



Curbing Corporate Social Responsibility: Preserving pluralism – and preventing politicisation – in Australian business

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Analysis Paper 2

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Related Works

Tom Switzer & Charles Jacobs, *Millennials and socialism: Australian youth are lurching to the left*, Policy Paper 7, The Centre for Independent Studies, June 2018.

Peter Kurti, *A Shy Hope in the Mind: Secularisation and the Diversity of Australia's Religious Economy*, Analysis Paper 1, The Centre for Independent Studies, June 2018.

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Summary

The body of management thought and practice concerning the social role of modern corporations is called Corporate Social Responsibility (CSR). CSR is based on the belief that for corporations to hold a 'social licence' to operate, companies must fulfil a range of social obligations beyond their traditional profit-making role. This includes ensuring that corporate decision-making considers the social impacts of company activities on the interests of wider groups of stakeholders in the community.

Recent attention paid to CSR in Australia has — not without reason — led to accusations of 'politically correct' corporations indulging in gratuitous political diversions from their primary duty: to protect shareholder's financial interests. In response to the unprecedented part leading companies played in the same-sex marriage campaign, critics have argued that companies should "stick to their knitting" and not meddle in politically-contentious social debates.

An alternative interpretation is that the rise of CSR — and its institutionalisation within business — is a product of intersecting economic, social and cultural factors in contemporary society that have led to greater scrutiny of corporate conduct. In a more complex, more questioning, and more globalised world, factors such as the concentration of economic and political power in large corporations, the emergence of counter-cultural attitudes towards established authority, and the growth of the international environmental movement, have all combined in the marketplace of public opinion to shape how the community has expected modern corporations to be accountable for, and transparent about, their social impacts.

It was only in the 1990s that major Australian companies started to develop CSR policies, mainly in response to corporate scandals. This led to criticism that most CSR activities were mere 'window dressing' to polish tarnished company reputations. The response by Australian business has been to encourage a more meaningful approach.

In 2002, the Corporate Governance Council of the Australian Stock Exchange (ASX) formulated *The Principles of Good Corporate Governance and Best Practice*. Each of the three revised iterations of ASX's best practice guide has presented CSR as a 'core business' feature of good corporate governance.

ASX has endorsed what is known as the 'material business risk' approach, which seeks to 'mainstream' and 'integrate' CSR into strategic decision-making and operational practices across all levels of company management. Under ASX's guidelines, considering the social impact of company activities on the reasonable and legitimate interests of stakeholders is viewed as a form of 'risk management' of non-financial risks relating to environmental sustainability or other social issues considered 'material' to the long-term success of the business.

There is merit in the 'business case' for CSR: in well-managed corporations, it is reasonable and realistic for company directors and managers to exercise good commercial judgement to effectively manage social risks to the company's interests in the best interests of shareholders. However, within the existing debate inside business circles about CSR, there has been insufficient discussion of the risks and negative brand and reputational consequences of escalating corporate involvement in CSR embroiling companies in politically-charged issues.

The mainstreaming of CSR has been accompanied by the growth within the corporate landscape of an influential and strategically-placed 'industry' of CSR professionals. This is typified by the elevation within management structures of HR departments transformed into 'People and Culture' divisions in charge of CSR policies such as promoting gender, sexual, and racial 'diversity'. CSR has also been heavily promoted by the 'Big Four' consultancy and professional services firms because of the potential to drive growth in new business such as external audits of corporate sustainability reports.

The aims and objectives articulated by CSR professionals speak of the subversion of companies from traditional business endeavours towards open political activism. This is revealed by the activist mindset of CSR professionals who assert that the "focus is now clearly on business' role in society as a driver of change" and that the next step in the professionalisation, mainstreaming, and integration of CSR is enabling companies to meaningfully participate in driving "systemic change" around pressing social, environmental, and economic issues.

CSR professional activists also argue that corporate political involvement in systemic change should be facilitated by government action to regulate CSR governance and management practices, via revolutionary changes to company law that would introduce mandatory CSR obligations that explicitly define the non-shareholder interests directors can consider.

CSR is legal because, under existing company law, directors have a wide discretion concerning the non-shareholder interests they may be required to consider so long as the proper purpose is to protect shareholder's interests in general.

Mandatory CSR laws, however, would give directors a vague but potentially unlimited discretion to consider the competing or conflicting interests of stakeholders for their own sake, which would leave them effectively unaccountable to shareholders.

Some critics of corporate involvement in social debates have suggested CSR should be ruled illegal for breaching the Corporations Act. This would be counter-productive, as a successful legal challenge would only fuel the campaign for mandatory laws that would give CSR professional activists what they seek — a license for companies to participate in politics.

Mandatory CSR should not be legislated because of the deleterious consequences for corporate governance. Nevertheless corporate decision-makers need to be aware of how the ongoing professionalisation, mainstreaming and integrating of CSR threatens to lead to the politicisation of companies.

Standard CSR practice has CSR professionals invite lobby groups to 'engage' with corporate entities to endorse their political, social, and cultural agendas — or risk the reputational consequences. CSR therefore has promethean qualities that leave companies vulnerable to being forced to become publicly involved in social issues that appear to have only tenuous links to their business interests.

Given that well-organised 'progressive' advocacy organisations have newfound ability to influence corporate reputations through social media, it may be difficult for corporate leaders to easily distinguish the difference between CSR activities justified by a business case and those that should be rejected as inherently politicising. Corporate leaders may also feel that they are simply acting in a socially responsible way by reflecting the position on social issues where society has already landed.

But the reality is that companies are politicised by taking sides on questions for which there is no community consensus, given the political polarisation evident in many western countries — including Australia — over social issues between 'elites' holding progressive views, and 'ordinary' citizens holding more conservative views.

Public companies, given their special legal rights and privilege, should aspire to be pluralistic institutions that serve the whole community equally, which is impossible if companies acquire reputations for 'being political'. Associating a corporate brand with a divisive political position is hardly in the best interests of the company, given that not all employees, customers, shareholders and stakeholders will agree about what constitutes responsible corporate behaviour across social issues in a pluralistic society.

Notwithstanding the typical CSR rhetoric and appeal to the abstract notion of a 'social license', meddling in political issues for the sake of stakeholder's interests that are faintly — if at all — connected to shareholder's interests is the Rubicon that the CSR activities of Australian business should not cross if we are to avoid companies becoming inappropriately politicised.

Politicisation is hardly an abstract concern. The substance of the revised corporate governance standards proposed by ASX — which suggest that companies must earn their social license to operate by acting 'socially responsibly' with regards to inherently politically contentious issues including human rights, climate change, taxation and wages — reflects the mindset, ambitions, and influence of the CSR industry.

The rhetoric emanating from the CSR industry about corporate involvement in political change should

therefore be a wake-up call for company boards about the willingness of CSR professionals to play politics with shareholders' money at the margins of what might be permissible under company law. However, corporate leaders who might wish to avoid the political risks and limit CSR activities to appropriate business parameters are currently unable to be guided by any alternative set of principles, policies or institutional framework to counter the well-established CSR doctrines and structures across business.

To stop the politicisation of Australian companies, this paper therefore proposes introducing into the language and practice of corporate governance a new clarifying principle to overtly qualify existing CSR philosophies — the Community Pluralism Principle:

It is important for modern corporations to consider their impact on all genuine stakeholders in the best interests of shareholders. It is also important that engagement on social issues cannot be perceived to distract from company's core business mission, duties, and accountabilities, nor negatively affect its brand and reputation in the market of opinion in a political sense. It is a matter for boards of directors and other corporate decision-makers to manage these risks by ensuring that companies respect and reflect the pluralism of Australian society and remain open to the views and values of all employees, customers, shareholders and stakeholders across the community.

It is unclear whether there is an appetite within the business community for pushing back against the CSR trend, given that opponents of 'progressive' CSR agendas can face professional repercussions. Company directors and senior managers can also personally benefit from CSR initiatives that associate their individual corporate profiles with 'worthy' social issues, literally at the expense of shareholders who bear all the associated costs of CSR incurred by public corporations.

But if the will to curb CSR exists — or greater awareness of the business risks of politicisation fosters the will to protect company brands — the ability of corporate leaders to explain their decisions by reference to the Community Pluralism Principle as an established part of good corporate governance would prevent companies from inappropriately straying into politics, and instead leave the politics to politicians, parliaments, and the people

Practising this principle would also see companies practice the values of 'inclusiveness' that underpins many CSR initiatives, but in new, important, and genuinely tolerant ways. By promoting respect for the perspectives of all groups in the community, the Community Pluralism Principle would ensure that Australian corporations respect the only kind of diversity that ultimately matters in a liberal democracy: the diversity of political opinion that is the foundation of a free society.

Introduction:

The Business of Business Isn't Strictly Business

In March 2017, Turnbull government minister Peter Dutton criticised the high-profile involvement of Australian business in political debates about social issues such as same-sex marriage by asserting that companies should “stick to their knitting”. According to Dutton, corporate leaders should not use their company brands and shareholders’ money to drive what he claimed were personal agendas around political causes.¹

Dutton’s remarks were prompted by the publication of an open letter signed by prominent Australian business leaders, including 20 chief executives from among the nation’s leading public companies — such as Wesfarmers, Commonwealth Bank, Telstra, Holden, and Qantas — calling on the Prime Minister to introduce legislation to legalise same-sex marriage, and abandon the Coalition Government’s pledge made prior to the 2016 election to conduct a national plebiscite to decide the issue. The letter was organised by the Australia Marriage Equality lobby group,² whose campaign to legalise same-sex marriage ultimately gained the backing of a reported 1300 Australian businesses that agreed to have their logos published in a show of support.³

The letter signed by the CEOs stated that they were “acting in their personal capacity” and not on behalf of their companies.⁴ This did not stop Dutton from singling out for special criticism Alan Joyce, the CEO of Qantas, who was among the first and most prominent corporate leaders to declare his — and his company’s — support for Marriage Equality. Dutton argued that while Joyce was “perfectly entitled to campaign for and spend his hard-earned money on any issue he sees fit”, such advocacy should not extend to any “official capacity” that used “an iconic brand and the might of a multi-dollar business” to exert influence over political debates and social issues that are “best left to individuals and elected decision-makers.”⁵

Joyce took Dutton at his word — up to a point — when he personally donated \$1 million to Australian Marriage Equality ahead of the plebiscite (the ‘postal survey’) eventually conducted in November 2017.⁶ However, Qantas would also become one of the first major companies to support a ‘Yes’ vote.⁷ When announcing that Qantas would throw its weight behind the ‘Yes’ campaign, Joyce (who is openly gay) sought to clarify that the decision was not driven by any personal agenda. He said Qantas was supporting a ‘Yes’ vote because:

It is very important for our employees, customers, and our shareholders, and that is why Qantas is a supporter of marriage equality, and a supporter of gender equality and a

supporter of Indigenous rights. We believe that social issues are very important for all of your stakeholders and are very important for this country.⁸

According to Joyce, companies such as Qantas have a broader social remit beyond their traditional economic activities that justified supporting and speaking out on social issues. This view was outlined in an article published under his name in response to Dutton’s ‘knitting’ comments. Joyce argued that because they played a “role in the community beyond selling it things”, companies and their CEOs “absolutely should” express views on important social issues “that ultimately shape what kind of society we live in.”

