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Dr Anthony Marinac
Acting Committee Secretary
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Dear Dr Marinac

Inquiry into Corporate Responsibility

The Finance Sector Union of Australia (FSU) welcomes the opportunity to contribute to the inquiry into Corporate Responsibility.

The FSU represents 60,000 members employed in the finance sector across Australia. Our interest in corporate responsibility stems from our members' interest in working in soundly managed, accountable and sustainable companies and ensuring that the interests of all stakeholders are considered by directors.

We have seen first hand the impact on employees when companies fail. One thousand finance industry workers were directly affected by the HIH collapse. Our members' difficult experience of working within a company with such inadequate corporate governance practices demonstrates to us the fact that good corporate governance is as much an issue for stakeholders as it is for shareholders.

Unfortunately the need to encourage and broaden corporate responsibility in Australia is nowhere better exemplified than in the finance industry, and not solely because of the HIH disaster. Many scandalous examples of management incompetence exist within the finance industry with members having to pay the price, (ie NAB's disastrous acquisition of Homeside which created a $4billion hole in the balance sheet and resulted in hundreds of jobs being shed, George Trumbull and Paul Batchelor's destruction of AMP value and reputation leading to more jobs being cut).

Several of the largest companies in the finance sector are good examples of the need for greater accountability in relation to corporate governance and specifically senior executive remuneration. We know first hand of the negative effects such excesses at the top of the corporate tree, particularly when it occurs within a context of cost cutting at the lower levels of the organisation.

We have witnessed the disregard adopted by the leaders of our industry for their employees, their customers and their community as a direct consequence of massive remuneration packages being based solely on shareholder return. The race to outbid one another, particularly in the banking sector during the mid to late nineties, on the amount of jobs they would shed and the amount of branches they would close to gain an immediate positive response from the 'market' was done without thought for the social impact of such decisions.

In fact, the finance sector is the exemplar of the corporate excess that is so detested by working people in this country. To support this assertion, a 2002 report found that

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overall, average weekly earnings in the finance sector were 74 times less than executive pay. For customer service staff, who earn considerably less than average weekly earning in the sector, the ratio was about 188:1 in 2002. The worst example of excess was the Commonwealth Bank of Australia where CEO David Murray earned 307 times the salary of a customer service representative. [1]

In response to the public outcry and political pressure from groups such as the FSU some banks have now admitted that they went too far in their cost reduction strategies. It is the FSU's contention that continued scrutiny of the impact of executive and directorial strategies on all stakeholders should be mandatory in relation to good corporate governance. This will benefit all those associated with our industry and stop the short-term madness of a single focus on costs.

The FSU believes that organisational decision-makers should have a greater regard for the interests of stakeholders such as employees, customers, and the broader community. Higher standards of corporate responsibility and accountability should be observed; however there is no simple way to achieve this.

Our submission will be divided into 6 broad sections.

1. Directors duties
2. Ratings services
3. Current reporting practices
4. AGMs
5. Works Councils
6. International codes

Directors duties

There does not appear to be a clear cut view as to whether the current regime under the Corporations Law permits directors to consider issues wider than the financial performance and future of the company itself.[2] FSU has previously advocated that the Corporation's Law should be amended to require directors of publicly listed companies to have a broader responsibility to stakeholders such as employees and customers;[3] however it is recognised that this may not be enough.

Regulatory requirements can establish some of the basic ground rules for corporate responsibility but they are not a sufficient condition to ensure a culture of corporate social responsibility. The FSU believes that a broad range of incentives, education and information will be required (along with legislative change) to address the short term focus on shareholder returns. In addition, any changes are likely to occur slowly over time as market behaviour develop and responds to community pressure and legislative guidance.

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[1] Shields, O'Donnell & O'Brien, "The Buck Stops Here: Private Sector Executive Remuneration in Australia" A report prepared for the Labor Council of New South Wales, 2003 at page 37

[2] See Harold Ford, R P Austin and Ian Ramsay, *Ford's Principles of Corporations Law* (12th ed, 2005), and Peter Henley, 'Were Corporate Tsunami Donations Made Legally? '(2005) 30(4*) Alternative Law Journal.*

[3] Recommendation 5, Submission on Exposure Draft CLERP 9 (Audit Reform and Corporate Disclosure) Bill 2003

The FSU would advocate that section 181 of the Corporations Law be amended to proactively require directors to also have regard to the interests of people or organisations who the company may have or is likely to have a business or employment relationship, or who may be directly affected by the business of the company. At a minimum the law should be amended to clarify that directors ***can*** have regard to these stakeholders.[4]

Ratings services

The growing profile of various ratings agencies who provide assessments of companies' activities according to various ethical, environmental, labour, safety criteria are a strong sign that the market and society are increasingly interested in the 'non-financial' aspects of a company's behaviour.

