think we need to change legislation, but we do need to encourage people. As I tried to say up front, corporations will come in and they will support road safety or an anti-alcohol message or responsible drinking or whatever because it is important for their business that they do not get a bad reputation. I think that is true and good.

Senator BRANDIS—And because also that is an intrinsically good thing to do.

Mr McDonald—And because it is an intrinsically good thing to do.

Senator BRANDIS—But, unlike some other areas of policy, the three examples that you have just given are, to use my word, really ‘contestable’. Everybody would agree that those are intrinsically desirable social objectives.

Mr McDonald—Yes. What we were trying to do in our submission was to say that there are some other things that are good to do but that are more risky. I will bring it back to the *Big Issue* and use it as an example. Are people familiar with the *Big Issue* magazine?

Ms BURKE—Yes.

Mr McDonald—The *Big Issue* magazine supports hundreds of homeless people in Australia. It gives them a reason to get up in the morning. It gives them a way of having interaction with the community that they otherwise would not have, and it provides an interface between homeless people and people legitimately in the street. They are not begging; they are actually offering something of value. It gives dignity to the relationship. The interesting thing about that was that corporations would not go near the *Big Issue* at the start because it was very risky, but we could see it as an enormous way to create social change within our community—a really good way to do it. But you would not get corporations involved in that because it does not fit neatly within anybody’s business model. It was intrinsically risky—would this model work?

It is now a self-sustaining business that government does not have to put into and corporates do not really have to put into. It creates jobs for homeless people, through homeless people, and it has done an enormous power of good in the community. But we could not get anybody engaged in that because it did not fit into ‘protecting our patch’ or being ‘good for the corporation’. But, if we had a mechanism whereby it really did not cost a corporation a lot of money—maybe it cost them some risk capital or some expertise—we could have got people involved. It is that sort of thing that we want to see happen within this country. How do we extend past where we already are with our welfare state? How do we create new models of change and how do we get an untapped corporate creativity into social change?

Senator MURRAY—But this comes back to the other question I wanted to ask you, because you three have direct experience in trying to ensure that values, which I think by your presentation you imply are not common in business models, are embedded in your own company. Some years ago I heard a major figure in social science in his retirement years saying that, when he began his professional life, he thought it was 30 per cent nature and 70 per cent nurture. By the time he had finished his career, he realised it was 70 per cent nature and 30 per cent nurture. That means that the values people bring when they arrive on your doorstep will actually be more determinant of their conduct and, therefore, if you have people arrive on your doorstep without an inclination towards your values you are going to find it difficult to change

that. So is it in the recruitment and the identification of the sorts of people you want to work for you that in fact you can create your success?

Ms Wallace—It is a little bit of both. In some respects, as I said earlier, you have got to know who you are as an organisation—I mean the essence, the personality and the DNA. The three company goals are what we stand for. Then your ad reflects that, your interview process reflects that and people can self-select. If they think we are some weird cult, they will look elsewhere. But, having said that, we humans have a lot of goodwill. Intrinsicly we are good people, generally speaking. Given the right environment anyone can contribute well. Alex's example of reconciliation was a good example. We actually said, 'We're going to support the campaign on Aboriginal reconciliation and really put out there to the community as much information as we can so that people can make up their own minds.' Initially our 1,100 staff were very nervous. They saw it as a tough political campaign that they were being asked to get involved with. But through the education process they began to see that we were not going to sway them one way or another—we were just going to provide them with facts. So that is a good example: just provide people with the right environment and you will see the best come out in them. To answer your question, it is a little bit of both.

Mr BOWEN—Sorry I am late. Could you expand on your submission's point about expanding the R&D tax concession to community work? I am interested to hear a bit more from you about how that might work. You deal with it briefly in your submission. Do you have any examples of things which you have done which might have been covered by that standard concession if it existed?

Mr McDonald—There is probably a number of things. For the sake of staying on a theme, I will use the *Big Issue* as an example. Because the organisation has only one shareholder and he can have a meeting in the rear-vision mirror of the car on the way to the airport, we are able to consult with our shareholders—

Senator BRANDIS—Can we just clarify that. The Australian operation of the Body Shop is wholly owned by one person or company?

Mr McDonald—A person here in Melbourne. That is interesting. The Body Shop is actually an Australian company here in this country.

CHAIRMAN—Is that a franchise from a parent?

Mr McDonald—Yes. We own the rights to Australia. We own other brands as well in Australia, namely Accessorize. That shareholder was able to say, 'The company will, because it is part of our DNA, really bring this idea of the *Big Issue* to the table and make it work and invest in that.' There was no incentive to do that other than that it was right to do it, we thought it would work et cetera. It was just a normal business cost. With the R&D tax concession, what we were trying to get at—and we do not know the R&D tax concessions that well—is: how do we have both things? How do we maximise shareholder value yet also give companies and boards the legitimate right to invest shareholder money in new welfare models and new ways of doing things in the community? How do we have both? I keep saying this: I did not think they are mutually exclusive. I want to make them better for both parties, so that boards can legitimately say: 'You know, we have a right to use some of our shareholder money to make a better

community. It pays off in the long run to the community anyway, but also we get some concession so that we can allay shareholders' fears that we are taking all their money and using it for a purpose. We are all in it together.' How does the government play a part in that? I thought maybe through the R&D tax concessions.

There are things like the *Big Issue*, where it was not simply a matter of giving money to St Vinnies or Mission Australia or anything like that. They were totally new things through which we could create an enormous financial gain for our community—like a new heart monitor, a new process for harvesting grain or whatever. They are real things that have real results for our community in a financial sense. The corporate community are as well placed to do those things as anybody else is. In fact, they are more so because they are out there in the communities. They see their impact. They think fast, they do fast, and that is what we want. It is about whether tax law is a lever that other people have not considered to create that enabling environment so everybody wins. As I said, I do not see it as an either or. It has to be both. I would imagine there would be myriad ways you could structure something like that. There could be an application process, where you would say, 'This is the idea; you may partner with a welfare organisation.' There would have to be certain parameters around any R&D program, but we have to start to consider social innovation as being as valuable as any other innovation in this country.

Mr BOWEN—So you would specifically target research? You would target not so much good works generally—

Mr McDonald—Not good works generally, no.

Mr BOWEN—but research that is catering for good works?

Mr McDonald—Yes.

Mr BOWEN—Presumably the money you spend on the *Big Issue* et cetera is a tax deduction as it is. But you are saying a bit more of an incentive—that is, 125 or 150 per cent—would be—

Mr McDonald—Yes.

Mr BOWEN—Do you see that as being more of a financial incentive or a signal to the market that this is a good thing? Realistically, how much of a benefit would it be? Or would it be more symbolic?

Mr McDonald—I think it is two things. Firstly, it is symbolic. It is giving people permission and saying, 'It's okay to think about that.' Social innovation and social change are legitimate concerns of everybody. It also enables the director of the board, or the board themselves, to say, 'You can spend shareholder money in R&D in this area and you can do the same in social areas.' It negates the shareholder backlash, if you like. It takes a middle ground that maybe is not there at the moment. It creates a meeting place where shareholders, companies and communities can get some piece of the action. It is an exercise in legitimacy. Using the tax regime may be only one answer to that. That is the ground I think the committee should be struggling for. How do we create enabling mechanisms for boards to meet their obligations in terms of Corporations Law and directors' responsibilities and duties as well as fulfil their human need to actually address the

social impacts of their business? They are there as well. Does that make sense? I hope I make sense.

Senator BRANDIS—It was not clear before but it is now that the Body Shop in Australia is basically owned by one person. I will not ask you the name of the person. That person is the owner of the holding company of the Adidem Group.

Mr McDonald—Yes.

Senator BRANDIS—So, when we talk about shareholder value and the interests of shareholders and so on, that is a bit artificial in the context of your enterprise because you are talking about a solely owned operation in which the profits all go into one pocket.

Mr McDonald—Yes.

Senator BRANDIS—So the holding company of the Adidem Group pays a franchise fee to the UK operation, which owns the intellectual property and the business goodwill, for the right to operate, to use the name and the goodwill and to conduct the Body Shop business. Is that right?

Mr McDonald—Yes.

Senator BRANDIS—After paying the franchise fee, all of the profit the Body Shop makes in Australia after costs is returned to that one person as dividends?

Mr McDonald—Yes.

Senator BRANDIS—How much does the Body Shop make in Australia? How much did it make last year?

Mr McDonald—This is one of those things—

Senator BRANDIS—Roughly.

Mr McDonald—Okay. After everything—sale-to-profit—probably between \$8 million and \$10 million.

Senator BRANDIS—This one person is earning from the Body Shop between \$8 million and \$10 million a year from its Australian operations.

Mr McDonald—Yes.

Senator BRANDIS—I do not want to be too cynical about this but I want to follow on from a point Ms Burke made—that this very ostentatious concern about the environment is a very good marketing tool for the Body Shop. It presents an attractive message to a particular demographic within the market, wouldn't you agree?

Mr McDonald—At times, yes.

Senator BRANDIS—I know from my own experience. I have a 13-year-old daughter who would not dream of going anywhere else. I was in your shop only last Sunday, in fact. It is very clear to me, and would be clear to most people who turn their mind to the question, that the advocacy of environmental and like causes is a very clever marketing strategy for the Body Shop, isn't it?

Mr McDonald—That would probably be where I would depart a bit.

Senator BRANDIS—You don't think it is? I think it is.

Mr McDonald—We have a marketing department that concentrates on marketing our products through magazines et cetera. I have to be honest and say that, at times, some of our campaigns do us financial damage.

Senator BRANDIS—I think you are ahead, aren't you, on balance?

Mr McDonald—We can certainly create more profit than we do. There is no doubt about that. We suffer and we gain in equal proportions sometimes. I was not joking about the reconciliation campaign when I said we had customers ring up and say: 'I will never shop with you again.' That regularly happens if we take a social and sometimes environmental stance.

Senator BRANDIS—Can I tell you that, from the consumers point of view, the Body Shop is trendy. It is attractive, its products are attractive and it is presented attractively, and the conspicuous concern for environmental issues is an extremely effective way into a particular demographic within the market.

Mr McDonald—It is not done for that purpose—

Senator BRANDIS—Oh, come on, Mr McDonald!

Mr McDonald—but I can understand that people do see it that way.

Senator BRANDIS—I find it hard to accept that it is not done for that purpose. I really do.

Mr McDonald—I will not argue with you. You can choose to accept it or not. The bottom line is we do it because we want to do it. When we did the *Big Issue*—I think the figures are on the table—we invested well over \$2 million in hard currency in that. That was never going to be a sexy issue for us. It was never going to bring us another customer.

Senator BRANDIS—It is part of the marketing profile, isn't it? Does the *Big Issue* contain advertising messages for the Body Shop?

Mr McDonald—No. The only thing that it does is that on the front page we have a supporters page and we are there, among other people from Origin Energy through to Australia Post et cetera. The Body Shop has never advertised in the *Big Issue* or any other magazine. We specifically ruled that. We said, 'We don't want people to draw that kind of parallel.' I know it is

hard for people to believe but we do these things because we actually believe them. We can maximise much more profit. I would say this: we can maximise profit in the short term by not doing the things we do. We will not maximise profit in the long term because we will become like any other shampoo company in this world.

Senator BRANDIS—But part of your appeal, it seems to me from the point of view of the market and from the point of view of, if I may say so, the youth market, is that you are seen to be pure, that you are not like any other shampoo company. A very idealistic person might say, ‘That’s wonderful’ and a very cynical person might say, ‘Isn’t that a clever marketing tactic.’ Perhaps the truth lies somewhere between those two propositions.

Ms Wallace—Perhaps it does and it gets back to what we were saying—you do good because it is the right thing to do and because it will have long-term benefits.

Senator BRANDIS—With regard to the shareholder who earns \$8 million to \$10 million in income each year from the Body Shop’s Australian operations, before that dividend is declared, does the Body Shop make donations to charities? We heard about the *Big Issue*, and you tell me that that is not an advertising tool for the Body Shop business. Fair enough, if that is the case. But, to be honest, I would be a little more reassured about the genuineness of your credentials to being a compassionate, socially aware enterprise if actual hard cash hit the tin of some real charities. I see that there is \$10,000 spent in the Solomon Islands. If it earns \$8 million to \$10 million a year, that is chicken feed. Does any other real cash hit the tin of charities?

Mr McDonald—I can speak to that quite easily.

Senator BRANDIS—Please tell us.

Mr McDonald—We used two examples in our submission. The bottom line is that we support a number of large mainstream institutions around Australia with significant cash donations. I do not want to go into it, but you would find the Body Shop—

Senator BRANDIS—Just a minute. When you say ‘we’, do you mean your staff, or do you mean—

Mr McDonald—Both.

Senator BRANDIS—What the staff do in a culture which encourages them to do so is good, but that is a matter for their discretion. I am interested in how much of the \$8 million to \$10 million profit that is made from this enterprise in Australia—not the income of the staff—finds its way to charities.

Mr McDonald—A significant amount.

Senator BRANDIS—Can you give me a rough estimate? These would be publicly available figures, wouldn’t they?

Mr McDonald—I just know I am using somebody’s personal giving.

Senator BRANDIS—It is not really personal giving. The shareholder takes advantage of company law to create a structure, as he is perfectly entitled to do, but one of the obligations that goes with taking advantage of that is the transparency of transactions according to the Corporations Law. Tell us how much the Body Shop as an enterprise gives to charity in Australia each year please.

Mr McDonald—We have a target within the organisation that we will give up to five per cent of all profit to charity. Further than that, the shareholder is also one of the more significant philanthropists in Australia. In fact, combined between what we do as an organisation and what that person does as an individual, you would find that they are probably one of the most philanthropic people in this country bar none.

Senator BRANDIS—Of the five per cent target for charitable donation that the company has set for itself, has that target ever been achieved, and what per cent was donated to charity let us say for the last reporting year?

Senator WONG—On a point of order: I question whether this is appropriate. These people are not on trial here. This company is not on trial. This is not Senate estimates. If this were a public company, clearly those things are publicly disclosed. I am not necessarily sure it is appropriate for this committee to be delving into the precise amounts that a private company donates. My respectful suggestion is that I fail to see where this takes us in terms of the terms of reference of the inquiry.

Senator BRANDIS—Further to the point of order, if it is relevant to ask what the target is for charitable donations, which was not objected to—and the answer was forthcoming: five per cent—

Senator WONG—I did not think that was appropriate either.

Senator BRANDIS—then it must be relevant to ask whether the target has been achieved.

Senator WONG—I do not think either of them are appropriate.

CHAIRMAN—I will rule on the point of order. I think it is quite in order for Senator Brandis to ask the question, but it is also quite in order for the witnesses to say, ‘Being a private company, this is confidential information,’ or respond and provide the information.

Mr McDonald—I will respond initially. Senator, I know where you are going. It is great you asking me the question. I really do find it difficult. If the person were here—and I am certain that if you wanted, I could give you his name—

Senator BRANDIS—No, I am not asking about the person, about the shareholder’s affairs. What I am asking is this: before the dividend is declared and the \$8 million to \$10 million is returned to the person’s wallet, how much does the company donate to charity? You have said the company has set itself a target of up to five per cent per annum, which is a fine target. I am not asking about the person’s affairs. I am asking what percentage of the company’s profit before the dividend is returned is donated to charity.

Mr McDonald—We regularly exceed our target. It depends on what may happen in a year—like if you have the Asian tsunami crisis we may exceed our target.

Senator BRANDIS—So sometimes the company has donated more than five per cent.

Mr McDonald—Oh God, yes.

Senator BRANDIS—And sometimes it has donated less.

Mr McDonald—Yes.

Senator BRANDIS—What would be, in an average year, your best guess?

Ms Van Der Leest—At the end of the day it is about the needs of the community. We have a target. But being in a private organisation and talking about corporate social responsibility and reacting, it is about the ability we have talked about to take risks. If a staff member in a shop drew a particular issue to hand that was going to cost a certain amount of money and Graeme thought that it was something that we should be engaged and involved in, then that would be looked at at that time.

Senator BRANDIS—That is a different measure. I understand that. But that is not what I am specifically asking about.

Ms Wallace—That is probably all we can say.

CHAIRMAN—I think we had better draw our questions to a close.

Senator BRANDIS—Can I ask one last question on a different topic? I want to put a hypothetical case to you. Let us say you had a young person employed in one of your stores, and that young person had views that were not particularly in conformity with the environmental values of the company. Let us say it was a Young Liberal—I know such people—

Mr McDonald—They are usually very environmentally conscious.

Senator BRANDIS—Some of them aren't. Let us say this person was against the ratification of the Kyoto protocol, saw nothing wrong with clubbing baby seals, and his political positions might be broadly described as right wing—very right wing. May I take it from what you have said that that person's career would not prosper?

Ms Wallace—Absolutely not. We are essentially a retail company. We have very clear ideas about the tasks that need to be performed in any given job. As I alluded to earlier, we are very clear about what we stand for, so our recruitment process stands any person in good stead for them to assess whether the job is right for them. At the end of the day, their core function is to work in a store, make customers feel fantastic and sell them what they need.

Senator BRANDIS—Okay. So you don't run a ruler over your employees' political opinions?

Ms Wallace—Heavens, no! Diversity is it.

CHAIRMAN—Mr McDonald, Ms Van Der Leest, Ms Wallace, thank you very much for your appearance before the committee. We have gone well over time, but I think that reflects the value of the interaction that we have had and the contribution you have made to our inquiry. So thank you very much.

Proceedings suspended from 10.14 am to 10.23 am

[10.23 am]

COHN, Mr Philip Robert, Associate Director, Research, RepuTex Australia Pacific Pty Ltd

LEE, Mr Graeme John, Chairman, RepuTex Australia Pacific Pty Ltd

MORAN, Mr Michael James, Research Analyst, RepuTex Australia Pacific Pty Ltd

CHAIRMAN—Welcome. This is a public hearing, but if at any time you wish to give evidence in private you may request the committee to move into an in camera session and we will consider such a request. I now invite you to make a brief, opening statement, at the conclusion of which we will move to questions.

Mr Lee—Thank you for the opportunity to allow RepuTex to meet with members of the joint committee to answer questions and have further discussion in relation to our submission. Firstly, I would like to apologise on behalf of our chief executive, Laurel Grossman, who is overseas on business at the moment and could not be here today, and our legal expert, who is the author of our submission, who is also away this week.

RepuTex is a private, independently owned company whose main focus is research and ratings relating to corporate social responsibility and reputation. We have been operating since the year 2000. In addition to those products, we have a number of associated services, one of which is training. Last year, we released the RepuTex socially responsible investment share price index, an index of 44 companies who achieved the required levels of corporate social responsibility. I would now like to hand over to Mr Cohn, who will give you a very brief overview, the key points, of our submission and then we will be happy to answer questions.

Mr Cohn—I thank you for the opportunity to present to the joint committee. I will very quickly summarise the key points and recommendations that were part of our submission. Firstly, we presented a definition of corporate social responsibility, which we believe is a slightly more holistic approach to CSR issues than is necessarily the mainstream understanding or interpretation of CSR. That tries to situate business operations in the broader social environmental setting of the current era in that we are faced in a resource constrained era where there is environmental degradation and serious social concerns such that issues of corporate sustainability and social responsibility go beyond traditional notions which are situated in corporate philanthropy or corporate social welfare, depending on how you would like to phrase that.

We see that CSR has been a critical bedrock of business operations in addressing issues such as corporate governance and the environmental and social impacts of workplace practices as a key to enhancing enterprise value and ensuring long-term shareholder value. For this reason, our submission has made the recommendation that there is no need to reform the Corporations Act but merely provide a safe harbour, so to speak, for company directors or officers who are engaging in corporate social responsibility activities or issues. However, we have argued the point that in the current setting in Australia, where self-regulation is the dominant paradigm, this more sophisticated or integrated notion of corporate social responsibility is not necessarily the

norm amongst a large proportion of companies and that triple bottom-line reporting is a mechanism which can drive enhanced performance in this area through driving corporate strategies towards addressing key risks and exposures and opportunities in essentially what could be termed 'non-traditional' or 'extra financial' areas.

As well as perhaps recommending work in the area of policy on triple bottom line reporting, we have also seen that government could enhance its position as a leader on these issues, firstly, by ensuring that its departments, authorities and agencies all meet accepted standards of corporate social responsibility and corporate sustainability and, secondly, that it can have an impact in the general market by requiring suppliers and those who are tendering for government business to address and achieve satisfactory standards of corporate social responsibility and performance. That concludes a very brief summary of our submission, so we will throw it across to the committee for questions.

CHAIRMAN—Can you give us some insight into your experience with large Australian corporations as regards the influence that institutional and retail investment interests have had in encouraging corporate responsibility or sustainable business practice, and do you expect that that will change over the years ahead?

Mr Lee—Firstly, Reputex assigns corporate social responsibility ratings to 100 listed Australian companies. We assign those ratings to the largest 100 companies according to the *Business Review Weekly* top 1,000 list. In terms of their position and their response to retail investors, I suppose we would say that corporate social responsibility is entering the corporate management paradigm from a large number of pressures, some of which Philip has already mentioned—probably not specifically from retail investors.

Mr Cohn—To date in the Australian setting, in terms of the ethical or SRI investment market, we are probably positioned behind, say, the North American or European markets, where a larger amount of capital is invested in ethical funds or SRI investment vehicles. But increasingly in Australia there is greater interest from fund managers in establishing these things as a result of increased consumer awareness and desire for those sorts of investment products.

CHAIRMAN—What is your view of the Chartered Secretaries of Australia proposal for a replaceable rule situation to be introduced to the effect that a clause could be inserted in a company constitution to permit directors to take account of the interests of stakeholders other than shareholders for any purpose that the board sees fit?

Mr Lee—I do not think any of us present today have considered that sort of proposal. If you like, we will take that on notice and come back to you with a response.

CHAIRMAN—Okay. Judging from your submission you generally regard the current Corporations Law as adequate in terms of directors' duties and responsibilities.

Mr Lee—We view corporate responsibility as something that companies should be doing because it is good for business, good for developing enterprise value and reputation and good for shareholders in the long term. To the extent that it can give a company a competitive advantage to bring new customers to the organisation, it can also add to short-term profitability. We would see the main factors in corporate social responsibility—which we have defined as good

governance, good workplace practices and having a positive social and environmental impact—as being good things for business that all companies should be doing and being in the best interest of shareholders. We do not see any real need for change.

CHAIRMAN—I do not have details, but three academics in the UK recently did a report which showed that those companies that ranked lowest in corporate responsibility measures ranked on average I think 24 per cent higher than those that ranked highest in their returns to shareholders. I am wondering what your view is of that outcome.

Mr Lee—I think that gets back partly to the various pressures and issues in the market and who companies are responding to. To a large degree it probably comes down to maximising short-term profits compared to long-term corporate sustainability and enterprise value. I suppose that is the crux of this issue—that if companies are purely out to maximise short-term profits they may never jump on board a lot of corporate social responsibility platforms.

Senator WONG—From your experience dealing with companies and compiling the index, are you able to tell us broadly which sectors you think most constructively manage their social and environmental impacts?

Mr Cohn—It is a little bit counter-intuitive, in that the sectors that would be traditionally thought of as having the highest impact—for example, the mining and minerals sectors and the banking sector—are those that have either willingly or been forced to engage most constructively with a range of these issues. That is not to say that they are necessarily negating their social and environmental impacts, but they have implemented the most sophisticated management systems to address occupational health and safety risks or environmental management systems. The need to address those issues has been thrust upon those industries.

Senator WONG—I think we are aware of that just in the short time we have been conducting the inquiry. Ten or 15 years ago, those sectors might have been identified as problematic. They may not be doing what everyone wants them to do, but I think it has become a commercial imperative for them. Which sectors do you think are having the most difficulty or are being the slowest to respond?

Mr Lee—Politics.

Senator WONG—Apart from parliament. Parliament is always the slowest thing to change.

Mr Cohn—Outside of parliament, I would say those sectors that do not view these issues as being immediately relevant to their operations. It would be the lower impact industries—perhaps even media, health care and those industries which are traditionally viewed as lower impact industries. A media company, for example, might not necessarily see the immediate relevance of environmental risk. That is not to say that globally there are not progressive media companies that are addressing CSR issues. But I would say, from a general point of view, that the industries that are the least engaged in substantive CSR management and CSR issues are those that come from sectors that would be traditionally defined as lower impact.

Senator WONG—What falls within ‘lower impact’? Media and health care are the two you have mentioned so far.

Mr Moran—Some technology companies that are primarily engaged in consulting.

Mr Cohn—And business services.

Mr Lee—From the point of view of the companies that are really taking the CSR issue to heart, I think the financial institutions sector—particularly our major banks—have become leaders. In work we have done we have also found that some companies that have large workforces are very high in workplace practices but they might score low in other areas. Often it is also the structure of a company. We assess companies according to four major categories, and you do not find many companies that are strong across all four. Some might be very good at workplace but they ignore environment. Mining companies put a lot of focus on environment because they know it is a potential high-risk exposure area.

Senator WONG—I was interested in the clear way in which you articulated CSR as more of a risk management approach rather than philanthropic. Can we turn now to mechanisms. I am not really clear from your submission whether you are suggesting that mandatory reporting is a good or a bad thing. There seems to be a bit of a discussion about different experiences with France and the UK. I do not know if you want to comment on that.

Mr Cohn—The thrust of our argument was that mandatory triple bottom-line reporting is an effective policy alternative to drive enhanced performance. We see increased disclosure requirements and transparency as a mechanism to encourage companies to engage in a more substantive fashion in these areas. I think at the moment there is a large degree of disparity between the different sorts of sustainability or social responsibility or triple bottom-line reports that are produced. Some focus almost exclusively on charitable donations or philanthropic activities engaged in by the companies, whereas others engage in detailed reporting of material substantive risks and impacts that are relevant to the company. Obviously, the Global Reporting Initiative is an effort to try and create some parity between those different kinds of reports. But obviously to date that is a voluntary mechanism. It assists them to structure a report. Given that we argue that reporting is one mechanism which can drive enhanced performance across these areas, having mandatory triple bottom-line reporting regulations or policy could be one way to drive enhanced performance.

Senator WONG—What do you say to those who say that the imposition of black letter law in this context is actually going to encourage the wrong sort of compliance focused behaviour in companies who have not engaged with this yet and will not encourage cultural change? You quoted M Wenzel in your submission:

Allowing time for a corporate culture to develop within companies, in which consideration of stakeholder interests is respected as a legitimate and central component of the decision making process...is preferable to the imposition of black letter law.

I think the point there is that there are those who think, ‘This is all a joke’—CSR—and there are those who say, ‘Let’s have mandatory reporting or mandatory mechanisms et cetera’ and there are others who might say, ‘The role of government is to encourage this and facilitate this.’ Given where we are at this point in time, if you put in place a requirement for reporting, you are going to get a compliance based approach from too many companies that really is going to militate against the cultural shift that we might want to develop.

Mr Lee—We take the view that, in a global setting, corporate social responsibility is firmly on the agenda because of all the issues that the world economy faces in terms of sustainable environment, population, climate change and all those sorts of things. Corporate social responsibility is firmly on the agenda and is not going to go away, and companies are going to have to address it. We believe that really the way for companies to best address this is that it obviously has to start at the top and over time it will filter down, which is I think what that quote was about. The initial reaction of companies generally is to talk the talk: they grab a concept, they talk about it, but they are not doing much. Over time, they have to start doing things and they have to filter it down. We take the view that CSR is really a way of doing business that ultimately has to be embedded through the whole company if it is to be effective. By having mandatory reporting, you are at least putting it on the table. Companies have to respond and, in time, the talk will become walking the talk rather than just talking the talk.

Ms BURKE—We have read about the notion of greenwashing: that you can just report it and there is no actual concrete evidence that it is being delivered on the ground. I contend—and probably the witnesses will bear me out on this—that some of our major banks put nice things in their reports but then verifying that they have actually gone through with those things and have walked the talk is the difficulty. How do we verify that they are doing what they are reporting that they are doing? Does anybody actually verify that or are you, like some of the other organisations, merely verifying what goes into a report then assessing on the report?