Let’s be clear. A company’s first responsibility is to its shareholders and delivering sustainable returns on their investment. To do that, you’re automatically part of the community you operate in. Society is your customer base. And just because there is money changing hands doesn’t mean it is only ever an economic transaction. There’s an implicit social contract between companies and communities.⁹

Joyce’s (somewhat circular and abstract) rationale for Qantas’ social remit — Qantas is part of society; therefore, Qantas should speak out about society — was also endorsed by another prominent corporate leader, Paula Dwyer, the chair of gaming giant Tabcorp, who in response to Dutton, said:

The community is demanding more of their business leaders and expects them to model behaviour which is constructive for all of society. The role of commerce has to be balanced with the role of companies in the community and part of that is how people behave and act, and what they value.¹⁰

The explanations offered by Joyce and Dwyer as to why the business of business was no longer simply business — or no longer simply a matter of giving primacy to shareholder’s interests alone¹¹ — reflected the body of thought and practice concerning the social role of modern corporations called Corporate Social Responsibility (CSR).

There is no agreed definition for the meaning, scope, and content of CSR and the range of activities that are undertaken by companies under this label. But in general, CSR is based on the belief that to hold a (unwritten) ‘social licence’ to operate and engage in their commercial and profit-making actions, companies must fulfil a range of social obligations that extend beyond the traditional role and duties of limited liability companies — which is: to serve the

public good by undertaking beneficial economic and entrepreneurial activities and maximise returns on capital for shareholders.

These CSR obligations — which also extend beyond compliance with the letter and spirit of relevant company and other laws, and ethical business standards and practices — are said to entail ensuring that corporate decision-making considers the social impacts of company activities on the interests of the

wider groups of 'stakeholders' in the community who can be reasonably or legitimately considered affected by those activities.

The notion of a company's activities being subject to a social license is accompanied by the expectation that corporations will operate transparently with regards to their conduct, such as by publicly reporting on their social impacts against environmental and other criteria.

The Local Debate

Public attention in Australia has only recently started to focus on the CSR activities of business, and mainly in response to the high-profile and unprecedented involvement, as noted above, of major companies in the same-sex marriage debate. A common perception therefore is that involvement by corporations in social issues in the name of CSR is a recent phenomenon. In reality, the growing range of CSR activities* undertaken by Australian companies is a product of decades of evolution and development of an extensive body of corporate management thought and practice internationally since at least the 1960s.¹²

Nevertheless, much of the recent critical attention paid to CSR has focused on accusing companies of indulging in gratuitous political diversions from their core business in favour of meddling in politically-contentious social debates. Such criticism of corporate elites abusing their company's brands to play cultural politics reached a new crescendo following the publicity generated by the information pack issued to all employees by the Qantas People and Culture Group as part of the company's Spirit of Inclusion Month in March 2018.¹³

The information pack — which former Prime Minister Tony Abbott described as "political correctness that's gone way over the top"¹⁴ — warned Qantas staff about using "gender inappropriate" words such as "mum and dad" and "husband and wife" which "can reinforce the idea that people are always in heterosexual relationships", and instead encouraged the use of terms such as partner, spouse, and parents, that did not exclude LGBTI families. The use of gender-specific terms — "guys", "mankind", and "foreman", "chairman" along with "love", "darling" and "honey" — was also discouraged in the name of preventing

offence, breaking down stereotypes (the "idea that leaders are always men"), and making all employees feel comfortable in the workplace. Male staff were also warned to "minimise interruptions" (when sexist men interrupt and speak over women based on their gender). Beyond policing gendered language and behaviour, the information pack even covered the 'history wars': Qantas staff were told to "recognise reality" that Australia was not settled peacefully, and think about using the terms colonisation, occupation or invasion instead of "settlement" when referring to the arrival of the First Fleet in 1788.¹⁵ In defence of Qantas, its People and Culture group executive, Lesley Grant, pleaded the typical CSR line: the language guide was consistent with the company's "long and proud history" of promoting diversity, equality, and inclusion by supporting indigenous issues, gender parity, and marriage equality.¹⁶

Indicative of the nature and extent of corporate involvement in social issues, the inclusive language factsheets included in the Qantas information packs were created by the Diversity Council of Australia, based on its 'Words at Work' project that aimed to "build inclusive workplaces around the power of language". The Diversity Council is a not-for-profit, activist peak body that promotes diversity and inclusion in the workplace, and is supported by a 450-strong list of fee-paying member organisations that range across both the public and the private sectors.¹⁷ Not surprisingly, therefore, these kind of controversies over corporate involvement in social issues has led to companies being criticised for becoming partisans and active political players in the 'culture war' under the rubric of CSR — and hardly without valid reasons.¹⁸

* For example, Tabcorp's annual CSR report runs to 44 pages and cover 8 subjects from Economic Contributions to Environmental Data. <https://tabcorp.com.au/TabCorp/media/TabCorp/Sustainability/Corporate-Sustainability-Review-2017.pdf> Qantas's annual CSR Report runs to 33 pages and covers 11 major topics from Diversity and Inclusion to Climate Change and Environment. http://investor.qantas.com/FormBuilder/_Resource/_module/doLLG5ufYkCyEPjF1tpgyw/file/annual-reports/2017AnnualReview.pdf

However, the aim of this analysis paper is to try and move the discussion beyond the polarised debate that dominates much of the commentary about CSR. This debate has rightly generated public interest and concern about how problematic CSR can be in terms of authorising corporate political meddling, and exceeding the proper purposes of companies. But it has also generated more heat than light, especially about the strategies that might successfully curb corporate political meddling. This paper's intention is to give a more balanced account of the rationale for

CSR, starting with an exploration of its origins and development. However, the perspective employed here is still a critical one. In general (and beyond the 'culture war' analysis), CSR in Australia has been subjected to insufficient scrutiny. This is in part because within the debate inside business circles about CSR and corporate governance, discussion of the merits of CSR is usually confined to those who work in the 'industry' — either in the relevant company teams and divisions, or in the professional services and consulting sector.

Beyond a Culture War Account

An alternative, more nuanced, interpretation of CSR would assert that it is unrealistic not to expect that a modern corporation's actions and behaviour — as with any other public institution — will be influenced by the nature and character of the societies that house and produce them. Hence, for example, the rise — and ultimate contemporary institutionalisation — of CSR within significant tranches of Australian business reflects broader social and cultural trends both locally and internationally since the 1960s. This begins with the emergence of counter-cultural questioning attitudes and mistrust of established authority and institutions, including corporations, which (by cultural default almost) are held to be inherently self-serving at the expense of the interest of the wider community (see below). CSR seeks to address and counteract these beliefs by transparently detailing and dealing with the social impacts of companies.

It is also to be expected that organisations that trade on their reputations, such as public companies and other commercial enterprises, would strive to build trust by respecting and reflecting prevailing social and cultural values. These are commendable and socially-valuable cultural practices. They are consistent with conservative thinking about the role of culture, which holds that beyond self-interest and considerations of profit or loss, individual and institutional actions and behaviour should be shaped in the public interest by established social norms and values — by the accumulated wisdom of generations that has stood the test of time and contemporary relevance — in properly self-regulating societies. This line of thinking informs one of the standard arguments for CSR, which is that customers and investors — who are making choices in an era when technology is providing an increasing amount of information about corporate responsibility, including a range of internationally-recognised corporate responsibility market indices — are increasingly supporting products, brands, and companies that align with their values on a wide spectrum of issues, ranging from labour standards to the environment.¹⁹

As the federal government Corporations and Markets Advisory Committee's 2006 report on *The Social Responsibility of Corporations* realistically argued, balancing the economic role of companies with broader social considerations pertaining to other stakeholders was not only a legitimate subject of public interests, but ultimately a question that calls for the exercise of sound commercial judgement by company directors and senior managers responsible for corporate decision-making, given that:

... companies and those who govern their affairs do not operate in a values-free zone and their activities are and should be subject to evaluation and criticism. Within the marketplace of opinions, preferences and communication, the views and expectations of investors, employees, customers, local communities and other interest groups influence the way in which companies conduct their businesses and present themselves.²⁰

Critics fail to appreciate the significance of the cultural context for explaining CSR, especially when they apply the standard culture war analysis of social and political trends and assert that 'politically correct' corporations have simply become another institution that has been 'captured' or 'marched through' by the Left. Consider the counter-factual. Most critics would almost certainly expect Australian companies to uphold the important liberal principles of equality of opportunity and respect for the individual that underpin the national 'fair go' ethos; and expect these companies to make employment decisions based solely on merit regardless of gender, race, or religion (and irrespective of whether this is legally mandated under anti-discrimination laws). The left-wing view, however, is that structural discrimination — ranging from overt sexism to 'unconscious bias' — necessitates affirmative action quotas to ensure corporations meet their CSR commitments to promoting gender diversity. On this important social issue, it is the left-wing view that has prevailed. Hence the gender targets endorsed by both the Australian Stock Exchange and

the Australian Institute of Company Directors, which call for female directors to be appointed to 30% of seats on corporate boards of the top 200 ASX-listed companies by 2020.²¹

The case of gender diversity points to the real — but underemphasised — problem that critics truly have with CSR: the expansive view of the socially and environmentally responsible business practices many companies take today reflects the left-wing progressive values that are culturally ascendant on subjects including ‘diversity’ and ‘climate change’. From this perspective, the real ‘problem’ is that CSR is a symptom, or a product, of a culture that is dominated by left-of-centre perspectives in the culture-shaping institutions across the universities, arts, and media that play powerful roles in the production and transmission of social values. Corporations cannot, do not — and should not — operate in a cultural vacuum. It is therefore unrealistic — and somewhat futile and beside the point — to expect companies to hold back the cultural tide after the flood, as it were; as does much of the criticism

and commentary about CSR, typified by the calls for companies to simply stick strictly to making money.²²

This isn’t to deny that the CSR makes corporations susceptible to being drawn, perhaps unwittingly, into the ‘culture war’. The standard CSR practice of engaging with external ‘stakeholders’ to discover the terms of their social licence makes companies particularly vulnerable to aping the ‘progressive’ political, social, and cultural agenda of activist organisations — in part due to fear of incurring reputational harm, via public shaming, if the activist’s demands are not met. Such concerns have been heightened in recent times, when company brands are vulnerable to attack by activist driven social media[†] and shareholder activism[‡] campaigns around social and environmental issues such as divestment from fossil fuel industries. But here again, the character of CSR activities remains a symptom of broader cultural currents: it reflects the fact that left-progressivism activism is more organised, better resourced, and purposeful — it knows what it wants and how to get it — than is activism on the right.²³

Stopping Politicisation and Promoting Pluralism

The extent to which CSR principles have shaped thought and practice concerning the social role of corporations in Australia can be gauged by the revised corporate governance standards proposed by the Australian Stock Exchange’s (ASX) Corporate Governance Council.

