



CAMAC Discussion Paper: Corporate Social Responsibility

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1. Executive summary

Corporate responsibility is increasingly being placed on the public agenda as being a necessary part of good business management practice that should be a driving factor of corporate strategy. Concurrently, an increasing number of companies are recognising that corporate responsibility is an important part of their brand or reputation management and corporate identity.

The banking industry in Australia is recognised for its leadership in the area of corporate responsibility. Many banks acknowledge corporate responsibility and have adopted programs and practices that demonstrate their commitment to social and environmental performance, as well as financial performance. Banks that have adopted corporate responsibility have recognised it as a driving factor for being able to distinguish themselves through effective forms of stakeholder engagement.

The high level of innovation, creativity and competition regarding corporate responsibility is reflected in many banks introducing internal programs and undertaking extensive external programs and some banks producing an annual 'CSR-type report', along with their annual report and financial statements. This voluntary commitment by Australia's banks reflects the growing importance of responding to the expectations of shareholders, customers and the community.

In relation to this inquiry, the ABA makes the following points:

1. The ABA believes that corporate decision makers already have the ability within the current legislative framework to have regard for the interests of shareholders and other stakeholders by exploiting corporate opportunities that are in the long-term interests of the company.
2. The ABA believes that directors should have regard for the short-term and long-term interests of the company to ensure sustainable economic growth and increased profitability for the company. However, corporate decision making should involve determining relevant interests, based on the nature of the business activities, the different business models and industry sectors, and the different operational issues impacting their stakeholders. Companies should be responsible for their decisions as they impact on stakeholders, as these decisions will inevitably impact overall financial and operational performance.
3. The ABA does not support revising the Corporations Act to oblige or explicitly allow directors to take into account the interests of other stakeholders. A legislative amendment that requires directors to take account of other stakeholders as part of their statutory duty to the company could confuse the role of directors. The ABA considers that the current legislative framework already permits corporate decision makers to have regard for stakeholders in addition to shareholders. Furthermore, a statutory obligation could have adverse consequences for innovation in corporate responsibility practices, and therefore is impractical, unnecessary and potentially counterproductive.
4. The ABA does not support codification of sustainability reporting requirements or a legislative amendment that prescribes a reporting framework. A prescribed reporting framework could limit the value of such disclosure as well as limit the company's ability to determine what best suits its reporting needs and the needs of its shareholders and stakeholders.

Mandating corporate responsibility will not necessarily result in better outcomes, as prescribing requirements in addition to the existing framework is likely to result in a 'tick the box' approach, which is not desirable and defeats the spirit and intent behind the concept of corporate responsibility.

2. Background: corporate social responsibility

2.1 What is corporate responsibility?

Corporate social responsibility is a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis¹.

There are many definitions of corporate responsibility, but the concept as expressed by the European Commission is widely recognised. Corporate responsibility means not just fulfilling legal obligations, but voluntarily adopting business practices that go beyond legal and regulatory compliance by integrating business activities with a balanced response regarding wider considerations for the environment, human and social capital.

The ABA supports the proposition that "the focus [of corporate responsibility] is on the way in which the affairs of companies are conducted, and the ends to which their activities should be directed, with particular reference to the environmental and social impact of corporate conduct²."

Globalisation has created opportunities for companies, but has also placed increasing demands on business reputation and company brand, which play an important role in a competitive corporate environment. Consequently, shareholders and other stakeholders are seeking greater disclosure of information, financial reporting and management accountability; and companies are seeking greater knowledge, competencies, performance and competitive advantage.

Essentially, the concept of corporate responsibility involves:

- Corporate behaviour voluntarily adopted that goes beyond legal obligations because the decision makers have deemed that responsible business practices and behaviours can lead to improved long-term performance;
- Corporate practices intrinsically connected to sustainable development because businesses integrate financial, social and environmental considerations into their day-to-day activities; and
- Corporate culture incorporated into core business strategies because responsible management of financial and non-financial risks is in the long-term interests of the company as well as other stakeholders.

Companies that take into account stakeholder expectations and broader community attitudes in their forward looking strategies can be better placed to address business risks and take advantage of business opportunities that may arise.

¹ Some commentators refer to the concept of "corporate social responsibility". The ABA considers that arguably corporate social responsibility and corporate responsibility are interchangeable terms. Definition of corporate responsibility is contained in *Green Paper. Promoting a European framework for Corporate Social Responsibility*. Commission of European Communities. Brussels. (p6)
http://europa.eu.int/eur-lex/en/com/gpr/2001/com2001_0366en01.pdf

² CAMAC (2005). *Discussion Paper: Corporate Social Responsibility*. November 2005. (p3).

2.2 What is an appropriate approach to responsible corporate behaviour?

A *compliance approach* to corporate responsibility emphasises that companies are obliged to comply with the letter of the law, regardless of the commercial consequences. Indeed, there exists a number of Commonwealth, State and Territory statutes regarding occupational health and safety, anti-discrimination, industrial relations, equal opportunity, consumer protection and environmental impact as well as international covenants that stipulate minimum standards of corporate behaviour. However, the ABA believes that a corporate responsibility approach that merely reflects compliance does not necessarily ensure responsible business practices, an ethical corporate culture or long-term sustainable performance.

A *philanthropic approach* to corporate responsibility involves companies giving to the community in a variety of financial and non-financial ways, such as community donations, corporate sponsorship, business support for community projects, partnerships with community or welfare groups, staff volunteering for community projects, etc. Provided there is some direct or indirect benefit for the company, a philanthropic approach to corporate responsibility can both enhance a company's long-term economic interests and deliver value to the community. The ABA considers that this approach is a sub-set of a more holistic corporate responsibility approach.

A *commercial approach* to corporate responsibility emphasises that it is likely to be in the short-term and long-term interests of a company to take into account the environmental and social context in which the business operates. Australia's banks recognise that corporate responsibility is not merely in the domain of philanthropic activities, but is a concept that broadly covers a wide range of corporate-community-employee activities that deliver value to the community as well as returning value to the company and its shareholders.

The ABA believes that the value of corporate responsibility is in the voluntary adoption of innovative business practices that reflect flexible and strategic business judgements by the Board in terms of financial considerations (such as allocating capital and other resources) and social and environmental considerations. It is important for the Board to retain discretion in assessing the interests of stakeholders to determine when, and to what extent, certain stakeholders in particular circumstances may be impacted by the decisions of the company.

2.3 What are the incentives or disincentives for a company to conduct its business in a socially responsible manner?

Many companies have suffered significant losses in market value because they did not anticipate or manage business risks. Comprehensive management of risks allows companies to improve their knowledge about the environment in which they operate and to be better placed to prevent, minimise or recover from losses in shareholder value.