Mr Cohn—As with financial reporting, there are requirements for audit and verification of those statements. With a properly structured, triple bottom-line report, there would similarly be those requirements for independent, formal verification and auditing of statements. Statistics would be reported and statements would also be made. Obviously, greenwashing is an issue, which I think is massively prevalent in the current reporting system. That is not to say that all reports are a greenwash. It is an ongoing problem that needs to be addressed. To not address the reporting issue at all, to say that that is not an effective mechanism—

Senator MURRAY—We pursued this in Perth, and the parallel activity to reporting has to be auditing. You cannot verify something just on its face, and that is why you have auditors. The difficulty with auditing in the private sector, as distinct from the public sector, is that in the public sector they look at performance and risk far more than they do in the private sector, where they look at just the financial statements. I suggest to you that that is one of the solutions to the problem you just presented.

Mr Lee—That is right. Many companies that prepare a separate social or environmental report do have it verified by an independent body. Obviously, that is a very effective and appropriate way to go. How that independent body goes about it is another issue.

Ms BURKE—Some of this would be ascertained by us engaging with staff or with this philanthropic trust, so it is not just crunching out some numbers. It gets down to the subjective, doesn't it, and how you do that? There is no use mandating a report, because you can write a lovely report—we around the table have probably all done it in one way or another—but whether you have actually achieved what you have said you have done and then verified it is something else again, isn't it?

Mr Lee—That is true, and it is one of the challenges for an organisation such as ours, which is subject to greenwashing. It is up to us to manage our way through that to sift the wheat from the chaff, so to speak—

Ms BURKE—That is a bad analogy to use on the day of the AWB's general meeting!

Mr Lee—Over time, an organisation like ours does get to know the companies very well. It is hard the first time you do it. They snow you under with a whole lot of finely worded information, but over time you get to know them and you can hopefully work your way through that. It is one of the big challenges.

Senator WONG—In your submission, you comment on the silo approach to CSR in the Australian context. How would you achieve the recommendation of greater coordination on this front?

Mr Cohn—This is in the context of government taking a broader leadership approach.

Senator WONG—Yes. You comment on the Prime Minister's Community Business Partnership. You make the point that some areas within the partnership have been reasonably successful and others have been marginalised. Workplace practices and the environment are the two that you identify as having been marginalised. You say that this is indicative of the silo approach within government. Do you have any suggestions about how you might take a more coherent and strategic approach at the Commonwealth level?

Mr Moran—A couple of ideas have been put forward, which are in practice in other jurisdictions—for example, in the United Kingdom, where they have a minister for CSR. I think there is more coordination between departments, trade and industry, for example, and international development on these kinds of issues. We are not questioning the contribution of the Prime Minister's Community Business Partnership, which is a very critical program. However, it has been put forward in other submissions that I have read that tucking it away into Families, Community Services and Indigenous Affairs lowers its profile in a sense.

Senator WONG—The focus becomes welfare.

Mr Moran—Yes, it becomes philanthropic. Environment and Heritage has its own programs, but these could be more of a joined up approach, so to speak.

Senator WONG—Thanks.

Senator MURRAY—Economists say that where there is sufficient market stimuli you will get a response. The early response was more in the area of financial analysis and development of accounting standards and so on, as mass markets exhibited a need for integrity and reporting systems. You have the development of organisations like Standard and Poors, which now almost have veto rights over the interest rates you can acquire as a company or as a government if you do not meet certain standards. Do you see a day when an organisation like RepuTex has the same market power as, say, a Standard and Poors in this area, because of growing market interest and response to this approach?

Senator WONG—He just says, ‘We wish’!

Mr Lee—That is right—yes, we wish! I think at the moment, while we are getting a regular flow of what might be called CSR risk type issues, investment markets still do not see CSR performance by companies as a key component of investment analysis, whereas, referring to the Standard and Poors example, credit is one of the key factors and capacity to repay is one of the key platforms of investment activity.

At the moment, CSR type issues are not a part of the risk analysis of investment. It is more a part of people who want to invest according to a set of values or moral judgments, so to speak. That is where it sits. It really could only reach the level that you are posing the question on if it became a key component of investment analysis. So far, we have had a lot of studies done to try and prove that companies who achieve or perform at a high level of corporate social responsibility outperform other companies, and we tend to know that you can prove anything with a study if you really want to.

We are taking the approach that, with CSR investments—and on the investment side we refer to it as socially responsible investment—people can basically have their cake and eat it too. In effect, they can invest according to a set of particular values without giving up too much of their investment return rather than achieving a higher investment return. I think our own RepuTex SRI index for the Australian market over the last two years has performed about on par with the S&P ASX200, the S&P ASX300 and the All Ordinaries. People who invested according to our index have been able to invest according to their values without giving up a lot of investment yield rather than achieving a higher investment yield.

Senator MURRAY—I am trying to look towards the future. In my mind, there is a set of people who say, ‘CSR is good for business,’ and there is a set of people who say, ‘CSR protects you against risks which would otherwise be bad for business.’ In that category, there are certain sectors of the economy where the highest risk to the company, to the shareholders and to the future value of that company is in fact in the CSR area. If you have caused environmental damage or health and safety damage, those are not externalities. They become bigger internalities because they are going to cost you a lot of money—a James Hardie scenario or a major mine problem. In that sense I believe that risk management, and the audit and reporting of it, is going to grow and not diminish, which means agencies like yours, to my mind, will have more market power in terms of the judgments you make. Is that an assessment you agree with or disagree with?

Mr Lee—We certainly agree with the assessment that it is becoming a key component of corporate risk. At the end of the day, a dollar value can be put on that risk. As I said, I think investment markets at this stage are not seeing that as a major component of their investment decisions. If in the future that type of risk does become a key component of financial investment analysis, the services of organisations such as ours which evaluate and put some sort of risk standard on companies will probably be required by investors—more so than they are now.

Senator MURRAY—My last question is to you, Mr Cohn. I heard you talk about a safe harbour prohibition in the Corporations Law. Did you mean by that the protection for directors from being sued by shareholders for spending money or conducting activities in areas which the shareholder might regard as not core business? I will give you an easy example from the earlier

witness: pursuing the expensive Indigenous reconciliation campaign through your stores, which cost you money and customer support and lessened shareholder return. Is that what you are talking about—that there is a defence provision in the law?

Mr Cohn—Yes, that is what we were referring to—that, given our definition of CSR is being strongly aligned to long-term shareholder value and enterprise value, there is no need to create that.

Senator MURRAY—Has there been any case so far where shareholders have gone after board members for going in a direction that they thought was not part of their core responsibility?

Mr Lee—In terms of donations and listed companies, we are not aware—

Senator MURRAY—I do not just mean donations; I am thinking of activities and campaigns.

Mr Cohn—I am not aware of any case where a company has been sued by a shareholder based on—

Ms BURKE—James Hardie’s argument about paying out was that they would be in breach of their directors’ duties to shareholders. So you could look at it from that perspective as well. One of their big arguments was that, ‘If we pay out, it will be a breach of our directors duty and we will therefore be liable to prosecution.’

Mr Moran—I think this aspect of our submission was prepared by Hugh Grossman, who is currently not here.

Senator MURRAY—Ms Burke makes a very good point. If the negative side of a safe harbour provision not being there inclines directors to a narrow view of their responsibilities which is subsequently found to be flawed, you are better off allowing them the capacity to take a broad view of their responsibilities. Is that an interpretation intended by the safe harbour provision?

Mr Lee—I think the safe harbour aspect of our submission was prepared more in line with donations and philanthropic aspects. I think, in the James Hardie case, we probably do not want to respond publicly to that. But I do not think we would totally agree with the view that has been expressed by James Hardie.

Senator BRANDIS—Actually, Senator Murray, there have been cases in both Britain and Australia in which shareholders have on occasion successfully sued the board for engaging in activities on the basis that the activities were ultra vires of what might be thought to be a philanthropic character. I will give you the references—but I cannot give them to you now. Mr Lee, is your firm the only Australian ratings agency that rates companies according to some form of social responsibility index?

Mr Lee—There is another organisation that assigns ratings.

Senator BRANDIS—Would you say you are the principal one?

Mr Lee—I think our ratings are most probably more publicly known. I think the other company at this stage assigns ratings to more companies than we do.

Senator BRANDIS—So there are two of you, basically, who publish this data?

Mr Cohn—There are a number of research houses that look at sustainability, at performance, but I think, as Graeme said, we possibly have a higher public interface in the ratings that we do, given our annual public ratings process for the top 100 companies.

Senator BRANDIS—You are aware of course that increasingly it is the custom of some stockbrokers and some superannuation and other mutual funds to offer to their clients or members the option of investing in what are generically called ethical investments, presumably informed by ratings set by your firm or another ratings agency like yours.

Mr Lee—That could be the case.

Senator BRANDIS—Well, it is, isn't it?

Mr Lee—Yes, I think the current environment is that all those groups that are providing those sorts of products are using a whole range of mechanisms to decide who is ethical and who is not, who is socially responsible and who is not. I would think that in the current stage of the development there may be some groups out there utilising our ratings, but I do not think there would be anyone out there utilising our ratings exclusively.

Senator BRANDIS—Sure. I am not saying they use yours exclusively. My point was the more general one that it is becoming increasingly common to see investment advisers, stockbrokers and superannuation funds presenting their clients or members with the option of investing in ethically acceptable stock, if I can use that term.

Mr Lee—That is right. I think the initial approach to that type of investing has been one of what is termed the negative screen, where the sponsor of the product would select a population of companies and then go through and put a line through those companies that they think have an ethical problem. Generally that covers sectors like gambling, alcohol, arms, nuclear involvement et cetera. So it is a sort of negative-screening type of approach. A lot of people can do that internally without any sort of external analytical support. That is generally. Other people may engage particular consultants to advise and consult with them. Our approach has been to put out in the market a set of public ratings that is there if people in the financial market or the investment market want to use them, whether they are end investors or they happen to be an intermediary such as a fund manager or a stockbroker.

Senator BRANDIS—But, Mr Lee, it would be fair to surmise, though, wouldn't it, that an organisation such as yours, which publishes public ratings, would be listened to and would have a considerable influence on the decisions of investment advisers or superannuation funds which in turn present their clients or members with ethical rankings for investments.

Mr Lee—Socially responsible investments, not ethical.

Senator BRANDIS—I am sorry; socially responsible.

Mr Lee—We see the ethical as more a personal decision on the part of the investor—what they consider ethical and not ethical. That is true that people could start to utilise our ratings for that purpose.

Senator BRANDIS—You would hope they would, I suppose, since you are in the business, and you would expect they would.

Mr Lee—Yes. That is true.

Senator BRANDIS—Which, particularly given the vast amount of funds on deposit or the investments in the stock exchange, gives an agency like yours potentially an enormous amount of power in the market, doesn't it?

Mr Lee—Potentially, to the extent to which these issues become a key part of the investment decision-making process. At the moment, except for perhaps a very small proportion of the investment population, that is still not the case.

Senator BRANDIS—But, for an as yet to be defined proportion of the investment population, it is the case, isn't it?

Mr Lee—There are people out there where this sort of evaluation as a part of the investment is one of their key criteria. It could be the key criterion. But at the end of the day, in the more professional institutional market, while many investors would like to adopt this form of investment and make it a more key component of the investment decision, they are also very reluctant to give up any return.

Senator BRANDIS—I will give you an example. The other day I was looking at a superannuation fund statement of my own from years gone by for a university superannuation fund and I noticed that there was a box that said: 'If you want your funds placed in ethical investments, tick here. If you don't care, don't tick here.' Given the audience of that particular superannuation fund, I dare say a very large number of people would have chosen to adopt that option. It seems to me that you are in a powerful position and that the more the community talks about socially responsible investment or ethical investment the more powerful your position or the position of agencies like yours is going to become. If that surmise is right, I am concerned to know according to what criteria you benchmark these judgments which you described before as values or moral judgments. For example, do you retain on your staff a professional ethicist or a moral philosopher? How are these moral judgments made?

Mr Lee—We do not try in the rating evaluation process to make moral judgments. We think that moral and ethical judgments in terms of investing have to be made by the investor.

Senator BRANDIS—According to what benchmark is the social responsibility index determined then?

Mr Lee—Our ratings are based on looking at an organisation and its corporate social responsibility in terms of four basic categories: corporate governance, social impact, environmental impact and workplace practices. We have publicly available areas within each of those sectors that we look at to establish a company's performance.

Senator BRANDIS—Those are the four that Mr Cohn mentioned earlier, I think. The first and fourth—corporate governance and workplace practice—I should have thought are largely regulated by federal or state law, and the question would be essentially whether there is compliance. It is a compliance issue: a judgment about whether there is a compliance culture is the core judgment you make in the first and fourth categories. Is that right?

Mr Lee—I would not totally accept that. For many companies and employers what is regulated as a minimum by regulators becomes the maximum. We would say that a company that just meets its legal and regulatory requirements—if you take a situation like workplace practices—probably would not make that organisation an employer of choice, which most organisations tell us that they want to be. They all want to be an employer of choice, so they have to do much more than what is legal and required by regulation. It is the same with governance. We might say: ‘Okay, if you do what’s legal, at the very best that makes you satisfactory. That doesn’t make you highly socially responsible. You have to do more than what is legally required to achieve those sorts of things.’

Senator BRANDIS—Looking at the other two criteria you have mentioned, social impact and environmental impact, I think we would agree that they are less likely to be the subject of an easily definable legal minimum benchmark. I put it to you that in both of those criteria what has a beneficial or a harmful environmental or social impact is really a very contestable proposition.

Mr Lee—It is.

Senator BRANDIS—So how do you arrive at conclusions which are neutral if the benchmarks embody contestable propositions?

Mr Lee—At the end of the day, I think a rating that an organisation like ours gives is nothing more than our opinion. People do not have to agree with our opinion, and people that do not agree with our opinion will not accept the ratings. That is the market mechanism at work: if people do not accept our ratings because they do not agree with our opinion, if our ratings over a period of time are deemed to lack credibility or are unreliable, people will not use them, in the fashion that you have suggested. They will not be used and, ultimately, they will go out of business.

Senator BRANDIS—When you publish these ratings, are you not only setting out the benchmarks but setting out the various criteria according to which a judgment is made against each of those four benchmarks so that those who use your ratings can be aware of the basis upon which your opinions are formed?

Mr Lee—Yes. We publish a report on each company that we rate. We have brought along today for the committee a supply of our reports that we published in 2005. We will tender them to the committee as a supplement to our submission.

Senator BRANDIS—Thank you very much.

Mr Lee—There are two things that Reputex has tried to be. One is that we have tried to maintain absolute independence. In terms of the various people in the market and overseas in this sort of role, I do not think that many are truly independent as we are. We are totally

independent. Second, we have tried to be totally transparent. All our criteria, all that information, can either be obtained from us or is available on our website.

Senator BRANDIS—I was a bit confused by what seemed to me to be an inconsistency between your treatment of the safe harbour issue that Mr Cohn addressed before, which appears on page 4 of your submission, and the last dot point of your recommendations on page 20 of your submission. Unless I am misreading it, at page 4 you seem to be saying that you do not think the law needs to be reformed in relation to a safe harbour provision or in relation to directors' duties concerning stakeholders. But in the last recommendation you say that you would recommend:

Expansion of directors duties to include responsibilities to stakeholders, provided deficiencies with respect to ambiguity are addressed.

Is there something I am missing? Would you like to clarify that?

Senator MURRAY—I must say, in adding to that question, I read this as an offence in the sense of an expansive recommendation rather than a defence, which is my understanding of a safe harbour.

Mr Cohn—I think the intention was to put out there a recommendation suggesting as a possibility that, provided some of the issues that had occurred in the UK with regard to stakeholder interests being incorporated directly into directors' duties could be addressed successfully, a specific provision may be a particular option.

Senator BRANDIS—I will put my own cards on the table. I do not favour expanding directors' duties. I think most of the submissions this committee has received which contend for that are—and I use the expression in a neutral way—ignorant of the extent to which the law imposes duties as it currently stands. But I do have an open mind at the moment in relation to the question of a safe harbour type defence. I am a little surprised, if I may say so, at the conservatism of your position in relation to that.

Mr Lee—As I said, unfortunately the author of the submission is not able to be here today. But I think what we are saying is that it would be useful to have a safe harbour for various reasons—for example, if without it certain companies might hide behind it. We therefore think that could be useful. But if it is to be introduced, areas regarding definitions, ambiguities and all those issues need to be appropriately addressed otherwise the whole issue just becomes too hard for everyone.

Senator BRANDIS—Thank you.

Mr Moran—That aspect of the submission—again, I cannot speak on behalf of Hugh—is addressed on page 7 in relation to ambiguity.

CHAIRMAN—As there are no further questions, thank you very much for appearing before the committee and for your contribution to our inquiry.

[11.16 am]

APPLE, Mr Nixon, Industry Investment and Policy Adviser, Australian Council of Trade Unions

BOWTELL, Ms Catherine, Industrial Officer, Australian Council of Trade Unions

ESLAVA, Mr Luis, Corporate Social Responsibility Adviser, Australian Council of Trade Unions

TATE, Ms Alison, International Officer, Australian Council of Trade Unions

BENNETT, Mr James, Policy and Research Officer, Finance Sector Union

MASSON, Mr Rod, Manager, Policy and Communications, Finance Sector Union

CHAIRMAN—Welcome. Ms Burke and Mr Bowen wish to make a declaration.

Ms BURKE—I want to put on the record a declaration that I am a previous employee of the Finance Sector Union.

Mr BOWEN—I would also like to declare that I am a former official with the Finance Sector Union.

CHAIRMAN—I now invite you to make a brief opening statement, at the conclusion of which we will go to questions.

Mr Bennett—We agreed that I would kick off. Just briefly, the FSU represents the 60,000 employees in the finance sector across Australia. Our members aspire to work in soundly managed, accountable and sustainable companies where the interests of all stakeholders are considered by directors and senior executives. We have seen the impact on employees when companies fail. We believe that corporate governance and corporate responsibility are issues for stakeholders such as employees as much as for shareholders. The need for greater corporate responsibility in Australia has often been exemplified in our industry. We have witnessed the disregard adopted by the leaders of our industry for their employees, their customers and their communities. We believe this has often been a direct consequence of massive remuneration packages based solely on short-term shareholder return.

During the nineties, in order to gain short-term positive responses from the market, thousands of jobs were shed and hundreds of branches were closed with little or no thought for the social impact of such decisions. We have also had bank CEOs telling the public they had no community service obligations. Since then, we have seen a shift towards language about responsibility and sustainability and the importance of stakeholders other than shareholders. Indeed, we now see major corporations in our industry engaging in and, in some cases, leading the corporate social responsibility debate. We welcome this and we acknowledge that the industry has come a long way in the last decade.

Our concern is to ensure that companies claiming to embrace CSR are actually doing so in a genuine way. To use a cliché: is the rhetoric matched by the reality? Perhaps more importantly, how do we obtain the information to answer this question? We note that the global reporting initiative provides a comprehensive framework for companies to report against indicators such as labour market practices, consumer policies and environmental impacts. It is also pleasing to note that numerous companies are now reporting some of the information described by the GRI. However, only a handful of companies are currently having their results verified and audited by third parties. We hope this practice continues.

In relation to directors' duties, the FSU advocates that the law should be amended to at least clarify that directors can have regard to the interests of people or organisations with whom the company has a business or employment relationship or people who may be directly affected by the business of the company. We thank the committee for the opportunity to appear today and welcome any questions.

Mr Apple—The ACTU's submission has three principal components. My colleagues will address the issue of James Hardie as well as various ILO conventions and international guidelines that are intended to promote stakeholder interests. The third component of our submission, which I will comment on briefly, really goes to the issue of whether, if changing the duties of directors were undertaken as per the UK enlightened shareholder value notion, that would change the investment value and the pressures that reinforce short-termism and focus on the bottom line. In our role as superannuation trustees we are quite conscious of the role that we play, both as part of the problem and hopefully as part of the solution, in terms of reinforcing that trend towards short-termism. That is why in the ACTU's submission we include reference to the world economic report on responsible investment and some of the suggestions that they have made about what would be required if you want this broader agenda of CSR to evolve or to take shape more quickly. I will turn it over to my colleagues to address James Hardie and the ILO.

Ms Bowtell—Given that you are so short of time, I will not spend a lot of time on the James Hardie issue. The substance of our submission there is to say that of course the issue of CSR and directors' duties is an important component in looking at what happened at James Hardie, but our general view is that if you want to change corporate behaviour you change it by addressing the general law that applies to corporations rather than necessarily looking only at this as the fix-all solution. The real problem at James Hardie was partly director duties but primarily it was a split between the assets and the liability. So our submission is that if you fixed that problem—and we have not proposed a wholesale change to tort law but a fairly modest change in relation to related companies and death and serious injury—then that would go a long way to preventing another James Hardie occurring. So while we support a lot of the submissions in relation to CSR, there has been a tendency in these submissions to see the directors' responsibilities as the real problem at James Hardie, and it was not the only problem at James Hardie. The real problem at James Hardie was that the doctrine of limited liability stopped at one part of a group of related companies.

Mr Eslava—Finally, our submission encourages the use in Australia of the ILO tripartite declaration on multinational enterprises due to the importance, in global terms, of the norms. Also, the ILO multinational enterprises declaration should be understood in the broader context of the International Labour Organisation. The ILO has a number of other mechanisms that enhance the use and accountability of the declaration. For instance, the Committee on Freedom

of Association is the most widely used and is competent in dealing with complaints raising the issue of a state failing to uphold workers' rights to freedom of association and collective bargaining. In that regard, the ILO declaration is pivotal and it is very important to take into account in the Australian context, especially in this discussion of corporate social responsibility.

CHAIRMAN—Thank you very much. In relation to your proposed extension of limited liability, how far would that go? Is it proposed that you extend it to all members of a corporate group or to small subsidiary companies who had no part in the issue of concern?

Ms Bowtell—We have not fleshed out the proposal. We have floated this as a solution and probably we would involve people who know more about tort law reform than the ACTU in providing you with details. But we have limited it in this submission to matters involving death and personal injury. Potentially you could go further and look at wholesale environmental damage and you could look at issues in relation to siphoning off of employee entitlements in insolvencies and so on, but for the purposes of this submission we have limited it to death and personal injury. Whether you would do it in terms of a prima facie presumption that the entire related entity, using the definition of Corporations Law, was the group of companies or whether there would be some other evidentiary burden on the plaintiff to link the companies is something that we are open to considering further in terms of bringing forward a detailed law reform proposal. If there were an appetite to look at that, we would be happy to work with other organisations to put forward a more detailed proposal, but first of all there would have to be acceptance of the general principle that related entities could be seen as one for the purposes of tort creditors.

Senator WONG—Let us go through precisely what is being recommended here. I think I understand, Ms Bowtell, the suggestion that a number of people have put about how to deal with the Hardie phenomenon and how to diagnose that, but I would like to go to a few other matters. The FSU proposes a clarification to the directors' duties—a safe harbour type provision as was discussed with the last witnesses?

Mr Bennett—I do not know if we had really thought about it as a safe harbour, but just perhaps a clarification to make it—

Senator WONG—So: this does not preclude directors from having regard to—

Mr Bennett—Yes.

Senator WONG—Okay. Mr Apple, you discussed the World Economic Forum report as a basis for going forward. I am not clear what is being suggested about how that might occur.

Mr Apple—First, in relation to directors' duties, I suspect a fair analogy for a trustee would be the sole purpose test and the extent to which the sole purpose test is seen by many to confine us in the same way that directors' duties are confined to what some would see as a rather narrow range of issues regarding shareholder value. I suspect if you had a safe harbour provision in relation to trustees and institutional investors you might find that some of my colleagues would breathe somewhat easier in terms of the attitudes that they take when we make investment decisions. So there is a very similar set of pressures on us which we then push down onto our

investment managers and their mandates and how quickly we turn those over when they are not performing.

In terms of the World Economic Forum, you could look along the investment value chain and, again, I will give an example that has risen in your proceedings. I understand you have canvassed the discussion of how the environment minister would like to see better reporting on the environmental impact of companies. What we would say, and certainly what comes out of the World Economic Forum report and also what you heard from the previous witnesses, is that, yes, one set of information would be very good for an environment protection agency and another set of information would be very good for a minister. But I would certainly encourage this committee and the minister, if they want to get information from companies that is actually going to have an impact in the financial world, to have a very good input from the fund managers and the analysts in terms of information that is quantifiable and is going to be able to be taken into consideration in their buy/sell recommendations. What we have at the moment is a paucity of information that would allow analysts to perform that, and probably a group of clients in terms of investors who see that as limited solely, if you like, to our SRI mandates—which, as Senator Brandis points out, is offered in a ‘tick the box’ way to our members.

Senator WONG—You raised the issue of short-termism. It has been the view so far—I think this is only our third day, but it has been raised a few times—that if one took a broader and longer term perspective to shareholder value then some of the contradictions which people discuss may not arise. I guess the question we have to grapple with is: what does government do about that? How does government impact upon the sort of short-termism that Mr Bennett spoke about in terms of the finance sector? I think Ms Bowtell or someone in your submission said they acknowledge we cannot legislate for—was it ‘good moral behaviour’ or something? There has to be somewhere between the necessary regulatory mechanisms which deal with what the community and the government regard as a bottom line and people doing the right thing. There have had to be some other mechanisms that government might look at to encourage it.

Ms Bowtell—I think the disclosure issue—reporting and disclosure—is one of the things that comes up there. I am probably speaking as a fund trustee now rather than an ACTU industrial officer, but one of the things you do notice with fund managers, particularly active managers in the Australian equities area, when you talk to them about how they make their decisions and ask them about certain practices is that they have no information about that. It is partly our responsibility to ask them to go back and find that out, as a manager acting on your behalf, but having that regularly available to them would assist them and certainly would prevent that being an excuse for not taking it into consideration in terms of the way fund managers behave. So I think that the reporting and disclosure obligations could be enhanced.

The quality of the reporting has to be looked at too. It is quite difficult to encourage ASIC and others to look at reports that we would say perhaps verge on being close to misleading or not as open as they might be—certainly not presenting the facts in a way that we think is entirely disclosing to the market what is going on in the company. It is quite difficult for stakeholders to prosecute that sort of issue.

Senator BRANDIS—That is a matter for ASIC.

Ms Bowtell—It is a matter for ASIC.

Senator BRANDIS—The law is very clear. You might have an argument as to whether ASIC polices the law as well as it should, but the law itself is very demanding as to disclosure of market relevant information.

Ms Bowtell—But we need to look at whether those standards are actually being applied properly. The law is there, but where there is no compliance or the compliance mechanism is not adequate, there has to be a review of that. I am thinking of the case that has recently been launched using trade practices legislation. It is not a company; it is a university. It is in relation to false and misleading conduct by one of the universities in relation to its adherence to labour standards. There is potentially individual litigation, but there is also a responsibility of government to monitor that.

Senator BRANDIS—If a case is being launched, it means that the regulator in fact is enforcing the law.

Ms Bowtell—It is a private matter.

Senator BRANDIS—Nevertheless there is an existing standard against which that behaviour is being sanctioned.

Ms Bowtell—There is an existing standard, yes. It is the compliance regulation mechanism that I am—

Senator WONG—I am sure that we could have a long discussion about ASIC, but let's not go there. When you say 'improved disclosure requirements', what do you mean? Do you think there should be mandated, best practice or other mechanisms through ASX et cetera to try to encourage or require companies to report against the triple bottom line? What is being suggested?

Mr Apple—In some cases, it may be improving existing disclosure arrangements. For example, I think most of us would agree that the CLERP 9 initiative was a good one—to have the non-binding vote at company AGMs on remuneration. One of the important things was that institutional investors met with their advisers and developed guidelines. We became more informed about how to vote at AGMs on that issue.