ASX’s corporate governance guidelines are non-binding on publicly-listed companies. However, the proposed new standards are designed to encourage company boards of directors to cement CSR principles at the heart of corporate governance by recognising “the fundamental importance of a listed entity’s social license to operate and the need for it to act lawfully, ethically and in a socially responsible manner in order to preserve that license.” Compliance with new standards would, in practice, aim to qualify the primacy of shareholder’s interests and maximising returns on investments, and would escalate responsibility for CSR to board level by explicitly requiring company directors to

acknowledge and consider the views and interests of stakeholders.²⁴ Moreover, the draft guidelines also contain prescriptive commentary setting out the kinds of ‘socially responsible’ behaviour allegedly required to earn a ‘license’ including avoiding tax minimisation, respecting human rights, disclosing climate change risk, paying a living wage, and meeting a range of diversity targets across companies.²⁵

The intent of the revised ASX guidelines reflects the views of CSR proponents, who often characterise current CSR activities undertaken by Australian corporations as mere tick-box actions designed to burnish the reputation of company brands. The critics argue that tokenistic approaches to CSR can only be addressed by the ‘mainstreaming’ of corporate responsibility — by fully integrating social and environmental considerations into the normal internal business operations and the strategic and commercial decision-making processes and practices of corporations.²⁶

† The most notable recent example was the decision by Coopers Brewery to withdraw from a sponsorship association with the anti-Marriage Equality Bible Society of Australia in response to virulent — and effective — social media campaign accusing the company of supporting homophobia. <https://www.dailytelegraph.com.au/business/coopers-accused-of-homophobia-after-teaming-up-with-bible-society/news-story/60fd163b751624ce94109c53959a93a2>

‡ For example, after being targeted by shareholder activists seeking divestment from all fossil fuel industries, the Commonwealth Bank announced in November 2017 that it was unlikely to lend to new large coal projects in Australia. <https://www.theguardian.com/environment/2017/nov/16/commonwealth-bank-says-its-lending-for-coal-will-continue-to-decline>

The discussion within business circles about CSR generally tends to consist of companies being criticised for not doing enough CSR, while emphasising the supposed benefits of them doing more. Indicative of this is the 2018 Deloitte Global Human Capital Trends report. This survey of Australian business leaders, which was conducted by one of the leading business consultancies in the nation, found that *only* 23% said that “social responsibility is a top priority reflected in their corporate strategy.” These results were presented not as raising questions about the priorities of a quarter of the corporate workforce, but rather as a “wake-up call” for Australian business that was “falling short when it comes to building a strategy to making a difference in society.”²⁷

As explained below, there is merit in the view that company directors and managers should display social responsibility — as a matter of exercising good commercial judgement — towards the interests of a broader group of stakeholders, including customers and employees, because such good practice is not at the expense of shareholder’s interests but can protect and add to shareholder value. It remains, however, that there has been relatively little consideration — as the Deloitte report illustrates — of the potential negative brand and reputational consequences of

escalating engagement in CSR activities leading to companies ultimately becoming embroiled in politically-charged issues. This is particularly relevant at a time when moves to further ‘mainstream’ CSR in at the heart of corporate governance — and to even make CSR mandatory by changing company law, and have corporations participate in ‘systemic’ political change — gather momentum.

It is these aspects of CSR — the under-examined risk of politicisation associated with such activities for companies and the broader business community — that are explored here. To reduce these risks and avoid the problems associated with politicisation, this paper will propose that the CSR activities of companies can be contained and limited to appropriate parameters by introducing into the language and practice of corporate governance a new clarifying and qualifying principle — the Community Pluralism Principle. Application of this principle would require company directors and other decision-makers to make sure — CSR activities notwithstanding — that companies, in a political sense, respect and remain open to the views and values of all employees, customers, shareholders and stakeholders across the community.

The Rise of CSR: 1950s to 1980s

The rise of CSR is a product of intersecting economic, social and cultural developments since WWII. These developments, in a more complex, questioning, and globalised world, have shaped the way modern societies have expected corporations to look beyond a narrow financial calculus and consider their business operations’ environmental and other social impacts upon society.

The greater community interest in the social role of companies has therefore stemmed, in the first instance, from the greater concentration of economic and political power and influence in larger corporations since 1945. The powerful economic role corporations play as the dominant form of private sector business organisation and vehicle for entrepreneurial activity — allied to the underlying social concern that the apparent political influence of economically-powerful corporations would be used to protect vested interests and subvert the public interest — invited greater scrutiny of corporate conduct. This scrutiny — and the accompanying expectation that companies needed to be more open and transparent about taking responsibility and being accountable for the broader impacts of their activities — was further heightened by cultural developments since the 1960s, particularly the growth of a strong and influential not-for-profit or non-government organisation (NGO) sector that

has critiqued the performance of corporate entities’ actions and impacts across a range of environmental and social issues.²⁸

In the United States, concerns about the social impact of large corporations wielding disproportionate economic and political influence began in the 1950s, and were intensified by the aggregation of corporate power through aggressive acquisitions and mergers from the early 1980s. The rise in the US (and elsewhere) of a corporate culture in which ‘hostile takeover merchants’ were often lionised as model (or archetypal) capitalists was viewed, by definition, to prioritise the creation of market and shareholder value ahead of all other considerations. Local factors have also played a role in European nations, such as the UK and France, where the privatisation of formerly state owned and operated utilities generated scepticism and additional scrutiny of the activities of corporations formerly in public ownership. Globalisation has also been a crucial factor in the rise of CSR, as the impact of multinational companies operating in developing nations led to criticism of corporate behaviour assessed against environmental, human rights, and labour standards criteria; and to the demand for greater corporate accountability to address corruption and exploitation.²⁹

The cultural expectation that companies should be held accountable for their social impacts, and the belief that such scrutiny was warranted, has especially gained legitimacy through the flourishing of the international environmental movement over the last half-century. Growing community concerns about the depletion and the degradation of the earth's natural resources focused on the activities of the large corporations who were held chiefly responsible for 'exploiting' those resources for profit. The demand that company decision-makers take full account of environmental impacts was linked with an overall critique of corporate behaviour (which also betrayed a certain anti-capitalist mindset and aversion to the 'immorality' of the profit-motive) that was said to focus on the generation of profits in the short-term to satisfy the markets and shareholders, at the expense of long-term sustainability. This has led to the ubiquitous use of the term 'sustainable' in the CSR context to describe how companies seek to reduce environmental impacts and ensure their economic activities generate 'sustainable returns' over the long-term. The priority given to sustainability has also been sharpened by global factors, such as the United Nation's focus on 'sustainable development' since the early 2000s, and by the emergence of several global indices that encourage companies to voluntarily report on the environmental, social and economic impact of their activities against internationally recognised sustainability principles (the so-called 'triple bottom line').^{30*}

A substantial proportion of CSR activities therefore have a clear and proud 'green' hue as companies strive to prove their environmental credentials. In recent times, such activities have focused on the issue of 'climate change', as companies have

sought to manage the 'carbon footprint' of their activities.^{**} However, as the debate about the social role of corporations developed in the United States in the 1960s and 1970s, environmental concerns were matched, if not exceeded, by concerns about the bread-and-butter economic impact of corporate activities.

These concerns arose in the context of the rise of corporate raiders and the social impact of hostile takeovers. The question that was posed for directors of companies targeted for takeovers, was whether primacy should be given to shareholders' interests (and the economy-wide benefits), or whether bids should be assessed based on the impact of mass retrenchments and the closing or relocating of factories on small towns and local communities. This led to the legislating in the majority of US states of 'corporate constituency' statutes that were designed to allow directors of targeted companies to reject hostile bids by considering not only the best, short-term interests of the shareholders, but also the long-term effect on the non-shareholder interest of employees, suppliers, and customers in the communities in which the corporation's facilities were located. The apparently limited effect of these 'blue collar' kind of CSR initiatives — which actually allowed directors to take the other interests into account; but only to the extent of still acting in shareholder's best interests — have taken on a new significance following the election of Republican President Donald Trump, whose campaign promise to revive manufacturing industry in America resonated with so-called white working class voters in economically-depressed states across the former manufacturing heartland of the mid-west of the United States.³¹

CSR in Australia: 1990s to 2000s

The Australian business community was a relative late-comer to the issue of corporate social responsibility. It was only in the 1990s that major local companies started to develop CSR policies. This was in part under the influence of globalisation and the impact of the 1980s reforms that opened the Australian economy to international business trends and practices including CSR. However, the emergence of CSR in Australia was also spurred by high-profile corporate collapses and scandals in the late 1980s,

and then in the late 1990s and early 2000s. It is this confluence that has chiefly led to the perception among some advocates and commentators that most Australian CSR activity amounts, at best, to 'window dressing' designed to polish the tarnished image of corporate Australia.³²

This criticism is not without foundation; but nor has been the response by the business community to encourage a more meaningful approach to CSR,

* Such indices include the Global Reporting Initiative (GRI) and the *UN Global Compact* <https://www.globalreporting.org/Pages/default.aspx> <https://www.unglobalcompact.org/>

** For example, see Commonwealth Banks Corporate Responsibility 2017 report which includes "Our first Climate Policy Position Statement [which] outlines how we intend to support opportunities associated with responding to climate change." <https://www.commbank.com.au/content/dam/commbank/about-us/shareholders/pdfs/corporate-responsibility/2017/2017-corporate-responsibility-report.pdf>

efforts which have been typified and led by the Australian Stock Exchange. In August 2002, the ASX Corporate Governance Council was formed. The Council, chaired by ASX and made up of 21 business, investment and stakeholder groups, was tasked with formulating what would become the first edition of ASX's *The Principles of Good Corporate Governance and Best Practice*, which was released in March 2003. In 2006, ASX conducted a review, and following extensive public consultations, the revised second edition *Corporate Governance Principles and Recommendations* were released in August 2007. The third edition released in 2014 was completely re-written and re-ordered.