Some of the drivers of corporate responsibility for Australia's banks include:

- *Enhanced governance to respond to business risks*: profiling and managing risks and being able to anticipate and respond to emerging issues to improve operational performance;
- *Improved ability to understand business performance*: benchmarking market position and competitiveness against own targets and competitors to provide value to customers;
- *Improved ability to attract and retain quality employees*: enhancing employee recruitment, retention and motivation;
- *Improved ability to conduct a dialogue with stakeholders*: delivering innovative communications and managing investor and public relations;

- *Better financial monitoring of resource allocation*: categorising use of resources more systematically to identify new business opportunities;
- *Greater profile for raising capital*: disclosing financial and non-financial information to shareholders can reduce market volatility in share price and translate into greater investor confidence and improved opportunities for managing capital; and
- *Enhanced market reputation*: integrating transparent and accountable business practices can build long-term value and translate into competitive advantage and better brand and reputation management.

It is in the interests of banks to enhance internal and external governance. A systemic failure to respond to community expectations could translate into increased legal and regulatory obligations, increased operational and compliance costs, reduced employee support and reduced reputation and brand image.

Corporate responsibility can provide a way for companies to manage their reputation with the market by considering their operational activities and how to best represent their corporate culture. Part of enhancing responsible business practices and promoting disclosure of financial and operating performance is to consider how best to communicate the prospects of the company; not just how the company has performed, but how it expects to perform over the long-term.

2.4 What is triple bottom line reporting? Could triple bottom line reporting be improved?

Triple bottom line reporting essentially captures a broader range of measures of organisational success – economic, environmental and social. Triple bottom line reporting tends to be a qualitative summary of performance including non-financial indicators and metrics, but is increasingly becoming more quantitative. In considering current performance some banks currently provide an assessment of future trends, prospects and sustainability for the company. Triple bottom line and sustainability reporting is often an opportunity for companies to disclose to shareholders and other stakeholders information they already report under various Federal and State laws or industry standards.

There are a number of triple bottom line or sustainability reporting frameworks; whether that is a social impact report, stakeholder impact report, environmental impact report, community engagement report, CSR report, sustainability report, etc. The *Global Reporting Initiative (GRI) Sustainability Reporting Guidelines* is a set of reporting principles that contain specific content indicators that guide a company's thinking about their social and environmental performance and assist in the preparation of a sustainability report.

The GRI guidelines are becoming the most commonly adopted set of guidelines for reporting on corporate sustainability and are widely recognised. A number of ABA member banks use the GRI guidelines as part of their annual performance reporting. The GRI guidelines provide finance sector specific guidelines and also allow companies to select indicators in a systematic manner. The ABA notes that the third generation of the GRI guidelines are currently available for public comment in draft form and are due to be finalised later this year.³

³ <http://www.grig3.org/>

However, due to the early stage of development of triple bottom line reporting, there are still some issues to be resolved with reporting indicators, including:

- Lack of standardised or imprecise performance criteria or reporting indicators;
- Lack of guidance on reporting intangibles; and
- Lack of comparability of company performance.

A significant challenge for triple bottom line reporting is ensuring that reporting is relevant to the company, its shareholders and its other stakeholders. The GRI guidelines are a substantial reporting framework that contains many performance criteria and reporting indicators; not all these criteria or indicators are going to be relevant to all businesses. It is important that any reporting framework enhances disclosure and transparency to the market, and does not generate 'information overload'. It is also important that any reporting framework evolves and reflects not just the disclosure needs of both the business and the community but also the changing nature of commercial operations.

In addition to some impediments with availability and applicability of reporting indicators, some other impediments with triple bottom line reporting include costs and resource constraints. This highlights the importance of ensuring a flexible reporting framework where reporting indicators are not restricted or mandated. It is important for companies to be able to select reporting indicators that reflect the realities of their business as well as the expectations of their shareholders, stakeholders and the wider community.

The ABA considers that part of aligning triple bottom line reporting to business and community expectations is ensuring that the report is internally verified. The larger ABA members also consider that external verification is an important part of building trust with stakeholders and integrity of reporting. However, external verification can generate costs that inhibit smaller companies from undertaking extensive triple bottom line reporting, and therefore should be tailored to the size and nature of the business. The ABA suggests that disclosure of whether the report has been externally verified can be taken into account by stakeholders in the weight they give to the report.

In addition to the GRI guidelines, various business groups in Australia have released a number of publications about how corporate Australia may introduce triple bottom line reporting⁴. In addition to guidance issued by business groups, CPA Australia and the University of Sydney have been provided with a \$1 million grant from the Government to develop a framework for corporate reporting of non-financial information⁵. The Australian Accounting Standards Board (AASB) has also announced it is looking at developing a standard for triple bottom line accounting⁶.

⁴ The G100 released *Sustainability: A Guide to Triple Bottom Line Reporting* in June 2003, highlighting the importance of aligning triple bottom line reporting with the business strategy. The Business Council of Australia (BCA) has released a number of documents on sustainable development and triple bottom line reporting, including *Towards Sustainable Development: How leading Australian and global corporations are contributing to sustainable development* (May 2001). The Institute of Chartered Accountants Australia (ICAA) has released its report *Environmental Management Accounting (EMA)* containing case studies conducted in conjunction with Environment Australia and EPA Victoria. The ICAA also has produced a number of articles and a regular Triple Bottom Line newsletter. CPA Australia has published a number of research reports, including *Triple Bottom Line: A Study of Assurance Statements Worldwide and Sustainability Reporting Practices, Performance and Potential*. CPA Australia is currently conducting a sustainability and triple bottom line project to examine 'responsible investment' portfolio performance, security market disclosure responses and corporate governance performance relationships.

⁵ Buffini, F (2005). *Reporting framework*. Australian Financial Review. 06 July 2005.

⁶ Gettler, L (2005). *Making coming clean a standard practice*. The Age. 28 July 2005.

3. Australia's banks and corporate responsibility: current practice

Increasingly, companies are coming to the conclusion that businesses that take a broader view of managing business risks can shape a healthier, more productive corporate culture and thereby a sustainable and profitable company. However, as already stated, how companies, including banks, will adopt corporate responsibility will, and should, depend largely on their business model, their customers and other stakeholders. Similarly, what performance criteria or reporting indicators are of most relevance will, and should, depend on the operations of the company. Integrated corporate responsibility can be a mechanism for management to better understand the relationship between the company and its shareholders and other stakeholders.

3.1 *Do corporate decision makers have regard for the interests of stakeholders, and should they have regard for the interests of stakeholders?*

In practice, responsible management of a company involves balancing short-term and long-term performance with regard to those factors that determine the sustainability of the company; such as consideration of the interests of shareholders and other stakeholders who can have a significant impact on the successful operations of the company. Australia's banks recognise the importance of shareholders, other stakeholders and the wider community in all aspects of the financial services business. Essential to the operation of the banking business are employees, depositors, investors and consumers of financial products as well as government and regulators that set the legal and regulatory regime for banks.

Banking businesses would not exist without customers purchasing financial products or using financial services, and therefore customer expectations can have a significant impact on the financial and reputational performance of a bank. Emerging business models and distribution across various types of financial products and services within the financial services industry means that without suppliers and distributors the business would also not exist. Competition within the financial services industry for highly skilled professionals means that successful banks provide optimal conditions for their employees. Increasing legal and regulatory obligations placed upon the financial services industry means that relationships with Government are important. However, few companies could disregard the interests of these internal and external stakeholders for very long and continue to be a viable and profitable business.