Two issues arise out of that, though, which go to the issue of clarification and refining disclosure. First of all, as the regulator noted, 43 companies did not put the executive remuneration to their AGMs and no action was taken, but a warning was given that something might be done next time. Secondly, if you look at the advisers to the institutions casting their votes, quite often, in relation to the criteria they set in relation to matters such as the benchmarks that were used for the increases in executive remuneration, we required more information on (a), (b) and (c) before we could vote yes or no. There you are getting into the grey area of when does disclosure go into confidentiality and so on. In that respect, some refinements and some improvements help.

In relation to mandating triple bottom line reporting, again I would go back to the example of the proposals in relation to the environment, being particularly sensitive to exactly what information you are going to get and the extent to which it is going to change behaviour. My

experience over the past decade from the investor side of things is that life does not change very much. We have a very similar focus on the bottom line, as we should. There are larger societal pressures that are changing. We have a process in place now at several of the funds in terms of what we might call good stewardship of the assets—that is, in the unlisted market, in terms of property, infrastructure and private equity.

There is a certain reputational risk these days in investing in a toll road or perhaps in owning nine schools in New South Wales, where you have responsibility for a 30-year maintenance contract to make sure that those schools are properly maintained. The contract breaks down and teachers, schools and parents are in an uproar. You have a choice. You can say: ‘Stuff you. We’ll see you in court. We have a contract.’ Or you can take what we would regard as a proper stewardship of the asset approach, which is that you engage with the particular school, you engage with your manager who is managing that particular asset and you come to a resolution and you do not worry about the sole purpose test until it gets down to: ‘Am I shaving 10 basis points of my returns by doing this?’ At which point I hope most of us would say, ‘We’ll recover that in the long term because we’ll be the preferred investor in aged care facilities and other facilities because we take that long-term view.’

Ms BURKE—Where does it become a conflict of interest for corporate responsibility and shareholder return when there is excessive remuneration to directors and managers and excessive payouts so the shareholders are being impacted by these obscene payouts, disbursing on anybody? Look at what David Murray walked away with from the Commonwealth Bank recently. That has got to have an impact on the bottom line for the shareholder as well as on corporate responsibility. How do you marry those two up? You can disclose how much they are earning but when does somebody actually take a line and say, ‘This is excessive—300 times more than what someone on the front counter is earning’? When does somebody turn around and say, ‘We are reporting; take account of that,’ and not just from corporate but also shareholder return?

Mr Masson—We put forward a bit of an argument that says perhaps there is a way to actually link executive remuneration to broader stakeholder interests. Perhaps you start to consider the measurements or the hurdles that people have to meet in relation to their broader corporate responsibility rather than simple bottom-line shareholder performance hurdles as they currently are. I think it is an interesting question. You can attend a lot of annual general meetings and there certainly is a backlash from those that are present in those meetings to the levels of those executive remunerations.

There is equally a backlash about activities of the organisation within the community. For example, in the nineties you would have shareholders of large banks attending their AGMs and berating them about the closure of branches. You would have them berating them about fee structures. So there is a common interest there between shareholders and the executives and directors, around wanting to perform, wanting to be socially responsible and also wanting to gain some sort of return. I think the two things are linked and I think you can make some sort of linkage between them.

Ms BURKE—Just getting back to Mr Apple’s point about where you draw the bottom line: one of my previous experiences with the FSU was that, when 1,000 staff went, the share price went up 30c. There was a direct correlation. They were saying, ‘We are demonstrating that we

can savage the employee status of this group.’ Customers were outraged because they all had to wait in queues, but the bottom effect—you could see it overnight—was that the share price went up 30c the next day. The day after it went up 60c. At what point do you also say there is some corporate responsibility for the employees? The bank gets lauded all the time for doing great things for its employees—they keep winning prizes for it—but where do you demonstrate that they have done it?

You invest people’s money in these institutions. Where do you say, ‘We’re not going to,’ or ‘We are going to,’ and how do you draw that distinction? The next thing is short-termism, because 12 months down the track they suddenly do not have enough staff and people are switching banks because they can no longer get the service at the banks they were previously going to. How do you marry all that up in investment advice as well as social corporate responsibility?

Mr Apple—I can give an example. Take the case of a large mining company operating in an emerging market that is using child labour and has an appalling occupational health and safety record, and in which industry funds are invested. This comes to our attention, we look at the sole purpose test, we decide to take our managers aside and tell them, ‘We want that taken out of your portfolio.’ Then it turns out that two expats within the mining company have an account with the super funds; they take us to court and say we breached our sole purpose test. How do I draw the line in the sand? I do not think I would do justice on HIH but as I sat back and looked at the situation I asked myself: why didn’t someone just say, ‘Is this the right thing to do?’ That is how I might personally feel. But, knowing that the regulator will look at my decision-making process, the way it comes into play is in the assessment by the investors that, ultimately, that sort of behaviour by the mining company is likely to diminish long-term shareholder returns because of the performance of the business and how it will perform in the long term. Within the current system, that is what will orient my decision-making framework.

Now, in a perfect world, it is a little bit like Bellamy’s *Looking Backward*, where you wake up in the perfect future and can say, ‘I don’t like them using child labour and I’m pulling my shares out.’ Within this system, I can certainly do that within the context of long-term return to the beneficiaries of the fund. And you see examples of this happening: with Walmart in the United States, there used to be just community activists and others crying out about a number of alleged offences that Walmart had committed. Now you will find institutional investors actively engaged, and it is on the premise that it will diminish the value to shareholders of the business. So in answer to your question, ‘Where do we step in?’ we have to step in from that point of view.

Senator WONG—If that is the case, and essentially what you are arguing for is an enlightened shareholder value, then you are looking at the longer term, so would we need a safe harbour provision?

Mr Apple—I do not have enough legal expertise to know. What I can say is, just as a letter of comfort in business gives some comfort—

Senator BRANDIS—It wouldn’t be enough, Mr Apple!

Senator WONG—It is a statutory letter of comfort!

Mr Apple—There would be some comfort there, Senator, and I would not want to underestimate, within the realm of institutional investors, the extent to which people perform an act of self-censorship about just how broad a role or interpretation of their duties they take.

Senator WONG—Ms Bowtell, you might want to address that as well. When you were talking about reporting you talked about your experiences as a super trustee. I would like to get some sense from you of how far you think reporting has the capacity to change behaviour and change thinking.

Ms Bowtell—It is almost the same answer to the question about a safe harbour: I think it will have some impact. In the Hardie case, a safe harbour provision may well have changed the dynamics of the negotiations once the problem emerged—and I was not close to those negotiations, so I say that from the public reporting rather than from the point of view of someone who was involved in them. But it may well have changed the dynamics of those negotiations, although it would not have solved the fundamental problem there.

Generally, I go back to my first proposition, that if you want to change behaviour you do it through the general law. Take antidiscrimination and gender equity as an example. You could report forever that you have not been found guilty of any breaches of antidiscrimination law in Australia, which would be of no use in determining whether or not there are issues in relation to gender equity in your company because where there are complaints they are settled by conciliation et cetera. So it is what is reported, how it is audited et cetera that ultimately will change behaviour. But, as a trustee, it certainly would give you the capacity to say back to a manager, ‘That information is available.’ You cannot say that you do not know how to ask the questions or there is nowhere to find out and there is no consistent basis for you to do it, particularly when you are looking at managers who are quant managers rather than qualitative managers and so need something that they can consistently plug into their matrix, plug into the computer, and out comes the decision to hold or not. Regulatory overview of what is reported and how it is reported would give them some consistent basis upon which to at least incorporate that into their models.

Senator BRANDIS—But you have to report against an objective standard, though, don’t you?

Ms Bowtell—That is right, yes.

Senator MURRAY—The development of double-entry bookkeeping was the way in which modern markets were initiated and were able to function, because there was a proper way of accounting for and recording financial information. However, that was not sufficient and great risk developed because people were unable to verify what was going on. So you had the development over time of accounting standards, and they came to be supported by governments. You had the development of a self-regulatory device. Governments said you had to have an auditor. The auditor relied on the accounting standards for their criteria and they reported. So you have this wonderfully well developed system now, whereby financial statements have these huge precedents behind them. There are hundreds of pages of individual accounting standards—I forget how many there are altogether now; 41 or something—and a whole audit matrix dealing with finance.

Modern risk, in my view, has moved into the CSR area, but you do not have the same standards development capacity, you do not have the same auditing capacity, and you do not have the same government requirement capacity that develops. The question to me is whether the government should lead this process or follow the process. In the brief history I gave to you of the development of financial mechanisms, governments essentially followed the process and, as the markets developed, governments helped it and made it better. We are kind of in that decision period. That is the problem, isn't it? People keep looking towards regulators instead of actual market mechanisms which work of themselves in the same way as I have described for financial systems.

Do you think governments should become much more active in setting up the equivalent of risk standards in the CSR area, requiring somebody like the ASB to have that as a division and then auditors to be involved, not only with financial systems reporting but even CSR reporting? Should the regulator then make sure that the whole system works well instead of trying to do the job itself? Or do you simply follow the line you have outlined, which is more top end orientated? It is laying down some norms, some social principles, but not getting to the nuts and bolts of implementation.

Ms Bowtell—I don't know that there is an official ACT policy that we can give you on that one, Senator Murray. We might have to come back to you.

Senator MURRAY—My fear is that you are coming in at the wrong end.

Ms Bowtell—My concern with a compliance regime imposed on companies that is generally accepted—and I take the point that you have to report against standards and that you evaluate your risk against standards—is that you will drive a lowest common denominator approach. You will drive a 'check the box' type approach, et cetera. That does not necessarily encourage fantastic performance—outperformance, if you like—and it would become formulaic within corporations. Against that I think the idea that you would bring together the various stakeholders to perhaps develop an understanding of what the risks are, rather than having them develop separately in different parts of different agencies, might be something government could usefully do. But I am concerned about a lowest common denominator approach, I guess.

Senator BRANDIS—It all depends how high the standards are. The lowest common denominator always sounds bad, but if it is the lowest common denominator against an acceptably high standard, then that is good enough, isn't it?

Ms Bowtell—Perhaps I don't have faith that the standard would be an acceptably high standard.

Senator BRANDIS—That is a different question, though. The question is how high you make the standard.

Senator MURRAY—It is a good point that Senator Brandis makes. If you take the accounting standard, you can in fact perform to a far higher standard than that in terms of asset and capital management. People commonly think the accounting standard is the highest standard. It is a not. It is a common standard which is high enough to be manageable and material to the market—and understandable. But if you want to put in greater prudential

requirements, for example, or higher standards of maintenance or refurbishment on your assets and so on, you can. So I think the point that Senator Brandis makes is dead right.

Ms BURKE—But how do you do that on employment standards given the low base of the IR legislation?

Senator BRANDIS—You cannot.

Ms BURKE—Someone had to get the cheap political shot!

CHAIRMAN—Does Senator Brandis have a question?

Ms BURKE—That is a question. That is a genuine question from me insofar as, if we are looking at not just environmental issues but at reporting—and we are looking at the ILO standards worldwide and what they are talking about in the UK—we are talking about employee standards as well. If we look at the lowest common denominator at the moment and the benchmark they have to work against, it does not give me great hope for the future. So how do you build that into corporate social responsibility? That is a question.

CHAIRMAN—That is a rhetorical question.

Ms BURKE—No. It is a question—and it is something that these people before me should have addressed.

Ms Tate—Perhaps they could speak to that. Given that the ILO tripartite declaration and the ILO standards, along with perhaps the OECD guidelines for multinational enterprises, are things that Australia has committed to and is responsible to, this will no doubt emerge in terms of the undermining of the lowest common denominator. We do not necessarily have a domestic capacity to raise that in the political context that we are talking about. In fact, it involves an understanding of what is internationally accepted as core labour standards.

Senator MURRAY—By the way, you should remind us, for the record, that tripartite means government, business and employees. That is correct, isn't it?

Ms Tate—That is correct, yes.

Senator BRANDIS—Mr Bennett and Mr Apple, to my slight surprise I found myself in furious agreement with much of what you were saying. Mr Bennett—Mr Apple, you might like to address this too, but my question is addressed primarily to Mr Bennett—I understood you, in particular, to be saying that there is a risk that corporate social responsibility might become, in effect, merely a rhetorical or advocacy device which does not reflect any substantive change in business conduct. We had an example this morning of a particular firm, owned by a person who earns \$8 million to \$10 million a year out of it, which markets itself very cleverly by affecting environmental concern. That may or may not be an example of the concern of which you speak. Can I ask you both to address the extent to which you feel that this language of corporate responsibility or ethical investment is being deployed by firms, large or small, purely as a rhetorical device or advocacy device; and, to the extent to which you are concerned that that may be happening, how you would recommend that that be addressed?

Mr Bennett—I am pleased that you agree with our submission so heatedly.

Senator BRANDIS—I said I agreed with your remarks!

Mr Bennett—I might defer to my colleague Rod Masson on that.

Mr Masson—I think it is fair to say that, in our sector, we have companies that are leading in corporate social responsibility, companies that are following and companies that are ignoring. I think there are those that put a lot of emphasis in their written reports to shareholders and the public about how socially responsible they are, but there is not a great deal of rigour around testing, auditing or stakeholder engagement that would allow us to say that that is in fact the case. So I think there is some use of CSR as a propaganda tool, if you like, by some players. But, having made a public statement that they are committed to such things as, for instance, collective bargaining and environmentally friendly practices and that they understand their community obligations, we can at least hold them to account publicly as a result of their utterances. But I will diverge from previous responses by saying I think there is a possibility that we can mandate a standard, and I would like to see those players that currently ignore CSR come up to the standard, even if it is a minimum, because it will be something against which we can hold them to account.

Senator WONG—What would the standard be?

Mr Masson—I do not have that total answer at this point.

Senator WONG—I am sorry. I am not trying to put you on the spot but would it be reporting against objective requirements or would it be reporting of what they do in relation to community, the environment et cetera? Do you see what I am saying?

Mr Masson—I do. I think it would be reporting and I think there would be an auditing process. Auditing processes and practices are being developed in terms of assurance reports and so forth. It would require a great deal of stakeholder input. I think one of the things that is missed sometimes by some of these companies that report how CSR-friendly they are is that there is actually no stakeholder engagement occurring, there is no testing by stakeholders and there is no way that stakeholders can actually have input into those reporting standards. There are a range of areas we can start discussing and we can start moving on this matter. That, in the end, will bring those that are ignoring broader stakeholder interests at least up to some sort of understanding that they have those obligations.

Senator BRANDIS—If you are right then that would direct our inquiry to the question of the benchmarks, wouldn't it, and in particular the definition of those benchmarks?

Mr Masson—Yes.

Senator MURRAY—Then the question becomes whether government's role is a facilitation—in other words, to provide the resources to think about these things and to develop them—or whether it becomes regulatory—in other words, they lay down a legislative requirement. My feeling so far is that you have to go to facilitation first so that you know what it is you have to regulate.

Mr Apple—Just in terms of briefly addressing the issue, I suspect that a very substantial part of the solution lies with company directors and institutional investors. Coming from North America, I am quite fond of the dictum of: ask not what your country can do for you but what you can do for your country. In the real world, that means what those representatives who appeared before you from the Institute of Company Directors said—that more demanding shareholders will help set both benchmarks and a higher standard. I see a fairly high onus on us to lift our game in that area. Vis-a-vis companies themselves in terms of the benchmark, I think you could find a number of company reports where the company notes that it is complying with ILO standards when it is demonstrably the case that it is not.

Thirdly, as I think was pointed out by Senator Murray, the ILO conventions are tripartite. If you are a party to the convention on collective bargaining, there is a role for government to lead by example in terms of the way in which you follow through with your commitments there. So I think it is a multilayered approach in terms of what has to be done but I also agree that the benchmarks issue is quite critical.

CHAIRMAN—Mr Masson, could you just confirm that you answered yes to Senator Brandis's earlier question? I think you nodded but you did not actually verbalise the answer.

Mr Masson—Could we repeat the question? I will make sure I answer yes!

Senator BRANDIS—It was a question to the effect that if you were right then the issue to which that would direct us would be the question of benchmarking and the definition of the benchmarks.

Mr Masson—Yes.

CHAIRMAN—I thank each of you for appearing before the committee. It has certainly been very helpful to our inquiry and I thank you for that.

Proceedings suspended from 11.59 am to 1.42 pm

FAST, Mr John, Chief Legal Counsel and Head of External Affairs, BHP Billiton

GOSMAN, Mr Alex, Director, Government and Corporate Affairs, GlaxoSmithKline

SIMPSON, Mr John, Director, External Affairs, Shell Australia Ltd

CHAIRMAN—Welcome. We have before us your respective submissions. Are there any alterations or additions you wish to make to the written submissions at this stage? If not, I invite you to make your opening statements, at the conclusion of which we will have some questions.

Mr Gosman—GSK is a world-leading research based pharmaceutical company, headquartered in the United Kingdom. We employ 1,500 people in Australia and we have interests in the pharmaceutical industry and consumer health care. Also, we are the supplier of legal opiates through the poppy fields in Tasmania. So 40 per cent of the world's legal opiates come via GSK. We invest in community initiatives and charitable donations—over \$800 million a year on a global basis. In Australia—and I am from the pharmaceutical side—we are heavily involved in supporting a range of disease support groups in such areas as diabetes, asthma and mental health. We are based at Boronia. We also support the local community through such organisations as, for example, Illoura House, which helps young children with learning disabilities.

We recognise that the concept of corporate social responsibility will mean different things for companies of different sizes and different sectors. Therefore, it is not really appropriate to have the one size fits all. Within GSK, our corporate social responsibility commitments translate into a set of principles which sets the standard for everyone in our business. Our submission included an attachment with that set of principles. On an annual basis, we rate our performance against those principles. We are involved in a number of voluntary reporting organisations such as the Global Reporting Initiative and more recently with the London Benchmarking Group. We believe providing our performance via these voluntary reporting organisations is considerably more user friendly than onerous mandatory reporting requirements.

We also recognise that appropriate types of corporate social responsibility activities will vary greatly across sectors. What makes sense to an organisation involved in the health care industry could be quite different to what makes sense to my colleagues from the resources industry. Any reforms or any mooted changes to the current legal framework within Australia must take into account global developments. We do need to have a consistent approach rather than for a company like ours that operates in a hundred different markets being subject to a hundred different regulations.

We believe that the role of government is essentially one of encouragement rather than mandatory reporting or the prescribing of activities. In that respect, activities that encourage companies to take an interest in this area, such as the Prime Minister's corporate social responsibility awards, are what we believe is needed to go forward. We very much favour a voluntary approach rather than a mix of prescriptive or proscriptive regulations. At a later stage, I would be happy to take questions on GSK's submission.

Mr Fast—BHP Billiton is the world's largest diversified resources company. It has a dual listed company structure. Its headquarters are in Melbourne. It currently has 100 operating assets in 30 countries around the world. It is engaged in exploration in a number of other countries as well. The submission that we have provided is fairly fulsome. I have also brought along today for the members of the committee our sustainability report and another report which details some of the programs—but not all of them. I thought, rather than trying to describe them in half a minute, it was better for you to see them.

Like my colleague, we are signatories to the Global Compact. We report according to the Global Reporting Initiative. In fact, we are involved with what is currently being looked at as the third generation of the Global Reporting Initiative. We are part of the ICMC Sustainable Development Framework, and there are a number of other things that we are involved with on a voluntary basis.

We regard corporate social responsibility as an essential part of our business. It is an evolving agenda. We see it as an opportunity for companies to seek competitive advantage by differentiating themselves from other companies. Each one of us will have a different form of engagement in relationships with our key stakeholders. We do not support reinforcement through regulation. We think that will lead to a loss of differentiation and may ultimately lead to adopting a lowest common denominator approach. It is worth noting that in 2005 we were awarded the Company of the Year in the Business in the Community National Awards for Excellence in the UK. It is the first time that a resources company was nominated, let alone awarded the Company of the Year award. We have also been assessed as the mining sector sustainability leader in the Dow Jones Sustainability Index. We are also part of the FTSE 4 Good Index.

We believe that good corporate social responsibility performance is an important contributor to our licence to operate. If you are a poor performer in that area, you run the risk of withdrawal of community support and difficulties with either renewing or obtaining regulatory approvals for your businesses. Good corporate social responsibility for us provides an assurance to external parties about our commitment to corporate social responsibility and is generally viewed as a good proxy for the overall management competency, because it provides investors and stakeholders with an insight into how well risks are managed and how governance issues are dealt with.

As my colleague has said, we think that the degree of involvement is very much dependent on the needs of the business. Not to be overlooked, and something that is critically important these days, is the internet and the impact it has on the dissemination of data worldwide. Today, everyone in the world can find out what you do and where you do it, so where you stand on issues of corporate social responsibility is critically important.

In terms of regulatory frameworks, we acknowledge that there are different schools of thought about whether the current law enables interests of stakeholders other than shareholders to be considered. We believe that the current provisions are sufficient. There has recently been some push back in the UK in relation to what can be done vis-a-vis other stakeholders. In our submission, we refer to the UK Political Parties, Elections and Referendums Act 2000. Other forms of attempts at regulating reporting in certain areas have failed in the UK. I am thinking in particular of the operating and financial review which was sought to be regulated by legislation but which ultimately was withdrawn in the UK because it involved considerable opposition.

The other issue in relation to this debate is that we do not believe that corporate responsibilities should be confused with the debate on corporate governance, which we regard as a separate issue. As far as the question of regulating corporations themselves is concerned, we would say that corporations are just one vehicle through which businesses are conducted. If you accept that it is not about governance but about corporate responsibility, then it does raise the question of why you would single out corporations as opposed to any other form of business association, be it a statutory corporation, a partnership, a joint venture, a sole trader or indeed a trade union.

We do not support compulsory reporting. We think that the voluntary measures have been very successful and, indeed, have generated considerably more activity than might otherwise have been the case by those companies that have a firm commitment to it. Our general view is that we support a principles based approach rather than a prescriptive approach.

The last point I would make by way of opening is that there is a very considerable debate, you would be aware, around the cost of regulation and whether Australia is an overregulated country. At this stage I would think that anything that introduces further reporting requirements and adds to the compulsory cost of corporations would not be warranted in the context of the current debate. They are my opening remarks. I am happy to take any questions or comments as we go.

Mr Simpson—Having regard to the time, I will try to be brief in my remarks. I think everyone is aware that Shell is a large energy company. We operate today in about 135 countries around the world, one of which is Australia. We have operated in this market for 103 years. As a longstanding local and global employer in the energy sector, we welcome the opportunity of contributing to this inquiry.

Shell has been a significant contributor, we believe, to the global discussion on the role of business, corporate social responsibility and triple bottom line reporting, particularly in the last decade but also, to some extent, for the last 30 or more years. There is hardly a book or paper on these subjects that does not reference the global energy industry or Shell in particular. Shell has never backed away from involvement in these discussions and, in the eyes of some, was probably in the vanguard of companies prepared to speak openly about the challenges and dilemmas facing both multinational business and large domestic businesses in the internet age.

Shell first produced a global sustainability report specifically addressing its triple bottom line approach in 1998 and has produced similar annual reports specifically on sustainability every year since. Royal Dutch Shell, of which Shell Australia is part, is commercial in nature and has as its primary responsibilities wealth generation, meeting customer needs, providing an acceptable return to investors and contributing to overall economic development.

But there is also an inseparable responsibility, we believe, to ensure that our businesses are run in an ethical way and in line with Shell's own values. These are honesty, integrity and respect for people. Equally importantly, we must show that we are doing so by providing independently verified assurance. This approach is fundamental to the health of the business and, as such, is both compatible with and supportive of the primary economic responsibility. We realise too that we must be part of the debate in order to learn from others, explain our actions and put our point of view forward. We may not always get it right, but we do strive to be good corporate citizens. We have a proud history of social responsibility and we want to build on that. Shell's business

principles, which have guided the company since they were formally implemented in the mid-1970s, show that we are serious about our responsibilities to society, our shareholders, employees, customers and those with whom we do business. These groups might broadly be known as key stakeholders.

It will be evident from what I have said that Shell does not regard corporate social responsibility as being confined to matters of philanthropy or what we describe as social investment. Shell takes a much wider perspective on the concept of CSR and has expended considerable effort and resources here in Australia and elsewhere in contributing to public discussion of the many issues involved in addressing the so-called triple bottom line of economic, environmental and social performance. For Shell, social investment is only an element—albeit an important one—within any assessment of the overall performance of an organisation's social responsibility.

We believe that CSR is not itself our business; rather, it is a way of conducting our business which helps us to be more successful over the long term. To commit to a socially responsible way of working is not, as some critics claim, a distraction from our core business, nor does it in any way conflict with our promise and duty to deliver value to our shareholders; quite the contrary—it is compatible with and supportive of it.

I conclude by acknowledging that, aside from meeting our statutory requirements where we operate, Shell is also a signatory to a number of global reporting and assurance mechanisms, each of which is voluntary. Shell has ensured that its reporting processes are consistent with those outlined in the GRI—the Global Reporting Initiative—and we are a founding signatory to the United Nations Global Compact principles. Shell also recognises the OECD Guidelines for Multinational Enterprises and has been a regular attendee of meetings on the guidelines convened by Treasury and the FIRB here in Australia. On that note I conclude my opening remarks.

CHAIRMAN—Is there any particular stakeholder group more than others that the push to commit to corporate responsibility and sustainability comes from? Does it come from the investors—in particular, institutional investors—or employees or environmental groups or other segments of the community or is there some other source?

Mr Fast—There is no one particular push. It is very much driven by, firstly, our charter of values, which I think was appended to our submission, and, secondly, by a recognition that we need to be able to take account of the interests of a diverse range of stakeholders. Those stakeholders differ depending on where we are operating, but overall I would say that, at least in BHP Billiton's case, there is no one particular group that has exerted more influence than any other group. It is generally a view about what we think we need to do, what we want to do and how we achieve that.

Mr Gosman—I think my colleague from BHP Billiton made the comment about your licence to operate. The pharmaceutical industry, to be honest, does not have the greatest of reputations. From the GSK perspective, we probably had our road to Damascus experience several years ago in relation to South Africa. We were already doing a lot of what I spoke about, but I think it made us as a company redouble our efforts and make sure they were fully focused in terms of

the areas of greatest need. Given that we are producing medicines such as HIV antivirals, there is a natural alignment of what you therefore do in terms of donations to those areas of need.

Mr Simpson—I do not think there is any one particular stakeholder group that has ascendancy over another in terms of volume in demanding further regulatory or legislative interventions. We are not aware of that.

Mr Fast—It is interesting that my colleague just raised HIV. We are very much involved in the HIV question, having extensive operations in southern Africa. We are involved in a range of different programs including funding the development of an antiretroviral injection, which we are doing in collaboration with the World Health Organisation and to which we have committed significant funds. So it is interesting that, although we are coming from different industries and representing different groups of shareholders, there is certainly alignment in certain areas around common issues that we see in different parts of the world.

CHAIRMAN—Given the absence of a standard reporting framework in Australia for non-financial information, how seriously do you think capital markets take the information that is published by those companies that do report on those matters?

Mr Simpson—I will have a brief go at this—recognising that we are not listed in Australia. There is a growing recognition of the value of this information. Over the last decade, I think it can be argued that the quality of reporting has improved. That does not mean that we perhaps enjoy the level of reporting that all constituents might want, but I think there has been an improvement. I think there is a recognition on the part of financial markets that this stuff is worth looking at in a more serious way, but I think there is still headroom there.

Mr Fast—The recognition is probably more intangible than tangible. It is intangible in the sense that if you hear no noise around an issue often that is the measure of good activity or good corporate governance and success. So our shareholders are not saying to us, ‘You must engage in activities in the corporate social responsibility area,’ but I think they would be equally concerned if there was a perception that we did not do that. Likewise, as I said earlier, it is regarded as a proxy for good management practice and good risk management. In a practical sense, when we look at our share register, sustainable funds and sustainable investors represent less than one per cent of our share register.