As the chair of the Council pointed out in his foreword to the second edition, "a decade ago, the term 'corporate governance' was barely heard... [but] today is a staple of the everyday business language and capital markets are better for it." ASX's and corporate Australia's interest in corporate governance — the framework of rules and process that holds company

directors and managers accountable to shareholders and the market — and the perceived need to develop a "practical guide for listed companies" was a response to the corporate scandals of the late-1990s and early-2000s, and represented an enlightened attempt at good self-regulation designed to pre-empt heavy-handed government regulation by promoting "a high standard of corporate governance in Australia without the agency costs of 'black letter' law common in other markets."³³

This motive was enhanced by the impact of the 2008 Global Financial Crisis. While Australian markets and financial institutions emerged relatively unscathed from the crisis in the US and Europe, the international trend towards new legislation regulating corporate behaviour heightened the incentive for Australian business to keep their governance houses in order.³⁴ This was reflected, in particular, by the attention paid to 'risk management'^{***} strategies, processes, and obligations in the 2014 version.³⁵

ASX's 'Business Case'

Hence, the various versions of the ASX's best practice guide articulate many sound principles and practices to guide the behaviour of boards and executives, protect the rights and interests of shareholders, and promote accountable and transparent management of financial reporting, disclosure, and risk. However, along with concentrating on the 'core business' elements of corporate governance, each iteration has not only included specific reference to CSR but has 'mainstreamed' corporate responsibility by presenting it as a core business feature of good corporate governance principles and practice.

As an indicator of the "evolving nature of the corporate governance debate",³⁶ the push to mainstream CSR constituted a major feature of the revisions made to the second edition in 2007. The first edition had included CSR "legal and other obligations to all legitimate stakeholders" under a stand-alone Principle 10, which read in part:

Companies have a number of legal and other obligations to non-shareholder stakeholders such as employees, clients/customers and the community as a whole. There is growing acceptance of the view that organisations can create value by better managing natural, human, social and other forms of capital. Increasingly the performance of companies is being scrutinised from a perspective that

recognises these other forms of capital. That being the case, it is important for companies to demonstrate their commitment to appropriate corporate practices.³⁷

Principle 10 explicitly endorsed the standard rationale for CSR in terms of managing the "broader issue of enhancement of corporate reputation", while also endorsing the notion that CSR "can create value." The understanding of CSR as a genuine business proposition and part of the core business of good corporate governance — and as a responsibility of boards of directors — was fully endorsed in the revised second edition, which merged Principle 10 with Principle 3 (promote ethical and responsible decision-making), and stated:

To make ethical and responsible decisions, companies should not only comply with their legal obligations, but should also consider the reasonable expectations of their stakeholders including: shareholders, employees, customers, suppliers, creditors, consumers and the broader community in which they operate. It is a matter for the board to consider and assess what is appropriate in each company's circumstances. It is important for companies to demonstrate their commitment to appropriate corporate practices and decision making.³⁸

*** A relatively new phenomenon in the corporate world, Risk Management, entails the development of internal processes and systems that identify, monitor, measure, manage, audit and report on company's exposure to financial risk that endanger the success of a business.

The revised principle placed far greater emphasis on social responsibility compared to the original Principle 3.[§] A matching emphasis on the integration of CSR into core business and operational processes was also evident in the revised Principle 7 (recognise and manage risk), into which elements of Principle 10 were also merged. As the accompanying commentary made clear,³⁹ risk management not only included financial risks, but also non-financial risks relating to sustainability or social risks considered 'material' to the success of the business:

Each company will need to determine the "material business risks" it faces. When establishing and implementing its approach to risk management a company should consider all material business risks. These risks may include but are not limited to: operational, environmental, sustainability, compliance,

strategic, ethical conduct, reputation or brand, technological, product or service quality, human capital, financial reporting and market-related risks...When developing risk management policies the company should take into account its legal obligations. A company should also consider the reasonable expectations of its stakeholders. Stakeholders can include: shareholders, employees, customers, suppliers, creditors, consumers and the broader community in which the company operates. Failure to consider the reasonable expectations of stakeholders can threaten a company's reputation and the success of its business operations. Effective risk management involves considering factors which bear upon the company's continued good standing with its stakeholders.⁴⁰

Risk Management

The explanation offered by the ASX Corporate Governance Council chair, Eric Mayne, suggested corporate Australia largely supported the move to mainstream CSR. Mayne noted that while some submissions to the review process had raised objections to considering CSR in the context of risk management, the bulk of submissions were in favour:

There is a clear message from submissions that concerns about [CSR] are a legitimate issue, and that they are not new. Companies should be encouraged to receive this message and it should be better reflected in the 'mainstream' of corporate governance activities, that is, through strengthened risk management processes and reporting.⁴¹

Consistent with a mainstreaming approach to CSR, the third edition simplified the language but reiterated the 'material' or business case for CSR in the revised Principle 3:

A listed entity's reputation is one of its most valuable assets and, if damaged, can be one of the most difficult to restore. Investors and other stakeholders expect listed entities to act ethically

and responsibly. Anything less is likely to destroy value over the longer term. Acting ethically and responsibly goes well beyond mere compliance with legal obligations and involves acting with honesty, integrity and in a manner that is consistent with the reasonable expectations of investors and the broader community. It includes being, and being seen to be, a "good corporate citizen"... Acting ethically and responsibly will enhance a listed entity's brand and reputation and assist in building long-term value for its investors.⁴²

In addition, the revised Principle 7 placed risk management and reporting for non-financial CSR risk on a par with risk management and reporting of financial risk — in the wake of the GFC, no less — to address "the increasing attention being given by the investment community to environmental and social issues and the investment risks they raise."^{43§§} This encompassed a new 'Recommendation 7.4':

A listed entity should disclose whether it has any material exposure to economic, environmental and social sustainability risks, and, if it does,

§ See ASX Corporate Governance Council, *The Principles of Good Corporate Governance and Best Practice*, March 2003, 25: Actively promote ethical and responsible decision-making. The company should:

- clarify standards of ethical behaviour required of company directors and key executives (that is, officers and employees who have the opportunity to materially influence the integrity, strategy and operation of the business and its financial performance) and encourage the observance of those standards.
- publish its position concerning the issue of board and employee trading in company securities and in associated products which operate to limit the economic risk of those securities.

§§ The disproportionate emphasis placed on social responsibility in corporate governance has also been a feature of critical commentary pointing this out in relation to the Australian Institute of Company Director's Company Directors Course — which is the standard industry qualification for board membership. See Miranda Devine, 'Beware the Perils of Corporate Wokeness', *The Daily Telegraph*, 15 May 2018.

how it manages or intends to manage those risks.^{44†}

The recommendation did not require companies to publish a sustainability report, and only mentioned that if such a report was published it could be cross referenced to meet the recommendation. This was in keeping with the non-binding nature of ASX's 'guidelines'. However, under ASX listings, companies are required to comply with a general governance disclosure requirement and include a statement in their annual reports declaring the extent to which they have followed the guidelines. This entails an 'if not, why not' approach, which requires that explanations be given for why specified guidelines have not been followed.⁴⁵

Since 2014, companies must also lodge a detailed checklist ('Appendix 4G') of each recommendation and if not followed, an explanation of why not.⁴⁶ By applying a version of the tried and tested principle of 'what gets measured and reported, gets done', ASX has created a mechanism — and a motive to take the line of least resistance and avoid the potential embarrassment of explaining why a company has done nothing to act socially responsibly — that encourages compliance and thereby shapes corporate governance, including deepening company's commitment to CSR.*

In sum, the 'material business risk' approach recommended by ASX seeks to mainstream CSR into strategic decision-making and operational practices across all levels of company management — and not simply on the basis that well-managed companies should be responsive to relevant cultural and stakeholder considerations. Nor does the recommended approach treat CSR as simply the transactional cost of acquiring a 'social licence' by factoring in the social and environmental impacts into corporate governance and management decisions. Rather than an 'add-on' — an incidental activity that could be characterised as either a cave-in to interest groups or as essentially philanthropic or promotional in nature — the business case for CSR insists these activities that consider the legitimate social and environmental interests of stakeholders are central to

the overall business strategy and to the protection and creation of market and shareholder value.⁴⁷

The legislative and regulatory responses to corporate scandals have also played a role in encouraging companies to adopt CSR practices. These responses, both in Australia and internationally, have featured a raft of new accountabilities for company directors, which have principally involved compliance with new reporting, disclosure and auditing requirements. In general, the corporate governance culture that has developed is heavily focused on risk management and reduction.⁴⁸ The 'business approach' to CSR apes — explicitly so in the ASX guidelines — what has become the accepted and well-established risk management practices; the cornerstone of contemporary corporate governance across business.

At company board level, managing regulatory and financial risk and meeting the complex compliance obligations this entails, can create crowded agendas and detract from focusing on operational matters and new expansion and entrepreneurial opportunities. (Especially, and understandably, as company directors in Australia are subject to strict legal personal and sometimes criminal liabilities for corporate fault under various state and federal statutes.⁴⁹) Focusing on CSR risk issues also looms as another distraction and displacement activity at both board and management level.* However, given the prevailing corporate culture, the business case for CSR transforms these social and environmental issues into another series of risks that call for the exercise of commercial judgement and foresight to effectively manage perceived non-financial risks to the company's commercial interests. This effectively elevates the importance of CSR based on the assumption that these activities do not merely boost corporate reputations in the community, but can also secure commercial advantages and add market value — such as by attracting customers, investors or employees, or by good environmental and social practice and self-regulation forestalling government intervention and potentially costly additional new regulation and compliance obligations.⁵⁰

This is to say that there is merit in the 'business case' for CSR: in well-managed corporations, it is

† The accompanying commentary continues:

How a listed entity conducts its business activities impacts directly on a range of stakeholders, including security holders, employees, customers, suppliers, creditors, consumers, governments and the local communities in which it operates. Whether it does so sustainably can impact in the longer term on society and the environment. Listed entities will be aware of the increasing calls globally for the business community to address matters of economic, environmental and social sustainability and the increasing demand from investors, especially institutional investors, for greater transparency on these matters so that they can properly assess investment risk.