The banking industry is strongly committed to stakeholder engagement as a part of corporate behaviour. Some examples of how banks engage with stakeholders as part of day-to-day business practice includes, but is not limited to, customer research to understand customer needs and employee consultations and stakeholder forums to manage feedback and expectations. The following provides a brief overview of some of these programs and activities.

Employees: Banks adopt people management principles that include career opportunities and performance evaluation; assessment of employment policies; labour laws (including equal opportunity and workplace diversity, occupation health and safety); training, learning and development; grievance processes; work-life balance and flexible working arrangements; competitive remuneration; protecting employee entitlements; work conditions that respect human rights and freedom of association.

Customers: Banks adopt customer service principles that include respecting customer privacy; product development and service delivery; equity and access to banking products and services (including adoption of Disability Action Plans, financial inclusion responses, etc); transparency of business; responsible marketing practices; customer advocacy, complaints and dispute resolution; and socially responsible investing.

Suppliers: Banks adopt supplier management principles that include supply chain management; sustainability performance; and human rights practices of third parties.

Environment: Banks adopt environmental management principles that include meeting or exceeding environmental standards; resource usage; environmental risk factored into lending practices; reporting on climate change, water and energy management; trading and market environmental solutions; and awareness raising campaigns.

Community: Banks adopt community service principles that enhance social contribution such as financial literacy; strategic partnerships (including with the community and welfare groups, not-for-profit and non-government organisations); community advisory panels; and philanthropic activities (including vocational training, support for socially and financially excluded people, sponsoring sport and cultural events, charitable donations).

* The ABA notes that this overview is an amalgamation of general stakeholder engagement programs and corporate responsibility activities and is indicative of practices across the banking industry; however, it may not reflect an individual bank's particular corporate responsibility practices.

In addition to these programs and activities, some banks are preparing specialised reports that align financial reporting with sustainability reporting to provide a more holistic view of the banks' economic, social and environmental issues as built into the banking business. Other specialised reports provide details on how banks are responding to shifting business demands, including changing workforce dynamics; accessibility of banking products and services for regional/remote communities, people with disabilities, households with low incomes, etc; increasing regulation of financial services; climate change; and socially responsible investing. Essentially, reporting on corporate responsibility acknowledges diverse stakeholder interests and how the banks are responding to these views.

Australia's banks have been recognised internationally and domestically for their corporate responsibility leadership, as reflected in the high ratings against corporate responsibility performance of a number of indices, including the Dow Jones Sustainability Index, FTSE4Good Index, Governance Metrics International Global Governance Ratings, RepuTex SRI Index and the St James Ethics Centre Corporate Responsibility Index. These indices seek to measure the performance of companies and their corporate responsibility practices.

Corporate responsibility can contribute to a company's competitiveness by enhancing management accountability, transparency and resourcefulness as well as improving business processes, procurement and distribution. However, while the ABA considers that the interests of other stakeholders are key to business performance, the degree to which a company may have regard for other stakeholders will depend on a number of factors; such as the nature of their business activities, the different business models and industry sectors, and the different operational issues impacting their stakeholders.

Therefore, it is reasonable that a company may, and should, have regard for the interests of stakeholders in different ways, reflecting the importance of particular business activities, the interests of shareholders and other stakeholders and the relationships between the company, its business practices and the wider environment in which it operates.

In summary, the ABA believes that:

- Corporate decision makers in Australia already have regard for the interests of stakeholders, as reflected in the wide range of activities in corporate Australia that can be described as “corporate responsibility”. For example, banks already have in place comprehensive corporate responsibility activities and stakeholder engagement programs that acknowledge the importance of their employees, customers, suppliers, the environment and the wider community. Therefore, the ABA disagrees with the sentiment that directors and companies are only interested in maximising short-term profits for shareholders at the expense of long-term performance and wider stakeholder interests.
- Generally companies can only be successful in the long-term if they broadly take into account their business impacts on their stakeholders. Companies should be responsible for their decisions as they impact on stakeholders, as these decisions will inevitably impact overall financial and operational performance.
- Australia's banks have demonstrated that an important part of making corporate decisions and developing competitive advantage is about delivering shareholder value through business efficiencies and strategies that take into account broad shareholder and non-shareholder interests. Corporate responsibility represents a perspective on delivering value to shareholders, involving a corporate mindset that goes beyond current financial reporting and internally focused governance and risk management to generating long-term sustainable performance.

3.2 *Examples of corporate responsibility in Australia's banking industry*

Financial literacy and financial inclusion programs provide opportunities for banks to work in close partnership with community and welfare groups to deliver better accessibility to banking products and services, particularly for the more disadvantaged groups within the community.

Financial literacy

Financial literacy is the ability to make informed judgements and effective decisions about the use and management of money⁷. Australia's banks are responding to issues of financial literacy in various ways, ranging from research into the level of youth and adult financial literacy in Australia, development of financial literacy education for school-age children and partnerships with financial counsellors and community groups to deliver financial literacy training to low income families.

Some banks financial literacy programs include:

- An adult financial education workshop program facilitating training for financial counsellors and community educators to assist people, particularly low-income households, to build their financial skills and knowledge and make informed decisions about their money. The program was developed in collaboration with a number of financial counseling groups.

⁷ Definition of “financial literacy” from the UK National Foundation for Educational Research, 1992.

- A student banking program providing fee-free banking accounts to encourage young people to save. The program is conducted in partnership with schools and teaches young people the principles of banking and sound money management. A website facility also offers young people objective and unbiased financial management information on a range of important money management topics, including saving, budgeting, borrowing, lending, jobs and money. The facility features a number of interactive tools to enable more informed financial decisions.
- A student education program providing a resource for teachers to use as part of their teaching modules to improve young Australians financial literacy. The program is mapped to every state's curriculum.
- A grants program for primary and secondary schools to develop literacy, numeracy and financial literacy education programs.
- A national assessment tool for students so that they can identify aspects of their financial knowledge that are strong and those that could be improved.
- A one-day financial literacy workshop for 16-25 year olds, offered throughout rural and regional Australia. The workshop provides young people with the opportunity to develop skills for making informed decisions about using and managing money, saving, budgeting, investing, managing debt, and being entrepreneurial.
- A financial literacy curricula resource package providing support and assistance to teachers to improve the knowledge, skills and understanding of their students in the area of financial literacy. The curriculum resources apply across primary school-aged and high school-aged students and have been developed with the assistance of the NSW Department of Education and Training and community groups.
- An education workshop developing understanding of employees, customers and members of the community around basic financial matters and advice. The workshop includes information on basic financial literacy but specifically looks at how to apply critical thinking to financial decisions, including activities on budgeting, ways of paying off debt and the advantages and disadvantages of various credit, store and charge card options, and where to go for help when they get into financial difficulty.
- An Indigenous community money management skills and savings program that includes financial literacy workshops and training on topics relevant to the individual community. This program has been introduced in collaboration with Government, local community and Indigenous community groups.

Other financial literacy programs provided by banks include guides on using credit cards, managing finances online and making banking easier for small business and older Australians.