Mr Gosman—I have nothing to add—I think that was a good answer.

CHAIRMAN—Following on from that question, given the relatively low level of sustainability reporting in Australia to date, in your experience as international companies, is that likely to lead to institutional investors investing in countries where the level of reporting is higher and perhaps does report according to particular indexes?

Mr Gosman—It is probably difficult to say because we are listed in the UK.

Mr Fast—We are listed in both and we would say no, just based on what we have seen in our context.

CHAIRMAN—Measuring the interests of shareholders against other stakeholders—and there are several other categories of stakeholders—have you got any examples within your own experience where there has been a conflict between those interests and directors have had to choose the interests of one group as against another? How is that sort of conflict resolved?

Mr Gosman—I would not say that they have had to come to a conflict in choosing one direction. But, coming back to the point I made before around the licence to operate, I think things did get so bad for GSK, specifically in the UK in the early parts of 2000, that we really did need to come back and address it, and probably make people more aware of what we were actually doing. I think that has had the effect of dissipating some of the external stakeholder antipathy towards the company.

Mr Fast—We have not seen that. In fact, we have a public commitment to spend not less than one per cent of our annual pre-tax profits on sustainable development—and that is one per cent on a rolling three-year average. We have found in some years that we have spent 1.4 per cent. I think last year we spent about \$US54 million in that area. There certainly has not been any conflict. One of our board committees in fact looks at our sustainability. The health, safety and the environment committee also encompasses sustainability, so there is feedback that goes through to the board through that committee, but certainly there has been nothing other than support from the board.

Mr Simpson—I am not aware of any such conflict in Shell. It is possible that I would not be aware of it, but I am not aware.

CHAIRMAN—I understand from the submissions and what you have said that you regard the current Corporations Law as being sufficiently permissive, as far as directors are concerned, in taking account of the interests of stakeholders other than shareholders. I think in your case your submission went further and said that it may be tantamount to a breach of existing duties to disregard those interests in certain circumstances.

Mr Fast—Depending on the business and what it is that you are seeking to do.

CHAIRMAN—Do you have particular circumstances in mind?

Mr Fast—Our licence to operate—and we operate in 30 countries—is very much dependent on how we are perceived and how we interact with the communities involved with us and the countries in which we operate. If you were to entirely disregard that and behave in a manner that was inconsistent with our charter then I think someone may argue that, if you were to lose a valuable licence in a particular country, you could theoretically have an argument that you failed in your duties to do all that you should have done, particularly if you did it deliberately and knowingly. That was the context in which that point was made.

CHAIRMAN—That is all I have at the moment.

Ms BURKE—I have a question on the issue we have been discussing today—the notion of a safe harbour in respect of directors' duties. I refer to the James Hardie scenario, where one of the arguments from the directors was that they could not pursue compensation because they would be in breach of directors' duties. Whether you accept or do not accept that, that is the premise I

am asking the question on. So is there a notion that perhaps we do need to give directors a safe harbour if they are going to make a decision that may be detrimental to shareholders' interests in response to being good corporate citizens?

Mr Fast—I am aware that this is the business judgment rule type argument. I am not sure that there is a case for creating a safe harbour. I think in the end directors assume certain responsibilities as directors and are required to discharge those responsibilities. I think you have to make a judgment—and there are lots of judgments that you make, not just about corporate social responsibility but on a whole range of activities, including investments that you might undertake, about whether you did or did not act prudently, and whether you did or did not do the things you needed to do.

The worry for me about a safe harbour is that you then get into the area of having to define what the safe harbour is. I presume you would be looking at bona fide best interest. Then you get into a whole raft of discussion around what you should do, and you create a whole due diligence effort—as you do now with prospectuses—simply so you can say, 'I am in the safe harbour'. I am not sure that that is necessarily desirable or indeed necessary. I think directors should be expected to know what they ought properly to be doing.

Mr Simpson—I think that is also true for our organisation. Having regard to the number of countries in which we operate, we can only do so successfully and safely, and I think socially responsibly, where directors recognise fully the breadth of their responsibilities and their accountabilities. Our directors are given substantial training in order to recognise the breadth of their responsibilities. We would not support any safe harbour mechanism for directors in order for them to somehow duck or avoid their accountabilities in a country. But we do give very heavy emphasis to the competence and confidence of directors to do what they need to do in order to meet our own standards and the statutory standards of the market in which they are operating. It is fundamental to the way we operate.

Senator WONG—My apologies for being late. I think the issue that Ms Burke is attempting to elicit from you is this: you talk, Mr Fast, in your company's submission about the enduring value of the Australian minerals industry code. As I understand from that, it is attempting to say, 'Let us have a look at the long-term value of the company'—and, as a result of that, to take into account a whole range of factors which may diminish long-term value and which may militate against a decision and arguably increase short-term return and put the company in a difficult position. It has certainly been put to us that it is not perceived among directors that that is always a legitimate approach. It is certainly the view that has been put by some submitters that their duty to act in the best interests of the company does not permit them sufficiently to take account of those long-term value issues, which may be impacted on particularly by stakeholder concerns.

Mr Fast—I think that that is a judgment for each director to make and for each board to make independently of other companies. Some will take that view and others will not. In the end, directors will be measured by how they discharge the responsibilities and will be answerable to their shareholders in terms of the total return. The total return is not just necessarily the financial return but it might involve the reputation of the company and a whole range of other non-financial measures. I have no problem with certain directors taking a view about it. In our

submission we have taken the view that it is a matter for each company to determine what it wishes to do and how it wishes to participate.

Senator WONG—Your submission—and particularly Shell and BHP’s submissions—is very strong on voluntary only. I appreciate that is a position you are taking. I think we are asking about something different. I think we are asking: what if the current law gives directors no comfort if they do take into account stakeholder issues? This is a view that has been put to us. Frankly, it is not one I necessarily share. I think there is a pretty good argument that you can take those interests into account under the current legal test, but that is a view that has been put. If that perception is there then, and obviously we are legislators, there is a line between mandating certain requirements but permitting directors to have regard to these issues.

Mr Fast—It is ultimately a matter for the committee and the parliament to determine whether they feel that the current law is or is not sufficient. In our view it is and, as I said, we would not support it for that very reason. I think it actually does create an overlay of complexity that you do not need to have.

Senator WONG—Mr Fast, in your submission you talk about the GRI as being particularly appropriate. You may have addressed this in your opening submission but do you think there is any difficulty in the GRI being adequately applied in this country?

Mr Fast—I cannot speak for how it is applied. I do not have enough knowledge about what is happening across the board, but I believe that most of the major companies, certainly in our sector and in many others, do report according to the GRI. It has become pretty much the benchmark. It is now connected to the UN as well. Most of the major companies that we are aware of are signatories to the Global Compact. It is not tied into the Global Compact. It does require you to report an awful lot of stuff but, assuming that you are prepared to do so and want to deal with it, I do not see it as being difficult—but I cannot speak for companies across Australia.

Mr Simpson—I think there is a huge spectrum of understanding and, potentially, misunderstanding within the Australian corporate sector on reporting initiatives, whether it is the Global Reporting Initiative or whether it is other mechanisms. One of the reasons that the global resource industry is at the forefront of this is that it has to be. There is no hiding place for the industry, and I think that is exactly right. We, naturally enough, have the capacity and the professionalism internally to be able to get our minds around what these initiatives mean and to be able to fulfil their requirements.

There are a large number of medium sized enterprises and possibly smaller ones as well who are grappling with these mechanisms and trying to understand what it is all about. What pleases me—and I record this in the Shell submission—is that there is an enormous amount of information sharing occurring on a voluntary basis in Australia, where there is, I think, real and genuine learning occurring and where there is knowledge sharing between large and medium and smaller sized enterprises. That is all happening on a voluntary basis and it is quite remarkable to see the amount of information that is being shared.

Senator WONG—Can I interpose there? Is there a role for government there? Just because something is voluntary, it does not mean that governments cannot have a role that might facilitate it. I would be interested to see whether you think there is something that could be done.

Mr Simpson—I strongly believe there is a role for government. I think it would be quite wrong and even impertinent to suggest there is no role for government. I am a big believer in collaboration between the private and public sectors, and hopefully our submission reflects that. It is interesting that, here in Victoria, there have been efforts that the Victorian government has itself initiated. I am aware of some other efforts in other states in Australia where there has been some really interesting collaboration. WA is another example. I believe that, if we are going to maximise the real potentiality of corporate social responsibility in its fullest meaning, it is essential that there is private-public sector collaboration. I would like to see much more of it. Shell would be quite prepared to participate in it.

Mr Grosman—Can I answer that also. In a previous life I was in the telecommunications industry. Cisco won the Prime Minister's award on a number of occasions for the work that it does with the Smith Family. Anecdotally, that went around the whole telecommunications industry. That had the effect of lifting the bar for all players, because it is a competitive industry. There is a degree of jealousy. They saw the amount of recognition that Cisco received for what I think was a fantastic program, and it actually led to a lot of other companies looking at how they could move into that space and replicate some of what Cisco was achieving. I know that Nokia, for example, is one of the companies that has moved into doing a lot of work around the Olympic site, cleaning up and so on. That all came out of the encouragement and the awareness.

Senator WONG—They are obvious ones, aren't they, when you get good PR or recognition from doing something right. But I think that is fairly—

Mr Grosman—I suppose that is what we said in our submission—that it is the encouragement.

Senator WONG—I guess what I was trying to explore with you, Mr Simpson, was something a little bit different, about how to facilitate information sharing and how to facilitate understanding of different case studies so that companies get some understanding of what other companies are doing, research et cetera and different forms of collaboration. You do not have to answer that now, but, in that facilitative role, I would certainly be interested in seeing what your company might think government can achieve. That is a question for any of you. You may want to think about that and give something back to us. The other issue I wanted to raise was the issue about how to deal with the impact you—particularly Shell and BHP—have on the environment. Obviously, governments do many things. They regulate you and give you certain minimum standards with which you have to comply, but the other thing governments can do is to set market mechanisms to deal with that. I am particularly talking about emissions trading. I would be interested in your views about that. I know some comments were made recently by your company, Mr Simpson.

Mr Simpson—We are very supportive of such a mechanism, particularly on the question of carbon trading. I think our position is pretty clear on that. We have a lot of collaboration with various arms of government on the subject. In respect of our environmental footprint, our whole approach to this is that we will be measured not only in the public forum but in every aspect of

our business performance on our operational performance and our operational integrity. That includes the consequential environmental impact of what we do. So we factor that, crucially, into every aspect of the business, recognising that we are required to and want to operate within the statutory requirements wherever we operate. That is key to the business.

Mr Fast—I would echo Mr Simpson's comments as far as we are concerned. In the mining industry, obviously the impact on the environment is significant. We are very much committed to try to achieve best practice, not just in terms of compliance but in terms of closure and closure standards and how you deal with sites after you have finished operating there. Likewise, we are committed in relation to carbon emissions and we have worked very closely with government. In fact, we have our own—

Senator WONG—Committed to doing something about carbon emissions?

Mr Fast—Absolutely. We have our own programs to reduce carbon emissions and we report against those programs publicly. We are very committed in that area as well.

Senator WONG—My final question might have been raised earlier, but some of the witnesses we heard from today pointed out that the resources sector, for want of a better term, and also banking—although that is a disputed matter—have looked more closely at these issues. They have had to because of the nature of the industry. And there was the comment you made, Mr Simpson, that it is part of your business to look at the consequence or environmental impacts. To some extent, some might argue that you have had to come to that point because, frankly, the community believes that and therefore the sector has responded. I wonder what we might learn from that about other sectors which perhaps do not have the same view, that the consequences of some of their business activities are necessarily something they should take into account.

Mr Simpson—Our contention, and I hope that is reflected in our submission, is that those businesses that do not factor in all of the consequences of their activities will be judged in the court of public opinion. We believe they will ultimately also be judged commercially and will probably go out of business. We certainly take the view that the triple bottom line thinking as a concept is fundamental to our business success. You cannot have two of the legs and not the third. You must have the three legs of the triple bottom line in place, operating at the highest levels, in order to achieve quality outcomes across the board. If you do not, we do not believe that you can be commercially successful going forward.

Mr Fast—I support that and I would say that there are a number of indexes. I was just trying to find the reference but could not, but some of the indexes from the UK that are sought to be replicated here—I think that St James Ethics Centre is one that is looking at establishing its own index—are something that will evolve naturally as you have companies that are rated according to that behaviour. Those that do not rate or do not behave in a particular way will stand out by omission. Having said that, one needs to recognise that different industries have different impacts, globally and domestically.

The other thing to remember is that there a number of product stewardship programs that are evolving. For example, the EU has recently introduced quite controversial legislation called REACH, which is an attempt to look at the impact of a range of chemicals. It was introduced as a chemicals policy. It has broad implications for industry and the stewardship of products. So we

are increasingly seeing a number of these stewardship programs as well, where people are starting to have to look at the consequence of their activities in the broader community and the broader community impact. I think it is happening, and that those who will not or do not participate will, either through peer pressure or otherwise, find themselves out of step with the majority.

Senator WONG—Mr Gosman, from the pharmaceutical industry perspective, how do those views gel with your company?

Mr Gosman—We have similar views. In Australia, some of the issues that we deal with as a pharmaceutical company are nowhere near as high profile as they might be in Europe or in the US. The same issues around peer pressure and the court of public opinion have led the industry, particularly GSK, over the last five years to really do a lot of addressing within itself in terms of the support it provides.

For example, we are the only major pharmaceutical company that is doing research into the diseases of developing countries. At the end of the day we are there for the interests of our stakeholders, but we are working with the Gates foundation on access to our intellectual property. We are working with the funding they provide to look at providing solutions to these diseases. That is something that six or seven years ago the industry did not believe it needed to do. A number of things have forced the industry to fundamentally rethink its approach, and that has been very much driven by the US and the UK.

Senator MURRAY—While in a sense you are right about not wanting too much regulation, my take on that is that if risk reporting was done to its fullest extent we would not have to talk about further regulation. My view is that companies were—and are not as much any more—under-reporting risk. Regulation, in accounting standards and other forms of the law, wanted companies to report on risks which should be recognised in the balance sheet. For instance, James Hardie did not properly articulate its risks, as far as I can see from the material I have read. AWB do not appear to have properly articulated the risks of their activities. It was true of mining companies in the past, that they did not properly report the risk which has now been met. With the greater sensitivity in the area of CSR and the links to what is good for business, do you think that regulation is not necessary because companies are now doing what they should have been doing before—namely, reporting on these things to the extent they now are?

Mr Fast—I do not see it as an issue of risk; I see it as an issue of reward. You may recall I said earlier that I regard this as a conversation about corporate social responsibility, not corporate governance. We may differ on that interpretation, but what I am saying to you is that we regard our work in the corporate social responsibility area as a distinct competitive advantage for our company. We do it because we think it is the right thing to do and it is a good thing to do for our company. We do not view it as a risk. We may not win the accolades we have if we do not do it, but it does not add to our balance sheet risk. It might ultimately mean that over time our business will not be as successful or as profitable, but it is not a risk issue that you can measure and quantify in quite the way that I understand you to be saying.

Senator MURRAY—Doesn't it depend on the issue? In a financial sense, risk results in a loss to the shareholder. The James Hardie case is an easy example. There was a risk that, if they continued to sell the products in the way that they did, eventually it would come back to bite

their shareholders. On the other side, when you talk about competitive advantage, if you choose to report on your energy and water usage and omissions and so on and as a result of that you achieve efficiencies and improve your reputation, there is no risk in that. There is great advantage. So I think we have to distinguish between the sorts of things that to go on. When I see a major mining company—and I am most impressed by some of the reports—report on the range of things they do, I see both categories in there. For instance, if you do not smash up a whole lot of Aboriginal artefacts and burial sites and things, you avoid risk. If you save yourself money because you are now watching energy better, you have added value. That is all in the same report.

Mr Fast—But I struggle with how you report or try and quantify it. Many of these things are quite intangible. If we talk about balance sheet items, we are talking about the legal requirements and the requirements of accounting standards and so on. These are far more difficult matters to quantify in a snapshot. Some of these programs that we undertake have got gestations of many years and the rewards, such as they are, are in reputation enhancement. For example, how do you value that? I would struggle to understand how you could value or define a framework within which you could attribute a value, without actually making your accounts misleading. It will ultimately be very subjective question. We know it works when it works.

Senator MURRAY—As you know, modern accounting standards have stepped back from valuing intangibles and mastheads and brands are no longer valued in that sense.

Mr Fast—Correct.

Senator MURRAY—I understand the point you are making but, to me, CSR is entwined with two objectives. One is the requirement that you must declare risk or should declare risk to your shareholders.

Mr Fast—Absolutely.

Senator MURRAY—The other is that you should be telling your stakeholders what things you are doing which are giving you a competitive advantage and reputation advantages and making a positive contribution to your society as well as to your economy, which you obviously do through employment. The point you made was that you do not want more regulation, but it seems to me that major world players like you are voluntarily accepting a huge regulatory burden. That global reporting initiative you signed up to seven years ago is a massive imposition on your company. You are voluntarily doing what you do not want the parliament to make you do.

Mr Fast—I would add to that. I agree with that, but we are in a position where we can do that. There would be a lot of corporations that might just not be financially able to discharge the burden of complying with that regulatory requirement and it maybe out of proportion to what they do. For example, a company whose business it is to develop software might not have interactions with communities and the public. It is essentially a business of developing intellectual property. I cite that as an example. There are probably others. It is very hard to know how you draw that into the frame.

Senator MURRAY—Isn't that where the government should be acting as facilitator? There may be industries too small, too dispersed or too underresourced to develop standards. The government can develop those or pay for somebody to develop those for industries that are underperforming.

Mr Fast—Would you have the same regulation apply to other forms of business enterprise, or would you just be limiting yourself to corporations? How would you justify differentiating between other forms of business enterprise?

Senator MURRAY—When I said facilitation, I did not mean regulation; I meant literally helping people make progress. Government has three prime roles: legislative, regulatory and facilitative. I am interested in the facilitation of the development of these issues.

Mr Fast—We would strongly support any facilitation for voluntary—

Senator WONG—What we are asking for is: what? I can understand the thrust of your submissions. You do not want regulation. We are really clear on that but, if not that, then what? If government is not to vacate the field and you do not want regulation, there must be other ways in which government will facilitate. For example, you talk about the software company. I can think of a number of things you might want to look at there: their supply chain, where they source their material from, where they source their IP and how they deal with their employees. There are a range of issues there. Clearly, it is not the same as the sort of environmental impact a resource company has.

Mr Simpson—If chief executives of large- and medium-sized enterprises were to be approached, I think you would find a very ready audience to engage with government. Exactly which part of government and how that might be coordinated is perhaps not for today to probe. The one thing that such discussions must not degenerate into where people are spending money in a philanthropic way—and this is what happens so often when companies come together—is beating their chest about how wonderful they are. I put it to you that that is not what any of us are talking about at all.

Senator WONG—We agree, I think, wholeheartedly on this side of the table. I would say two things: I do not think the discussion should just be about who is being more philanthropic, but equally I am getting tired after three days of the discussion that it should not be about regulation.

Mr BOWEN—Mr Gosman, I wanted to go into a little bit more detail about your submission in relation to HIV-AIDS and the role your company plays. I note that you talk about the role your company plays in awareness, stigma, prevention, care and treatment. Can you give us some idea of the scale of your company's involvement? I recognise you are one small part of a multinational corporation. What is the scale of your company's role in the distribution of affordable drugs in Africa to combat HIV-AIDS?

Mr Gosman—I would pick you up on the word 'distribution', because I think that is where we end up having arguments. At the end of the day our role is to manufacture and supply the medicines. There is often an expectation that the pharmaceutical industry should also be distributing and then be responsible for individual patients receiving them. In sub-Saharan Africa we have licensed our HIV products to generic manufacturers. We also make our products

available at cost, and over the last three years we have dropped our prices by about 80 per cent. Every time we have an improvement in manufacturing, that is reflected in a lower price. Because we have the scale, we find our prices are actually lower than those of the generic suppliers. We make those products available to government. We also work in a number of cases on case examples of distribution in an area, but at the end of the day the sovereign governments have to take responsibility for the distribution of our HIV drugs and for making sure that people are taking and being compliant with those products.

Mr BOWEN—Do you make all your HIV drugs available at cost to the governments, the health systems or the charities of those nations, or all of the above?

Mr Gosman—Yes. As you can imagine, it varies in the 60 countries that make up sub-Saharan Africa.

Mr BOWEN—Are you able to give me some idea of how many people would have been treated by your drugs at cost?

Mr Gosman—Can I take that on notice?

Mr BOWEN—Sure. Whether you come back through the committee, if the committee is interested, or direct to me, I do not mind. I am interested in as much information as you can provide on that, because it is the biggest health crisis facing the world and, if we are talking about corporate responsibility, from your point of view it is the area I would have thought is in the sharpest focus.

Mr Gosman—It is, and it is also a big issue in the islands and Papua New Guinea. We are working with seven other pharmaceutical companies on a HIV initiative there, again looking at making sure there is access and education information. We work with companies like BHP Billiton, as John was saying before, in terms of specific work site issues.

Mr BOWEN—I do not know if you are able to, but it would be very useful and interesting to me if you were able to provide some sort of rebuttal to Jeffrey Sachs's criticism of you and your colleagues in other pharmaceutical companies in Africa.

Mr Gosman—Yes, I would be pleased to do so.

Ms BURKE—What an opportunity!

Senator BRANDIS—I wanted to invite you to address one topic. That is the relationship between corporate social responsibility and philanthropy. Let me share with you a couple of considerations that are weighing on my mind. Firstly, obviously they are two different notions, although one might be thought to encompass the other, so I would be interested in hearing you address the borderlines. Secondly, I am always very suspicious of grand rhetorical claims and conversely very impressed by action, as manifested in particular by the donation of hard cash. I wonder whether it might be more socially useful for corporations which want to be conducive to social wellbeing to channel those benevolent intentions through actual providers by way of donation to specialist providers—for instance, aid agencies—rather than seek to develop benevolent programs of their own of whatever nature. In other words, is not corporate

philanthropy both a more efficient and also a more sincere manifestation of corporate responsibility than the invocation of broader but vaguer and rhetorical claims?

Mr Gosman—Perhaps I could have first go and come back to some of the points that Chris was talking about. I would see corporate social responsibility encompassing an education and awareness program that is more long term, more about actually combating the symptoms than changing the problem. On the other hand, philanthropy is actually product donation. From the GSK perspective, we do both. It will vary on particular circumstances and particular needs. I can tell you that drugs are as good as cash to an aid agency.

Senator BRANDIS—They are probably better.

Mr Simpson—For our part—and I did touch on this in my opening remarks—we see a clear distinction between philanthropic endeavour and philanthropic behaviour. Our approach to corporate social responsibility—what we in Shell call our triple bottom line approach—clearly encompasses our financial performance, recognising that if we get that wrong we are incapable of operating effectively in the environmental and social areas of the triple bottom line. We therefore see our approach to philanthropic activity as being just one, perhaps even quite small, component of the overall social performance of our organisation. In fact, that term is something that we use quite repeatedly. For example, we would describe our relationships between a plant—take a refinery for example—and the local community around it as Shell's social performance. People—stakeholders, residents, customers, everyone—make judgments about our performance in that context.

It is fair to say that whenever companies come together and talk about the triple bottom line or CSR, there invariably ends up being a discussion about philanthropy. I think that is a pity. I think it diminishes the potentiality of what we are talking about. It is not about philanthropy; it is very much broader than that. In the areas of meeting our environmental and financial obligations, we would not see that as being woolly or ill defined. We see those things as being clearly defined for us in Australia, and we seek to meet—or in most cases exceed—the requirements that pertain in any given country.

Senator BRANDIS—On that last point, when you say those obligations are clearly defined, do you mean clearly defined by law?

Mr Simpson—Yes.

Senator BRANDIS—But often when people—perhaps not you—speak about corporate social responsibility they are not talking about compliance with legal obligations; they are talking about something way beyond that.

Mr Simpson—That is right.

Mr Fast—We are in a similar, but not necessarily identical, place as my colleague Mr Simpson. We too view philanthropy as being separate from corporate social responsibility. We do engage in a limited amount of corporate philanthropy. For example, we have a matched giving program for employees where we match donations that they make. When the tsunami

occurred, we made a significant contribution to the aid agencies. I am trying to think which ones they were. We did something similar when Hurricane Katrina devastated New Orleans.

Having said that, it is worth recognising that we are long-term investors. It is the nature of our business that most of our operations are very long life. We can be in a community for 30, 40 or 50 years. Some of our assets have longer lives in terms of reserves. For us it is about forging partnerships with the communities where we operate. Many of the things we do are partnerships where we contribute to the well-being of the communities where we are.

We do not see ourselves as having an unlimited licence to simply make philanthropic donations to aid agencies. We do, however, think it is legitimate. A very good example is malaria spraying in Mozambique, one of the most malaria-affected areas in the world. We undertook a voluntary spraying program in the area in and around our smelter there and reduced the incidence of malaria by over 50 per cent. Some of the programs that we have implemented have since been taken on by the World Health Organisation and continued. We view that as being good for the communities in which we operate and also good for our business, because it enhances the quality of life of the people there, including our employees, so it is a win-win situation. It is on that basis that we think that is an appropriate thing for us to be doing as part of our business operations. So it is a case where you are enhancing your reputation, you are enhancing your contribution to the community and it is good for your business as well.

Senator BRANDIS—So does the difference between the broader notion of corporate responsibility and the much narrower notion of philanthropy amount to this: corporate social responsibility describes that range of activities which a company may but not must undertake, but which it nevertheless does undertake because it is also good for business, whereas pure corporate philanthropy is the narrower range of activities which a company may but not must undertake which does not directly have any benefit to its business at all, other than enhancing the sense of moral virtue of its employees and management?

Mr Fast—I do not think it is quite as stark as that. I think you can have corporate philanthropy which will enhance the reputation of a company. If you think about branding, large multinationals are very concerned about their brand, their global reputation, and I think being associated with a philanthropic activity can achieve some of that for it. So I do not think it is quite as stark as that. It is not purely about feeling good about oneself.

Senator BRANDIS—I have oversimplified it, obviously, Mr Fast.

Mr Fast—No, I understand that. I am just responding. So I think that it is less direct. It obviously does not necessarily have the immediate effects that you are trying to achieve within the areas of your operations, but it can nevertheless still be good for your reputation.

Mr Simpson—We would agree broadly with the proposition that you put, Senator—

Senator BRANDIS—With the distinction I just made?

Mr Simpson—With the distinction, yes, but with the caveat that we would also include those obligations which we are statutorily required to meet, particularly those in the environmental performance area and the health area.

Senator WONG—Can I just clarify something, Mr Simpson. I might have misunderstood one of your answers to Senator Brandis. I did not understand your position to be that the extent of your obligations and responsibilities to stakeholders in your triple bottom line approach are legal obligations.

Mr Simpson—I think some of them are legal obligations.

Senator WONG—Yes, I know, but the extent of them?

Mr Simpson—No, that is correct.

Ms BURKE—Seeing as you are all reporting, do you report in each country in which you operate?

Mr Simpson—Yes.

Ms BURKE—Would you say that your reports are more than just rhetoric? There is this notion of greenwashing, especially in some of your cases, unfortunately, where you have had some disasters that may or may not have been of your own making. The reports should be not just rhetoric, not just nice words on paper, so that if an ethical investor said, ‘We’re going to put some money here; we feel comfortable about it,’ we could actually audit you and see that the words on paper are actually matched in practice—that you are doing what you say you are doing in those reports.

Mr Fast—Absolutely.

Mr Simpson—We do in fact self-audit. We do not audit ourselves, but we have auditors who do—

Senator WONG—You get someone in, yes.

Mr Fast—As do we.

