AUSTRALASIAN CENTRE FOR CORPORATE RESPONSIBILITY

Mr Mark Fitt
Committee Secretary
Senate Economics References Committee: Inquiry into Carbon Risk Disclosure
By email: Economics.Sen@aph.gov.au

23 March 2017

Dear Mr Fitt

Australasian Centre for Corporate Responsibility: Answers to Questions on Notice

Thank you for the opportunity to appear before the Senate Economics References Committee's Inquiry into Carbon Risk Disclosure.

Please see in the attached document my answers to questions taken on notice at the hearing of the Committee on Wednesday, 8 March 2017, in Sydney.

Yours sincerely

Ms Brynn O'Brien
Executive Director
Australasian Centre for Corporate Responsibility
www.accr.org.au

There were two questions to which I undertook to provide answers on notice, as reflected in the proof Hansard transcript of evidence, as extracted below (http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcommsen%2F04cf6cef-9366-43c0-bf16-6359fb31c925%2F0000%22).

Extract 1:

ACTING CHAIR: Thanks, Ms O'Brien. I think what both Senator Whish-Wilson and I want to talk about most, to understand it more deeply, is the legal situation in terms of shareholder resolutions. Do I correctly understand that, in Australia, this is governed by a common-law framework rather than any statutory guideline?

Ms O'Brien: The Corporations Act allows shareholders to put resolutions in meetings, but this statutory provision has been very narrowly interpreted by the Federal Court and the Full Federal Court. I can certainly undertake, on notice, to provide you with references for those decisions.

…

Answer

Australasian Centre for Corporate Responsibility v Commonwealth Bank of Australia [2015] FCA 785

Australasian Centre for Corporate Responsibility v Commonwealth Bank of Australia [2016] FCAFC 80

Extract 2

Senator WHISH-WILSON: I can see the usefulness of resolutions and engagement to get the ball rolling. Has there ever been considerations in terms of going the next step to call extraordinary shareholder meetings or even to look at two-strike rules for boards who do not comply with these, or ignore resolutions?

Ms O'Brien : I will take that one on notice. I have only been in this role for a couple of months.

Senator WHISH-WILSON: I know that is a pretty severe outcome, but if it is targeted at the board taking shareholder issues seriously then it might be—

Ms O'Brien : ACCR has engaged, for example, in extended litigation with the Commonwealth Bank over the types of resolutions, and unfortunately we lost that litigation on appeal. So we do take a pretty strong position, and we are prepared to stand by it. But, as to the specific mechanisms that have been deployed by ACCR in the past, I will need to take that on notice.

...

Answer

- ACCR is a shareholder advocacy organisation, and we are therefore engaged in the practice of ‘active ownership’ of shares. We own shares in companies and seek to engage with those companies on policy and strategic issues that relate to environmental, social and governance matters, including by putting shareholder resolutions to companies’ annual general meetings.
- As a general position, we do not call extraordinary general meetings, because they are not the appropriate forum at which to have our concerns - which for the most part relate to company policy and strategy - heard. We have not called EGMs in the past.
- As discussed at the Committee hearing, Australian law is severely limited as to what types of resolutions can be put by shareholders. The ‘two-strike’ rule, as it is known, is designed to hold directors accountable for executive salaries and bonuses. It is only possible, under Australian law, for shareholders to vote for or against a resolution to approve the remuneration report. It is not possible to frame a resolution in any other fashion, for example, to deal with the structure of remuneration arrangements.This is out of step with comparable countries such as the US and the UK.
- ACCR has therefore never framed a resolution in this way.