In addition to individual banks' financial literacy activities, the ABA's financial literacy program involves three key areas:

- Information dissemination program: objective to enhance distribution and delivery of existing and new materials in collaboration with partners.
- Awareness and access program: objective to increase awareness and access to ABA and banks' own financial literacy materials and programs.
- Materials development program: objective to continue to develop generic materials and resources to promote 'responsible spending leadership'.

The ABA's financial literacy program seeks to build on the work of ABA member banks and advocate the importance of financial literacy within the banking industry. Some highlights of the program include the 'Broadening Financial Understanding Workshop' and the 'Smarter' booklet series ('Smarter Banking: Make the most of your money'; 'Smarter Banking: Make credit work for you'; and 'Smarter Super: Make the most of your retirement').

In addition to individual financial literacy initiatives, the ABA and some member banks are working closely with the Government's Financial Literacy Foundation.

Financial inclusion

Inclusion is about addressing potential problems with access to financial products and services because of a range of factors, such as physical, geographic, cultural or financial, to assist in improving the quality of life for members of the community. Financial inclusion aims to address financial exclusion, which is the lack of access faced by the most needy members of the community to low-cost, fair and safe financial products and services from mainstream financial services providers⁸.

Financial inclusion programs seek to assist low-income consumers address issues such as low savings levels, unsustainable levels of personal debt and financial stress. Australia's banks are responding to issues of financial exclusion in various ways, including research on the size and nature of financial exclusion (seeking to address the needs of those excluded from mainstream financial services) and development of programs that assist low income consumers save, manage their debt obligations and deal with financial hardship.

Some banks financial inclusion programs include:

- A matched savings program to assist low income families save money for their children's education by matching every dollar saved for the purpose with \$1, up to a maximum of \$1000. The program was developed in conjunction with a welfare organisation and has been extended through an additional welfare organisation partnership.
- Micro-credit schemes and no interest loan schemes pooling resources and returning to the community to assist people on low incomes. A number of banks have developed programs in partnership with Government, welfare organisations, community groups and consumer groups. For example:
 - Community development finance programs involve small loans for enterprise development.
 - Micro-credit schemes involve making loans of between \$300 and \$1000 to disadvantaged people to obtain access to funds for essential personal and household goods (e.g. white goods). In addition, the scheme provides people with basic financial planning and budgeting advice.
- A "Low Interest Loan" program involves making loans of between \$800 and \$3000 to low income consumers at a fixed rate. These loans provide affordable credit for the purchase of essential household goods and services. In addition, the program assists consumers to establish a credit rating and gain entry into the mainstream credit system. Loans are tailored to the needs of people on low incomes who are currently using 'payday' lenders and other fringe credit providers. Successful applicants for the low interest loan program are monitored by dedicated officers that, throughout the loan process and repayment period, offer support and access to information and referral services.

⁸ Definition of "financial inclusion" from research conducted by Chantlink Associates for ANZ, 2004.

- An Indigenous community and regional banking program assisting local community representatives to help community members in opening bank accounts to receive financial entitlements. The program has been designed to support individuals with limited English ability and has been implemented in partnership with Indigenous community groups. The program has also conducted research investigating lending on communal land. The program seeks to assist with strategic management of Indigenous land assets in a culturally appropriate manner to generate sustainable financial outcomes for the local community.
- Low fee basic bank accounts and low interest credit card products involve providing access to banking products and services that minimise the impact of transaction costs for disadvantaged and low income households.

Banks stakeholder engagement programs and corporate responsibility activities aim to help build social capital and empower local communities. Activities designed by banks to assist in addressing problems with financial exclusion are break even products seeking to make a difference for people that may otherwise not be able to access credit for household necessities. Importantly, these programs have been able to progress and evolve in a competitive banking sector environment.

In addition to individual financial inclusion initiatives, the ABA and some member banks are working closely with the Government's Financial Wellbeing Taskforce and Department of Families, Community Services and Indigenous Affairs.

For further information on the ABA's financial literacy program and member banks financial literacy activities and stakeholder and community programs, see <http://www.bankers.asn.au> or individual banks' websites.

4. Directors' duties: current position

4.1 Does the current legal framework constrain directors from taking into account the interests of particular groups or broader community considerations when making corporate decisions?

Under both the Corporations Act and common law, directors have a duty to act in the best interests of the company. In addition, to duties based on a directors' fiduciary relationship with the company, companies must also meet a wide range of Commonwealth, State and Territory statutes regarding occupational health and safety, anti-discrimination, industrial relations, equal opportunity, consumer protection and environmental impact as well as adhere to international covenants. It is the ABA's view that clearly identifiable minimum standards are best dealt with in these particular statutes, particularly as the minimum standards then apply across the business sector and not just to corporates.

Australian courts have successfully applied directors' duties to different circumstances and adopted the law where appropriate (for example, gradually increasing the standard of care and diligence expected of directors as community expectations have increased). Importantly, the existing law allows directors to consider the interests of stakeholders other than shareholders ... A fundamentally important issue is how directors balance the interests of various stakeholders in the company and the role of the law in this process⁹.

In March 2003, *ASIC v Rich*, the New South Wales Supreme Court held that a court's role in determining the liability of a defendant for their conduct as director is to articulate and apply a standard of care that reflects "contemporary community expectations". Therefore, directors' duties involve exercising care, skill and diligence in the best interests of the company, that being the company as a whole, reflecting wider expectations.

⁹ Ramsay I (2005). *Directors' Duties and Stakeholder Interests*. Company Director. 21 May 2005.

Section 180(1) of the Corporations Act 2001 provides that a director must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise. In addition, under section 181 a director must exercise their powers and discharge their duties in good faith in the best interests of the company and for a proper purpose.

Section 180(2) provides that a director meets their duty of care and diligence where they make a business judgement that is in good faith for a proper purpose (i.e. without material personal interest), that they inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate, and that they rationally believe the judgment is in the best interests of the company.

Business judgment means a decision to take or not take action in respect of a matter relevant to the business operations of the company. The "business judgment rule" was introduced to protect directors in the exercise of their duties and to give directors confidence to engage in entrepreneurial or informed decision-making that takes into consideration the wider interests of the company and the company's long-term performance.

What does it mean to act in the "best interests of a company"?

Some commentators believe that acting in the best interests of a company is to act in the best interests of the owners of the company (i.e. the shareholders). However, the statutory obligation is that directors are to act in the "best interests of the company". In fulfilling their duty to the company, arguably directors must consider the interests of both existing and future shareholders, and this means the long-term sustainability, not just short-term profitability of the company. Broadly, this requires directors to balance the short-term and long-term interests of the company as well as to consider the internal and external governance of the company.

It is the ABA's view that directors may make decisions in good faith and for a proper purpose that substantially benefits the community, consumers and the environment. Where there is lack of regard for the company or where no attention is paid to the interests of the company's shareholders, then this would likely be a breach of the duties of the Board. However, to ignore the interests of other stakeholders would also likely not be acting in the best interests of the company, as disregard is likely to expose the company to business risks.

Should the Corporations Act be revised?

