

24 February 2006

Mr John Kluver
Executive Director
Corporations and Markets Advisory Committee
Level 16
60 Margaret Street
SYDNEY NSW 2000

Dear John

Submission – Corporate Social Responsibility Discussion Paper

We are pleased to provide our submission to the Corporations and Markets Advisory Committee (CAMAC) in response to their *Corporate Social Responsibility Discussion Paper – November 2005* (the Discussion Paper).

We have structured our response to the Discussion Paper based on the matters raised in each Chapter as a whole rather than addressing each question individually.

We would be happy to provide clarification or additional detail regarding any aspects of our submission. Please contact Liza Maimone Principal Environment and Sustainability Services (03) 8650 7348 or Gail Bergmann (03) 9288 8593 Governance and Corporate Culture service leader if you would like to discuss our response.

Yours Faithfully



Rob Perry
Business Unit Director
Risk & Technology Services
Ernst & Young

Chapter 1 – The issue of corporate social responsibility

We favour the definition of Corporate Social Responsibility (CSR) as provided by SustainAbility and addressed in the Discussion Paper (Page 2, Footnote 2):

‘ a business approach embodying open and transparent business practices, ethical behaviour, respect for stakeholders and a commitment to add economic, social and environmental value’.

In particular we believe that any definition adopted should **avoid** implying that interests of shareholders and stakeholders are mutually exclusive.

In calling for comment on the most appropriate approach or combination of approaches to responsible corporate behaviour is most appropriate, we would point out that we do not believe the approaches are strictly mutually exclusive.

In terms of legislating a particular approach or combination of approaches we would suggest that the only approach capable of being legislated is the commercial approach, for example mandating company reporting of non financial risks. However, as detailed in our response to Chapter Five of the Discussion Paper, we do not support mandatory reporting and favour a system of supported voluntary disclosure as discussed below.

In addressing the question of the extent to which corporate decision making is already driven by stakeholder concerns we can provide only anecdotal evidence based on our observations. It is our contention that decision makers in corporate Australia are cognisant of the impact on stakeholders other than shareholders of their corporate decisions. There is an understanding that in order to prosper financially in the longer term various considerations, beyond just those pertaining to current shareholders, must be taken into account.

In relation to the question of how companies engage with stakeholders, we would suggest that there is significant variation in the sophistication of stakeholder engagement. However, we note the development of voluntary standards, such as the AA1000 Stakeholder Engagement Standard, whose intention is to improve the quality of stakeholder engagement through defining good practice and a framework against which companies verify their performance. We would suggest that to improve performance in relation to stakeholder engagement there is a need for both greater awareness and understanding of existing standards by both companies and auditors verifying company reports against the standard.

In response to the question of whether there are any changes that could enhance triple bottom line, sustainability or like reporting we would suggest that there are many initiatives already in place which seek to achieve that very outcome. Many of these initiatives have been addressed in the Discussion Paper itself, such as the *Global Reporting Initiative (GRI) Sustainability Reporting Guidelines 2002*. As one purpose of the GRI guidelines is to provide clarity and comparability in sustainability reporting we do not believe it is necessary to introduce requirements that would duplicate this guidance.

Chapter 2 – Directors’ duties: current position

The ability or degree to which the current law pertaining to directors duties allows the interests of non stakeholders to be taken into account is beyond our scope of expertise to comment upon. We are unable and do not provide opinion regarding the law or the interpretations made by the courts. It is our general understanding and one which accords with much of the commentary in the Discussion Paper, that directors are not constrained from making decisions that take into account the interests of non stakeholders, if such a decision is ‘in the best interests of the corporation’. ‘In the best interest of the company’ is not limited to an assessment of the impact on current shareholders and can consider for example shareholders in perpetuity.

The extent to which directors themselves feel constrained by the law is one best answered by company directors in the context of individual or company submissions on the Discussion Paper.

Chapter 3 – Directors’ duties: matters for consideration

Attempts to *clarify* the Corporations Act regarding the extent to which directors may take into account the interests of specific classes of stakeholders may serve only to confuse the issue. We contend that it would be difficult to draft such an amendment. The classes of stakeholders vary for each company and may vary over time. To nominate, specify or rank shareholders would be tedious and would result, we suggest, in a cumbersome and difficult to apply provision. A broad principle based amendment would do little to add clarity.

Similarly we do not support a proposal to amend the Corporations Act to *require* directors to take into specific classes of stakeholders. The concerns we raised above regarding clarifying the Corporations Act apply equally or indeed even more so to amendments that would require consideration of specific classes of stakeholders.

We suggest that other mechanisms be explored to raise the issue and address concerns regarding the ability / desirability of directors taking stakeholders into account when making decisions. For example the Australian Institute of Company Directors (AICD) would be one avenue of raising and debating this important issue and could be a resource for directors seeking guidance on the execution of their duties in this regard.

Finally, we believe the emphasis of discussion should be on the balance or consideration given to short term versus long term interests of shareholders and stakeholders rather than an emphasis on specific classes of stakeholders.

Chapter 4 – Corporate reporting

Currently the Corporations Act requires all disclosing entities, public companies, large proprietary companies and registered schemes whose operations are subject to particular and significant environmental regulation under Commonwealth or State / Territory laws to provide details of the entity’s performance in relation to the environmental regulation in the annual directors’ report.

The directors' report of a listed company must include an 'operating and financial review' (OFR). It must provide information on the operations, financial position and business strategies and future prospects of the company. The explanatory memorandum which accompanied the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act – which introduced the OFR – refers preparers of the directors' report to the Group of 100 guidance on such reporting.

There is also a requirement under the Australian Stock Exchange (ASX) listing rules (rule 4.10.17) for companies to include a review of operations and activities in their annual report. Guidance to the listing rule also supports the Group of 100 guidance as 'best practice' guidelines.

The Group of 100 'Guide to review of Operations and Financial Condition' suggests that various factors should be considered in preparing the review and should inter alia 'deal with the broader dimensions of the company's performance such as sustainability reporting, where that is relevant to users'.

Chapter 5 – Encouraging responsible business practices

Ernst & Young's direct involvement in validating Corporate Responsibility Index (CRI) submissions means we have seen first hand the improvements made by companies participating in this initiative. Companies utilising the framework are seeing definite improvements in management over the short term, with likely long term performance improvements to follow.

The CRI is a voluntary self assessment tool with an independent validation process. The CRI is a management, measurement and reporting tool which provides companies with a practical framework for improving and communicating corporate responsibility performance.

We would advocate government support for establishing a robust *voluntary* reporting mechanism as the most appropriate route to shifting focus to long term responsible management. As such one possibility would be to build on the existing CRI tool to promote wider uptake. We believe that mandatory approaches have an associated risk of creating a culture of 'compliance for compliance sake' or a 'tick the box' climate. A voluntary approach that encourages a culture of sure judgement, responsibility and accountability and challenges the underlying ethical culture is a more desirable result. In addition, the benefit of voluntary approaches is that they allow for the demonstration of leadership and differentiation in the market.

There are a range of current barriers to the uptake of CRI that could be overcome through interim government support. We would encourage government support of the CRI to promote wider uptake to the point of building a critical mass.