Mr Simpson—assure the information that is in there. We begin from the proposition that, aside from, obviously, commercial negotiations, there is nothing about our operations that people who want to know should not know. If they want to know, we will tell them. How many people did we fire last year for acts of corruption? We tell them in this report; it is all here. What were our emissions to air? What were our emissions to water? That is our starting point for disclosure.

Mr Fast—If you were to look at the two documents, the ‘A Sustainable Perspective’ document and the ‘Performance at a Glance’ document, they measure, for example, our HSEC target score cards and talk about other areas as well. There is a much fuller version of that on our website. So it is there, and it is very public. Whatever is there is out in full view—good or bad.

Mr Gosman—I don’t think there would be another industry subject to more public scrutiny globally.

Ms BURKE—Thank you.

CHAIRMAN—Given your international operations, and the fact that each of you probably operate under the newly emerging democracies, do you see your corporate responsibility as extending towards facilitating the development of democratic institutions and traditions—ethical government, transparency in government—either by advocacy or by supporting training programs in those countries?

Mr Gosman—Within GSK we have what we call ‘business essentials’. We do deal with a number of countries where some of the requirements for doing business are borderline. We have turned away business or turned away dealing with particular governments because it does not meet our own internal benchmark, which we believe is probably higher than the global benchmark.

Senator BRANDIS—And that is above legal obligations, either domestic or local?

Mr Gosman—We are also subject to issues to do with how you actually advertise our products. It is only in the US and New Zealand that you can advertise. We could talk of cases where senior executives in markets such as Brazil and the like have been dismissed from the company because they were considered to be taking the promotion of our products in an inappropriate direction. So that is how serious we take that. At the end of the day, that comes right back to our licence to operate.

Mr Simpson—It is an ever present challenge for a company like ours, and we are very sensitive to not taking a paternalistic approach to the point that you raise. I come back to the earlier comment that I made about operational performance. It is our own standards that we hope others may observe and either learn from or not learn from in terms of building social capital and political institutions. We are acutely sensitive to not being paternalistic about that. I hope that is reflected in our behaviours wherever we operate—but that is a big statement for me to make in 135 markets.

Mr Fast—I would support Mr Simpson. We also operate according to, obviously, our charter and our *Guide to Business Conduct*. I chair the global ethics panel. We have anonymous helplines in every country for reporting of behaviours which may be regarded as being unethical or in breach of our *Guide to Business Conduct*. We thankfully receive very few calls but, of those that we do receive, each one is investigated and concluded and appropriate action is taken, depending on the outcome of the investigations. That will include sometimes our internal audit group as well as our external auditors as and when appropriate, depending on the matter. So we take it fairly seriously. We will not operate in countries where we cannot operate according to our *Guide to Business Conduct*.

Senator BRANDIS—Do any of your companies either employ or retain as consultants professional ethicists?

Mr Fast—We don’t employ them. A member of the St James Ethics Centre is a member of our global ethics panel, so we have independent members of our global ethics panel who are part of the review process. We obviously deal with these sorts of issues.

Mr Simpson—We do.

CHAIRMAN—I thank each of you for your appearance before the committee today. We have run somewhat over time but I think that demonstrates the interest in the issues that you have had to raise with us, and we certainly appreciate your contribution to our inquiry.

[2.54 pm]

WOLTHUIZEN, Ms Catherine Nicloe, Chair, Consumers Federation of Australia

CHAIRMAN—I appreciate your agreeing to change the time of your appearance this afternoon. I invite you to make an opening statement.

Ms Wolthuizen—The committee will have received the submission from the Consumers Federation. I am obviously happy to discuss any of the matters that are contained in that. I also thought I would take a few moments to expand on what we perceive as the role for consumers in promoting corporate social responsibility because consumers, like shareholders, are often identified as a key group of stakeholders who can exert pressure on corporations. In doing so, I thought I would outline a framework by which the committee might assess the extent to which consumer pressure can encourage CSR and where it may be fostered or supported and, where it can't, what alternatives we would consider to be appropriate. We certainly view CSR as able to be fostered in various ways, especially where a company's activities or its output affects consumers who have market power. As we see it, such companies are increasingly becomingly aware of shifting demand side priorities even though many still have some way to go.

It is true that CSR continues to be more about corporate reputation first and product positioning. Often it is viewed as a way of managing reputation risk or avoiding reputation risk or dealing with fallout where it occurs, rather than developing a reputation as a socially responsible company in all its activities. That is not to say that there are not clear trailblazers in this area—those who have identified and tapped into a more discerning or active consumer demand. Organic food, cosmetics and toiletries that are not tested on animals and hybrid cars are just some of the markets that we have seen develop in response to that new demand.

How that might be supported and fostered in our view is a three-stage process. Firstly, often in the development or emergence of these sorts of markets, you will see a minority of consumers who are informed and active and have the purchasing power to exert pull on producers and companies to develop and market products that suit their more, I suppose, ethical demands. Secondly, you will see those enlightened retailers or producers pushing their products onto the market and promoting them. Thirdly—and we see this as of particular relevance to this committee—government endorsement, incentives or regulation can help spread more ethical practices or the emergence of new markets more widely to ensure even recalcitrant companies adopt those new practices. Some of the examples of government involvement might be labelling initiatives, reducing subsidies for high fuel consumption vehicles or introducing incentives for the introduction of things such as hybrid cars into a market. It is important to note the importance of consistent, independent and reliable information for consumers in these sorts of markets to assist them in making choices and exerting market pressure to foster their positive patterns of purchasing.

On the flip side, there are going to always be instances where companies' activities impact particularly on consumers who do not have purchasing or market power and so do not have the capacity to exert demand side pressure to exact better corporate behaviour. That constrains the capacity for shareholders to exert pressure as well, because there is not necessarily the impact on

a companies' bottom line if those less desirable practices are impacting on a portion of the market that has little capacity to kick back. We see this obviously in certain bank activities, such as branch closures and fee increases, and the activities of telecommunications companies. We have the recent example of Telstra removing phone booths from regional areas. We also see it when utilities companies refrain from expanding networks in regional and rural areas or from making competition available to customers in those areas.

In our view it is appropriate for obligations to be imposed on those companies, especially where they are providers of essential services, because market mechanisms will often be insufficient to protect consumers in those instances. Even a strong public reaction to various moves or activities does not necessarily flow through to a reversal of that action where there is not an obligation in place. I think a good example is to compare the decision by the National Australia Bank a few years ago to close branches in regional areas, which, despite generating a lot of public criticism, ultimately prevailed, with the decision by Telstra to pull phone booths out of regional areas, which it is required to account for. I am not saying they are necessarily going to restore phone booths networks in that area, but at least they are more accountable for that decision.

I also think that where you do not have obligations setting out what socially responsible behaviour is for certain corporations, you tend to get inconsistency. Of course, despite the fact that there are lots of good people working in large corporations who are keen to see those companies act in a more socially responsible manner, corporate cultures can change for the worse as well as for the better. We again have a recent example in an area which is close to my heart. Westpac a few years ago was trumpeting its decision to make itself the most well known, socially responsible bank, and only about a month ago it took a very large step away from that intention by increasing fees across the board, which will disproportionately affect some of its lowest income customers.

Again, I see this as flowing through to some of the problems with corporate philanthropy and why we draw a distinction between corporate philanthropy and encouraging or requiring companies to act in a more socially responsible manner in their core business areas. As I said, corporate cultures can change and what might be the pet project area of a CEO may be very low on the priorities of his or her replacement.

CHAIRMAN—Thank you very much.

Senator WONG—With regard to the ethical consumer argument, it has been put, I think, in some of the submissions but also generally when discussing this matter that, instead of regulatory intervention, we really should just be reliant on the ethical consumer—that is, consumers will buy only from companies that adhere to their own values et cetera. What is your response to that?

Ms Wolthuizen—There are people who are prepared, as consumers, to put their money where their mouth is and, if they aspire or adhere to certain values, will make their purchases according to those values. But, in the vast majority of markets, they are probably not the majority of consumers. There are often other constraints for consumers which prevent them from exercising that kind of market power—restraints on switching, especially when it comes to service providers where people are locked into longer term contracts to acquire certain services; they

may not be able to exert that kind of pressure. Similarly, they may not have information available to them which reliably enables them to exert that sort of pressure, or there may be cost implications. In some cases, as more and more consumers display a preference for a particular product and create a demand, you would expect over time to see costs for certain more ethical choices coming down, but that can take time to emerge.

Senator WONG—So how realistic is it for us to say, ‘Let’s leave it to consumer power or shareholder investment decisions’?

Ms Wolthuizen—It is not realistic in a lot of areas to leave it to the market to sort this out. The reality, especially where companies are engaging in practices that we would see as less than socially responsible, is that in many cases they may well have already considered the reputation impacts of those activities and made the considered decision that they can get away with it. That is not always borne out, but unfortunately it remains to be the case.

Senator WONG—You argue for an alteration to the Corporations Law to enable directors to explicitly take into account a broader range of factors than the bottom line in their decision making. That is obviously a highly contentious issue. But leaving aside the philosophical argument there, at a more practical level some people would say that that introduces a level of complexity into the task of directors that will not necessarily improve either the social outcomes or the outcomes for the company itself. In other words, directors’ duties are the focal point of a whole range of different social and policy objectives that we might collectively agree on, but it ends up being that that is where government or the community can regulate so it is placed there. But that puts directors in a very difficult situation in terms of assessing what they should do.

Ms Wolthuizen—I would say that in many cases directors are already clearly considering these factors in their decision making but probably filtering it through a more inefficient process which is considering reputation risk or through other aspects of their decision making in terms of considering other liabilities or responsibilities they have under other legislation which explicitly sets out responsibilities in each of these areas. We have listed this as a manifestation, if you like, of their licence to operate the community grants to corporations. In our view, in a range of other areas too, parliament has set out some overarching responsibilities on directors and on companies, and this would provide a kind of overlaying framework in which directors would be making their decisions but recognising that, in many cases, those factors are already being taken into account.

Senator BRANDIS—Ms Wolthuizen, I listened carefully to your opening remarks and I was troubled by two perhaps related things, and I invite you to comment on each of them. The first is what I would describe as ethical overreach that seems to me to bedevil this debate. Let me give you an example from one of the examples you gave us. You referred to the fact that some years ago one of the banks closed a lot of their branches in smaller centres in regional Australia. As I understood you, you suggested that that was perhaps an example of socially irresponsible, unethical conduct. Just because a company makes a business decision that has a deleterious impact on a section of the community that does not necessarily mean that that conduct is either unethical or socially irresponsible, does it?

Ms Wolthuizen—I think the reaction to that decision at the time demonstrated—

Senator BRANDIS—I am not interested in the reaction; just answer my question.

Ms Wolthuizen—That was by way of preamble to saying that opinions as to what is ethical conduct differ among individuals, but you can look at a community's reaction to a company's activities as a good guide to what a community generally considers to be acceptable or ethical behaviour.

Senator BRANDIS—But can you, though, just because people were adversely affected by a decision? People are always being adversely affected by decisions. You could argue that whenever there is an election the 45 per cent or so of people who do not vote for the winning party are adversely affected by the decision of the 55 per cent of people who do. That does not mean it is unethical, nor does it qualify the people who are on the wrong side of the decision to determine its ethical character or otherwise. All they can do is complain.

Ms Wolthuizen—I would say in that instance, as with other instances of the provision of what we would deem to be essential services, the community does have a view that access to those services is important, that companies that are granted a licence to operate—a licence that enables them to operate very profitably in most areas of their business—also means that they owe broader responsibilities where their business is perhaps not as profitable. That is part of the licence of operating, and—

Senator BRANDIS—That is not what the company law says. The company law does not say that it is a condition of your right to incorporate and to carry on a business that you cross-subsidise the unprofitable parts of your business with the profitable parts. In fact, company law actually says the opposite in effect.

Ms Wolthuizen—That is why I made the distinction between that instance, where there was no obligation placed on the National Australia Bank to maintain a reasonable level of access to its services in areas less profitable for it to operate in, and Telstra which does have an obligation to maintain access to essential services in areas where it is less profitable to do so.

Senator BRANDIS—I guess Telstra is a special case, is it not, because it is the residue of a statutory monopoly, which used to be a public utility.

Ms BURKE—Through the chair, are we debating ethics or are we debating corporate responsibility? I suppose I would take issue because I would say, coming from my perspective, that some of these large financial institutions, as Ms Wolthuizen rightly says, are licensed by the—

Senator BRANDIS—That might be your opinion, Ms Burke.

Ms BURKE—Exactly, but it is your opinion that you are putting to her at the moment too, so I just wanted to—

Senator BRANDIS—And I am inviting her response, not yours. I am sure you have opinions, as do I.

Ms BURKE—No, I wanted to ask where we draw the distinction between having an ethical argument, which I—

CHAIRMAN—Are you asking that of Ms Wolthuizen?

Ms BURKE—No, I am asking you, Chairman.

CHAIRMAN—No, that is not—

Ms BURKE—No, I am asking you. Are we having an ethical argument, are we putting the witness through her views on ethics, or are we asking the witness about issues of corporate responsibility? I do not think it is beholden—

CHAIRMAN—Senator Brandis can ask the questions that he sees fit as long as they are within the general terms of the reference—

Ms BURKE—That is what I am arguing. I do not believe they are in the general reference that we are arguing today.

CHAIRMAN—I think from the previous discussions and questions we have had during the day that it is fair to argue that ethics come into the area of corporate responsibility. Senator Brandis is free to ask these questions, as he sees them relevant, and I will ensure that they remain relevant, and Ms Wolthuizen is free to answer them as she sees fit.

Senator BRANDIS—Though, Mr Chairman, I might say that Ms Burke's intervention does call to our attention an important issue—that is, that there has been a lot of loose confusion of the language in this discussion between ethics and social responsibility, which may be but are not necessarily the same thing. They may be the same thing in some certain circumstances but not in others. There is an overlap, but they are not coextensive notions. In a sense, that gets to the point of my calling to your attention the great danger of what I called ethical overreach—that is, to denounce as unethical conduct that which is merely unethical from the point of view of those who are disbenefited by it, when it may not be unethical at all.

Ms Wolthuizen—Would you put unethical conduct on a spectrum beyond socially irresponsible conduct?

Senator BRANDIS—I spent many years teaching a university course in moral philosophy. The basic litmus test, if you like, of whether conduct is ethical or unethical could be regarded as whether it is morally right or morally wrong. Whether or not something is beneficial or unbeneficial to a section of the community does not of itself tell you whether it is morally right or morally wrong. It may, but it does not necessarily.

Ms Wolthuizen—I would say that in the branch closures example labelling that conduct unethical or socially irresponsible or both is not mutually inconsistent.

Senator BRANDIS—Not necessarily, but I am inviting you to acknowledge that just because a commercial decision may have a detrimental effect on a given section of the community does not of itself make it unethical. Do you agree?

Ms Wolthuizen—Of itself, that is correct, but in this instance that decision was viewed by many in the community as socially irresponsible—

Senator BRANDIS—I think you have made your position clear.

Ms Wolthuizen—particularly by many of the communities that were directly affected by it.

Senator BRANDIS—I want to move to the second confusion which I think has bedevilled this debate—that is, whether we talk about conduct as being ethical or unethical or whether we use the other language of whether it is socially responsible or irresponsible. It seems to me that many of these propositions are highly contestable. Let me give you an example. Let us say that there was a company which marketed timber products created from trees felled in certain Tasmanian forests. Both the federal coalition government and the Tasmanian state Labor government are pretty happy with the current arrangements in relation to the felling of certain areas of forests in Tasmania, but there are environmental groups that are very critical of those policy settings. The former, both coalition and Labor, say, ‘In terms of judging the social desirability of protecting the environment against the social desirability of looking after the welfare of families employed in those industries, we think this is the right balance.’ Environmentalists, like Senator Bob Brown, say, ‘It’s not the right balance. In fact, there should not be a balance; it should all be one way.’ Those who would criticise those companies for selling products derived from the felling of those forests are taking a position in an area which is ethically contestable and saying, ‘You are being unethical.’ They are stating a conclusion without acknowledging the contestability of the different ethical considerations on either side of the argument. My concern is that, to the extent to which the anterior debate between different sets of ethical considerations is not transparent, the sorts of arguments that people like you have been advancing run the risk of obscuring rather than exposing the issues.

Ms Wolthuizen—Which argument in particular was I running that was obscuring it?

Senator BRANDIS—Those who, for example, say, ‘We should score this company negatively on a range of indicia because’—to use the example I have given—‘it makes’—

Ms Wolthuizen—I do not recall raising any issues around corporate reputation rating.

Senator BRANDIS—I am not just talking about corporate reputation though. I am talking about this whole idea of scoring companies according to so-called ethical criteria or criteria of social responsibility. Unless the benchmarks and the judgments are transparent, it seems to me that there is an enormous risk of confusion. For instance, take companies which market products made from Tasmanian timber. There are those whose careful ethical considerations might cause them to conclude that these products are ethical products because they are produced by an industry in which the ethical balances are right and the policy makers have it right. There are those who would dispute that proposition. Those who take it upon themselves to score the companies on the grounds of, for example, environmental friendliness seem to me to beg the question and, in begging the question, obscure the debate, because underlying this there is a set of contestable propositions. It is not just a matter of ticking a box and saying, ‘Because you are environmentally friendly you get a plus’ or ‘Because you use Tasmanian timber products you get a minus’.

Ms Wolthuizen—I am not sure that that example necessarily contradicts much of what I was saying in the sense that—

Senator BRANDIS—Just address the general question of the contestability of what—

Ms Wolthuizen—If I could continue—

Senator BRANDIS—lies underneath the argument.

Ms Wolthuizen—What I want to say is that we have absolute no problem with—in fact we support—allowing consumers to make decisions about how they want to exercise their own personal ethical judgments about whether to buy timber felled from forests in Tasmania. That would require, though, reliable labelling information that at least puts them in a position where they can make that choice themselves. Where you can effectively use market mechanisms like that to leave the ethical considerations to individual consumers who are operating in a market such as furniture, I think that is a reasonable way of addressing that issue. The area of concern that I addressed in terms of irresponsible corporate behaviour relates to where consumers are not in a position to necessarily exercise that kind of choice but have to sit back and deal with the consequences of decisions which are made where they have very little capacity to exercise any kind of consumer impact through their purchasing decisions.

Senator BRANDIS—Then I take it that we would be in agreement with each other that, to the extent to which there is benchmarking against these criteria, whether you call them ethical criteria or criteria of social responsibility, the greater the transparency of the criteria according to which the benchmarking takes place the more appropriate.

Ms Wolthuizen—Yes, I am in favour of transparency generally.

Senator MURRAY—You come at this from the consumer's point of view. Most of the discussion so far has been from the point of view of the producer, manufacturer or owner. Quite often a corporation will behave in a manner which is in its interests, but its users may not behave in a manner which reflects well on it. Consider the manufacture of alcohol or the production of a motor car. The users may cause harm. The corporation can quite legitimately say, 'We did not set it up to do those things; it was the consumer's own fault.' I think that at heart that was the tobacco industry's view. There are some industries, however, where the consumer is directly in their control. Think, for instance, of the gigantic sports industry in this country—the behaviour of fans at a soccer match or a cricket match and the direct consequence of how many security people are on, admission, whether they serve alcohol, and how much, and all those sorts of things. Do you have the view as a consumer's representative that there are some sectors addressing the complex issues of CSR very much better than others, and would you be able to itemise for us those you think are at the better end of the spectrum—recognising that it is a developing field—and those that are at the worst end of the spectrum.

Ms Wolthuizen—I would probably feel more comfortable getting back to my members and taking that question on notice, largely because I would not want to leave out sectors that they consider are doing a particularly good job and relying instead on my own areas of particular concern. My experience in financial services, for example, demonstrates that the extent to which individual companies have adopted or embraced notions of corporate social responsibility and

how they conduct areas of their business varies enormously. And the views as to what CSR actually is vary enormously across that industry. For some it is much more concerned with corporate philanthropy and giving their staff one day off a fortnight to engage in charitable activities or activities of benefit to the community that may not be directly related to the business itself. And it goes all the way through to companies which are actively engaged in examining how they do their business and how they can do it in a way that produces more positive impacts on their customers.

Senator MURRAY—I would be grateful if you could do some kind of indicative research. You will not be able to do detailed stuff. The difficulty with this inquiry is this. It is my impression that we are hearing from people who are getting to grips with it—who understand it, who are making efforts in that regard. They are certainly better than they were five years ago and certainly better than they were 10 years before that. Some of the material we have received from some of the major corporations is impressive. But there are a huge number of sectors—I named the sporting entertainment sector as just one—where they have absolute no idea of whether they have a CSR program or whether they are involved in industry wide or sector wide discussions. The resources industry definitely does that. They are talking to each other nationally and internationally in detail on these issues. But I do not know what else is going on. It would be helpful.

Senator SHERRY—I have two questions. If we go to financial services, which I know you have some knowledge of, let us take the example of the Commonwealth Bank, which has, I notice from another submission, a corporate foundation. I am not sure what its CSR reporting is like; I have not looked at it. You would think that it would be one of the more reputable major companies, yet only recently—and I do not raise it simply because it is the only example of abuse in the financial services sector; there are others—the Commonwealth Bank got caught by the regulator excessively charging people in the Aboriginal community and had to make restitution. Do you think that highlights the difficulties in applying a judgment or conclusions about corporate social responsibility or philanthropy against some of the practices that occur from time to time?

Ms Wolthuizen—I do, and I think that is why we have mentioned in our submission the need for a benchmark against which companies can be assessed consistently. As I alluded to just then, there is that confusion about what constitutes CSR. In the case of the Commonwealth Bank, I genuinely believe that, once that activity was discovered, it was deemed utterly unacceptable within the bank and swiftly addressed, but by the same token engaging in that sort of behaviour or even lesser adverse behaviour—such as what we consider to be overcharging for low-income customers, particularly customers you have inherited because you used to do DSS payments—is not offset by engaging in corporate philanthropy which benefits unrelated communities or unrelated individuals. In the case of the Commonwealth Bank, the company is well known for sponsorship of certain sporting activities and its community engagement in other areas, but that does not necessarily offer any restitution to customers who are disadvantaged by its core business practices.

Senator BRANDIS—Your point is: if it is wrong, it is wrong; it does not make it any better that there might be philanthropy elsewhere.

Ms Wolthuizen—Yes.

Senator SHERRY—In this case—and I do not want to pick on the Commonwealth Bank because I know there are lots of other examples of other financial institutions of questionable behaviour—

Ms Wolthuizen—Pretty blatant examples.

Senator SHERRY—Pretty blatant but probably not illegal, as I understand. This is an interesting debate. I think a considerable majority of the community would conclude unethical but not illegal.

Ms Wolthuizen—Misselling goes on, unfortunately, and it is not just the Commonwealth Bank who engages in deeply inappropriate misselling practices. Often, it takes someone either exposing that activity or threatening to impose some sort of regulatory action, even if it would be difficult to pursue, that encourages a change in behaviour.

Senator SHERRY—I was a bit surprised at the conclusion to your submission. You refer to sustainable reporting, global reporting initiative, GRI:

... attractive on the surface ... organisations prepare audited SR statements, possibly using the GRI format.

Then you say:

... 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 ...

I take it from that you think it would be appropriate at some point in time. Are you suggesting some sort of transitional period and then a requirement on reporting with audited statements?

Ms Wolthuizen—I think that that recommendation reflects the different experiences that different members of the CFA have in working with different companies in order to improve their conduct and improve the manner in which they report. I suppose the concern that is reflected there is that a one-size-fits-all model may not be appropriate. That is not to say that an economy wide requirement to report or a mandated requirement to report according to and including certain agreed criteria would not be appropriate at some point.

Mr BOWEN—I want to clarify a couple of things. Firstly, Senator Wong referred earlier to your submission which called for the Corporations Act to be amended to allow directors to take into account other factors. I interpret that as being a sort of safe harbour amendment that we have heard from other organisations to deal with Hardies concern that we are not allowed to take these things into account. Earlier in your submission on page 3, you say:

The interests of the community should be equal to those of shareholders ...

which to me is a much harsher test requiring directors to hold other stakeholders in equal standing to shareholders, which goes much further, I would have thought, than what your recommendation actually is. Is that more of a motherhood statement without being—

Ms Wolthuizen—I know what you mean.

Mr BOWEN—Is that more a name in principle or is it something that you would request us to consider putting into law?

Ms Wolthuizen—I think it is an extension of the other recommendation that you referred to—the consideration of a set of factors which directors are not currently required or, as you said, always able to take into account. It also reflects the discussion within the submission about the role of corporations as members of a community and the responsibilities that come with that. We are very quick to impose obligations and responsibilities on individuals within our communities. We are quite reluctant or hesitant about extending those same obligations to corporations within the community.

Not only that, but I do think it is interesting that, in a lot of the debate around corporate conduct, frequently it will be justified in a de facto reference to the community by referring to superannuation fund members. Corporations are keen to justify their behaviour as being beneficial not only to shareholders but also to a sort of amorphous group of superannuation fund members, who are obviously not defined and not known when those decisions are taken into account. So, on the one hand, decisions are being justified in relation to a wider group of stakeholders than defined shareholders; on the other hand, companies are reluctant to name that wider group of stakeholders, the community.

Mr BOWEN—I turn briefly to a specific matter. It sort of follows up Senator Sherry's point about financial institutions and the issue of overselling credit to people who simply cannot afford it. Now, some would say, 'Well, it's the individual's choice; they should know how much credit they can handle.' Others would say, 'If they think the bank thinks they can afford it, well, they must be able to afford it,' even though clearly they cannot. And it is an easy option out: if you have got bailiffs at your door then another credit card which will put them off for another six months is an easy option. Does your organisation have a view about how big a problem that is in the community and, obviously, in areas of socioeconomic challenge in particular?

Ms Wolthuizen—Absolutely. Our organisation has very strong views on this matter. Credit is most definitely being oversold to, in many cases, vulnerable consumers, consumers who are not in a position to afford the credit which they are being advanced. In the area of bank-issued credit, at least they will have recourse to complaint schemes and hardship mechanisms. Of course banks, being subject to prudential regulation, often have constraints on lending beyond a certain level, but that does not necessarily stop them from making offers of increased credit without assessing further capacity to repay, and those are often the people who very quickly find themselves in difficulty. Banks are, I think, constrained to an extent by reputation risk and they do not like turfing people out of their homes who then appear on current affairs programs talking about what the terrible bank did to them.

Beyond that, though, an increasing problem is in the sector that is less regulated, where we are dealing with small finance companies, finance brokers and payday lenders—who have no reputation risk to be concerned about because they do not have much of a reputation to start—who are increasingly preying on very vulnerable consumers. That again brings me back to the idea that we really cannot leave market mechanisms to sort those sorts of problems out.

Mr BOWEN—So what would you have us do? There are seven payday lenders within a kilometre of my electorate office. What would you have us do? What would be your advice?

Ms Wolthuizen—What has just happened in New South Wales is that the New South Wales government has incorporated the fees that payday lenders charge into the 48 per cent interest rate cap, and that has effectively shut down payday lending and a lot of finance company lending in that state. It would be a great advance if that measure could be expanded to other jurisdictions.

Mr BOWEN—And banks more generally? Is there something that you would have us look at within the finance sector more generally?

Ms Wolthuizen—With banks, first, an easy measure is to require them to give better information to consumers about the cost of credit and the cost of making only the minimum monthly repayments. Second to that would be requiring them to undertake more thorough assessments of people's capacity to repay, especially when granting additional credit such as credit card limit increases.

Senator BRANDIS—When you give that example of banks throwing people out of their houses, I cannot help but think that that is a very good example of the sort of ethical overreach that I was complaining about before. Do you think it is always unethical for a bank to foreclose on a mortgage?

Ms Wolthuizen—The point I was making—

Ms BURKE—She didn't say that.

Mr BOWEN—She wasn't saying that at all.

Senator BRANDIS—That was the implication.

Ms Wolthuizen—No, I was saying the banks do not want to be on *Today Tonight*—

Senator BRANDIS—That is because the banks—

Ms Wolthuizen—and be embarrassed for turfing people out.

