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Submission to Senate Economics References Committee on *Carbon Risk Disclosure* by the Australasian Centre for Corporate Responsibility (ACCR)

The Australasian Centre for Corporate Responsibility (ACCR) welcomes the opportunity to make this submission on Carbon Risk Disclosure.

The ACCR is a not-for-profit association whose mission is to promote informed shareholder engagement and advocacy for more just and sustainable corporate activity. We research corporate activity and assist people to use the research. We aim to empower stakeholders in corporate Australasia. In particular we have sought to improve the capacity of Australian shareholders to lodge resolutions at shareholder meetings.

Our submission deals with items (b) & (e) of the Terms of Reference:

(b) current carbon risk disclosure practices within corporate Australia;

(e) any other related matters.

Our submission deals solely with disclosure by listed public companies, ie companies with shares traded on the stock exchange. We distinguish between listed public 'trading companies' (e.g., BHP) & 'asset owners' which may or may not be listed public companies. For example, the wealth management division of NAB is an asset owner and NAB is a listed public company; Australian Super is also an asset owner but not a listed public company.

We note that improved carbon risk disclosure can be the result of mandatory disclosure obligations imposed by law, or voluntarily improved disclosure.

There is certainly a role for mandatory disclosure obligations, such as those imposed by the UK Listing Rules or the French requirements on asset owners.

However, we argue given an appropriate legal framework[1] significant progress can and has been made through voluntary disclosure and this is always a vital complement, and often preferable, to mandatory requirements. It results in better quality longer term disclosure as a result of ongoing pressure from asset owners, owners of the assets bearing carbon risk.

The remainder of this submission deals solely with voluntary disclosure by trading companies as a result of asset owner concern.

There is a divergence of interest between boards and shareholders. Shareholders have long-term interests; boards can become myopic. Shareholders have an interest in pressuring boards to disclose and manage risks.

It is useful to distinguish two forms of interaction between shareholders and boards:

- '*Engagement'* involves private discussions between asset owners qua shareholders and the trading companies they are invested in;
- By contrast '*resolution activity'* is public. Typically, shareholders unhappy with the results of private 'engagement' file resolutions for consideration at the AGM which all shareholders then get to vote on. Resolutions do not have to get majority support to be effective. Conduct will often change where resolutions get the support of 3 to 5% of shareholders. It is common practice to lodge resolutions year after year slowly gathering support. Very few companies will resist a course of action which gets the support of 25% of shareholders.

In regards carbon risk disclosure, in other countries, in cases where management initiative has been weak, shareholder pressure has been reasonably significant. For example, shareholder engagement has resulted in substantial improvements in carbon risk disclosure in the US. Where management has failed to improve disclosure, shareholders have turned to resolutions. In 2015 there were 34 climate change/GHG emissions resolutions at listed US companies.[2] Typically, this number of lodged resolutions would have been preceded by engagement with over 100 companies which didn't escalate to resolutions or the resolutions were lodged but withdrawn after the company agreed to the request.

Similarly, substantial improvements in carbon risk disclosure in the UK have resulted from shareholder engagement and resolution activity. In 2015 BP and Shell management actually supported shareholder resolutions seeking improved carbon risk disclosure. [3]

Engagement is often successful because of the credible threat of resolutions if management ignores private requests.

Progress towards improved carbon risk disclosure by Australian listed public companies has mostly been the result of:

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[1] Australia does not have such a framework but both the US and the UK do.

[2] See Institutional Shareholder Services, *Preliminary 2015 US post-season review.* The wording of some of these resolutions can be seen at CERES url.

[3] See http://www.ap2.se/Global/NyheterPressmeddelanden/2015/Aiming%20for%20A%2021st%20January%20Press%20Release_FINAL.PDF .

- management initiative, often in response to the Carbon Disclosure Project;
- private engagement by 'asset owner' groups (and their representatives) such as the AODP, IGCC, Regnan & ACSI; &
- the resolution activity of the ACCR. ACCR has engaged with and filed carbon risk disclosure statements/resolutions with each of the top four banks as well as the 'gentailers' AGL & Origin. For example, the resolution filed by the ACCR considered at the 2015 Origin AGM sought constitutional amendment to provide for improved carbon risk disclosure and targeted reductions in carbon intensity. It was supported by 6.4% of voting shareholders. Just days before the AGM Origin announced its intent to, inter alia, improve its carbon risk disclosure. [4] Support for these resolutions has been constrained by their 'constitutional change' legal framing which is at odds with practice in the UK and the US.

Australian shareholders are severely constrained by comparison with their Anglophone cousins. Despite clear rights in Australian statute law, Australian common law is hostile to shareholder resolutions. In the US shareholder rights to lodge resolutions for consideration at AGM's was established as a matter of common law in the 1950's. In the early 1970s a judgement further instructed the SEC[5] to facilitate shareholder resolutions and play a refereeing role. Since the early 1970s there have been approximately 17,000 shareholder resolutions on ESG issues considered at US public companies. The practice is a very healthy part of US corporate democracy. Resolutions are less common in the UK but there is a clearly defined route for their framing and following their success at BP and Shell in 2015 the 'Aiming for A' investor coalition has lodged three more resolutions for consideration in 2016 seeking improved carbon risk disclosure.

The OECD Principles of Corporate Governance[6] sets out the components of an effective corporate governance framework. The Principles support shareholders rights to "to place items on the agenda of meetings", for example, by lodging resolutions other than resolutions to appoint/remove directors. Australia fails to comply with these OECD principles. The only such resolutions the common law permits Australian shareholders to lodge are those resolutions framed to amend the company constitution. Resolutions of the sort permitted in the UK and US are not permissible in Australia.

This common-law deficiency in Australia weakens the impact of engagement and also reduces the chances of management initiative.

The most effective way to enhance carbon risk disclosure practices over the long term amongst listed public companies would be for the Australian Parliament to clarify the operation of the statute law[7] which provides for shareholder resolutions. The law in Australia should be aligned with practice in the UK, the US, Canada and New Zealand which allows the owners of public listed companies, shareholders, to file resolutions, for example resolutions seeking improved carbon risk disclosure. In all these countries there is a clear route for shareholder resolutions. In Australia there is not.

The ACCR would be happy to provide further assistance upon request to this Senate enquiry.

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[4] See http://www.accr.org.au/power .
[5] The SEC is the US regulatory body – the equivalent of ASIC in Australia.
[6] See OECD, *G20/OECD Principles of Corporate Governance* (OECD Publishing, Paris, 2015).
[7] Ie ss 249N & O of the *Corporations Act 2001*

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ACCR