‡ 'If not, why not' has also encouraged compliance by creating a mechanism for advocacy groups and activist shareholders to hold companies to account and exert pressure on boards and managers. <https://www.afr.com/leadership/is-david-murray-or-david-gonski-right-on-governance-20180802-h13gfe>

* This has been recently noted by David Murray, the newly appointed chairman of AMP and former CEO of Commonwealth Bank and Chairman of the Future Fund. Murray has suggested technical compliance requirements "led to directors being swamped by hundreds of pages of board paper", and prevent time-poor boards from being able to focus on 'big picture' strategic and risk issues, including the proper management of the internal culture of companies. <https://www.afr.com/business/david-murrays-defiant-plan-for-amp-20180731-h13dc4>.

reasonable and realistic for company directors and managers to exercise good commercial judgement to effectively manage social risks to the company's interests in the best interests of shareholders. It is therefore appropriate — as a practical matter of good management and under the heading of CSR — for companies to use foresight to address unsustainably environmental or other practices which, if unaddressed, may affect future shareholder value if such risks are not addressed (such as continued participation in dying industries or exposure to future liabilities and damages). Such foresight could also extend to activities that might address the externalities or future costs on society of a company's social impact, either through its use of resources or through the use of its products. Such activities are most appropriate in circumstances when the failure to address the companies' social impacts could foreseeably impact on shareholder's interests such as by impacting on brand or reputation, or by inviting government action that would negatively affect the company.

These kinds of CSR activities conducted in the interests of shareholders may require companies to be involved in trying to influence political debates to encourage governments to implement, or not implement, certain policies that are, or are not, in the best interest of the business. However, CSR activities in Australia have courted controversy and criticism with respect to companies 'being political' over issues that appear only faintly, if at all, connected to shareholder interests; notwithstanding the typical CSR rhetoric and abstract appeal to earning a 'social license' by taking a stand on social issues important to stakeholders. This question of companies, in this sense, becoming politicised was highlighted by corporate involvement in the marriage equality campaign. However, the issue now is that this example of corporate meddling in political debates may be just the tip of the politicisation of Australian companies, if the expanding 'industry' of CSR activists in Australian business achieve their objective and transform corporations into key participants in achieving 'systemic change' on contentious social issues.

Internal Subversion: Is the Business... Politics?

The rising profile and acceptance of CSR as a legitimate part of corporate governance has been accompanied — and encouraged — by the development of an 'industry' of CSR professionals. The growth of the industry, and the professionalisation of CSR as a recognised field of business management, is a natural product of corporate structures: when boards of directors and senior managers need assistance with new and emerging management challenges, it is standard practice to employ specialists as part of the corporate team to assume responsibility for those issues. This has led to the deployment of considerable amounts of corporate resources to establish in-house CSR capabilities to manage the raft of new social responsibilities owed to stakeholders. This has been typified by the transformation and elevation within management structures of Human Resources departments — whose role and responsibility were formerly limited to employment practices — into 'People and Culture' divisions in charge of the formulation and implementation of corporate responsibility policies such as commitments to gender, sexual, and indigenous 'diversity'.

The professionalisation of CSR has also been marked, and encouraged, by the consultancy industry, particularly by the 'Big Four' professional services firms in Australia who are loud and proud about promoting their own CSR activities.⁵¹ Without

necessarily challenging the integrity of those activities, the promotion of CSR by these firms could also be characterised as a 'loss leader', given that CSR has the potential to drive growth in new business such as external audits of corporate sustainability reports and on the consultant advice subsequently proffered to implement corporate structural and strategy changes recommended by the audit. This is to say that the corporate landscape is populated with internal and external actors with powerful and self-interested motives to promote and encourage the mainstreaming of CSR practices within companies. The more CSR is treated as the core business of business, the more the allocation of larger amount of corporate resources can be justified — for such is the nature of the internal scramble over the allocation of scarce resources in bureaucratic organisations — to address these strategic and management issues; and the higher the status, authority and rewards in the corporate hierarchy can CSR professionals acquire.

An insight into how CSR professionals advocate strongly for deeper corporate commitment and engagement with sustainability and social issues as part of 'core business' can be gained from the *State of CSR in Australia* report prepared by the Australian Centre for Corporate Social Responsibility (ACCSR). Until it was (tellingly) absorbed by professional services giant Deloitte in November 2017, ACCSR

was a consultancy specialising in CSR strategies. Its 2014 *State of CSR* report was based on a survey of almost 1000 respondents on the ACCSR mailing list. This was hardly a scientific survey. But the findings of the report — based on the self-selecting nature of the survey — illustrate the activist mindset of many of the CSR professionals that responded. This mindset reflected the objectives and aspirations of ACCSR itself, whose managing director argued in the foreword to the report that the “professionalisation of CSR” is needed to extend beyond internal processes and operations because:

It’s not enough to do well at CSR any more. CSR leaders need to participate in systemic change, not just organisational change. Only in this way can we address deep-rooted social, economic and environmental problems to create lasting value for both organisations and their stakeholders.⁵²

The notion that greater professionalisation should entail driving “meaningful change”⁵³ around social, environmental, and economic issues identifies the inherent — but under-examined — potential risks of corporate involvement in CSR. What the ACCSR report suggested was that the professionalisation, integration and mainstreaming of CSR processes within business is conceived of by activist CSR professionals not simply as means of ensuring companies effectively manage their social impact in the best interests of the business. Rather, the development of internal CSR capabilities and practices is conceived of as “the first steps of the journey” of enabling companies to participate in systemic change. This is to suggest that the business of business is to be actively involved in politics — an objective reflected in the (extraordinary) statement made by one survey respondent and prominently quoted by the ACCSR report:

For all the good work that’s been done it still feels like we haven’t made much difference. Minimal systemic change has occurred and the future under the current political climate seems very bleak.⁵⁴

This quote (among others⁵) reveals a concerning outlook. It suggests that the ambition is that “buy-in” and “integration” of CSR into organisations will ultimately lead to contributing to systemic change, which will inevitably entail the politicisation of corporations. In the words of the report: “CSR will be strategic and action-oriented and make a real impact.”⁵⁵ One international advocate has described this Rubicon as the point at which companies seeking

to promote collective action to address social concerns shift CSR “from being an object of civil activism to a key participant in civil society initiatives and processes.”⁵⁶ Or as Deloitte Human Capital Leader, David Brown, put this in relation to the alleged wake-up call delivered to business about “their broader role in society” by the 2018 Deloitte Global Human Capital Trends report:

The focus is now clearly on business’ role in society as a driver of change. Just look at the role they played in the marriage equality debate in Australia late last year ... Companies’ reputation, relevance, and bottom-lines increasingly hinge on their ability to act as good citizens and influence pressing public issues.⁵⁷

On this understanding of the ultimate ‘focus’, the business of business will not just be CSR. Under the envisaged escalation and transformation of CSR activities, the business of business will be politics.

Other aspects of the ACCRS report also reveal the other elements of the same outlook and ambitions. The survey found CSR professionals felt that while progress had been made, it had been slow, insufficient and focused internally. The suggested ways to hasten progress were to enhance engagement with stakeholders across multi-sectors, and improve reporting accountabilities beyond brand and reputation management.⁵⁸

With respect to the latter, the report stated: “Respondents also hope that CSR will have more government support and that mainstreaming would be assisted by more mandatory CSR actions.”⁵⁹ With respect to the former, the notion that respondents wanted CSR to entail “developing multi-stakeholder partnerships on issues of common interest” employs, inappropriately, the language and concepts of politics and coalition-building. This notion of stakeholder engagement goes beyond a process of establishing relationships to create internal awareness of the importance of CSR to the business. The aims and objectives of CSR professional activists speaks of a process of internal subversion — diversion of companies from traditional business endeavours towards open political activism. Moreover, internal subversion and political activism ‘starts at home’, as it were, given the support from respondents for government action to “increase mandatory requirements and create an enabling policy environment” for CSR strategy, reporting standards and more.⁶⁰

§ See: “Sustainability made some real progress over the 2000-2012 period, but has travelled many steps backwards in Australia, very quickly. This is unsurprising; the electorate elected an anti-environmental government in Australia. Business [with few notable exceptions] has chosen to take advantage of this, and cut their effort, rather than taking the lead.” Or: “Business is largely a laggard of regulation and has no incentive in Australia to promote sustainability values. Australia is dominated by a mentality of labour productivity and extracting value (from people and the natural environment)”. Or: “CSR in my area has stalled somewhat — is this due to economic or cultural or political factors — I don’t know. There is no leadership on the issue — it’s all about economics”.

Mandatory Social Responsibility

This suggests that inside Australian corporations there is an influential and mobilised group of activist professionals — occupying strategic and important positions within the management structure — who are not only able to shape internal CSR practices, but also the official attitude companies take to external debates about corporate governance; both when engaging with government, and in business forums such as ASX and the AICD on these matters. This further suggests that within Australian corporations, there is an influential lobby of professional CSR activists in favour of mandatory government regulation of company CSR governance and management practices, whose potential influence includes shaping (or ‘capturing’) company’s official attitudes towards and appetite for mandatory CSR.

The question of introducing mandatory CSR requirements — specific legal obligations for companies and legislative protections for stakeholder interests — into corporation law was considered extensively as part of the 2006 Corporations and Markets Advisory Committee report.⁶¹

This started with establishing the current state of the law, and initially by asking the question whether CSR — in terms of company directors and managers taking the interests of stakeholders into consideration — was legal. These legal questions pertaining to the primacy of shareholder interests have also been raised by critics of increased corporate involvement in social debates, such as the Sydney’s Catholic Archbishop, Anthony Fisher. In a speech to the Sydney Catholic Business Network in April 2017, Fisher (a former commercial lawyer) asked whether the directors and managers of corporations were breaching their common law and statutory fiduciary duties — the “responsibility to shareholders to pursue only the proper purposes of the company and to maximise profits within reason” — and also abusing company’s commercial powers and misusing company resources under the Corporations Act, by becoming involved in social issues and political debates “on matters unrelated to the purposes of the business:”

In our polity, corporations enjoy various privileges such as legal personality and perpetuity, limitation of liability, corporate tax rates, protections of intellectual property and bankruptcy law et cetera, on the understanding that they will use those advantages for their well-understood commercial purposes, and not so as to become a Fifth Estate governing our democracy.⁶²

Fisher’s views are a powerful reminder of the principal purpose of companies – and a reminder that the primary duty under company law owed by directors

and managers is, and should always be, protecting and adding value for shareholders. But is CSR legal or illegal?