A *mandatory provision* would *oblige* directors to have regard for the interests of groups other than shareholders in making decisions; whereas a *permissive provision* would *explicitly allow* directors to have regard for the interests of groups other than shareholders in making decisions. The matter of a mandatory or permissive provision for directors' duties was considered by the Senate Standing Committee on Legal and Constitutional Affairs. The report of the Committee noted that:

If company law were to impose new and, at times, contradictory duties (such as looking after interests which may be directly opposed to those of the [shareholders]) directors' fiduciary duties could be weakened, perhaps to the point where they would be essentially meaningless.¹⁰

¹⁰ Senate Standing Committee on Legal and Constitutional Affairs (1989). *Company Directors' Duties: Report on the Social and Fiduciary Duties and Obligations of Company Directors*. November 1989. (para 6.51)

The primary duty of a director is to act in the best interests of the company and it is a matter for the Board to determine, when, and to what extent, stakeholder interests should be taken into account. Directors should have the ability to balance competing interests from time to time.

The objective of the law should be clear and without unnecessary burden that can stifle corporate innovation, business opportunity and economic growth. The law should also be responsive to today's business and community needs and be capable of being flexible towards tomorrow's business and community expectations.

A redefinition of directors' duties is problematic. In determining how such a provision might look, two fundamental questions need to be considered.

1. Is it appropriate for directors to be required to comply with regulations that guide what are appropriate social causes for their companies?
2. What limitations would need to be imposed to ensure that shareholders and investors are not discouraged from placing their capital with corporates?

Whether directors' duties should continue to be defined in terms of the best interests of the company or whether duties should be statutorily widened to other stakeholders with potential for redress if their interests are not being served must be considered in terms of existing business practices by corporate Australia within the current legal and regulatory framework.

The ABA makes the following points:

- While in law it may be that directors' duties are to "the company" (the existing and future shareholders of the company), in practice, with the day-to-day management of the company, directors are already considering a wide variety of interests when making strategic and operational decisions. Indeed, not considering these wider interests would arguably be not acting in the best interests of the company.
- If the proposition that shareholder interests can only be served by maintaining a standard of care reflecting "contemporary community expectations", then managing financial and non-financial risks and disclosing financial and non-financial performance means that companies already have regard for the broader interests of other stakeholders and already have available mechanisms for disclosing their responsible business practices to the market.

What are "broader interests"?

It is important for directors' duties in company law to be drafted so that it balances providing directors with certainty regarding their obligations, yet allows the law to respond to changing business and community needs. It is the ABA's view that section 181(1) of the Corporations Act is broad enough to allow directors to have regard for the broader interests of shareholders and other stakeholders, yet is clear in that it provides that a director has a duty to act in the "best interests of the company". It is difficult to envisage how a provision could adequately capture the nature of corporate responsibility without confusing directors' duties.

Amending the Corporations Act to contain a *mandatory provision* may unduly restrict the way in which corporate decisions are made, to the detriment of shareholders and other stakeholders. A mandatory duty is likely to result in a compliance approach to corporate responsibility; a 'tick the box' approach, which is not desirable and defeats the spirit and intent behind the concept of corporate responsibility.

The ABA believes that company law affords ample latitude for directors and companies to act responsibly *vis-à-vis* the environment and society generally. There are also other legal and regulatory obligations, market rules, industry standards, codes and industry practices that necessitate directors and companies having regard to stakeholder interests as part of their duty to act in the best interests of the company. The long-term performance and sustainability of the company requires prudent management of a wide range of business risks. Failure to measure and manage financial and non-financial risks will inevitably damage the company. Certainly as part of corporate decision making, the Board should contemplate the business risk of not considering how the company may impact on its internal and external stakeholders.

Furthermore, the ABA believes that the law already permits corporate decision makers to have regard for stakeholders in addition to shareholders. Therefore, amending the Corporations Act to contain a *permissive provision* is unnecessary and unlikely to result in changes to corporate behaviour or lead directors to make decisions differently to the decisions they make now. Alternatively, a permissive provision may even result in directors being unable to make efficient and effective corporate decisions to the detriment of shareholders and other stakeholders.

Creating a legal requirement to take into account other stakeholder interests creates a risk that the legitimate decisions of the Board and management of the company may be challenged by small minority interests that are not in the interests of the company or its primary responsibility. A minority interest may not be in the best interests of the majority of stakeholders. There is a risk that directors will be distracted by vexatious litigation instead of concentrating on managing the company in the interests for which they have been given permission to do so by their owners. A statutory obligation may in fact narrow the focus of the Board and management of the company creating inefficiencies in company operation and management; ultimately to the detriment of shareholders and other stakeholders.

Acting in the best interests of a company does not restrict directors from focusing beyond maximising short-term profits and shareholder wealth when making corporate decisions. Indeed, taking a broader view that is not inconsistent with the interests of the company that creates long-term value is indeed acting in the best interests of the company. Failure to manage wider stakeholder interests may adversely harm the company. Therefore, the ABA considers that the duties of directors to exercise reasonable business judgement can enable and encourage directors to discharge a standard of care that takes into consideration the interests of shareholders and other stakeholders.

The ABA does not support an amendment to the directors' duties to include a mandatory duty to act in the best interests of other stakeholders. Nor does the ABA support an amendment that explicitly allows directors to take account, where appropriate, of the interests of other stakeholders. Such a general response is likely to have a number of significant unintended consequences:

- Potentially diluting responsibility across a myriad of interests, rather than clarifying responsibility of directors;
- Stifling corporate innovation rather than encouraging 'enlightened shareholder value'¹¹;

¹¹ The ABA notes that clause 156 of the UK Company Law Reform Bill 2005 seeks to introduce a concept of 'enlightened shareholder value'. The Bill proposes to introduce a duty for directors to have a primary obligation to benefit shareholders, but explicitly states that this can be achieved by taking due account of other stakeholder interests. It is the ABA's view that the draft UK legislation seeks to implement practices for directors that are already generally contained in the Corporations Act. The ABA also notes that debate within the UK Parliament is casting possible doubt as to whether this section of the Bill will proceed. Adams, C (2006). *Conservatives plan to water down company law reforms*. Financial Times. 1 February 2006.

- Confusing adoption of progressive ways of managing diverse shareholder and stakeholder interests; and
- Generating conformance rather than performance.

Do shareholders have adequate mechanisms to raise environmental and social issues with companies?

Section 249N(1) of the Corporations Act 2001 states that the following members may give a company notice of a resolution that they propose to move at a general meeting:

- (a) members with at least 5% of the votes that may be cast on the resolution; or
- (b) at least 100 members who are entitled to vote as a general meeting.

Once the threshold requirement has been met, a resolution, which could be regarding environmental or social issues, may be taken to a general meeting.

The ABA notes that section 250S of the Corporations Act requires the chair of an AGM to allow reasonable opportunity for members as a whole at the meeting to ask questions about, or make comments on, the management of the company. This is perhaps more relevant as a current mechanism for allowing shareholders to raise issues with the company than section 249N(1).

In summary, the ABA believes that:

- It is important for shareholders to have effective mechanisms to examine the affairs of the company and engage with the management of the company. Shareholder participation is essential for ensuring transparency of a company's business activities and accountability of a company's board and management. Shareholders already have adequate mechanisms for examining the affairs of a company.
- Legislative amendment to prescribe a duty to require directors to take account of other stakeholders as part of their statutory duty to the company could confuse the role of directors, resulting in less efficient decision making to the detriment of shareholders and other stakeholders.
- Government intervention could have adverse consequences for innovation and creativity in corporate responsibility practices, and therefore is impractical, unnecessary and potentially counterproductive.