Senator BRANDIS—want their mortgages to be secured, not to be insecure.

Ms Wolthuizen—It is a constraint on the borrowing decisions that banks make that they are less likely to lend to people who are going to end up in that situation—because they could never afford the mortgage in the first place—which is not a constraint that operates on many finance companies because they know in the end they can get the house and there is no kick back against them.

Senator BRANDIS—Given that, in a less than perfect world, there will be occasions when people default on their obligations, it cannot be unethical for the obligation to be enforced, can it?

Ms Wolthuizen—No. I am not saying that at all; what I am saying is—

Senator BRANDIS—Thank you.

Ms Wolthuizen—where finance companies extend credit on a totally unsustainable basis and they know it is secured and it is a cheap way of getting their hands on the property, they do so because they are not going to end up being dragged through the mud—

Mr BOWEN—It is a very different question.

Ms Wolthuizen—whereas a bank will be concerned about that. And banks also, obviously, have prudential responsibilities too.

Senator MURRAY—At its extreme, that is described as loan sharking.

Ms Wolthuizen—Yes.

Senator WONG—I am just conscious of the time, Chair. I think Ms Wolthuizen had to leave five minutes ago.

Ms Wolthuizen—Yes.

Senator MURRAY—If I could just add one thing. When you are doing your snapshot or survey of views, could you particularly ask about media companies?

Ms Wolthuizen—Yes.

Senator MURRAY—It seems to me that media companies have a massive social footprint, to translate across from environmental language, but it has never come to my consciousness that they enter the CSR discussion much. They do terrific philanthropy—things like telethons are wonderful philanthropic exercises—but actual CSR? I am not too sure they are model citizens.

Ms Wolthuizen—We certainly have members who are very close watchers of media companies who I am sure have very strong views.

Senator MURRAY—If you could feed us back some views, that would be good.

CHAIR—Ms Wolthuizen, thank you very much again for your appearance before the committee and for your contribution to our inquiry.

Proceedings suspended from 3.36 pm to 3.46 pm

COUGHLIN, Mr Mark, National President, CPA Australia

PURCELL, Mr John, Policy Adviser, CPA Australia

CHAIRMAN—I welcome the representatives of CPA Australia. The committee has before it your submission, which is numbered 103. Are there any alterations or additions you wish to make to the written submission?

Mr Coughlin—No.

CHAIRMAN—I invite you to make a brief opening submission, at the conclusion of which I am sure we will have some questions.

Mr Coughlin—CPA Australia is Australia's largest professional body. We represent 108,000 professional accountants. While most people assume that all those live in Australia, over 25,000 of them live overseas. We actually have members in 95 countries around the world. We take our role of looking after the public interest very seriously. It is basically with that principle that we have put forward our submission. Obviously issues that we will discuss today will cut to the core of that. Importantly, the views expressed in our submission are backed up with some qualitative and quantitative research that we undertook in 2005. Some pieces we have already submitted to the committee. There is one recent piece that I will come to shortly, which we would like to offer to you for your consideration.

Turning to the committee's specific terms of reference, we do not believe that corporate responsibility will be improved by extending directors' duties or by amending shareholder remedies at this stage, because we are firmly of the view that the current scheme of corporate law—both statute and general—will provide sufficient flexibility within which company directors can make environmentally and socially sensitive decisions. Nonetheless, we would recommend that there is scope within part 2D.1 of the Corporations Act to extend the business judgment rule to encourage recognition of those environmental and social decisions made by company directors.

With regard to the extension of directors' duties to take into account the interests of specific classes of stakeholders or the broader community when making corporate decisions, the law already enables directors to balance the short- and long-term interests of their companies. We believe that the law of shareholder remedies should not be used as an avenue for members to challenge environmental and socially based decisions made in the interests of their company as a whole and in the best interests of the company in the long term.

For the committee's consideration, we also believe that corporate responsibility can be advanced through the development of an appropriate framework of non-financial information disclosure to shape corporate behaviour and stakeholder engagement. There are already some existing frameworks, but none universally acclaimed or used. To build the framework that we are referring to, we suggest, again for the committee's deliberation, that government bodies will need to work in partnership with academe, the professions, business and community representatives.

Recently CPA Australia and the Institute of Chartered Accountants in Australia established the Australian professional and ethical standards board, which is made up of members of our two bodies and also a number of independent members. It will have an independent chair. We put to you that a body such as this could actually help guide the development of such a framework. Fundamentally, we are of the view that whatever framework is developed it is absolutely critical that it be principles based and not overly prescriptive. This will ensure that directors and companies will be compelled to develop appropriate responses to community expectations, which are likely to and must evolve over time.

I will turn now to our latest piece of research, which we undertook in late 2005, which is our *Confidence in corporate reporting* survey that we have been undertaking for the last four years. We pick up topical issues in the corporate reporting space, and in our latest piece we focus very much on corporate responsibility, CSR and triple bottom-line reporting. The research provides some timely insights for consideration by the committee. Firstly, the majority of market participants want an extension of directors' duties to a wider list of stakeholders but, as our survey results show, the public are unable to consistently define what a stakeholder is. Secondly, the public clearly support the need for improved social and environmental reporting by companies, whether it is voluntary or mandatory, but more than 60 per cent of shareholders see social and environmental reporting as nothing more than a public relations exercise. We believe these findings highlight the lack of a common vision for corporate responsibility in Australia, which points to the need for the development of an appropriate guiding environmental and social reporting framework. I look forward to answering your questions.

CHAIRMAN—Thank you.

Senator WONG—Mr Coughlin and Mr Purcell, thank you for waiting so long. I think you have been in the room for some time. I hope you have not been too bored. I was very impressed with your submission. It deals with a number of the matters that I have an interest in. I think you said at the outset that you were going to tender the most recent report. Did you annex the August 2005 report that is referred to?

Mr Purcell—I believe we would have, yes.

Senator WONG—It is annexed to your submission, is it?

Mr Purcell—I was confident it was, but I will ensure that additional copies are forwarded to the secretary in due course.

Senator WONG—That is okay. We can find it if it is not. It seems to me that the point that you make and that we also have to struggle with is that capital markets do not currently value sustainability sufficiently for market mechanisms to drive it. Whilst those companies that are having regard to the consequences of their business operations on the environment and the community would say that they think there is a business basis for doing that, it is not necessarily something that the market values at this point. One might argue that it might value it in terms of saying that they are managing risk in a different way and are not going to have a reputation blow-out et cetera, but it is not easily quantified in the same way. I am very interested in the points you make about that and about finding a consistent reporting framework, because you want to be able to harness market mechanisms where you can to good ends.

Without getting overly technical, I am interested in what you say about the GRI. I am not an accountant, but to what extent is the work you are doing with the University of Sydney reinventing the wheel, frankly, or to what extent is it saying, 'Here are the GRI principles'? I understand that it is reasonably principle based and companies can choose to report in different areas which are relevant, so to what extent do we have to reinvent it or amend it to apply it to the Australian context?

Mr Coughlin—That is a good question and one that we have pondered long and hard. The challenge we have is to come up with a framework that works within Australia but is consistent with and helps build the frameworks that we have internationally, and the GRI is the one that is most well recognised and one that we have done some research against.

Another piece of work that we have done is looking at the various frameworks in place around the Asia-Pacific region. There has not been a consistent view, nor do we expect there to be a consistent view. We have 12 different types of reporting frameworks, some mandatory, some not, and all sorts of different responses to market problems. That is our biggest challenge: how we come up with a framework. I think there has been an enormous amount of good work done within the context of the GRI. But from meetings we have had with the chair of the GRI it has been pretty clear to us that the further evolution of the GRI is going to take some considerable time because it does not have large pots of money to invest in it. There is a question around how quickly we want to get to the end point. Essentially where we are coming from is to help facilitate getting to an end point more quickly.

Mr Purcell—Part of the perspective on the research we are embarking upon with the University of Sydney addresses some fundamental issues around non-financial reporting from the perspective of systems. We have both well-developed systems for financial accounting and well-accepted standards against which financial accounting is produced. The GRI probably concentrates very much at the end, on the structure of what reporting can and should look like—although it is, to a degree, pick and choose what part is relevant to the particular type of business. What is lacking, from our perspective, is internal capacity within organisations to marshal their reporting systems to generate the type of non-financial information which feeds into a GRI type reporting. So, both from the perspective of the management of internal risk and the actual reporting of performance at an environmental and social level, there is a range of developments which need to take place before we can move to that level of confidence. Once those systems are put in place for the necessary period of maturity, then the capacity to give independent assurance to these types of reports is also significantly enhanced. That, then, feeds back into capital market confidences as to whether these reports are significant and useful for making decisions and assessments about corporate behaviour.

Senator WONG—Who are your partners with the University of Sydney research? Is it just CPA and the university?

Mr Purcell—We are the sole industry partner with the university.

Ms BURKE—Why did you embark upon that research? Why was CPA interested in doing this fundamental research? It seems like you are saying you are the only people who have done it.

Mr Purcell—I think we have done it partly for selfish reasons. We see that the accounting profession has particular challenges. It needs to push itself forward in terms of its capabilities and its engagement in wider business decisions. There is a pivotal role for accountants in terms of the management of information systems within organisations. Environmental and social risks are other dimensions which accounting should be able to engage in. We are also heavily involved with external reporting. We understand frameworks from which information is possible to get for interpreting markets.

Ms BURKE—Has your membership base been called upon to do some of this work already?

Mr Coughlin—Indeed. It is the next logical extension. Triple bottom line reporting has been around for some time. Again, as accountants are at the heart of corporate reporting, it tends to fall to the accountants or the lawyers or somebody alongside to pull together these sorts of reports.

Senator WONG—One of the positions put to us by some people is that they do not want to have to report any more, that it is onerous. How does the voluntary reporting against the GRI, for example, which a number of Australian companies choose to engage in, compare in terms of compliance burden with, say, the financial reporting framework they have to report on.

Mr Coughlin—What we found from the research we did last year is that, in many respects, the reporting that is done, particularly the separate types of responsibility reports, are building on existing responsibilities under various pieces of legislation, whether state or Commonwealth. Hence we talk about financial institutions, mining companies, energy companies that already have a lot of obligations in that space. So for those it is not a big step, but for other companies that do not have those sorts of obligations, or certainly not at the same level, there would be some imposition. Would it be to the same extent as for a financial reporting framework? That is a good question, and one that we probably have not pondered in any great detail at this stage. But my gut feeling would be, no, not to the same extent.

Senator WONG—In other words, governments already require more in that area?

Mr Coughlin—Yes.

CHAIRMAN—On that issue, it would be fair to say that accountants have a vested interest in extending reporting requirements.

Mr Coughlin—That has been put to us previously, yes.

CHAIRMAN—Would you care to respond to that?

Mr Coughlin—At the end of the day I think the reason we are here is that we see it as something that is important, that it is something there is a natural evolution towards. It does not have to be accountants who do this piece of work. We think it is a logical profession to take the lead on it, but it does not necessarily have to be. I would say there are quite a number of sceptics in the accounting profession at the moment as well, so we do think it is a piece of activity that needs to have a conceptual framework. As we have said, if it becomes overly prescriptive and is

just KPI driven, then that is good for people wanting to charge fees to do that sort of work, but I do not think that actually gives us a good outcome.

Senator SHERRY—You would open it up for lawyers then too.

CHAIRMAN—So you would acknowledge that the degree of precision that is possible in this form of reporting is not of the same order as in financial reporting?

Mr Coughlin—Indeed. In some areas it is strong, for instance the frequency of rates used in occupational health and safety, the number of incidents. With very simplistic but also very effective types of measures I think it can be very strong, but there are other areas where it becomes much more subjective.

Senator BRANDIS—That is the point I was going to raise with you, Mr Coughlin and Mr Purcell. I think you were in the room when I was making some observations to Ms Wolthuizen about ethical overreach. And I do have this concern that the more one expands the language of ethical or social obligations of firms, the more one diverts this argument into the criteria against which different varieties of conduct are benchmarked. For you as the accountant, reporting on these other indicia it is not like financial reporting which is essentially a quantitative exercise—there are both quantitative and qualitative issues involved in, for example, determining whether or not there is a beneficial or harmful social impact of activities. This morning, Mr Lee, who is the chairman of Reputex, one of the main agencies—I think you are probably familiar with it—said that these are moral judgments and value judgments. The question I put to you—it is a sort of bundled-up question—is firstly: in accordance with the discipline of your profession, how are you able to make the moral and value judgments anterior to deciding how to benchmark these different indicia? Secondly, do you accept that there are intrinsic difficulties, given that those elements which would go to benchmark these social and environmental indicia are themselves contestable propositions?

Mr Coughlin—There is a reasonable amount in that question, Senator.

Senator BRANDIS—Perhaps there is, but do you get my drift, Mr Coughlin?

Mr Coughlin—Indeed. If we can start from a basic premise, I take on board your comments about the ethical overreach—the proposition that we see as underpinning this type of work is very much around risk management. Again, some of the research that we have done—and just bear with me for a minute while I take you down this path—shows that while capital markets may not actually value this sort of information to the extent that we would like at the moment, there is a linkage between companies that do report a high number of indicators under the GRI on a regular basis. There is a correlation between them and a lower level of financial distress, so these companies are less likely to fail. We have done that by some analysis of the ASX 100 companies.

Senator BRANDIS—The causal relationship may be the other way around. It may well be that well-managed, financially healthy companies can afford the luxury of being better social citizens.

Mr Coughlin—Indeed. In some respects I would agree with you. I guess there is a question of how they have become well-managed and financially resourced—

Senator BRANDIS—And that may or may not be causally related to their good social behaviour.

Mr Coughlin—Quite possibly, but again I can only outline what our research tells us, and say that there is some linkage between those companies that do manage risk well, in the way that I would characterise it, and therefore are keeping an eye—the directors and the management are keeping an eye—on these sorts of issues on a day-to-day basis and not just on a profit motive per se.

Mr Purcell—The nature of non-financial reporting information is, to a degree, a problematic area. Our view is that the notion of who a company's stakeholders are can be quite well defined for those who have a predetermined contractual type relationship, say. The most clearly identified stakeholders of a company are its shareholders, its employees and its creditors. Falling somewhat behind that are the wider community and environment. When you start producing—

Senator BRANDIS—Can I just interpose to say that the wider community potentially means everyone—

Mr Purcell—Yes.

Senator BRANDIS—so you are going from a defined, closed class of obligees to an unlimited class which includes everyone. It is a big step.

Mr Purcell—Yes, and it makes it less difficult to describe what the information usage is going to be of this less precisely described group. Our view is that, the more information there is—the more quality information about corporate behaviour there is—in the market, the better the community can make its own assessments as to how corporations are behaving. We are not making specific value judgments about how a corporation should be benchmarked against another in terms of either ethical or moral issues.

Senator BRANDIS—How do you put the benchmarks together then? You both use this word 'information' as if that is an unambiguous term, but can I suggest to you that, for the purposes of this exercise, particularly when one considers porous concepts like social impact or environmental impact, the very expression 'information' is intrinsically ambiguous and value laden because the information can only report scores against a benchmark which is itself, as I said in my question, arguably ethically contestable.

Mr Purcell—Plus trends over time.

Senator MURRAY—The problem is that you are giving generalised answers. If you look specifically at Wesfarmers CSR report, Rio Tinto's CSR report or BP's CSR report, the concepts are not vague at all. The energy usage is measured; it is quantified. The environmental effects of emissions are quantified. Water is quantified. The environmental descriptions are not remotely value laden; they are precise and scientific. So, frequently, are the social areas. If people have Indigenous employment programs, they give percentages. What offends me about the discussion

is that, if it is so generalised, people will believe we are talking in ideal or general terms and not in specifics. It seems to me most CSR practical development at the Global Reporting Initiative and in the Australian concept is quantifiable, specific and relatively well defined, which is what you mean by 'information that management can use'. That is right, isn't it?

Mr Purcell—Indeed, plus being capable of showing trends in performance over a wide window of time.

Senator MURRAY—Very seldom does it have ethics or anything else involved with it. Most commonly it is a recognition that energy use, if you can limit it, has a benefit to the company in terms of cost and then it has a broader benefit in terms of CO₂ emissions and greenhouse and all that sort of thing.

Senator BRANDIS—Can we come to my question, Mr Purcell. Are you disagreeing with Mr Lee when he said this morning that these judgments about broader social obligations are value-laden and moral judgments? It seems to me, unlike Senator Murray, that, although perhaps in relation to certain specific scoring of, for example, environmental outcomes that might be quantifiable and that might be an exercise in science, when one goes into broader areas of social responsibility and ethical behaviour, they cannot fail to be value-laden and moral judgments. We saw an example before. Ms Wolthuizen, speaking in good faith, of course, suggested that perhaps a decision by a bank to close some of its branches in regional Australia was an unethical decision. She is entitled to that view. But the fact that she offered that view of itself suggests to me that it has to be conceded that at least some of these judgments are ethical judgments.

Mr Purcell—I would suggest also that, to a limited extent, reporting can embrace those issues. We are not suggesting that reporting of non-financial information can necessarily address those moral and ethical issues. They are a function of corporate behaviour and corporate behaviour can be a reflection of community—

Senator BRANDIS—What I am putting to you is a narrower point—that is, to the extent to which you do engage in reporting, in preparing the criteria against which that reporting is benchmarked you are necessarily, if only implicitly, bringing in ethical or normative considerations.

Mr Purcell—To a degree, there is an argument that a corporation should conduct its business in a manner which is sustainable. So it should have a focus on preserving its resource base for future generations. Naturally, an organisation as part of its activities causes depletion of resources. If it is able to describe the extent to which it depletes its resources and how its management fares in improving its behaviour, I think that information is a public good.

Senator BRANDIS—Let us move the discussion away from environmental impact—which, I would agree, is more readily susceptible to scientific measurements—to broader social impacts. Let us use the very example that Senator Murray gave—Indigenous employment. We now know that certain employment practices in Indigenous communities engaged in not only by corporations but also by governments in years gone by were actually harmful and destructive of those communities. If you tick a box saying, 'This company scores well on Indigenous employment,' what you are doing is pronouncing a conclusion behind which there is a whole

welter of contestable propositions ethically, policy wise and in terms of social responsibility. I question how accountants can arrive at the selection of those criteria.

Senator WONG—Hang on, isn't the point—

Senator BRANDIS—Can he answer my question, please?

Senator WONG—Can I just make this point. I thought the basis of the evidence that is being given was that this is precisely the sort of issue that this project is working on. I think that we cannot put these gentlemen in a position where they have to come up with a definitive answer. They have identified the issues and they are undertaking consideration of how you might deal with some of those matters in order to introduce a better consistency.

Senator BRANDIS—I think that, if they are thinking about it, they are in a very good position to respond to the question.

CHAIRMAN—Were you raising a point of order, Senator Wong?

Senator WONG—How do you want to take that, Chair?

CHAIRMAN—I will take it as a point of order. I think it is for the witnesses to respond as they see fit. They may want to take on board the comments you have made as part of their response.

Mr Purcell—I think it is important to understand that, with financial information which accountants are readily familiar with, we can readily measure how the market interprets that information. We do not have that type of framework to understand how users of information make assessments about non-financial information. Admittedly, yes, I must concede that it does introduce problems of subjectivity, but I think we need to learn a lot more about how users interpret and use this type of information.

Senator BRANDIS—It is not from the point of view of the users; it is from the point of view of the publishers of the information. That is what concerns me. Users will make of it what they will, but unless the information has a sufficient quality of empiricism about it, then it is not really information; it is value judgments. Can you respond to that?

Mr Purcell—What must be avoided are particular non-financial metrics which are value based.

Senator BRANDIS—That is my whole point. How do you deal with it?

Senator SHERRY—Just before he answers that: isn't that simple and clear-cut? Let me give you an example. Actuaries have to make long-term estimates based on a whole range of possible indicators of judgment over a 40-year period, perhaps, and make numbers forecasts on that basis. But they do have to exercise a fairly significant degree of judgment across a whole range of indices. I take Senator Brandis's point, but I do not think it is quite as simple as that.

Mr Coughlin—I take your point, Senator. It would be nice if accounting was as precise as perhaps what is being portrayed.

Senator WONG—The value of goodwill, for example.

Mr Coughlin—Indeed. There is an enormous amount of judgment and qualitative assessment required to actually become a very good accountant and a leader in a company. I put it to you that a very good accountant has all the qualities to actually help make those judgments. But also, as I mentioned in my opening statement, we are not saying this is just about the accountancy profession solving this; this is about government, the professions, academe et cetera working together, because we acknowledge there is more than just a financial element to this.

Senator BRANDIS—Would you say the accountancy profession—again, to use Senator Murray's example—has a professional capacity to make a judgment about whether a particular Indigenous employment policy was harmful or beneficial? Wouldn't that require the knowledge of social scientists, sociologists or anthropologists perhaps? Why does the accounting profession have that knowledge?

Mr Coughlin—I am not arguing that it does.

Senator BRANDIS—I just choose that because another senator offered it as an illustration. Pace Senator Sherry, I am not saying this is simple. It seems to me that there are others who are saying that this is simple. Not only is it not simple but there are elements of this that are too dense to be susceptible to empirical evaluation at all.

Mr Coughlin—Again, I think it is an issue about how this sort of activity is undertaken. I come back to the point that it is about a range of professions coming to a landing on a framework. I do not profess to be a social scientist, nor would any of my colleagues in the profession, I hope, profess to be social scientists. To get that sort of insight may require an accountant to actually be the gatherer of the information, but, before a director would be able to make an interpretation and publish a report on it, I would expect that they would get social science to actually help them interpret that type of information.

Senator BRANDIS—You use that word 'information'. I come back to my earlier point—and I will finish on this—that there is an implicit finiteness in the use of the word 'information', suggesting that this is uncontroversial; that these are data and are garlanded with the wreath of empiricism. That is not right. It is not always right and it may not be right. To the extent to which it is not right, I doubt the capacity or the utility of this as an exercise in what you accountants do which is essentially a quantitative not a qualitative exercise.

Mr Purcell—Could I perhaps add to that. What may sit behind information is an understanding of who the stakeholders are: who it is who has an interest in corporate behaviour and the conduct of a company's business and how they might be affected by it. Once you are perhaps better able to identify who the stakeholders are, then you might be better able to understand what it is they require in terms of information. I offer that as one means of addressing the problems of subjectivity to which you allude.

Senator WONG—What seems to be constructed in Senator Brandis’s argument, I think, is that financial reporting is completely black-and-white, no qualitative judgment; and that all CSR reporting which as of yet is unascertainable is necessarily qualitative, therefore unempirical and therefore inaccurate.

Senator BRANDIS—That is not what I said.

Senator WONG—That seems to be the implication. If I can just make a few points—I don’t want to have a huge argument about this now. This committee considered the application of the International Financial Reporting Standards. It seems to me that an enormous amount of qualitative judgment, if you want to call it that, goes on in your financial reporting context, in any event. As I recall, equity is now regarded as debt in the context of mutuals. Goodwill, I assume, used to require some sort of qualitative considerations. To set up the dichotomy that financial reporting is always absolutely without question and social is not I think is wrong.

Second, with most of the CSR reports, for want of a better term, that we have seen—I think Senator Murray referred to one—companies have determined themselves what their targets are and they have reported against those. So I have assumed what you are looking at through your partnership with the University of Sydney is a framework around which that might sit. But that is not to resile from the principle that companies in different sectors are going to have different targets in terms of environmental footprint and what they might regard as their social impact, whether that is supply chain focused particularly or customer focused particularly. That is how I have understood what you are saying about a reporting framework. Have I got that wrong?

Mr Purcell—Those ideas have shaped the way the project will go forward in so much as it is heavily based on field studies working with companies who are confronting these types of problems. So it is very much an iterative process that will evolve over the years and a project which will run about two to three years.

Senator MURRAY—The point to me seems to be that serious people with serious money all over the world have taken CSR very seriously and have invested great amounts of money and people in it. In the last few days of hearings, for instance, if you add together Wesfarmers, BP, BHP, Rio Tinto, Shell and SmithKline, you come to a market capitalisation and an employment level which is quite startling in its scope. These are people seriously into CSR. So the question to me is not that we should be debating whether CSR is relevant or not, but how to make it more relevant and more applicable and more beneficial, which I gather is what you are on about.

Mr Coughlin—Exactly.

Senator MURRAY—So I have understood in the broader sense of CSR it to fall into three main categories. The first is of conventional interest to your profession in terms of financial reportings. That is lessening risk. That is the exposure of environmental and social risks resulting from your process or product or activity. The second is what may be regarded as adding value. Somebody described it to us as adding enduring value; in other words, long-term benefits for the company as a result of enduring value and taking an interest in CSR out of which they have identified real benefits. For instance, the proper measuring of emissions or energy usage prior to the lift in energy cost has enabled some companies to react early to identify ways in which they can make their business more efficient and more profitable. That is adding enduring value. The

third area is what you might call reputational, or philanthropic or altruistic, which is covered by philanthropy or self-interest, which is reputation.

Senator BRANDIS—Or both.

Senator MURRAY—Or both. I thought your submission was very good, but the odd thing about it for me was that you did not cover audit. Measurement and reporting and usage can be very relevant to the company but are not relevant to society unless people are assured that there is an audit process which verifies them. When I questioned Wesfarmers, they had not thought to include within their internal process a CSR evaluation. They were still stuck with the old-fashioned financial systems. In the private sector, as you know, generally speaking risk or assurance audits have been poor in the past. They are improving. However, they were using external audit. It seems to me that, regardless of some of the remarks already made, given the accounting profession is attuned to numbers—namely the quantification of things—to risk, traditionally, and to the concept of enduring value, in fact integrating the reporting on CSR into traditional accounting reporting is not a bad idea. It does not exclude others being able to do it, but I think a one-stop shop in that area would be of great benefit. It might be in your self-interest to argue for that. Can you see any reason why, apart from the obvious difficulties of measuring something, the accounting profession should not have the principal responsibility for auditing and verifying CSR reports?

Mr Coughlin—Certainly the research that we did last year—which we will make sure you have, if you do not have it already—did say that people expected there to be a level of assurance, whether that was done by internal auditors or external auditors, preferably the latter. But that is lacking within the current way that reporting is undertaken. We see that as essential going forward and we see that the accounting profession has a role to play in that. There is a challenge in there at the moment, in that auditing is against standards and it is against the conceptual framework that underpins those standards—

Senator MURRAY—And you are trying to develop standards through this project, aren't you?

Mr Coughlin—Indeed, and that again is why it is so fundamental to have the framework that sits behind the sorts of reporting we are talking about, because otherwise it is very difficult to audit against. Having had discussions with some external auditors who are doing work in this area, I know they find it particularly challenging to give good instructions to their audit teams on how to actually undertake these sorts of audits.

Senator MURRAY—Will it mean the development of specialists within accounting firms? As you know, accounting firms develop specialists in management systems and IT, for instance, quite distinct from their accounting divisions. Or will it require the retraining of accountants for them to better master this area?

Mr Coughlin—That is a very good question. I would expect a bit of both. The accounting firms, particularly larger firms, are actually employing many graduates of non-finance disciplines, so I would expect that some engineers, IT people and others from the social sciences will evolve into auditors in this sort of area. And I would expect some who are strong auditors with a financial background would also evolve and be involved in this part of the profession.

Senator MURRAY—Does it mean that you have got to wind back some of the consequences of the Sarbanes-Oxley changes in America, which resulted, as you know, in major accounting firms selling off their consulting practices, where essentially they had developed non-accounting skills—management information abilities, strategic financing advice abilities and so on? Do you think you are going to have to go back to a more diversified accounting service being capable of being offered, and then you might get these conflicts developing again?