The Corporations and Markets Advisory Committee directly answered the question of whether CSR was legal under company law. After reviewing the relevant provisions of the Corporations Act and the related common law cases and judicial interpretations, the Committee concluded that companies, with the respect to the duties of directors, “have considerable discretion concerning the interests they make take into account in corporate decision-making, provided their purpose is to act in the interests of the company as a whole, interpreted as the financial wellbeing of the shareholders as a general body.”⁶³

This is to say that, under the law, CSR was legal; consistent, at least, with a ‘material business risk approach’. Under the standard ‘principal-agent’ model and analysis of the legal relationship between directors and shareholders, shareholders (the owners of the corporation) delegate the power to manage their equity interests in the company to the directors, who then delegate day-to-day decision making to senior managers under board supervision. However, the attendant duty of directors and managers to act in the interests of shareholders did not prohibit — and may require — “having regard to effects on other groups or social or environmental considerations that may bear on those ongoing interests.”⁶⁴

However, this is not to say that in practice CSR is always inherently in the interests of pursuing the proper commercial purposes of companies. In reality, CSR activities can be subject to the ‘principal-agent problem’ that arises in public companies when directors and senior managers make decisions on the shareholders’ behalf and allegedly in their best interests. Given the intense and usually personal nature of much contemporary media scrutiny of corporate conduct, directors and senior managers — who are the ‘public faces’ of corporations — may have an incentive to use company resources to implement CSR initiatives that protect their individual reputations and improve their standing in the business and wider community by associating their personal corporate profile with ‘worthy’ social issues. In these circumstances, the agents who do not own the company impose all the costs of implementing self-interested CSR agendas on its owners: the shareholders.⁶⁵

The ‘agency problem’ further helps explain the rise and institutionalisation of CSR: directors and senior managers may be receptive to internal CSR agendas — and responsive to external stakeholder pressure — because they personally benefit, literally

at shareholders' expense.* Who actually benefits from CSR can be opaque due to lack of certainty and transparency as to the specific and overall financial benefits derived for the company that bears the administrative cost of CSR divisions, and the associated cost of CSR activities that supposedly protect the corporate reputation and standing of the company with stakeholders. This is significant when the commercial implications can be major. For example: with regards to financial institutions, fear of being 'named and shamed' by stakeholder and activists groups has resulted in the implementation of so-called ESG (Environmental, Social and Governance) 'responsible' investment and lending strategies.⁶⁶ High-profile campaigns led by environmental organisations and the 'ethical' investment industry targeting financial institutions have led to all four major Australian banks (ANZ, NAB, Westpac and Commonwealth) committing to either cease or reduce lending to coal projects within Australia, ostensibly in the name of managing the long-term business risk of climate change abatement.⁶⁷

Nevertheless, the considerable discretion that the courts have decided directors and managers are lawfully able to exercise, and still lawfully fulfil their fiduciary duties, is legally a practical question of

commercial judgement — of making rational and reasonable decisions in good faith, and in the interests of, and benefit for, the company and the financial wellbeing of shareholders. It followed that under the law, the exercise of this discretion and use of company powers for a "proper purpose" might properly extend beyond short-term market considerations to the considerations of other interests relevant to long-term sustainability and commercial interest, and include consideration of the interests of relevant stakeholders such as employees (in the interests of staff wellbeing and productivity), suppliers, and the broader impact of company policy on the community.⁶⁸

The significance of the findings of the Corporations and Markets Advisory Committee regarding the state of company law did not lie in ruling out any claim that CSR activities are inherently illegal and against director's duties and shareholder's interests. Its real, and more important, significance was how the Committee's report used the flexibility allowed by the current law to argue against the calls made for mandatory CSR provisions — for government regulation and legislation to explicitly clarify and define the extent to which directors may consider the interests of specific classes of stakeholders and the broader community.⁶⁹

Small Mercies: No Political License

This aspect of the report reflected the terms of reference drawn up by the Howard Government which — such is the nature of democratic politics — had responded to self-evident 'industry' lobbying in favour of mandatory CSR (as part of the broader governance debate in the wake of corporate scandals) by commissioning an inquiry to consider "the extent to which the duties of directors under the *Corporations Act 2001* should include corporate social responsibilities or explicit obligations to take account of the interests of certain classes of stakeholders other than shareholders." Betraying the influence and pressure of the activists' intent on mainstreaming and integrating mandatory CSR (and international developments such as the creation of ministries to promote CSR in the UK and France), the Committee

was also asked to clarify not only "whether the current legal framework allows corporate decision makers to take appropriate account of the interests of persons other than shareholders" but also if "there may be a positive role for Government to play in promoting socially responsible behaviour by companies" including "should the *Corporations Act* be revised to require directors to take into account the interests of specific classes of stakeholders or the broader community when making corporate decisions."^{70**}

The Howard government's attitude to these questions was confirmed by the government-controlled parallel inquiry by the Parliamentary Joint Committee on Corporations and Financial Services, whose June 2006 report, *Corporate responsibility: managing*

* And yet, on the other hand, CSR may be in the vested interest of companies, and against the public good, if burnishing the corporate reputation becomes a form of political protection that might either encourage government regulation or discourage de-regulation that favours 'big business'. I am indebted to Matthew O'Donnell for drawing my attention to these points.

** The other mainstreaming tactic reflected in the TOR's concerned mandatory CSR reporting: "whether to introduce mandatory requirements for larger companies to include with their annual reports, a report on the social and environmental impact of the company's activities."

risk and creating value, recommended against any changes to provision concerning directors' duties.^{71***} The Corporations and Markets Advisory Committee also recommended against any revision of directors duties in the Corporations Act — and herein lay the real significance of its report's clarification of the current law with regards CSR. The Committee finding that the "established formulation of directors' duties allows directors sufficient flexibility to take relevant interests and broader community considerations into account" clarified that CSR was legal, and government action to clarify and expand the law was therefore not needed. But more importantly, the aim and purpose of clarifying the law was to forestall the proposed changes to company law, which for the reasons the committee explained, would establish a much worse situation with respect to the potential nature and scope of CSR activities.^{72 §§§}

The Committee warned that the general approaches suggested with revising the Corporations Act and clarifying the social responsibilities of directors — by either elevating the interest of other groups on a par with shareholders, or by including an explicit statement of the other interests for directors to consider — would radically change company law and director duties. This is because such changes would make it legal for directors to serve a wider range of stakeholder interests — whether defined or not — which would not be, as under current law, subordinate to promoting the interests of shareholders. Allowing directors to refer to the competing or conflicting interests of stakeholders would, in effect, free them from — and render meaningless and unenforceable — their hitherto overarching fiduciary and legal duties to shareholders and creditors under criminal and civil law. It would leave directors with vague but a very wide — potentially unlimited — discretion, which would leave them effectively unaccountable to shareholders for decision-making in relation to 'other interests' ... a law unto themselves "beyond the effective control of shareholders."⁷³

What the Committee foreshadowed was not only a situation that, by making CSR mandatory, would revolutionise corporate governance. It also envisaged a situation that would make not only the current

law, but also the 'business case' for CSR look like small mercies — tethered as it is under current law to the exercise of commercial judgement, an enlightened view of long-term company interest, and responsiveness to changing market and cultural expectation, but with primacy given to acting in the best interests of shareholders generally.⁷⁴ Herein lies the strong case for resisting all efforts to make CSR mandatory — as recommended to the Committee by a number of submissions from environmental, ethical investment, and other stakeholder groups including ACCSR.⁷⁵ Any change to the law allowing directors to "give effect to non-shareholder interests for their own sake",⁷⁶ would amount to giving corporations what the CSR professional activists seek — a license to play politics and be a key participant in systemic change.

On the other hand, this also means that attempts to have CSR ruled illegal under the current company law (and notwithstanding the 'agency problem' described above) could prove counter-productive — since if a legal challenge succeeded, this would inevitably fuel the campaign for mandatory CSR. This would occur at a time when the 'industry' push in this direction has already been renewed. This has taken the form of calls for the Australian government to introduce a new legal framework to allow companies to strive for "equality and equity in business" and "create social, environmental, and economic benefit." This new corporate structure would take the form of giving companies the option of re-registering as 'benefit companies', requiring "company directors to pursue both profit-making and the public good, which considers all stakeholders in decision-making, not only those with financial interest in the company."⁷⁷

The latest attempt to make CSR mandatory should be resisted for the reasons set out by Corporations and Markets Advisory Committee with respect to the impact on directors' duties and accountabilities. Moreover, what mandatory CSR would inevitably allow and encourage is the politicisations of corporations. Company directors and managers are not unelected politicians, let alone philosopher kings, possessing the requisite knowledge or wisdom to prioritise complex (and often directly opposed) competing interests and divine where the true public interest lies to solve

*** Mandatory CSR reporting was also rejected by the report, but as the subtitle suggests, the 'business case' approach was endorsed, but on a voluntary basis, with recommended government action limited to encouraging socially responsible corporate practices through education, seeding a national network, and research.

§§§ The report also recommended against mandatory CSR reporting requirements on the basis — against consistent with a general 'business case' for CSR — that "s 299A of the Corporations Act already provides a general framework for the disclosure of relevant non-financial information ... reporting about environmental and social issues relevant to a company's business." It also felt that the AXS listing rules and governance guidelines would also provide a more flexible and market-responsive way for companies to respond to changing community and investor expectations around transparency and reporting than legislation.

social issues.^{¶¶} Having to balance the competing interests of different groups in the community and find ways to reconcile those interests with the various compromises of those interests this will entail, is the job of politicians. In his classic essay on the social responsibility of business, Milton Friedman went further when he described corporate 'agents' effectively making political decisions about the social role of companies outside of the rule of law as undemocratically usurping the functions and acting as

"simultaneously legislator, executive and jurist."⁷⁸⁺⁺⁺

A more tempered version of this view was reflected in the Committee's wise advice that rather than politicise director's duties, it would often be a better approach to leave the resolution of conflicts between competing constituencies and protection of stakeholders interests — whether over social, environmental, or other issues pertaining to business practices — to parliament via "specific legislation directed to the problem area."⁷⁹

Implications for Corporate Leaders

With regards to the key question of politicisation, there are three points that corporate decision-makers should keep in mind when exercising their managerial prerogatives and commercial judgement concerning the CSR activities of companies:

1. The foundational principles, logic, and practice of CSR — the notion that companies are part of society, and must therefore be responsive to social issues — encourage the escalation of CSR activities. Standard CSR practice invites lobby groups to engage with corporate entities to adopt and endorse their agendas, or risk the reputational consequences of a refusal by losing 'good standing' with stakeholders. CSR professionals see such engagement with stakeholders as their core role, and as integral to the process of mainstreaming and integration of CSR within operational and strategic management structures.
2. Efforts to change company law to make social responsibility mandatory should be resisted due to the deleterious consequences for corporate governance. However, the mainstreaming and integrating of CSR into the corporate management can achieve a similar result — with respect to politicisation of companies — without changes to

the law. The notion that companies have a social responsibility to operate in the interests of a range of stakeholders can force companies to become publicly involved in social issues that appear to have only tenuous links to their business interests. CSR activities can hereby occur, and be justified beyond the obvious terms of any business case, in ways that inherently politicise companies' roles and brands by embroiling them in contentious political debates.