5. Corporate reporting: current practice

In Australia there is a mix of mandatory and voluntary measures to promote responsible business practices and consideration of wider stakeholders interests, including statutory and non-statutory corporate reporting requirements. Australia's banks currently disclose information to shareholders and other stakeholders through annual reports, financial statements, market announcements, product disclosure statements, financial services guides, press releases, market presentations and other documents, including CSR-type reports.

5.1 Corporate reporting requirements in Australia

Corporations Act

Most companies and registered managed investment schemes are required to prepare and file with the Australian Securities and Investments Commission (ASIC) an annual report. An annual report must contain, amongst other things, a financial report and a directors' report.

A director's report must include general information about operations and activities. The recently introduced Management Discussion and Analysis (MD&A) obligation requires directors to include quantitative and qualitative information about the operations and activities of the company pursuant to section 299A of the Corporations Act. The MD&A must contain information that shareholders would reasonably require to make an informed assessment of the operations of the entity during the reporting year; the financial position of the entity and any significant changes in the activities and the nature of the activities during the reporting year; and the entity's likely operational developments and the prospects of those operations in future financial years.

The introduction of this additional disclosure requirement is designed to maximise the usefulness of annual reports to all users, particularly people who are unfamiliar with reading and understanding financial reports, and is similar to the Review of Operations and Activities disclosure that is required by ASX Listing Rule 4.10.17. The MD&A obligation aims to ensure greater transparency and accountability within the company's operations and greater opportunity for all shareholders to take an informed role in the company business and other stakeholders to take an interest in the business operations of the company¹².

The ABA considers that the existing MD&A obligation, coupled with other corporate governance disclosure (periodic and continuous), provides adequate scope for directors and companies to report their financial and operational performance. The ABA notes that there is no statutory "safe harbour" for directors pursuant to section 299A.

ASX Listing Rules

Beyond the mandatory statutory disclosure requirements, each listed company (or disclosing entity) is obliged to meet the continuous disclosure requirements set out in Listing Rule 3.1. (A similar requirement applies to unlisted disclosing entities in section 674(2)(c) of the Corporations Act.) The continuous disclosure obligation requires a company to disclose any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities.¹³ This requirement would reasonably cover information regarding environmental and social matters that satisfies the materiality test, particularly as issues, such as climate change, become increasingly important for companies and the wider community.

¹² The ABA notes that the MD&A obligation is similar to the obligation on UK listed companies, which are required to discuss broad strategic and forward-looking issues in their annual report as part of the Operating and Financial Review (OFR). The OFR essentially seeks to promote an effective dialogue on key drivers of long-term company performance. However, while the OFR obligation is mandatory, in May 2005 the Accounting Standards Board issued a reporting standard for the OFR obligation, which enables directors to determine how best to structure their review, in the light of the particular circumstances of the company. The ABA also notes that the UK Government is considering removing the statutory requirement for listed companies to publish an (OFR). In the absence of a "safe harbour", directors may be exposed to shareholder litigation. Thornton, P (2006). *Ministers in U-turn over review aspect of corporate reporting rules*. The Independent. 3 February 2006; and Jopson, B (2006). *Directors need safe harbour on forward looking statements*. Financial Times. 9 February 2006.

¹³ ASX Listing Rule 3.1 and sections 674-678 of the Corporations Act.

In addition to continuous disclosure obligations, listed companies have obligations regarding corporate governance practices and disclosure of those practices. Pursuant to Listing Rule 4.10, companies listed on the Australian Stock Exchange (ASX) are required to comply with the ASX Corporate Governance Council's *Principles of Good Corporate Governance and Best Practice Recommendations* by providing a statement in their annual report disclosing the extent to which they have followed the best practice recommendations during the reporting period. Importantly, the best practice recommendations focus on an "if not, why not" approach; where companies must identify the recommendations that have not been followed and give reasons for not following them.

Principle 10

"Recognising the legitimate interests of stakeholders" (Principle 10) sets out that companies have a number of legal and other obligations to non-shareholder stakeholders. It also recognises that increasingly, the performance of companies is being scrutinised from a perspective that recognises other forms of capital, such as natural, human and social capital. This being the case, the ASX Corporate Governance Council has determined that it is important for companies to demonstrate their commitment to appropriate corporate responsibility practices. Companies are required to establish and disclose a code of conduct to guide compliance with legal and other obligations to legitimate stakeholders.

Furthermore, it suggests that directors have a responsibility to set the "tone and standards of the company" and to oversee adherence to these standards. A code of conduct, which states the values and policies of the company, can assist the directors in taking into account the interests of stakeholders as well as complement the company's risk management practices. Importantly, the best practice recommendations refer to "legitimate" stakeholders. Not all stakeholder interests will be relevant in all circumstances, and therefore it is reasonable for directors to retain the discretion to determine how best to balance the particular stakeholder interests.

Principle 7

In addition to Principle 10, the best practice recommendations identify the importance of identifying and managing risk. "Recognise and manage risk" (Principle 7) sets out that companies should establish a sound system of risk oversight and management and internal control to identify, assess, monitor and manage risk and inform investors of material changes to the company's risk profile. The risk profile of a company should be a description of the material risks facing the company, including financial and non-financial matters. A structure for managing risks can enhance the environment for identifying and capitalising on opportunities to create value and as such the concept of managing risk takes on a wider perspective than merely managing financial risks, to also managing operational risks. Importantly, the best practice recommendations refer to financial and non-financial risk management, and that these risks will vary across different companies and different industries.

The ABA considers that the best practice recommendations explicitly and implicitly require listed companies to have regard for the interests of other stakeholders as demonstrated by the conduct of the business, its operational activities and its risk management practices as part of its corporate governance framework. Considering the breadth of financial and operational risks inherently must involve a consideration of how the company interacts and engages with its shareholders and other stakeholders.

Standards Australia

In addition to corporate governance standards that apply to listed companies as contained in the Corporations Act or ASX Listing Rules, Standards Australia has published a series of Australian Standards to assist all companies develop and implement effective corporate governance practices. The Australian Standards are non-prescriptive and have been designed to apply across company-type; small or large, public or private, profit or not-for-profit. AS 8003 was published in July 2003 and provides guidance on corporate social responsibility.

In addition, Standards Australia has published a number of other standards for business, including risk management, compliance programs, OH&S, environmental management, security management, organisational codes of conduct, etc, to assist companies to meet their legal obligations as well as implement more broadly corporate governance structures and responsible business practices.

5.2 Bank-specific conduct and disclosure obligations

For banks, the Corporations Act not only contains fiduciary duties for directors, but also a statutory duty for the bank to ensure that its services are provided in an efficient, honest and fair manner pursuant to section 912(A). Banks have additional conduct of business obligations pursuant to their Australian Financial Services Licence and must have adequate organisational capacities, competent responsible officers and risk management systems to comply with the conditions of the licence and the financial services laws. Obligations to manage conflicts of interest also mean that banks must avoid, control or disclose any conflicts of interest pursuant to section 912(A). Licensed financial service providers that have a fiduciary relationship must act in the best interests of their clients. A similar obligation to act in the best interests of clients is also contained in the *Superannuation Industry (Supervision) Act 1993*.