Mr Coughlin—I think the conflicts are the key issue there. The fundamentals are auditing companies and then advising them on other sorts of activities. I think that is where those issues were in Sarbanes-Oxley and the corporate failures. All of these issues were happening around the same time. Bringing in specialists to do internal audits around triple bottom line reporting I cannot see leading to that sort of conclusion per se, but again it would depend on how the firms actually developed those parts of the practices. I would like to think that there have been lessons learned and that they would ensure that there are not those sorts of conflicts of interest. Some firms are saying, ‘We will never do IT consulting again,’ and I think that is what they intend to adhere to.

Senator MURRAY—Can you tell me why in your submission you did not say much about auditing?

Mr Coughlin—There was no strong reason, I would have to say. We were hoping to get information from the research that we conducted in the middle of last year which gave us some support for it. It is an oversight; it should have been there more rigorously than it is.

Senator MURRAY—Would you be able to? Would you have the time to give some further thought to it and come back to us?

Mr Coughlin—Indeed.

Mr Purcell—There is another thing I can identify. With version 3 of the GRI now having been issued for public comment, the International Federation of Accountants is addressing some of those audit issues. Both in Australia and internationally there is recognition that there is a significant need for development of audit, particularly assurance capacity, around non-financial reporting.

Senator MURRAY—Do you have the sense, from the work you have been doing, that the government does not need to get involved in this area in any substantial way yet because the private sector—the market—is working out its way in how to go with this? Alternatively, do you think that the government should be in there trying to facilitate the development of common standards and to assist with resources to think through the problems that we are scratching at today?

Mr Coughlin—The latter. I think there is a role for government to help facilitate the process. Again, because it touches so many different parts of the community and the various professions and businesses that we are talking about, it needs to have some group, and we think government is the ideal place to help bring that together. Once that is established I think there is a lot of capacity within the various professions to take it forward. But it is bringing them together in the first instance and then helping to guide that process that would be valuable.

Senator WONG—Do you have the original of the report that has just been submitted—the November report on the confidence and corporate reporting? It is not clear to me what ‘yes’ and ‘no’ are because of the way the photocopying is.

Mr Coughlin—I do have one colour copy, but it is scribbled on, unfortunately.

Senator SHERRY—The bar charts are hard to distinguish.

Senator WONG—We can read the numerical charts.

Mr Purcell—Could I arrange for original copies to be sent to you.

Senator WONG—That would be very useful so we could know whether the vast majority of people do not think that reporting will do anything or that it will.

Ms BURKE—On Senator Murray’s question that you are going to investigate the audit issue, could you put your mind to the notion of GRI washing in that as well because that is one of the fundamentals I have been trying to explore?

Mr Coughlin—Indeed.

Ms BURKE—You can report all you like, but do we know you are actually delivering? If you could have a look at that I would appreciate it.

Senator MURRAY—You said earlier that 60 per cent of the report is just public relations. There is no commitment if that is the size—

Senator SHERRY—That was the perception.

Mr Coughlin—That is certainly the public perception.

Senator BRANDIS—But also, though he did not put a figure on it, that was the view of the ACTU and FSU witnesses, and I felt, as I said at the time, that there was quite a bit of force in their impression.

Senator WONG—Within the public sector there is auditing against qualitative outcomes regularly. That is what the Auditor-General does.

Mr Coughlin—Indeed, with the outcomes and outputs type studies.

Senator WONG—That is right. I assume you can draw on that.

Mr Coughlin—Indeed.

Senator MURRAY—They are performance audits.

CHAIRMAN—As there are no further questions, I thank both of you for your appearance before the committee this afternoon and for your contribution to our deliberations.

[4.36 pm]

EDWARDS, Ms Leanne, Senior Analyst, Business Council of Australia

MUNCHENBERG, Mr Steven, Deputy Chief Executive, Business Council of Australia

CHAIRMAN—Welcome, Mr Munchenberg and Ms Edwards. We have before us your submission, which we have numbered 108. Are there any alterations or additions you wish to make to your written submission?

Mr Munchenberg—No, thank you.

CHAIRMAN—I now invite you to make an opening statement.

Mr Munchenberg—I will not go through in any detail what is in our submission because it is before the committee, but just for the record I want to quickly summarise where we are coming from. The Business Council welcomes this inquiry for a number of reasons. Firstly, we see it as an opportunity to get a bit of clarity around what everyone means by the term ‘corporate social responsibility’ that is bandied around. Secondly, it is a chance for the business community to actually discuss with and explain to government what is in fact going on in this area within business—why corporations are doing what they are doing—and then to have a bit of a talk about where we see some of these issues going in the future.

The Business Council is strongly committed to corporate social responsibility, both in our own organisational activities and in our engagement with our members, all of whom are engaged in some form of corporate socially responsible activity, and some 80 per cent of whom report publicly in some form or another on what they are engaged in. Notwithstanding our support for corporate social responsibility, we are opposed to the legislative proposals that have been put forward in the terms of reference by the committee, specifically the expansion of directors’ and officers’ duties and the suggestion for mandating reporting. I will go into the details and reasons if the committee wants me to later on.

We are also a little confused as to what particular problem, or perceived problem, the committee is seeking to fix or to answer. To our minds there is no serious claim that existing duties of directors or officers precludes them from taking into account the interests of stakeholders other than shareholders. We also question whether the Australian corporate performance in this area is noticeably behind that of other parts of the world, so we are not quite sure what particular problem the committee is seeking to address. Having said that—

Senator WONG—Maybe we just want improvement, Mr Munchenberg. You do not have to start being so defensive, you know!

Mr Munchenberg—No, far be it from me to be defensive, Senator! Having said that, we are more than happy to talk about how we can encourage continued development and evolution and uptake of corporate social responsibility.

Senator BRANDIS—This could be a congratulatory hearing, Mr Munchenberg, in which all the senators are going to congratulate corporate Australia—

Mr Munchenberg—I would be so familiar with that!

Senator BRANDIS—for a very extensive sense of corporate responsibility.

Senator WONG—First, can I start by saying I hope we can have some discussion here that is not focused only on the BCA saying ‘We don’t want directors’ duties changed.’ I think we have that message loud and clear.

Mr Munchenberg—No, I am in your hands as to where the questioning goes.

Senator WONG—I am sure that is not the case, but I understand that is your position. You did, however, say that there is no serious suggestion that directors’ duties do not permit regard being had to stakeholder considerations. Clearly, Meredith Hellicar and others have made that claim, so that is something that has been put.

Mr Munchenberg—I would be happy to discuss that.

Senator WONG—I have to say that my personal view is that you are probably correct, but that has certainly been discussed in the public arena and there have been submitters who have made that claim to us. Could you deal with that first?

Mr Munchenberg—There are two levels I would like to answer that on. Firstly, we are not here to represent James Hardie or what they may have claimed—

Ms BURKE—Are they a member of the BCA?

Mr Munchenberg—Yes.

Senator WONG—But you do not represent them here today?

Mr Munchenberg—Not specifically. Collectively, I do. The point I would like to make, though, is that, while there have been reports stating that James Hardie have claimed they were somehow completely excluded from considering issues or interests other than those of their shareholders by their directors’ duties, my understanding is that the James Hardie claim was actually somewhat narrower and more specific than that. My understanding is that they claimed that, having identified a shortfall in the funding to the foundation that was established to deal with claims, they perceived that they were being asked to sign what might be construed as a blank cheque in agreeing to fund any future amount of liability. They said that they were unable to do that without shareholder approval and they were concerned about the potential for litigation being brought against them in the US, which has a somewhat different attitude to shareholder rights than we have in Australia.

Senator BRANDIS—Is that because they were concerned it was an indeterminate obligation?

Mr Munchenberg—Yes, and that is a very salient point. I think there has been a tendency to oversimplify that, both through the media and then through subsequent discussion, to say that they were claiming some sort of blanket inability to deal with it. They clearly did not believe they had a blanket inability to deal with it, because they set up the foundation in the first place, and like most companies they were engaged in some form of CSR activity. We can debate whether that is adequate if you want, but I do not really see that as the point. The point is that James Hardie's own behaviour and, as I understand it, the precise issue that they raised is somewhat narrower than it has been presented.

If I can then answer that question in a more general way, we are here representing on one level the chief executives of the country. On their behalf, we say that we do not see that there is a problem. I am aware that the Institute of Company Directors has already appeared before you on behalf of the boards of the country. They do not see a problem; the chartered secretaries do not see a problem; and, if you ask the CFOs, who are probably appearing before you tomorrow, I suspect they will not see a problem. There may be such a perception in some parts of the community, due to slack reporting or whatever, but the people who are making decisions do not feel in any way inhibited by their current duties from engaging in—and indeed they do it; they demonstrate through their behaviour—looking after and taking regard of the interests of stakeholders beyond their shareholders.

Senator WONG—One of the themes in your submission, and frankly in those of a couple of your members who appeared earlier today, was the consistency or the synergy between a company's long-term value and the extent to which it manages or has regard to broader considerations, such as stakeholder issues, environmental issues et cetera. One of the things that we have to struggle with is how it is that you might get corporations who do not take that view to think in that way. We might argue about whether a great many of the companies from whom we hear are in fact doing what they say they do, but certainly they think about it as a part of business as usual—it is not an additional philanthropic aspect to their corporate operations; this is their business as usual. They say: 'It is part of our business operations to look at our environmental impact and our impact on various stakeholders, customers, community et cetera. That is just a part of how we do business.' To some extent it is a pity, because we do not have the companies before us, which really is where the issue might be. I would be interested in how you think we could encourage those corporations who do not take that view to do so.

Mr Munchenberg—The fact is that it is very much an evolutionary process, and there are many companies that are at different stages of evolution. However, we did very deliberately draw out what the existing drivers are that are making companies do that.

Senator WONG—Yes, I saw that.

Mr Munchenberg—We saw that as important because, if the committee is looking at what can be done to encourage greater uptake, obviously aligning activities with those drivers is a good way of doing that—without raising some of the more counterproductive concerns that we have flagged in the submission regarding other ways of encouraging. Is your question more generally, 'What can the committee do or recommend be done to encourage that uptake?'

Senator WONG—I suppose that is one thing. However, one of the points—and I can come to this shortly—is that you say, for example, one of the drivers is access to capital. The point the

previous submitters made is that, where you have imperfect information sharing or an inconsistent reporting framework, you are not going to get the market recognising value in order for that driver to be utilised properly. So there are building blocks associated with the drivers, are there not?

Mr Munchenberg—There are, and those drivers themselves have a variable impact on different companies in different sets of circumstances. One of the things that, from our point of view, is very important to understand is that this is in the scheme of things a novel area. It is still one which we are exploring. We are still finding our way. There are some who get it and there are some who do not, whether they are running companies or whether they are running superannuation funds and looking at their long-term investments. The trends are all in the right direction, and we would argue that the rate of improvement is pretty good. We are not arriving tomorrow, but we are certainly on the journey—and, to murder an analogy, the train is moving forward pretty quickly.

In terms of how you assist those who do not yet get it to get it, I hesitate to say this—and certainly Ms Edwards has been through some of the earlier transcripts, and I know there is some scepticism about education—but I think there is a role for education. However, we would say that we need to be somewhat more sophisticated in what we mean by education. When people talk about education there is too much focusing on, ‘If we do a report on why companies are doing this then others will read the report and they’ll see the light and they’ll do it.’ There is certainly a role for that, and we need to continue to inform the market broadly defined in the community, but we would like to see a little more sophistication in that.

All I can really offer you up today are some examples of things that might be done. As an example, government and business are working hand in hand with some of the business schools and graduate schools to make sure that these issues are dealt with as part of MBAs and similar postgraduate business type studies. The people who are going through those are often people who either are ambitious for high office in the corporate sector themselves or have been put through them by their employers because they are seen to be going places in the corporate sector. Let us make sure that they are subjected to the rationale, the arguments, the understanding and, to some extent, the validation that it is appropriate and right to take these sorts of things into account. That is one example.

Another example might be taking the first driver—for example, employee retention, attractiveness and motivation—which is a very major factor for many of the corporations involved in CSR activities. Most of those companies will tell you that their experience is that, in a market which is becoming increasingly weighted towards the prospective employee rather than the employer, CSR issues, environmental issues and work-family issues—that gamut of, for want of a better description, so-called ‘soft issues’, which is not the language we would use, even though I just did—are increasingly important and in fact determinative. Your top-break commerce graduate, or whatever field they may be in, may say that salary and career prospects are still No. 1 and No. 2, but No. 3 is going to be, ‘What personal development opportunities am I going to have with your organisation?’ or—and you may recall the ad from a few years ago where someone is at a party and says they work at a bank and the place goes quiet—‘How am I going to feel at a dinner party or a barbeque about saying that I work for a bank? This bank has a better reputation than that bank, so I will go and work for that bank.’

While companies will compete on salary and career opportunities, the margin between them is quite different. That third or fourth relevant issue can often be a major defining factor. What can we do about that? At the moment it is anecdotal evidence coming out of corporations that that is important, that they feel it is giving them an edge. Government and business collaboratively can do some research on talking to graduates, quantifying that element. If you link that with the declining net growth in the workforce, companies will start to understand that in the so-called war for talent these things are going to matter more and more: if you do not get the best people, you do not have the best company.

They are two examples. The only other area in education that I would raise is this. As you can see, I have come well prepared. It is a source of frustration for the corporations—and it is perhaps why we are a little defensive about these issues—that so much of the CSR lens is focused on the corporations themselves. In many ways the corporations are captive to the investment market. You have already indicated that investors do not always see this as an important issue. Maybe it is not so much the corporations that need education as the investment market.

Senator WONG—I would agree with that.

Mr Munchenberg—That covers the gamut from the Australian Shareholders Association, which sometimes says some bizarre things—for example, about corporations making donations to the tsunami aid campaign.

Senator WONG—I think they retracted that, didn't they?

Mr Munchenberg—They did.

Senator WONG—Wasn't there a hasty retreat?

Mr Munchenberg—There was, but through to the more hard-nosed institutional investors and through to the superannuation funds who are increasingly dominant in the marketplace. If anyone has a long-term interest, it is surely the superannuation funds. Maybe some education is needed on that side as well.

Senator WONG—I am sure that we would be happy to get from you any other examples that you might have.

Mr Munchenberg—We will be happy to provide more thoughts.

Senator WONG—Finally, you released a paper quite a number of years ago called *Towards sustainable development*. What has happened since?

Mr Munchenberg—We released two papers. One was just a short statement on the principles of sustainable development. Then there was a follow-up document that was more about the 'how to' rather than the 'what to do'. To which are you referring?

Senator WONG—Both. I am interested in what activities you have engaged in since that time to encourage more companies to take on sustainable development practices.

Mr Munchenberg—Until recently we have tended to focus on some more specific issues. For example, we have done some work on encouraging and assisting companies to employ increased numbers of older workers. We would see that as being part of this whole debate. We have done work on highlighting how companies have engaged, hopefully in productive and constructive ways, with Indigenous communities. We have done work on the social and economic costs of people not completing 12 years of education or training. We see all these as part of the BCA and its membership CSR activities.

One thing that we did do a few years ago now is the report *Corporate community involvement: establishing a business case*, which at the time was a major step forward in articulating the case for corporate engagement with the community and also in highlighting the future directions the corporations saw those engagements going. Through that report, we were able to predict what has come to fruition, which is that increasingly corporations are looking at long-term partnerships with a smaller number of community partners rather than the more annual disbursement of funds that was characteristic of some of the CSR stuff five or six years ago.

We are in the process of pulling together a project to update and renew that with a greater focus on—in part an extension of our submission to this committee and other sources—what is driving companies to go down the CSR route. What do senior managers, particularly CEOs, want to get out of it? What are they getting out of it? And then we are trying to tackle an issue which may or may not have been raised with the committee, and that is how you actually make sure that this is not just an add-on—that you actually integrate it in your decision making. As we saw earlier to some extent with environmental management, the classic line was: ‘Yes, we do environmental management. That’s our environmental manager over there. Now would you like to talk about some real issues?’

Senator WONG—That is right.

Mr Munchenberg—And we know that you have to integrate the environmental management systems into all of your process systems and your decision making. We need to be able to do the same thing with corporate social responsibility.

Senator WONG—What is the time frame on that project?

Mr Munchenberg—It will be this year but I am not sure when. It probably will not be useful for the purposes of this committee, depending on how long you choose to deliberate.

Senator MURRAY—Perhaps it will be useful to you.

Mr Munchenberg—Indeed, it may well be.

Senator MURRAY—You will recall some years back when corporate governance became such an issue, eventually the ASX got together a whole set of groups of people and then worked out, not a prescriptive set of rules but a set of rules, if you like, which it wanted its members to follow. That set of rules was further developed by other agencies and ASIC gave it the tick, an imprimatur and so on. Like Senator Wong, I fully understood your desire to avoid changing the Corporations Law, but do you think one thing we should consider is handballing this area to ASX on that corporate governance type principle and saying: ‘Why don’t you’—ASX—sit down

with the major players,' perhaps including ASIC but certainly business and unions and some government input and so on, 'and work out some rules which could be helpful to guide the participants in the ASX index as to a kind of common approach'?

Mr Munchenberg—I sit on the ASX corporate governance council so I am familiar with both its role and its modus operandi. I have a number of reservations about that. The first is I think that it is premature to be setting rules in this area—

Senator MURRAY—My instinct is that that is right.

Mr Munchenberg—Because I sit on the council I know that one of the key issues that the governance council has to wrestle with is that notwithstanding the 'if not, why not' approach, notwithstanding all the ASX's communications and all of our as representative bodies communications back to our constituencies, particularly smaller listed companies still see the ASX guidelines as mandatory, either because they are not paying attention or because they feel that regardless of the 'if not, why not' approach, if they diverge from what we ourselves mistakenly label 'best practice corporate governance' then they will somehow be seen to be less than best practice and be punished accordingly. There is an issue there that even that approach is prescriptive—not as prescriptive as legislation but it runs that risk. There may well be a time at which that is an appropriate risk to run, and, arguably, it is an appropriate risk to run in the case of corporate governance, corporate governance, of course, being a much more mature area of understanding corporate social responsibility.

A major concern of ours is by all means let us look at ways of promoting, encouraging and cajoling companies into doing more and doing it faster in this area, but let us not kill off the competition between companies that currently exists, the innovation, the rapid evolution in directions that people would not otherwise have been able to predict. There is quite a dynamic process going on at the moment and I think we need to be a little careful in focusing on those who don't yet get it. Five years ago there would have been so many more who did not yet get it who do now get it so we are seeing that progress. Whatever we do, we do not want to lock down that innovation and that competition.

Senator MURRAY—My instinct is that you right, I would think it is too premature, but I want to be sure as to your answer. If I agreed with you that it is premature now, do you rule it out as a later option?

Mr Munchenberg—No, because you do get to a point where such a degree of consensus has arisen through that organic evolutionary process and an issue is so well and widely known that you have to wonder whether the laggards are laggards from ignorance or deliberately. Let us be quite blunt: there can be quite significant short-term commercial and economic gains to be made by bucking the trend and making a fast buck—not that our members would do this—as quickly as possible and taking the money and running. At some point we reach a point where 90 per cent of people are doing the right thing, 10 per cent are trying to get a competitive advantage by not doing the right thing, and maybe that is the time for more stringent standard setting or for more stringent measures to bring the 10 per cent into the fold.

On the plus side, I can give you some, hopefully, good news, because it is still an exercise that is going on. The ASX governance council has a working group in part looking at that issue, and

that is an ongoing deliberation and I cannot really forecast where that might go. Certainly the Business Council's view is that that working group should be looking at the existing obligations under the ASX corporate governance council guidelines, particularly in relation to risk, which is principle 7 of those guidelines, and particularly in relation to the existing requirement to disclose how companies manage non-financial risks. The ASX's own analysis, rather than that of the council, of reporting against the guidelines shows that as an area of weakness so we, with many others, are pushing and working within the ASX's corporate governance council to get companies to understand that they are expected to, and should be, disclosing how they manage non-financial risk. That covers all the social and environmental risks that are material to the company, but also regulatory risks and a whole host of other things as well. So there is some work going on there that is germane to the committee's deliberations.

Senator MURRAY—In my broad framework for CSR of being those directed at minimising or identifying risk, those identified at adding, hopefully, enduring value, and those which are philanthropic or reputational, what you are saying to the committee is that the first area, which is already in a sense required by many accounting standards to be recognised and reported on, that area of CSR has already overlapped and the ASX is paying serious attention to it now.

Mr Munchenberg—That working group is currently deliberating on what they might do in that area, yes. I think that is an appropriate area for a governance council to be operating in. Taking your three areas, and to be honest, I cannot remember what that middle one was but I am sure you will remind me.

Senator MURRAY—The middle one is adding value.

Mr Munchenberg—Adding value, yes. Of those three areas, it would be appropriate for a governance council to be looking at the risk element. The adding value area is perhaps beyond it and certainly the brand management, reputation, philanthropy, that sort of element, would be way beyond what I would see as the role of a governance council.

Senator MURRAY—Let me be clear, the adding value is not my concept, it is the concept expressed to us in Perth of how the company is trying to take the assessment of environmental, and in some cases social, measurements and as a result of that analysis is able to add value to the company because it spends less on power or does something with its emissions and so on and so forth.

Mr Munchenberg—It is consistent with the eight drivers we have identified. Quickly thinking, I would feel that our eight drivers fall within those three categories. I have no trouble with what is being put. My only point was that the governance council is there to deal with governance issues and I think—

Senator MURRAY—I was just drawing an analogy, not trying to twine it in.

CHAIRMAN—Can I ask to what extent, if any, your member companies link executive or management remuneration to corporate responsibility measures or the performance of management with regard to performance?

Mr Munchenberg—At the specific level I probably cannot answer because I am not familiar with all 100 of their contracts, to be honest, and it is not something that I have examined, but I would be surprised if any of their contracts did not have long-term performance indicators in them. In a sense one element of the CSR debate for us is a slice of a bigger issue that companies are wrestling with all the time, and that is short-term pressures versus long-term pressures. A lot of the market forces, and it seems increasingly market forces, are driving towards the short term, so companies in looking at remuneration have had to try and structure contracts for their executives that balance meeting short-term market-driven objectives with long-term shareholder wealth generation and growth objectives. In that sense, it is there because, as I say, we believe that you cannot sustain a company in the long term without having regard to both the risks and opportunities of being out of or in step with community attitudes. To what extent do their contracts say, ‘Thou shalt ensure the company is a good corporate citizen,’ I do not know and I would guess that at that level the specificity would be fairly low, but it is inherent within the long-term performance.

CHAIRMAN—A number of the submissions we have received also deal with this issue of short-term market perceptions as against the longer term. Do you have any suggestions as to how executives can be encouraged to take a longer term view through their remuneration packages?

Mr Munchenberg—I think their remuneration is already structured in such a way. Particularly at the most senior levels, and certainly at the CEO level, in many corporations your guaranteed money, if you like, is only a small percentage of what you potentially could earn—it is a source of frustration for us when we only ever hear the maximum figure being bandied around, but that is by the by. On top of that there will be short-term incentives, for example achieve this share price by this time, achieve this market share or whatever the particular driver is by this time and you will then get additional payment, be it cash, options or whatever. Then there are longer terms ones and they tend to be more equity-based ones and they should not vest until the long-term goals have been seen to be there. They are there. I am sure some would say that they are not specifically CSR-driven enough. Maybe that is part of things that will change in time. We go back to the point that, if you want your company to be around and flourishing in 10 years time, you cannot do that without having regard to community attitudes, to environmental risks, the social risks, all those things.

Senator BRANDIS—I agree with you that there is no case to be made for further extending directors’ duties, and I suspect that some of the people who bandy that claim around have, in fact, no idea about how extensive directors’ duties are under the existing law. But I do wonder about the question of having some facultative exclusion in relation to the obligation of the board to consider the interests of stakeholders other than shareholders. This is the James Hardie scenario, if you like, and I heard what you said about that and that was interesting. Contrary to what I understood you to be saying, as I read the chartered secretaries submission, and I refer to page 11, they do recommend that there be what they call ‘an optional rule’ so that the company’s constitution might be amended, with the sanction of the Corporations Act, to enable the board to consider interest beyond shareholder interest for any purpose that the board sees fit, or words to that effect. I was wondering if you could speak a little further to that issue and, if the Business Council has a position of opposition to such a rule, could you tell me why; or, if that is not right, could you expand on what the Business Council’s position is?

Mr Munchenberg—My point about the chartered secretaries, and I will stand corrected if I am not right, was that they were not arguing that there was a problem with the current duties—

Senator BRANDIS—No, you are right in saying that.

Mr Munchenberg—What they have now done is said, ‘Were the committee to find that there is a problem, here is a potentially useful solution.’ To be perfectly frank, we were initially reasonably relaxed with what is referred to as an ‘enabling provision’.

Senator BRANDIS—We have called it a ‘facultative provision’. I think we mean the same thing.

Mr Munchenberg—Basically one which does not say, ‘You must’ but ‘You can’ or ‘You may’. Upon further reflection, and particularly some discussion with corporate lawyers as to how that might be interpreted, we formed the view that there were actually some dangers in that. The first—which is not really a legal issue; it is more a matter of perception—is that by amending the Corporations Act to say that, it rather confirms that there is a problem where we do not actually see a problem. You create this slight confusion as to why has parliament spent its valuable time making this amendment if they did not believe there was a problem to be addressed.

Senator BRANDIS—Parliament spends a lot of its valuable time doing unnecessary things, Mr Munchenberg. You know that better than most people.

Senator WONG—There is an answer to that, isn’t there, that it is confirming the existing case law and will provide comfort.

Mr Munchenberg—It may do that, but then you go on to find that there are further problems.

Senator WONG—Yes, the second issues.

Senator BRANDIS—May I infer from that, reading between the lines of what you say, that you are worried that, were the act to be amended in that way, one day a judge is going to come along and say, ‘I interpret that the legislative purpose was,’ and then build from that a body of precedent that change it from a facultative to a compulsory provision?

Mr Munchenberg—Yes.

Senator BRANDIS—I think you might be right.

Mr Munchenberg—I think that is a valid point. The second concern is, and there are probably better lawyers here than me and I am happy to discuss this, that having put in a provision that says, for example, the board may have regard to, there may come a time when a court says, ‘What did you do as directors to determine whether you should have had regard to these other things?’ so you do actually create a legal obligation, notwithstanding that you are attempting to—

Senator BRANDIS—Sorry? A legal obligation to address the issue at least at the broad level?

Mr Munchenberg—Yes. Not a legal obligation to act in any particular way but a legal obligation to have at least demonstrated that you had addressed the issue. Given that stakeholders can be such a wide class, that potentially raises quite a significant due diligence issue, to show that at the time you were able to conceive the likely stakeholders who may have an issue that the court can clearly see with hindsight. The third concern is one that has slipped my mind for a moment. Perhaps I can come back to that because I am sure it will come back to me.

Senator BRANDIS—I think it is a very important issue for this committee because this is not an amorphous issue, it is a very narrow and specific issue, and we do want to hear the Business Council's full elaboration of its position on this issue.

Mr Munchenberg—With the committee's indulgence, I have now had a chance to clarify my thoughts and remember what the final point was. That is that it does potentially open up a loophole. It effectively runs a risk of undermining the existing duty. If, for argument's sake, we had a CEO of a company who was a particularly charismatic and dominant individual who was heavily into the arts community and got his jollies by funding all sorts of different arts things because then he got invited to all the openings and all that sort of stuff, and he then frittered away shareholders' or investors' money on that sort of personal pursuit, he could then say, 'But I'm entitled to have regard to all these other stakeholders, and because of whatever industry we're in, maybe I can make some vague and weak claim.' So there is that risk that it will somehow be used.

Senator SHERRY—But couldn't you say that now? Under your argument, couldn't that chief executive mount that case now?

Mr Munchenberg—Under the current duties, he would have to demonstrate how those activities fed back into his existing duty to the company and its shareholders. If it was a broader, more open-ended and may have regard to the interests of other stakeholders, then there is potential for that to be seen to be overriding the initial existing duty.