FSU generally supports the concept of independent ratings agencies that provide these types of ratings and information, however it is critical that these agencies are truly independent and have transparent and fair process to ensure that any ratings are robust and reliable. Unfortunately the FSU has recently encountered one ratings agency that was not interested in receiving any union input into its public ratings for 'workplace practices' preferring to simply rely primarily on information in the public domain. This was particularly disappointing given the ACTU, FSU and other unions were actively involved in helping the agency to establish credibility in its early years of operation.

In a broad sense, many ratings agencies are assessing the levels of transparency and accountability displayed by companies; consequently it is reasonable to expect that these agencies will themselves display high levels of transparency and accountability.

Current reporting practices

FSU argues that it is time to require companies to set broader measures of performance than those based simply on shareholder return. This is not to undermine the importance of shareholder return as a measure of performance, but to ensure that executives consider the interests of all stakeholders in the company and the way that stakeholder satisfaction contributes to long term strength in company performance and growth. FSU argues there must be the capacity for greater control over executive and non-executive director remuneration and performance measures. Too often, stakeholders such as employees and customers have paid the price with their jobs or the loss of their local branch while executives increased their wealth by meeting performance hurdles based solely on shareholder value.

Financial measures alone are insufficient for modern organisations. FSU would argue for measures that include customer satisfaction, employee satisfaction and motivation, process improvement, corporate reputation and strategic development.

In response to documents such as the 'social charter' developed by FSU[5] we have begun to see individual companies in the sector move their language in recognition of the community's displeasure with their behaviour. From the ultra arrogance of the late 1990's when bank CEO's would brazenly tell the public that they had no community service obligations, we have seen the shift to language of responsibility, qualified

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[4] As suggested by Henley (above).
[5] Available from www.fsunion.org.au

moratoriums on branch closures and recognition of the importance of stakeholders other than shareholders.

Many of the 'charters' and programs referred to in the annual reports of Australian finance companies are self determined, self evaluated and lacking the rigour of genuine consultation and involvement of stakeholders. The results derived are therefore not reflective of the daily realities and often deceitfully and cynically used for the purposes of seeking to improve market positioning.

FSU members would support any measures that provide any additional controls and/or scrutiny of executive and non-executive director remuneration. In general, the FSU supports reforms to the Corporations Act to the extent that they increase transparency and accountability in relation to remuneration of directors and management.

However, we argue that the time has come for the government to require companies to use broader measures of performance that incorporate the interest of stakeholders such as employees, not just shareholders.

There is undoubtedly a growing recognition that a good disclosure regime includes financial and non-financial information.[6] Numerous companies have started to adopt these types of practices in their annual reports and/or discrete reports such as sustainability, stakeholder or social impact reports. The FSU welcomes these initiatives; however they are still in their infancy and could be greatly improved by incorporating a much wider amount of information and by incorporating some of these non-financial indicators into performance agreements for senior executives.

The Global Reporting Initiative (GRI) provides a comprehensive framework for companies to report against various indicators of economic, environmental and social performance. A recent report commissioned by the CPA[7] provides a useful guide as to which GRI indicators are being reported by the top 100 Australian companies. Unfortunately, it shows that most companies are not reporting information that would satisfy many of the GRI criteria, in fact some companies do not appear to be reporting GRI type information even when they are legislatively obliged to do so[8].

It is encouraging that a few companies are reporting some of the GRI indicators **and** having the results verified and audited by third parties. Ideally all companies would report all indicators and have them audited but this may take many years to develop.

The FSU supports greater reporting by Australian companies using the GRI indicators. This could be encouraged and rewarded by the directors of companies and, ideally, by the market itself as it evolves and matures. Alternatively, they could be mandated by legislation.

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[6] See *OECD Principles of Corporate Governance 2004.* Principle V – Disclosure and Transparency – specifically mentions that disclosure should include information regarding "key issues relevant to employees and other stakeholders that may materially affect the performance of the company." Also see ASX principles 5 and 6 from *Principles of Good Corporate Governance and Best Practice Recommendations 2003*.

[7] *Sustainability Reporting Practices, Performance and Potential A research project commissioned by CPA* Australia July 2005.

[8] CPA report – page 12 and appendix 2.