In addition to conduct of business obligations, a bank must also meet certain prudential requirements to be authorised to carry on banking business pursuant to the *Banking Act 1959*. Part of these prudential requirements is to meet certain corporate governance and risk management standards. Directors and senior managers are also to meet certain fitness and propriety standards. The Basel capital framework sets out a comprehensive risk management methodology for retail and commercial banking business. Banks must have adequate systems for managing credit risk, market risk and operational risk as well as adequate capital to protect the business from these risks. The Basel Committee on Banking Supervision has provided guidance on sound practices for managing and supervising operational risk as well as sound corporate governance practices (based on the OECD *Principles of Corporate Governance*).

Managing business risk, by having regard for internal and external risks, and maintaining a prudent governance structure by having in place robust and transparent operational practices, is an integral part of the day-to-day management of a bank. Reputational risk is increasingly important for banking business. Effective governance practices are essential to sustaining public trust and confidence in the banking system, which are critical to the functioning of the banking sector and economy as a whole. The ABA considers that banks are obligated to have regard for managing all risks to the business as part of their prudential management and conduct of business. Understanding financial and operational risks is part of a sound risk management system.

Australia's retail banks are also subject to the uniform *Consumer Credit Code*.

Code of Banking Practice

The ABA's *Code of Banking Practice* was first published in August 2003, with revisions subsequently made in May 2004. The Code is voluntary¹⁴ and sets standards of good banking practice when dealing with people, who are, or who may become, individual and small business customers. The Code includes key commitments, general obligations, principles of conduct and disclosures. The banking industry is dedicated to continuously work towards improving the standards of practice and service in the banking industry. Within the Code is a commitment to act fairly and reasonably towards customers in a consistent and ethical manner.

Customer service protocols

In addition to the *Code of Banking Practice*, each member bank will maintain its own customer service protocols. Banks have customer service charters, and some banks have more specialised procedures, such as Disability Action Plans, for addressing particular customer needs. However, a customer-focused culture can generally be demonstrated by principles of:

- Respecting and knowing customers;
- Understanding customer's needs and offering suitable solutions;
- Delivering consistently high standards of service;
- Working to build relationships with stakeholders (including customers, investors, financial advisers, business partners and the community); and
- Acting honestly and prudently and complying with legal and regulatory obligations.

Acting fairly and reasonably towards customers in the banking industry is essential in securing the long-term viability of the business. Therefore, acting in the best interests of customers is consistent with being accountable for corporate actions in the broader environment and community.

In summary, the ABA believes that:

- Current statutory obligations and industry standards encourage directors to have regard for the interests of shareholders and other stakeholders, where it is determined that such interests are also in the interests of the company.
- Corporate decision makers are not constrained by the existing framework. The law does not impede directors or companies from taking account of the interests of other stakeholders. Fostering relationships with shareholders and other stakeholders is an integral part of the existing legal, regulatory and corporate governance framework in Australia.

¹⁴ Details of the 13 banks that have subscribed to the ABA's *Code of Banking Practice* are on the ABA website. <http://www.bankers.asn.au>

5.3 Should the Corporations Act require certain types of companies to report on the social and environmental impact of their activities? Should there be any changes to the ASX Listing Rules to require disclosure of non-financial information to the market?

It is important to recognise that for companies to deliver greatest value for all stakeholders, a “one size fits all” approach does not adequately recognise the diverse and complex needs of all stakeholders. A “one-size-fits-all” approach to corporate responsibility or sustainability reporting will not work due to the uniqueness of each business and the variation in strategic approach across companies. The dynamics of the relevant industry, market sector, operating environment, product or service means that each company is different. The real and comparative influence of, and priority assigned to, varying stakeholder interests will be different.

Therefore, notwithstanding the wide recognition of the GRI guidelines, the ABA believes that it is premature to prescribe a particular reporting framework for companies to report against the triple bottom line. It is reasonable to expect that companies will determine that some aspects of economic, social and environmental reporting will provide a view of the operations of the company in its totality. However, it is unreasonable to suggest that all companies will have governance practices to report against all possible criteria, nor responsibilities to all possible stakeholders. Therefore, it would also be impractical to attempt to capture certain performance criteria or reporting indicators in either the law or listing rules.

The ABA notes that The Hon. Ian Campbell, Minister for the Environment and Heritage has approached the ASX Corporate Governance Council to consider incorporating sustainability reporting into the best practice recommendations¹⁵. The ABA also notes that CPA Australia and the AASB have both indicated that they are considering triple bottom line accounting standards for listed companies in Australia. Any Government intervention or legislative amendment that pre-empts the findings of the triple bottom line accounting discussions would be amiss. The ABA considers that it is preferable to allow reporting to evolve rather than mandating format and timing of reporting through legislation.

The ABA does not believe there to be a systemic failure of corporate Australia to address market and social forces by giving due consideration to the broader interests of the company as part of corporate decision making. Legislative intervention is not required, nor desirable, to enable or encourage directors and companies to have regard for the interests of other stakeholders. Modern governance, commercial practices and business necessity means that directors and companies already take into account wider interests in making decisions about corporate strategy and actions.

Importantly, Australia’s existing framework appropriately ensures that the approach to practices and reporting is scalable to company-type. Ultimately, attempts to prescribe corporate responsibility will either be too high level to provide practical guidance across the various industry sectors and various companies, and therefore unenforceable, or will be too complex and prescriptive engendering a compliance-based response that is likely to narrow innovation in corporate responsibility.

Australia’s banks have played a significant role in leading developments with corporate responsibility developments; in a voluntary capacity. The high level of corporate responsibility activity by Australia’s banks demonstrates that Government intervention or legislative amendment is unnecessary in order to promote responsible business practices and responsible disclosure of those business practices.

¹⁵ Department of the Environment and Heritage (2005). *Submission to the PJC Inquiry on Corporate Responsibility*. (p2).

In summary, the ABA believes that:

- It is not possible to codify all expectations that other stakeholders, including the wider community, may have of business, especially as these change over time.
- Additional regulatory measures that may impose additional compliance costs on companies without delivering tangible value are unnecessary.
- Directors duties' are already broad enough to allow directors and companies to have regard for the interests of other stakeholders.
- Australia's framework encapsulates corporate governance standards, corporate responsibility objectives, risk management reporting and good business practices that other jurisdictions are currently proposing or implementing to enhance existing frameworks.

6. Responsible business practices: partnership approach

6.1 *Should Australian companies be encouraged to adopt socially and environmentally responsible business practices?*

Corporate responsibility is not simply the space of large corporates or listed companies – it is about responsible business practices; “business responsibility”. A corporation is only one way a business can structure itself. Indeed, corporate governance should also be “business governance”. Therefore, it is important for the Government to endorse, encourage and facilitate responsible practices across all businesses, considering the nature and scale of their business operations.

