

Australian Government Corporations and Markets Advisory Committee Corporate Social Responsibility, Discussion Paper, November 2005

Introduction

The Environment Institute of Australia & New Zealand (“the Institute”) welcomes the opportunity to comment on the CAMAC Discussion Paper on Corporate Social Responsibility.

About the Environment Institute of Australia & New Zealand

The Environment Institute of Australian and New Zealand is a professional association established to meet the needs of environmental practitioners in Australia and New Zealand. The Institute is genuinely multi-disciplinary and was formed specifically for those who work in any of the numerous aspects of the environmental profession.

The primary purposes of the Institute are to:

- a) facilitate interaction among environmental professionals;
- b) promote environmental knowledge and awareness; and
- c) advance ethical and competent environmental practice.

The vision of the Institute is to “sustain the environment by assuring excellence in environmental people and practice”.

Response to the Discussion Paper

To make the transition to a sustainable society in a truly effective and efficient manner, the Institute would like to bring to the CAMAC’s attention that it is the skills of people that will make this happen. On the assumption that there is, or will be, a basis of sound legislation, the more competent, effective and efficient professional practitioners are, and the more supportive the public policy settings and corporate governance structures are, the better the environmental and sustainable outcomes will be.

The Institute accepts the concept of Corporate Social Responsibility (CSR) and sees it as an important mechanism for engaging corporations and ensuring transparency in an organisation’s approach to managing its surrounding environment and interaction with the community. The Institute does not see the need to develop a new system of application of CSR in Australian organisations and is satisfied with the systems already in use, such as the Global Reporting Initiative (GRI). However, there has been some ambiguity around CSR. Accordingly, since the Institute has the expertise to express an opinion on a number of matters relevant to the Discussion Paper, this submission is the

Institute's contribution to assist the Australian Government in making CSR worthwhile for both the business sector and the wider community.

1. Corporations Law and Directors' Duties

The CAMAC Discussion Paper explains how Australian corporations law does not require a corporation or its board of directors to consider externalities other than the obligation to meet compliance requirements of other laws. The CAMAC Discussion Paper gives a strong argument as to why boards and their directors can **not** be obliged to favour environmental externalities or the wellbeing of third parties over their shareholders' interests. However, in other jurisdictions (e.g. in Europe) there is permission in their corporations law for a corporate board to consider CSR in their decisions. European jurisdictions allow corporate boards to address climate change implications, local community implications and the product stewardship of their goods.

Irrespective of jurisdiction, it would appear that the paramount duty of directors is to act in the interests of the corporation's shareholders. So to the extent that CSR considerations adversely affect the financial interests of shareholders, such matters may not be seen as in the shareholders' interest. Notwithstanding any inclination that a benevolent board has to enhance the natural environment, to benefit a local community or to improve the living standard of their customers and employees, it would appear that where the shareholders' interests materially conflict with the broader community's interest – then the shareholders' interests prevail.

Accordingly, the Institute concludes that under the current legislation, no matter how well intentioned, whenever there is a net financial cost in implementing CSR, the primacy of shareholders' interests is an unfortunate obstacle to CSR.

This same argument stands also for the corporate implementation of sustainable practices in a corporation, except for short payback projects, cheaper programs or corporate image promotions.

Against this background, the Institute's view is that Australian corporations law should be amended to require company directors and business managers to take relevant environmental and social considerations into account in their decision-making. This means elevating environmental and social issues beyond the level of compliance to a more strategic level and making them central to corporate decision-making. It may also mean that the due diligence responsibilities of directors and managers in relation to the environment and community need to be strengthened.

This does not remove the need for appropriate legislation designed to achieve particular CSR objectives. Indeed, the Institute recognises that in some circumstances specific legislation may have advantages over more general corporations law, including greater certainty and better enforceability. Ideally, corporations law would provide a strategic framework for corporate social

responsibility, supported by more specific legislation where this is necessary to achieve particular CSR objectives. Relevant supporting legislation could include, for example, environmental, occupational health and safety, and trade practices law.

The Institute proposes, however, that to the extent that current corporations law prevents or discourages corporate decision-makers from taking CSR considerations into account in corporate decision-making because of a conflict between the interests of shareholders and the interests of the wider community, the solution must lie in reforming corporations law.

2. Not reporting for the sake of reporting

In any reporting exercise there is always the danger of ultimately reporting for the sake of reporting and thereby making it a “tick-box” exercise. The Institute has the experience to foresee that there is some danger of this happening to CSR reporting. One mechanism to prevent CSR reports becoming a “tick box” exercise is to ensure the purpose is outcome focussed. Another safeguard is to set the scope and level of CSR reporting in proportion to the size and/or impact of an organisation.

Currently the minimal level of CSR reporting demonstrates compliance and nominates each corporate breach of relevant legislation. However, the Institute agrees that CSR is beyond compliance, so a CSR report should also go beyond compliance.