3. CSR therefore has promethean qualities that can lead, in practice, to corporate resources and influence being deployed in trying to achieve systemic change. Given that well-organised advocacy organisations have newfound ability to influence corporate reputations and behaviour through avenues such as social media campaigns and shareholder activism, it may be difficult for corporate leaders to easily distinguish the difference between CSR activities that can be justified by a business case, and those that should be rejected as inherently politicising. However, companies will find it more difficult to draw these distinctions and avoid politicisation unless the political risks associated with CSR are better understood and factored into

¶¶¶ This is relevant to the ambitions and influence of the ethical or responsible investment industry. According to the CEO of Australian investment firm, BlackRock (<https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter>):

Companies must ask themselves: What role do we play in the community? How are we managing our impact on the environment? Are we working to create a diverse workforce? Are we adapting to technological change? Are we providing the retraining and opportunities that our employees and our business will need to adjust to an increasingly automated world? Are we using behavioral finance and other tools to prepare workers for retirement, so that they invest in a way that will help them achieve their goals?

This is a very challenging definition of the 'social purpose' of companies. And beyond the question of whether companies have the means, let alone the wit, to 'make a difference' on such complex issues, it also begs the question regarding the role of corporate leaders. Surely it is difficult enough being responsible for the governance, management, and performance of large corporations, without also being expected to operate as an NGO-at-large responsible for curing assorted social problems.

+++ Or, as Gary John's once expressed the same point about usurpation of democracy differently regarding the role of NGO stakeholders: "Corporate social responsibility is no more and no less than an instrument used by non-corporates to gain leverage over corporations for political purposes." Gary Johns, *Corporate Social Responsibility or Civil Society Regulation?* The Hal Clough Lecture for 2002, Institute of Public Affairs. <https://ipa.org.au/wp-content/uploads/archive/Clough02.pdf>

corporate decision-making than currently appears to be the case.

With respect to identifying these political risks, when corporate leaders are encouraged by stakeholder groups and urged by their own CSR managers to support a social issue — be it marriage equality, gender or sexual ‘diversity’, or climate change — they may feel they are simply acting in a socially responsible way (in addition to whatever personal benefits these agents may gain and might motivate CSR decision-making). But the reality is that companies are acting politically, and are politicised, by taking sides on questions on which there is no community consensus. Corporate leaders may not realise this, and may think they are simply reflecting and responding to the position on these issues where society has already landed. This impression is almost certainly conveyed by the advocacy imbalance in favour of better organised ‘progressive’ organisations and activists, compared to their conservative counterparts — an imbalance that was recently conclusively analysed and tabulated by former Federal Director of the Liberal Party, Brian Loughnane.^{80¶}

Such assumptions may also derive from — and reflect — the polarisation that is evident in many western countries (including Australia) between political, media, academic, and business ‘elites’ holding progressive views, and ‘ordinary’ citizens holding more conservative views, on issues ranging from religion and the family to immigration and climate.⁸¹ The evident community divide over social values suggests that corporate leaders would have to be politically tone-deaf not to realise that activities conceived of as socially responsible are inherently politicising of company brands and reputations; and that by embracing the values of some employees, customers, shareholders, and stakeholders they will be rejecting the different values and attitudes of other employees, customers, shareholders, and stakeholders. Yet a key feature of the new social polarisation is that ‘insider’ elites — who work, live and socialise within a ‘bubble’ of other elites who think the same way — often don’t appreciate that ‘outsiders’ think, speak, and act differently.⁸² These divides are not just fostering social division and political polarisation; they are also undermining trust in political and other public institutions, such as universities, that are widely perceived to have embraced political correctness and

‘virtue signalling’ over progressive social issues, at the expense of sticking to their core and traditional roles.⁸³

Perhaps Australian business is now more aware of the political risks of CSR — and of leaping into social debates in pursuit of systemic change — in the wake of the financial advice scandals detailed by the Banking Royal Commission, which has tarnished the corporate reputations of some of Australia’s largest and hitherto most trusted financial institutions. The damage inflicted on the corporate reputations of AMP, CBA, NAB, and ANZ (and on the standing of the business community in general) has been intensified by the perception and reality of companies exploiting customers and ignoring basic business ethics and commercial standards, while preoccupying themselves with a self-congratulatory social agenda: 30% female representation on company boards. The reputational damage inflicted by the financial advice scandal — on top of the damage to market value — has been compounded as these companies have been called out for hypocrisy for piously promoting their commitment to gender diversity and other acts of corporate social responsibility.⁸⁴ The focus on gender quotas has been widely criticised as a diversion of board and management attention from the core business of providing consumers with the reputable, good value services that truly add value to shareholder’s investments.^{85**}

This is a timely reminder about the dangers of (heroically) assuming community consensus about the definition of socially responsible behaviour; especially at a time of significant political disruption and social fragmentation. This suggests that corporate decision-makers might be wise to discount the advice of CSR experts, and realise that in these politically uncertain times especially, CSR activities assume a new range of risks for companies that — as in the case of the Qantas language guide — might find themselves at the centre of political storms. This is simply to acknowledge the truth that CSR incurs the risk, either wittingly or unwittingly, of involvement in contentious issues that can leave companies hostage to political fortune. These risks include the likely possibility that CSR will both foster internal political divisions and expose company brands and reputation to the external risk of politicisation; since not all employees, customers and shareholders — or stakeholders

¶ It would also be naïve not to point out, in the Australian context especially, the genuine party-political nature of some CSR initiatives. For example, union movement and Labor Party-aligned ‘industry’ superannuation funds — led by the peak industry body the Australian Council of Super Investors — have been accused of bullying and abusing their power as powerful and influential institutional investors to force companies to comply with board gender quotas strategies. <https://www.theaustralian.com.au/business/chris-corrigan-attacks-business-gender-targets/news-story/f2fcb8607a28ebb5abbc5bfcffbcdf39>

** This was dramatically highlighted when, in a bid to restore public trust and market confidence in the company brand, the board of AMP had to accept the resignation of its female Chair, who was widely perceived to be an ‘affirmative action’ hire, and who was replaced with one of the most experienced and respected male bankers in the country.

across the community — will agree about so-called responsible corporate behaviour regarding social issues in a free and pluralistic society.^{††}

As noted above, this does not mean it is always wrong for companies to assume a 'political' role in the context of the 'business case' for CSR, and in generally pursuing legitimate business interests. To reiterate, it may therefore be necessary for companies to try to influence political debates about contentious issues to pursue the best interests of the business. It is when the link to shareholder's interests becomes faint, and the appeal to abstract notions of a 'social license' is used as justification for company actions designed to appeal to, or to appease, employees, customers, and other stakeholders, that CSR activities become problematic in terms of companies 'being political', and results, in this sense, in companies becoming politicised.

A counter argument would be that companies becoming involved in political issues that are important to key internal stakeholders — such as employees and customers — may be in the interests of shareholders if the brand and reputational consequences help maintain or boost market share, or assist with staff recruitment and retention. The former may be true if, say, a company's market appeal is to a specific demographic. But that argument can hardly apply to the 'big corporates' — such as banks, telcos, or airlines — that have mass markets and rely on broad consumer appeal. It may well be a social trend for both employees and consumers to want company brands to be aligned with their own values. It is a different question whether it is in the interests of company brands and reputation, let alone in shareholder's interests, to endorse and further encourage the hyper-politicisation of society, and support the values of some employees, customers, and stakeholders at the expense of the values of other employees, customers, and stakeholders. This is to say, that in relation to brand and reputation, as well as concerning market share and recruitment and

retention, it is also in the shareholder's interest to ensure companies remain pluralistic institutions; open to, and respecting of the rights and perspectives of, all groups.

The further, crucial, question is the appropriateness of customers, employees, and stakeholders demanding that shareholders' money be used to support their social and political views — and for company directors and senior managers to authorise the use of company resources for such purposes. This question should also be at the forefront of the minds of corporate leaders in response to the aims and objectives of the activist CSR professionals calling for companies to take on an overtly politicised role on 'pressing public issues' and 'participate in systemic change'. Politicisation is hardly an abstract concern. The substance of ASX's revised corporate governance standards — which suggest that companies must earn their social license to operate by acting socially responsibly with regards to inherently politically contentious issues including human rights, climate change, taxation and wages — reflects the mindset, ambitions, and influence of the CSR industry.

Companies 'being political' by meddling in political issues for the sake of stakeholders' interests that are faintly, if at all, directly connected to shareholders' interests is the Rubicon that the CSR activities of Australian business should not cross. Given that a legalistic approach to curbing CSR is fraught with danger, this issue should be addressed by company directors and senior managers through the existing channels of corporate governance. The potential escalation of CSR activities that threatens to lead to the politicisation of Australian companies should be addressed as part of good corporate governance as a matter of managing a genuine 'business risk'. A framework that could shape corporate governance, and guide and assist corporate decision-making in this direction, is outlined in the next section.

^{††} The divisive impact of CSR in the corporate workplace was illustrated when IBM was targeted on social media by an LGBTQIA activist over its employment of executive Mark Allaby. Allaby's membership of the board of the Lachlan Macquarie Institute at Macquarie University, which awards scholarships to young Christian students, was claimed to be inconsistent and hypocritical due to IBM's membership of the pro-LGBTQIA workplace inclusion 'Pride in Diversity' campaign. Allaby subsequently resigned from the Institute's board, having previously been forced to resign from the board of the Australian Christian Lobby when his former employer — and high-profile corporate supporter of the marriage equality campaign — PricewaterhouseCoopers came under similar attack by the LGBTQIA lobby. See Jeremy Sammut, 'Public companies are already demonstrably diverse, why sign up to extra pledges?', Australian Financial Review, April 3 2017. <https://www.afr.com/opinion/public-companies-are-already-demonstrably-diverse-why-sign-up-to-extra-pledges-20170402-gvbr92>

The Community Pluralism Principle

The political risks entailed in professionalisation, mainstreaming and integration of CSR within Australian business are insufficiently flagged and discussed in the current debate and discussion about CSR. Regardless of the generic CSR gloss that might be spouted by insider CSR professionals to deny this, associating a company with a political position or world-view — for the sake of stakeholder's interests that are faintly connected to shareholder's interests — will inevitably repel dissenting employees, customers, shareholders and stakeholders from that brand; an outcome that is hardly in the best interests of the company. However, simply awakening corporate decision-makers to these risks is unlikely to be sufficient, of itself, to ensure the effective management of these risks and the curbing of CSR activities as judged appropriate.