6.1.1 Business initiatives

The ABA suggests the role for the business sector is to work to bring consistent recognition of corporate responsibility across their industry through competitive market driven responses to shareholder and other stakeholder interests. For example, a number of Australia's banks are involved in the United Nations Environment Program Finance Initiative (UNEP FI), a global partnership between the United Nations Environment Programme (UNEP) and the private financial sector. UNEP FI works with over 200 financial institutions who are signatories to the UNEP FI Statements, and a range of partner organisations to develop and promote linkages between the environment, sustainability and financial performance.

The ABA notes that an Australian bank is the current Chair of the UNEP FI Steering Committee. Its current work program is working on a number of key projects, including:

- *Climate Change*: focusing on carbon finance, national and international policy and regulation debates, and renewable energy.
- *Investment*: exploring how material social, environmental and governance considerations can best be incorporated into investment practice.
- *Sustainability management and reporting*: developing GRI Financial Services Sector supplement (environmental performance); building the business case for sustainability management and reporting in emerging economies.

In addition, to enhance dissemination of information about responsible business practices and to promote assessment of practices adopted by listed companies, the ABA suggests a number of possible initiatives.

Enhancing dissemination of information

An initiative similar to the London Stock Exchange's Corporate Responsibility Exchange may provide a mechanism for the consistent collection and dissemination of information about financial and non-financial performance of listed companies in Australia.

While this may assist smaller companies, it should be noted that the banking industry currently discloses information about stakeholder engagement programs and corporate responsibility activities on individual banks' websites and in various corporate reports. However, an alternative mechanism for the collection and dissemination of corporate responsibility information may supplement existing dissemination practices. This market driven approach may also give greater credibility and rigour to benchmarks of corporate responsibility practices.

The ABA would envisage that such a mechanism would complement existing reporting and disclosure practices and would not impose additional regulatory burdens on listed companies. Experience in the UK suggests that this approach has reduced the burden on companies that receive many requests for information from market analysts, benchmarking researchers, etc.

Enhancing comparability of information

The GRI is an evolving process. A number of ABA member banks support the GRI; these banks are involved as the framework allows flexibility to tailor to suit business needs. Notwithstanding, the ABA believes that it is too early to mandate performance criteria or reporting indicators. However, there is a need for mechanisms like the GRI guidelines to allow analysts to compare and benchmark performance against a commonly accepted reporting framework. The ABA considers that initiatives, such as XBRL, may be useful in promoting greater comparability through electronic communication of business and financial data¹⁶. The ABA also notes that the GRI is considering digitising reporting, which would allow information to be delivered to analysts in a format that would allow information to be more readily compared.

6.1.2 Government initiatives

The ABA believes there may be an important role for the Government to further promote responsible business practices across Australia by acknowledging the efforts of corporate Australia that work with community and welfare groups to deliver value for the community. For example, the Prime Minister's Community Business Partnership acknowledges business-community partnerships through the 'Awards for Excellence' program. The 2005 national award for large business was given to the *Millers Point Youth and Employment Partnership*, which is a collaboration between 12 organisations, including Westpac. In addition, Citigroup Australia, in partnership with YWCA NSW, won the 2005 multi-state award for their *Finance First* project and National Australia Bank, in partnership with Good Shepherd Youth and Family Services, won the 2005 Victorian award for large business for their *Step Up* program.

¹⁶ XBRL (Extensible Business Reporting Language) is an XML-based standard for financial information, reporting and analysis. It has been jointly developed by over 200 global companies and organisations. XBRL Australia is a member of XBRL International Inc. and is a joint venture of the Institute of Chartered Accountants in Australia and CPA Australia. It currently allows tags to be applied to financial data so that information can be easily handled by computer software. <http://www.xbrl.org.au/>

The ABA suggests the role for Government could be threefold:

- Endorsement and adoption of international covenants to further promote human rights, social welfare and environmental management in the interests of Australia's participation in the global community;
- Encouragement of corporate responsibility among Australian and foreign companies operating in Australia through business and community forums in the interests of raising awareness of how corporate responsibility may be relevant across industry sectors; and
- Facilitation of 'good for business' messages about corporate responsibility by conducting research into the contribution of corporate responsibility to long-term sustainability and competitiveness of companies as well as sponsoring awards programs to recognise excellence in corporate responsibility practices.

6.1.3 Education initiatives

The ABA believes there may also be an important role for the Government and the business sector to work in partnership to further develop responsible business practices across Australia. It is important for educational initiatives to foster theoretical and practical knowledge building in Australia's future business and government leaders. For example, RMIT's *Community of Practice: Ethics, Governance and Corporate Social Responsibility* consists of a diverse membership from across business and government. The aim of the group is to bring together practitioners in the field of ethics, governance and corporate social responsibility to identify issues from a practice perspective that may form applied research projects for the Graduate Business School. Overtime, students that have exposure to this form of skills and knowledge building will influence the manner in which business operates within Australia. The ABA is a member of RMIT's Community of Practice.

7. Conclusion

The value of corporate responsibility is in its voluntary nature, lifting best practices across the business sector. Attempts to codify or regulate will only stifle innovation and creativity of companies in balancing the interests of various stakeholders. A prescribed obligation will not encourage companies to adopt the 'spirit of the law', but merely comply with the 'black letter of the law'.

The value of sustainability reporting is in companies responding to shareholder and other stakeholder concerns and interests relating to social and environmental performance, as well as financial performance. Existing disclosure frameworks allow flexibility for companies to report those aspects of the business of interest to shareholders and other stakeholders as reflecting the relationships they have with their shareholders and other stakeholders.

Companies, including banks, should have flexibility in how they determine to govern and manage themselves, disclose their operational activities to the market and endorse responsible business practices. The wide range of activities that banks are engaging in demonstrates that it is not possible to legislate a single response to corporate responsibility. If the voluntary nature of corporate responsibility were removed, the likely result would be corporate cultures that meet compliance obligations or make insincere commitments simply to demonstrate conformance. Conformance necessarily would replace performance.

Therefore, the ABA suggests that the role for public policy in enhancing corporate responsibility across industry sectors is in promoting the transparency of credible corporate responsibility across business and the wider community. Disclosure of responsible business practices means that companies are accountable for the way they operate, how they manage corporate resources, and how they interact within the economy.

Companies are part of the community; therefore their long-term sustainable operation enhances shareholder value and community value. Furthermore, it is the ABA's view that a director that is not responsive to the broader interests of the company will expose the company to a number of business risks.

However, the over-emphasis on conformance, rather than performance, is already evident with the significant changes recently made to the corporations and financial services laws. Further regulation of companies or ambiguity for directors can actually impede the benefits of corporate responsibility; that is, the flexibility to deliver real outcomes that are relevant to the stakeholders of the company.

Building shareholder value through defined corporate strategies and by making voluntary commitments that go beyond regulated corporate requirements, may not just contribute to a better society, but can also lead to innovative practices for sustainable economic growth, increased profitability for companies and enhanced investor confidence. Australia's banks recognise the importance of corporate behaviour that reflects responsible business practices, corporate accountability and transparency and thus are recognised for their leadership in corporate responsibility amongst corporate Australia.

Australian Bankers' Association
8 March 2006