3. Mandatory CSR reporting

The Environment Institute sees merit in the introduction of some form of mandatory CSR reporting, to increase the level of attention paid by senior management in the private sector to environmental issues, as well as social and broad economic issues. A critical issue would be in defining the threshold at which mandatory reporting would be a requirement. (One threshold, say, could be for ASX300 companies to be obliged.) This could only be defined by directly engaging the business community in the decision.

The Institute has the view that a combination of incentives and penalties could be used to promote CSR reporting. For example, the largest companies could be required to report, the smallest companies could be exempted from mandatory reporting, and those in between could be *encouraged* to report on CSR.

The Institute sees merit in both integrating CSR reporting into existing financial reports and (alternatively) in publishing separate CSR reports. The most important issue is that a company’s environmental, social and broader economic performance or contribution is adequately and truthfully reported to its stakeholders.

This view is based on the premise that better environmental outcomes will only result from more people paying more attention to the interactions their businesses (or businesses in their community) have with the environment. Mandatory CSR reporting is a powerful motivator to take active steps to minimise the adverse effects of those interactions and where possible to help re-generate natural or environmental resources.

4. Ensuring that reporting focuses on the desired outcome: - e.g. capacity to change behaviour, improvement of performance, etc.

Corporate Social Responsibility (CSR) should be outcome focussed rather than process driven. Again this approach will assist in preventing CSR becoming a “tick-box” exercise by ensuring the organisation gets something out of its effort.

Outcomes will differ among organisations but at a minimum they will include improved environmental performance and promotion of positive behavioural change amongst staff. Companies within the organisation’s supply chain (both upstream and downstream) should not be neglected in the CSR report.

Where an Australian organisation deals with companies overseas it is important to promote the level of CSR (and sustainable practices) that would be expected back home, by Australian stakeholders. CSR assists organisations that are below standard to improve their performance. From an enforcement perspective, this is applicable where organisations have influence over these below-standard companies, such as being a major client or a purchaser of their goods and/or services.

5. The role of the environment profession and ensuring that qualified environmental practitioners (e.g. CEnvP) are involved

The Australian Government also needs to ensure that practitioners involved in CSR are competent and /or certified to do CSR tasks. Several years ago, the Institute accepted the role of overseeing, on behalf of the environmental profession, the assessment and certification of its peers.

The Institute brings to the CAMAC’s attention that having certified or qualified environmental practitioners involved in CSR, whether it is through development of CSR reports, auditing or verification would ensure the quality of the outcome. It would also give transparency to the process and provide a level of assurance that an organisation is delivering its CSR promises.

The Institute sees the involvement of certified or qualified environmental practitioners as critical to ensuring that CSR is implemented well, by business and accepted by the wider community. The Institute offers the recommendation that CSR improvements would utilise experienced professionals and in particular, certified environmental practitioners. More information on the Certified Environmental Practitioner Program can be found at www.cenvp.org

6. Embedding CSR and sustainability into business education and certification

Embedding CSR and sustainability into business education is a longer-term matter because it trains future business leaders in CSR. Opportunities include:

- having CSR as a core unit in all business courses;
- offering CSR streams in under-graduate and post-graduate courses; and
- continuing professional development courses in CSR for existing business leaders.

The Institute points out that as CSR becomes a more commonplace aspect of business management there will be a need for knowledge and experience in CSR to become an aspect of certification for other practitioners in other fields of business. An example is the accounting profession and its certification; CPA. The Institute would be happy to discuss this matter further with the CAMAC Committee.

7. Support for the Operating & Financial Review that is used in the UK

The Institute accepts the Operating and Financial Review (OFR) approach adopted in the United Kingdom. In Australia this would provide the wider community, including non-government organisations, with the means to familiarise themselves with organisations' operations, their performance, their perceived environmental impact and their policies in regard to environmental, social and community issues.

However, the Institute draws attention to the need for an external verification process of such a process, if it were adopted in Australia. This would ensure that it was transparent and gave an objective and true view of the organisation's CSR position.

8. Use of the Global Reporting Initiative together with utilisation of certified environmental practitioners and public comparative list

The Institute accepts the use of the Global Reporting Initiative (GRI) and Sustainability Guidelines as a framework for corporate reporting. The Institute points out that GRI provides a phased approach towards Sustainability Reporting.

For the Australia Government to commence a staged approach it could develop a minimal set of core indicators for use in different industrial sectors and work with relevant professional bodies such as the Institute to develop an appropriate accreditation / training program to facilitate this rollout.

It is important that whatever indicators corporations use under the GRI, the non-financial component of a CSR report would need to be validated by certified

practitioners in an appropriate field, just as financial statements are validated by chartered accountants.

Apart from awards, which are already used for corporate reporting, the use of a publicly available comparative list of company performance against agreed, standardised GRI indicators would need to be mandatory to provide sufficient incentive for change. Again, for reliability and transparency, the list would indicate whether the results are certified. This could take the form of the Sustainability Reporting Library managed by the Australian Government Department of the Environment and Heritage. The Institute acknowledges that this could only be put into action by revising current legislation.

Further Information

Further information on the Institute or any of the points raised in this submission can be obtained from John Ashe, Chair of the External Relations Committee, on (02) 6239 7835.

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