AGM actions & experiences

FSU is itself a shareholder and more importantly, has an increasing number of members who own shares in the companies for which they work. For the past few years we have been involved in the processes of shareholder participation currently facilitated by the Corporations Law, particularly in relation to section 249N members' resolutions and section 249P members' statements. These sections provide an important mechanism by which smaller shareholders can be active in their affairs of companies.

These actions have usually been taken to raise awareness of certain issues (usually related to industrial matters) and place pressure on board members. These actions have generally been accepted as a legitimate way of expressing stakeholder concern; however, the Commonwealth Bank (CBA) has been pursuing the FSU through the Federal Court regarding action taken by FSU at the 2004 AGM.

The FSU sought to raise concerns regarding the '*Which New Bank?*' change program that is being aggressively pursued by the CBA and consequently proposed an independent audit to be conducted to ensure that employees and customers were not being disadvantaged. The CBA is alleging that the FSU's action was in breach of the *Workplace Relations Act*. The CBA's actions may be indicative of a disturbing trend to use legal action in an effort to silence dissent regarding how companies are run (ie Gunns).

AGM's provide a key mechanism for shareholders and stakeholders to ask questions and provide feedback regarding the performance and running of the company. The FSU is both a shareholder and a stakeholder in relation to CBA – it would be a significant setback in stakeholder engagement if one of Australia's major companies succeeded in denying stakeholder groups access to basic accountability mechanisms such as AGMs.

Accountability mechanisms are useless unless they allow for dissent and criticism to be voiced and lessons to be learned.

Works Councils

Since the mid-90's the European Council has established arrangements for mandatory works councils and guidelines for informing and consulting employees. The works council directive was adopted in 1994[9] with the further directive on consultation and information issued in 2002[10]. Works Council agreements now cover over 700 companies or groups in the EU and approximately 11 million employees with roughly 10,000 employee representatives involved.[11]

These are described by Paul J Gollan and Glenn Patmore writing in the *Age*:

> The directive requires the establishment of elected committees of employees, called "works councils", which are consulted by management on key company decisions. Works councils are designed to improve workers' rights in the areas of information, consultation and participation. They are also designed to promote dialogue between management and labour, and to deal with the

[9] European Council Directive 94/45/EC.
[10] European Council Directive 2002/14/EC.
[11] EUROPA - portal site of the European Union - http://europa.eu.int/

problems resulting from corporate restructuring and transnationalisation. This kind of dialogue has been sorely lacking in Australia of late, as evidenced by the fallout from spectacular corporate collapses.

Another advance in the development of social partnership in Europe has been a brand-new directive on information and consultation in the workplace. This directive is aimed at improving the information and consultation rights of employees in small and medium-sized enterprises. Its primary focus is on companies operating within national borders. The directive seeks to enhance the employability of workers through the provision of information and consultation on pertinent workplace and company matters. The presence of a social partnership philosophy is evident in the objectives of the directive, which seek to promote social trust and to extend economic benefits to all citizens.

Unlike the European Works Council Directive, it does not mandate the establishment of a works council, but leaves open the kinds of arrangements that might be implemented. However, some measure must be adopted, such as biannual employer-employee meetings to discuss the present state and future direction of the company." [12]

The FSU would welcome a discussion around the possibility of introducing similar arrangements in the Australian context as a way of increasing consideration of stakeholder interests and promoting dialogue.

International codes

The FSU supports Australia being internationally competitive and adopting world's best practice. The FSU is cognisant that there are numerous international codes of practice that may assist in this regard by raising the standards of corporate behaviour. Some of the main international codes include:

- ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy;
- OECD guidelines for Multinational Enterprises;
- UN Norms in the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights.

The FSU notes and endorses the appraisal of these codes contained in submissions to this inquiry by the ACTU and the PILCH Homeless Persons' Legal Clinical.

In the time available the FSU has not formed a definitive view on these codes but believes the UN Norms provide a comprehensive and holistic code of practice for businesses of all types. The FSU endorses the provisions around the Rights of Workers (s5-7) and the wide definition of stakeholder (s22). Adoption of the UN Norms into Australia's regulatory structures as described in s17 would assist with raising standards of corporate social responsibility.

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[12] "*Our ailing industrial relations needs some European tonic*" Paul J Gollan and Glenn Patmore, **The Age**, 30.12. 2002

If you have any questions in relation to this submission please contact Rod Masson (03) 9261 5330 or James Bennett (03) 9261 5321.

Yours sincerely

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National Secretary
15 September 2005