Corporate leaders who might wish to take a more sceptical and business-based approach to CSR — and prevail in the inevitable internal management struggle over the CSR direction of the company — are currently unable to have corporate decision-making guided by any alternative set of principles or policies, beyond reference perhaps to the 'business of business is business' mantra that is widely viewed as outdated. Hard-headed corporate decision-makers who might wish to counter the well-established CSR management doctrines and structures that are now institutionalised across business, and combat both the activism and inertia of the CSR industry, are at a disadvantage due to the absence of anything resembling a counter-institutional framework to compare with ASX's pro-CSR governance principles, and help to shape and justify decisions taken to restrain and limit a company's CSR activities.

One reason external support and justification for such decision-making is needed is the reality that in these polarised times, those who oppose 'progressive' CSR agendas risk professional repercussions and social 'death'.⁸⁶ This particularly applies within 'big corporates' in relation to attitudes to CSR, especially as People and Culture departments remain responsible for HR decisions related to hiring, firing and promotion. Subscribing to a set of social or political values should not be an employment prerequisite and represents a (normative if not legal) violation of the democratic rights and freedoms that all citizens

should enjoy in Australia. What you can contribute to the mission of the company — not political criteria — should be the criteria for employment and advancement. Avoiding the politicisation of the workplace is a strong argument for curbing CSR. Yet the fact that quasi-political tests already play a role in employment practices — in violation of the bedrock principles of a free society that respects the rights and freedoms of speech, thought, and conscience of all citizens — means that few in corporate Australia may be brave enough to openly challenge CSR orthodoxies.⁸⁷

Hence, it is unclear whether there is an appetite within the business community for curbing CSR, with one informed view being that most company directors and senior managers are generally either too timid or intimidated to speak up on this issue.⁸⁷ On the other hand, 53% of respondents to the Deloitte Global Human Capital Trends survey said social responsibility is not a focus for them.⁸⁸ So perhaps — and notwithstanding the personal benefits that directors and managers can gain from implementing CSR — there is a silent majority in corporate Australia with a dissenting opinion, which is looking for something to say, and a way to say it, in order to push back against the CSR trend in business. If there is an appetite for this, company directors and managers would benefit from being able to readily explain their decision by reference to an established, recognised, and counter-vailing rationale or principle; such as the Community Pluralism Principle this paper proposes.

The overarching purpose of articulating and disseminating such a principle would be to stem the politicisation of companies that might otherwise occur through the escalation of CSR activities. The principle therefore needs to overtly qualify and clarify existing CSR philosophies by flagging the need and importance for companies to avoid the attendant risks of politicisation. Ideally, this needs to be the kind of statement that can shape and guide corporate governance and decision-making by being inserted at the relevant place into ASX's *Corporate Governance Principles*. It should also be the kind of statement that could be taken up by shareholders and shareholder organisations as a means of exerting greater authority over company directors and managers. If voted on at annual meetings and inserted into company constitutions, this would allow — a hitherto silent

⁸⁶ A further straw in the wind was in April 2018, when Rugby Australia announced that Israel Folau — its star player who is coming out of contract — would face no sanctions (this time at least) over his theologically-based comments on social media about homosexuality and hell. However, to appease sponsors such as Qantas, RA CEO Raleane Castles sent a memo to all Australian Super Rugby players warning of their contractual obligations under RA's Inclusion Policy and to use social media in a respectful manner. The implication was that any further expression of his religious views by Folau, or any other player, that contradicts the corporate inclusiveness mantras of RA and its sponsors will be treated as grounds for banishment from the code. See Jeremy Sammut, 'Mandatory Diversity', <https://www.spectator.com.au/2018/04/mandatory-diversity/>

majority of — shareholders (who might wish to question whether agents or principals are benefiting from CSR, and what value is being generated by CSR divisions and activities) to tell directors and managers what the owners believe are the appropriate limits of CSR. It also needs to be the kind of statement to which companies, under the direction of their boards, might voluntarily subscribe to protect their brands.

A guiding statement of principle that could serve these purposes might be:

It is important for modern corporations to consider their impact on all genuine stakeholders in the best interests of shareholders. It is also important that engagement on social issues cannot be perceived to distract from company's core business mission, duties, and accountabilities, nor negatively affect its brand and reputation in the market of opinion in a political sense. It is a matter for boards of directors and other corporate decision-makers to manage these risks by ensuring that companies respect and reflect the pluralism of Australian society and remain open to the views and values of all employees, customers, shareholders and stakeholders across the community.

To be effective, the Community Pluralism Principle needs to take the balanced approach to CSR expressed in this statement. Hence the principle, as drafted, reflects the essence of the current law that authorises CSR as a legal and legitimate area of discretionary management by boards and senior executives, when acting in good faith and in a reasonable manner for the benefit of the company. It also reflects the cultural reasons and realities why modern companies do — and should — consider the social impacts of their activities. It herein also embodies the business case for CSR as a matter of commercial judgement, and hence seeks to firmly link and limit CSR to considering stakeholder interests that are directly relevant to shareholders' interests. However, it is thereby also expressly designed to rule out any question of CSR crossing the Rubicon of participating in systemic change. In this vein, the

principle is also crafted with the purpose of supporting and encouraging the view that decision-making around CSR should focus on managing the business risks of politicisation. The hope and expectation are, that by following the standard business language and practice of risk management, this may enhance the relevance and applicability of the principle to corporate decision-making, and thereby help facilitate its incorporation into corporate governance.

As this paper was being finalised, growing evidence emerged of latent support in the business community for curbing CSR. The recent pushback by some corporate heavyweights — led by the new Chairman of AMP, David Murray — against ASX's revised corporate governance guidelines suggests that business is slowly waking to the danger posed by the abstract concept of a 'social licence' to the traditional role and functions of companies.⁸⁹ At the time of writing, this has led the chair of ASX's Corporate Governance Council to back away from the proposal to introduce a 'social license to operate' into the guidelines. However, it would be wrong to draw false comfort from this, for the statement issued by the Chair went on to say that the "issue can be addressed in different terms, such as reputation, brand, and trust."⁹⁰ Such linguistic backtracking bears all the hallmarks of a tactical withdrawal. It would, moreover, be naïve to think the proponents of CSR will simply give up after encountering one setback.⁹¹ Even more importantly, a (temporary) retreat on the language front by pro-CSR forces will not alter the fundamentals of the corporate landscape (the motives and methods of the burgeoning CSR industry) that got us to the brink of ASX fully endorsing the social license concept. Rather than be content with simply winning a short-term battle that will almost certainly have to be refought in the future, those who genuinely wish to curb the role of CSR in Australian business need to focus on 'winning the war'. They should therefore fully support introducing into the language and practice of corporate governance an institutional framework — the Community Pluralism Principle — that embodies a sound and sensible approach to curbing CSR and promoting the proper role of companies.

§§ For example, the will to fight on was clearly demonstrated by chief executive of the Australian Council of Superannuation Investors — which is reportedly a key advocate of the proposed guidelines — who said: "The proposed changes will position companies to deliver long-term sustainable returns to their shareholders who invest through their superannuation savings." <https://www.afr.com/leadership/governance-council-backs-down-on-industry-supers-social-licence-push-20180806-h13lc7>

Conclusion: True Diversity in a Free Society

Curbing CSR is not as simple as advising companies to 'stick to their knitting'. In a more complex world, and more complex business environment, considering the social impact of corporate actions is a legitimate part of the business of business. This is not only a legal and appropriate aspect of corporate governance; it is a matter of commercial judgement for company decision-makers to assess when the interests of wider groups of stakeholders need to be considered in the best interests of the business and shareholders.

However, the emergence of the CSR industry, and the mainstreaming and integration of CSR within corporate governance, poses genuine risks to companies and business in general. This includes not only the diversion of corporate resources into activities that, at best, can be considered marginal to the material interests of the business, and which can be justified only by applying the broadest definition of a CSR remit to protect the interests of stakeholders. The overarching risk is the diversion of companies from their core business mission into a political role, and the risks that politicisation and involvement in divisive social issues poses to company brands and reputations.

As the Banking Royal Commission has reminded, the greatest risk to corporate reputations, and the best way to protect those reputations, is to ensure that companies effectively and ethically fulfil their core business roles to benefit customers and shareholders. The Royal Commission has also illustrated the reputational damage that can be inflicted by engagement in social and political debates. The risks associated with business being dragged into the culture wars are more acute at this time of apparent and growing community division over social values. The reputational risks of CSR also are that companies will risk being perceived as not only political players, but as agents of social and political division. It might be fairly said that companies, being part of society, are simply reflecting the cultural polarisation that is occurring throughout society. However, public companies, given their special legal rights and privilege, should aspire to be pluralistic institutions that serve the whole community equally; which is impossible if companies acquire reputations for 'being

political' by meddling in political issues for the sake of stakeholder's interests that are faintly, if at all, connected to shareholder's interests.

Introducing the Community Pluralism Principle into corporate governance would be no magic bullet. It certainly would not restore a golden age when business's business was business. Nor would it, of itself, guarantee that CSR activities are limited to legitimate business parameters, and do not extend into overt political channels — particularly when outcomes would continue to ultimately depend on the appetite among corporate elites to challenge the thrust and momentum of the CSR industry (especially as the work of this industry may also add lustre to their personal corporate profiles at shareholder's expense). However, at the very least, the rhetoric emanating from the industry about corporate involvement in political change should be a wake-up call and generate questions at boardroom level about the willingness of CSR professionals to play politics with shareholder's money at the margins of what might be permissible under company law. If the will exists to exercise some enlightened self-regulation — or that will is fostered by greater awareness of the business risks of politicisation — the ability to refer to the Community Pluralism Principle as part of good corporate governance might help curb CSR and prevent companies from inappropriately straying into politics; instead leaving the politics to politicians, parliaments, and the people.

Practising this principle would prevent the politicisation of companies by, ironically, allowing companies to practice the values of 'inclusiveness' that underpin many CSR initiatives that champion 'diversity' — but in new, important, and genuinely tolerant ways. By promoting respect for the perspectives of all members of the community, the Community Pluralism Principle would not only protect the fundamental rights and traditional freedoms of speech, conscience, thought, and association of all groups. It would also ensure that Australian corporations respect the only kind of diversity that ultimately matters in a liberal democracy: the diversity of political opinion that is the foundation of a free society.

Endnotes

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- 11 The classic account of this view is Milton Friedman, *The Social Responsibility of Business is to Increase its Profits*, in Walther Ch. Zimmerli, Klaus Richter, Markus Holzinger (Eds), *Corporate Ethics and Corporate Governance*, (Berlin Heidelberg: Springer-Verlag 2007), 173-178.
- 12 Hence the literature on CSR is voluminous. For example, <https://www.polyu.edu.hk/af/cesef/Projects/CSR%20literature%20review%201980%20to%202014.pdf>
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