Senator BRANDIS—Your point being that a provision like that could be used as a pretext for subverting the existing duties and, indeed, in a particular case privileging the duty to stakeholders above the duty to shareholders.

Mr Munchenberg—None of those arguments, I would say, are killer arguments but the combination of them, particularly when we have a reservation about whether we really have a problem to deal with, has certainly been sufficient from our point of view to harden our position and say that even an enabling or facilitating provision would create more problems than it solves.

Senator WONG—I understand the position. I would have thought we were having an argument in the abstract rather than looking perhaps at the concrete. I take your point about: is there a problem or not? There are different views around that, but I take your point about those who assert there is no problem. They are fairly weighty submitters in this context. But I would have thought that some of the issues you raise about this perhaps relate particularly to how that provision might be worded as opposed to having a provision per se. For example, there is a

difference between ‘may have regard to’ and ‘is permitted to’ or ‘is not precluded from having regard to’.

Mr Munchenberg—That may address the point about the due diligence question to some extent.

Senator WONG—I think that addresses the point about whether ‘may’ creates legal requirements to consider that and potentially addresses the points about the risk of undermining the existing duty.

Mr Munchenberg—I am not as confident as you, Senator, on that.

Senator WONG—No, it potentially could, but what I am suggesting is that drafting may well deal with some of those issues. I think the more cogent issue from my perspective is your point about whether the current law prevents that. If the current law does not prevent that, why would we then go to the next step?

Mr Munchenberg—That would be our argument. We know that there are people who believe or claim to believe that somehow the duties prevent directors—they tend not to be directors, as you point out, or people who are actually making the decisions, which is a very important point.

Senator WONG—Other than the one we discussed. Given your evidence about it being a narrow issue, it still has been raised by parties.

Mr Munchenberg—Perhaps another tack on that is that we would be most concerned were parliament to pass legislation to clarify the laws just because someone somewhere said they thought they did not do what—

Senator WONG—We agree with that.

Senator BRANDIS—On the same point—I am following from Senator Wong—I have never ceased to be astonished at the inventiveness of judges in inferring ‘ought’ from ‘may’, inferring the injunctive from the permissive.

Mr Munchenberg—A large part of our concern is that—

Senator WONG—You should teach them better grammar, George.

Mr Munchenberg—they assume, perhaps from naivety, that the parliament does not do things without good reason. They infer what those reasons might be.

Ms BURKE—Ouch!

Mr Munchenberg—I am sorry: I am just reflecting back what the members of the committee said to me earlier.

Senator WONG—You are in trouble now, Mr Munchenberg.

Mr Munchenberg—They then construct interpretation around what that may mean. The thing that worries us is that we do not know what bizarre circumstances may one day arise about which a court has to take regard to this provision. Were we solving a particular key problem we may be prepared to take the risk, but, if there is no major problem, why take the risk?

Senator BRANDIS—I think it was David Hume who said in philosophy ought always implies can, but there are some Federal Court judges who turn that on its head and say may means ought.

Mr Munchenberg—Yes.

Senator MURRAY—On that same point, I think a judge's view such has been postulated would be right because if parliament did put it in it would intend more people to take an expansive view. I think you are right to be cautious. I am interested in defence and, on that same point, the lightest legislative touch you can put into legislation is a legislative note which has no legislative import except to be explanatory. If the specific ill to be cured is the excuse for nonaction put up by the Hardie people and that legislative note simply said something to the effect that it was not ground for a director not to act in that way, that would at least be a signal to the judiciary of the sorts of things that parliament would think were not excluded.

Mr Munchenberg—You are talking about a procedural point, the subtleties of which perhaps escape me, but, if you are saying that there is a way of introducing into extraneous—from a court's point of view—material a statement as to parliament's intent regarding the existing provision, and that has no legal impact and does not raise the sorts of issues that we have already been discussing, then I can see no harm with it—but with those caveats.

Senator MURRAY—It is a device used in Work Choices law and it is a device used, I think, in Corporations Law. It does have useful meaning, without changing the law.

Mr Munchenberg—And it may be something that is able to be done without creating any problems. The only question I would ask is whether, as Senator Wong points out, we have people who have this misperception of what the impact of the duty is, notwithstanding the fact the seniormost directors and company officials in this company repeatedly and publicly say it ain't so. But if there is some benefit that can be derived from that and there is no risk of legal complications then certainly that is something that we would be prepared to consider.

Ms BURKE—I want to go to something completely different, if that is all right, Mr Munchenberg. You said in response to a question from Senator Murray that some businesses do not look at corporate responsibility, so they can undercut and make a quick buck. But we have also had instances of companies that are actually using CSR as a corporate marketing tool. Some businesses are actually relying upon that as a stick to get the market in. We had an interesting discussion with the Body Shop this morning on that point: are they using it as a sophisticated marketing tool? So it can work as a two-way street.

Mr Munchenberg—Absolutely.

Ms BURKE—You pepper your submission with examples, but they are isolated examples, aren't they?

Mr Munchenberg—They are, because of the nature of the submission.

Ms BURKE—That is exactly right, and that is what I suppose I am getting to. We have some corporations getting kudos because they have gone out and done X, Y and Z fantastic thing—and I am not disputing that that is good—but they have not reported everything. So you may have a bank saying, ‘We’ve done this great financial literacy program,’ or ‘We’re doing this great volunteering program,’ but they have not put down, ‘But we’ve recently been in trouble for inappropriate lending practices to Indigenous communities’—as one rather large bank has recently. So, unless you have a whole contingent of reporting documents so that everybody can look at everything as opposed to just isolated instances of philanthropic goodwill, you are doing it in isolation and they are getting kudos for one thing and not the whole gamut of what you would see as corporate social responsibility.

Mr Munchenberg—There tends to be an evolution in reporting. My own background is more in environmental reporting, but I see the same things happening with social reporting, which is probably lagging five to 10 years behind. These are sweeping generalisations, but they will, I hope, be instructive. You first of all get companies feeling under pressure to say something and there is a higher risk you will get a bit of ‘greenwash’ or tokenism or whatever. That may or may not work for a little while, but very quickly, if that is all it is, people get very cynical about what is being put out there. So the company becomes a bit more robust and a bit more detailed about what it is doing and why it is doing it and all those sorts of things.

If you then get into a situation where you say, ‘Well, that’s all your good stuff, but we know, because we read the newspapers and listen to the radio, that you are also doing this,’ then that loses credibility. These environment and social reports cost money, so you want to get value out of them. If they are being dismissed as greenwash or as lacking credibility, you are ratcheted up the credibility scale. Then what you will see—as we saw with a lot of the mining companies’ environment reports—is that they will disclose: ‘Yes, we did this; this is great. We did that; that was great. But we also incurred these breaches and this is a current problem we have not yet resolved.’ There is much greater credibility.

You then get to the point that I heard Senator Murray express interest in earlier on, where everyone says: ‘Well, that’s all fine, but that is what you’re telling us. How do we know it is true?’ So you go to the next level of sophistication and you get some sort of certification or auditing process going. There is a ratcheting up there, driven in part by—and I realise the committee will be shocked by this—the community being largely sceptical of a lot that big business says. So that drives a degree of pressure on corporations to prove that they are doing what they are claiming to do. There is also competition between companies in any given sector. For argument’s sake, all banks might do a report, but a particular bank does something that is a big better than everyone else, so they follow suit and then someone else will come up with some new innovation. That is the sort of competitive spirit that I was expressing concern about being throttled if we get too prescriptive about what people should do.

Ms BURKE—If we do not get to the stage where you have a framework that people are comparing against for, say, an investment’s sake, or ‘I want to go to bank X because I think they are better,’ or ‘I want to work for company X’, do we not run the risk that, if we do not have some sort of framework, it will be out of kilter, you cannot compare like with like and companies will actually be disadvantaged? If there is not some broad framework—be it

prescriptive or voluntary or not—to say, ‘This should operate here; these are the benchmarks; these have been audited,’ you are actually putting corporations at risk of being disadvantaged, because they have gone and spent all this money on this great environmental impact statement or social impact statement, but it means nought because it cannot be compared to someone else’s.

Mr Munchenberg—We often hear this argument being put forward as a reason why there should be some form of—be it voluntary or mandatory—standardisation of reporting. There are a number of issues there. One is, I think, if you were to compare reports from particular sectors, you would find quite a bit of similarity between them. So, if you look at mining company environment reports, they will talk about much the same sorts of issues because they face much the same sorts of issues. It is the same with banks and manufacturing companies. So, within sectors, there is probably greater comparability than perhaps we are led to believe.

Once it moves beyond a sector, comparability becomes a problem because the critical issue for a mining company is going to be different to that of an accounting firm, for example. If you are trying to standardise across all sectors, you end up either where the GRI has gone—and many of our members are involved in the GRI—which is incredibly detailed and going through its third iteration, and still people are not quite happy with it, or you have it in such sweeping and general terms—where you are trying to find commonalities between banks, accounting firms, car manufacturers and et cetera—that the level of detail in that that is comparable is not meaningful.

So I think what we will find is—just as companies are progressing towards greater accountability in their reports and progressing towards trying to work out the issues that I heard you discussing with the earlier witnesses of how do you audit in this area—that work is going on within companies now. We will see increasing standardisation and you will then get to a point that I was discussing with Senator Murray before, where perhaps you can then—whether voluntary or mandatory—describe what those documents should have. By the same token, evolution is an ongoing process.

So I think at this time the costs of trying to say, even in a guidance sort of way, ‘These are the things you need to take into account’—we need to be careful of that, not least because there is already guidance out there. There is the GRI, there are the various indexes, and they have their own criteria and all these sorts of things. So we are moving in that direction anyway.

Senator WONG—Can I just raise one issue. One of the things you say on page 50 of your submission that governments can do is—and this is in the voluntary capacity, I think:

... identifying and removing regulatory barriers to corporations implementing CSR activities, such as restrictions that can make it difficult for employees to negotiate more flexible working conditions ...

I would have hoped that we could have avoided having an industrial relations debate in your submission.

Mr Munchenberg—Do you want me to respond to that or is there a point you want to make?

Senator WONG—Are you seriously suggesting that having a deregulated industrial relations system is going to lead to better CSR?

Mr Munchenberg—I am seriously suggesting that we need to look at whether there are restrictions on adopting more flexible work conditions. One of the things that we would like to suggest to this committee, something that it would be very useful for the government to do, is to look at what barriers and inhibitions there are there in government legislation and policy for corporations doing more corporate social responsibility work.

Senator WONG—I would be happy to discuss that, but what you are talking about there is industrial relations. In a submission to this committee it seems to be an interesting thing to pick as an example.

Mr Munchenberg—It was topical, but if you would like me to elaborate—

Senator WONG—The point is made. I would be happy to have that discussion.

Mr Munchenberg—You understand our point and we understand your point. If I could perhaps take it beyond that particular issue—

Senator WONG—You chose to put that issue in your submission.

Mr Munchenberg—If I could take it beyond that particular issue, let talk about a very real issue that would be of interest to this committee: that there are elements of government legislation and policy which make it more difficult for corporations to engage in corporate social responsibility issues. One very positive thing that we would see coming out of this committee is a recommendation that there be some examination of some of those issues and some consideration given to removing them.

Senator WONG—Such as? All you have given us so far is industrial relations.

Mr Munchenberg—I can give you two further examples that are completely unrelated to industrial relations. One relates to flexible working conditions, however. The first is that many corporations would like to be able to provide child care.

Senator WONG—We know about this.

Mr Munchenberg—You are aware of the arguments.

Senator WONG—Yes.

Mr Munchenberg—But it is a real issue.

Ms BURKE—It is a big issue.

Mr Munchenberg—They want to be able to provide it but they cannot do it.

Senator WONG—We do not disagree with you. Because of the tax treatment?

Mr Munchenberg—Because of the tax treatment; that is right. Another issue unrelated to that is problems associated with volunteering. Particularly at a time when insurance seems to be a problem, particularly with many NGOs, we are finding that the amount of paperwork involved with employees of corporations volunteering within non-government organisations plus the insurance issues plus the increasingly expansive occupational health and safety issues being imposed on corporations are making it increasingly difficult for corporations to agree to employees going out and working on community projects or working in community organisations because of the risks to the corporations. There are a couple of areas where there are some real non-industrial relations issues where government policy or legislation is inhibiting the uptake of CSR type initiatives. With time, we could certainly provide some more examples, and, were there to be a review, we would willingly participate in that and identify it.

Senator WONG—On notice, could you have a think about those areas and also the issue you raised before about the potential commercial competitive advantage that the people who do not get it—the 10 per cent who do not get it—might have for a period of time. I assume that your position is that that is not the situation currently.

Mr Munchenberg—No. Ms Burke raised the point that there are positives in positioning yourself around this issue. If, for example, you take a sector where there are four or five major players in a particular sector, if three or four of them are trying to position themselves around corporate social responsibility, there is in fact arguably an incentive created for a company to say, ‘They’re adopting that strategy. It means that it is a higher cost strategy for them in the short term’—

Senator WONG—Is that something we need to address?

Mr Munchenberg—No. I think that is something that the market is going to sort through.

CHAIRMAN—I thank both of you for appearing before the committee. It has been quite extensive, but it indicates the contribution you have made to our inquiry with your appearance. Thank you very much.

[5.34 pm]

ANDERSON, Ms Gina Nancy McGregor, Chief Executive Officer, Philanthropy Australia

CHAIRMAN—Welcome. The committee has before us your submission, which has been numbered No. 23. Do you wish to make any additions or alterations to the written submission?

Ms Anderson—Yes. I would like to draw to the committee's attention to the *Giving Australia* report. In our submission we quoted 2001 statistics. Of course, this report was produced after our submission date. I would just like to draw to the committee's attention to the trends in that report. Also, we would like to encourage the education initiatives that have been mentioned.

CHAIRMAN—I invite you to make a brief opening statement, at the conclusion of which we will move to questions.

Ms Anderson—I will read a statement and I can give a copy to you if you need it. Philanthropy Australia promotes giving and represents those who give to the community. As a national peak body for the philanthropic sector, we offer representation, networking services and information to members and the general community carrying out our mission to promote philanthropy. Our submission was prepared in consultation with a range of our corporate members and is based on our organisation's experience in supporting corporate community endeavour. The submission is reflective of member views but does not specifically represent the stated position of any individual member.

Philanthropy Australia's focus is corporate community involvement and interaction. We see corporate community involvement as a combination of donated money, time and in-kind services, social investment and community sponsorships, which we see as a key element of corporate responsibility but not its entirety. Philanthropy Australia believes that the Australian corporate sector has historically demonstrated corporate responsibilities and is already sufficiently regulated through a wide range of related legislation and continues to show leadership and growth in its regard for and investment in the wellbeing of our communities and society at large.

In fact, the recently released findings of the report entitled *Giving Australia: research on philanthropy in Australia* dated October 2005, which is a collaborative report sponsored by the Australian government Department of Family and Community Services and the Prime Minister's Community Business Partnership, show a considerable increase in the total value of giving by business from 2000-01 to 2003-04 despite the fact that it may be overestimated due to a difference in reporting methods. Focus group and in-depth interview research in support of this project led to a number of observations, including:

Strong giving by mostly larger businesses showed the importance of espoused social responsibility values and a delineation between sponsorship and other giving ...

The report also highlighted the value of:

... policies, plans and sometimes people to administer giving, sometimes through a mix of giving of staff time, money and goods.

It also stated:

Among larger businesses, giving is clearly distinguished from, but complements, marketing, human resource and corporate strategies.

It also highlighted that 'localised staff efforts (volunteering, staff donations) were encouraged' as well as staff selection of causes to support. It went on:

... larger businesses were often motivated by a sense of social responsibility and desire to express their values as an organisation.

It stated the 'larger businesses that give most consistently tend to have won management commitment, have a formal budget' for their giving, and 'qualified staff and systems in place to manage this function within the organisation'.

Our message throughout the submission is that government should recognise and value the existing voluntary community commitment made by Australian corporations and support the diversity of approach and structure of this commitment. We do not believe that legislation and regulation are the best tools for the government to use to encourage and enhance continued growth and evolution of the social partnership between Australian corporations and the community. An effective role for the government would be to critically review all existing laws involved in corporate community programs to ensure simplification of the processes and governance requirements, making it easier to make a difference. Another area that government could explore is the role of education and the teaching of ethics, social responsibility and implications of decision making.

Key to the continued growth and contribution of corporate community involvement and investment is the government's recognition and valuing of the diversity of structure and approach employed by the business community. Governments can play an effective role to encourage, inform and reward the growing social partnership between corporations and the community, such as demonstrated by the Prime Minister's Community Business Partnership.

CHAIRMAN—Thank you. You indicate in your submission:

... the current legal framework does not and has not discouraged directors and decision makers from having regard for the interests of the broader community ...

RepuTex, who we heard from earlier today, put the view that there is a perceived lack of clarity with regard to directors' duties. Obviously, the James Hardie case indicated a similar attitude. In that context, RepuTex suggested that there should be detailed explanatory memorandum to provide guidance regarding the degree to which the interests of people other than shareholders should be considered. What is your reaction to that proposal?

Ms Anderson—I think there are a couple of difficulties with a corporate social responsibility agenda, and one of them is definitional: what is it? In my opening statement, I was quite clear

about that corporate community involvement that we see as being a part of corporate social responsibility. Unfortunately, it is still evolving and many organisations consider their corporate community involvement as their total corporate social responsibility. So I think the definition is one of the difficulties. The other thing is that it is so much about attitude and behaviour, which is hard to legislate. So I think guidelines are good; I think there are a lot of guidelines there already. A lot of it is about education at all levels.

CHAIRMAN—You also indicate in your submission that you do not favour further legislative or regulatory intervention, but you say:

Philanthropy Australia supports continued analysis of existing law, rulings and regulatory practices (such as Taxation) with the aim of enabling and encouraging greater social investment and enterprise ...

Can you perhaps elaborate on the areas where you think review is required?

Ms Anderson—There is no doubt insurance is one of the issues that we need to keep an eye on. That is one area that affects both the charity and community organisations and the corporations. I do not have a list of them with me, but I could get back to the committee on that if that is required.

CHAIRMAN—Can you enlarge on your experience of the Canadian government's approach?

Ms Anderson—Unfortunately, I do not have that. I have taken over this role only in the last three months, so I do not have that experience, but I can certainly do some research on that and provide that to the committee if that is warranted.

CHAIRMAN—Thank you. Given your interest in the Prime Minister's Community Business Partnership program, do you see any scope for improving that program; and, if so, in what way?

Ms Anderson—I think we probably need to move a bit further on from giving awards to community involvement programs. I would like to see greater recognition of collaborative programs, rather than just isolated ones—so, where social initiatives are approached by a number of partners, not just by a corporation and a charity. If you look across this area, there has been considerable collaboration by a number of different parties to address a social issue or probably parts of it, and I think that is a really important agenda.

I do think there is scope for education—and by 'education' I do not mean more reports necessarily, although they are very important. But this work is behavioural and attitudinal and, rather than just confining education to MBAs, there should be some work and some study about when and where you should teach not only ethics but also decision making and questioning the implications and the impact of that decision making. Should that be through schooling? Should that start at school or at the undergraduate level? But there is no doubt that leaving it to only high achievers or those who are keen to do an MBA probably does not take into account that organisations are full of employees who are people from all different walks of life and with all sorts of different attitudes. I think the whole questioning of a decision and thinking about the implications of a decision, because of devolved decision making as it is today, is really important.

Senator WONG—Did you deal with reporting while I was out of the room?

Ms Anderson—No.

Senator WONG—You expressed some concern about any move to change reporting requirements on this. From your submission I understood that your primary concern is the administrative burden and how that might mean that the people with whom you work might be less likely to donate, essentially. Is that right?

Ms Anderson—No. I think the danger is more the box-ticking mentality: if you have to do it, you go to the lowest common denominator and make sure you can just tick the boxes that are legally required rather than incorporating it into the way you do business.

Senator WONG—With the reporting that is being discussed, there are lots of different ways people could report. This is clearly not determined but, for example, there are reporting tools which are widely utilised that have a fair bit of flexibility so that companies can report on the issues that are relevant to them and against targets that are relevant to them. And they are obviously against a range of issues that are far broader than philanthropy: employment targets and environmental footprint targets, for want of a better term. I think the logic behind it is to try and encourage that sort of thinking within the organisation. That is certainly how it has been described to me by companies that do that, that they do this because it is part of their core business activities.

Ms Anderson—That is right.

Senator WONG—If that is the way they are approaching it, do you really have an issue with more encouragement or even requirement for reporting?

Ms Anderson—I think it is like a lot of things, it is evolutionary. There is no doubt in business that what gets measured gets done. But I think the fear is that, if you make it mandatory that you report on X, Y, Z in these things, that is all people do.

Senator WONG—True. That is my point. Isn't what is required dependent on the assessment tool and the framework?

Ms Anderson—Absolutely. I think it is more that there are a lot of things being developed at the moment. People have talked about the GRI, and I would be in support of any kinds of globally based benchmarks, if you like, because that is how we operate today. Whether you are a small business or a large business, your competitors are global. I would prefer to see guidelines than requirements.

Senator BRANDIS—I do not know if you were in the room, much earlier in the afternoon, when we had representatives of three large corporations, BHP Billiton, GlaxoSmithKline and Shell, giving evidence. I asked them to describe what they saw as the relationship between corporate social responsibility and corporate philanthropy. To put it shortly, I think they were all of the view that they were quite different things, or at least one was a much narrower concept than the other. Can I give you the opportunity to express, from your point of view as an

organisation promoting corporate philanthropy, what you see as the relationship between the two. To the extent to which there is an overlap, where is the boundary line between the two?

Ms Anderson—Are you familiar with the London Benchmarking Group model?

Senator BRANDIS—Tell us about it.

Ms Anderson—Back in 1995 a group of companies looked at this and tried to come up with some descriptions as to how they would recognise all these sorts of things. They came up with the London Benchmarking Group model. To a certain extent a lot of the evaluation and measurement methods have perhaps been superseded because of the developments, but I have often used in discussions with large corporations their descriptions of corporate community involvement versus the CSR. From an outsider point of view looking at a corporation, we as individuals do not necessarily decide between internal silos and internal budgetary divisions. The way they describe it is as a large triangle. At the top of the triangle is the corporate community involvement that involves charitable gifts and donations, which includes workplace giving, anything where there is a straight donation and ad hoc things. Then they have community investment, where there might be a large program—often branded, although it may not be—that is usually three to five years with big money involved and where the corporation has significant involvement. Then there are commercial sponsorships. They form that top part of the triangle.

The second part of the triangle, which is wider, is really about the basic business practice and policy. It covers annual reports, environmental reports and codes, ethical marketing codes, supplier codes, employment codes, accounts and community involvement reporting. Then there is sustainability reporting, which today would be known as the social responsibility reports—where you report against, say, the GRI and that sort of thing. That is really the corporate social responsibility. At the bottom of the pyramid there is a piece with backward linkages and forward linkages. The backward linkages go to how suppliers, for example, impact on corporate social responsibility. The forward linkages might go to how products impact on social responsibility. That is the way I see it. From our perspective, we see community involvement, the philanthropic and community social investment initiatives, as a part—a key part, but only a part—of the corporate social responsibility.

Senator BRANDIS—Companies have been making philanthropic donations for probably as long as there have been companies whereas the location of companies in a broader matrix of social responsibilities is a much more recent concept. Would you agree?

Ms Anderson—Yes. I would say that certainly they have been making grants for a very long time. I think a couple of things have changed, particularly in the last five to 10 years. First is the sophistication of the way they give away money, how they invest and their interactions with the community. Second is the impact of the media in a globally interconnected world where what you do in one market is seen in every other market around the world. That has a real impact. Therefore, third is public scrutiny, public demands and changes in the way the public views large organisations. They are now seen as large institutions.

Senator BRANDIS—It will be apparent to my colleagues from some of my questions to other witnesses today that I actually have a lot more trust in philanthropy than I do in broader notions of corporate responsibility. Philanthropy is specific and you can see a clear, hard, sharp

beneficiary whereas broad notions of social responsibility may—not must but may—essentially be rhetorical devices rather than corporate conduct which in fact benefits anyone. Given my very strong prejudice in favour of philanthropy in the more traditional sense, can you suggest to us what governments in Australia might do better to encourage philanthropy in that more traditional, narrower, specific sense?

Ms Anderson—The Prime Minister's Community Business Partnership has certainly had a major impact because it has put it at the top of the agenda. There is no doubt that public scrutiny and public demands have had a huge impact, and client and customer demands of companies are starting to have an impact. There is a social change going on. There has been much written about generation Y and their beliefs and social values. I have talked about the education initiatives, but I will take a step back. In a former life, I have seen the impact of people management. When I was at university we did not study people management; there was not such a thing. Today, people management is a pretty standard piece that you do in any degree from business to building, quite frankly. That forces those people coming out of university today to ask their managers further up the line about issues and what they are doing about performance management and people management. So one of the major things is to really look at education initiatives and where that comes from so that the behavioural changes are forced up, as well as down, the organisation. I think that is where you get major change. It is not only at the top level, particularly today when a lot of responsibilities are devolved.

Senator BRANDIS—Does it follow from that that if there were to be cultural change within corporations or changes within their organisational culture we would be better placed encouraging that cultural change towards much more extensive philanthropic giving than towards looser notions of social responsibility?

Ms Anderson—Of course sitting in my seat I would say: yes! I think it needs to be balanced. Yes, I would like to see that cultural change—absolutely—but it does need to be balanced with the market. The reason for that is that people are held accountable in organisations, not only for how much they do in the market but also for delivering a bottom line number. In a good market when it is going along it is a hell of a lot easier but if we have a bad recession then it is a lot tougher—not up the top but for what they are holding their people in the middle accountable for. So I think it needs to be both.

Ms BURKE—Some of the corporations are getting kudos in a philanthropic sense by donating their staff's time and money. One example cited throughout everybody's submissions is that they let their staff volunteer their time. What they do not talk about is that some of that time is actually their leave time and some of the money is their money. In your submission, you talk about Macquarie Bank's staff profit pool, which I thought was interesting seeing as it was the staff profit pool that they were dipping into. Do you think that there is an issue here when some corporations are going more towards providing community involvement but are actually putting the onus back on the staff to do all these things, as opposed to the corporation?

Ms Anderson—My experience is that in most corporations it is a part of the giving program and only a part, as opposed to the whole thing. Certainly I think there is often a perception problem about workplace giving—about whose money it is. Sometimes the misunderstanding of that is also on the not-for-profit side. One of the biggest issues is the misunderstanding on both sides about the giving letter. Unless you have worked in a corporation, most people do not really

understand how they operate, and if you have worked in a not-for-profit or charity organisation, it is really hard to understand how they operate as well. With most workplace giving programs, though, it is pretty fair to say that unless the employees want to do it or they want to give to charity there is no compunction to do that.

Senator BRANDIS—I suppose there is nothing wrong with the phenomenon Ms Burke just described. But her point—which I agree with—is that unless it is the company’s own money, they should not be entitled to the kudos for it.

Ms BURKE—Yes, that is what I was talking about. There are a lot of staff organisations that get together and want to do these things. I think that is fantastic but it is the corporation that gets the banner for doing it.

Senator BRANDIS—The halo effect.

Ms BURKE—Yes, and if you are doing it in a CSR reporting thing, you are also getting, as you said, scores on a scorecard towards reporting. I think there is difficulty in determining who is getting the brownie points for doing these things.

Ms Anderson—The issue is also around who is matching the gift and who is not. There is often confusion there as well. If they are matching the gift then they deserve to be getting the kudos. But if it is just straight workplace giving—

Senator BRANDIS—So any CSR reporting should plainly distinguish between staff giving and giving that it is out of the company’s own funds.

Ms Anderson—Yes, I believe that it should.

Ms BURKE—That is what I think.

CHAIRMAN—Thank you very much for your appearance before our committee and for your assistance with our inquiry.

Ms Anderson—My pleasure. Thank you very much for the opportunity.

Committee adjourned at 6.01 pm