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JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES

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JOINT STATUTORY COMMITTEE ON

CORPORATIONS AND FINANCIAL SERVICES

Wednesday, 29 March 2006

Members: Senator Chapman *(Chair)*, Ms Burke *(Deputy Chair)*, Senators Brandis, Murray, Sherry and Wong and Mr Baker, Mr Bartlett, Mr Bowen and Mr McArthur

Members in attendance: Senators Chapman and Wong and Mr Baker, Mr Bowen and Ms Burke

Terms of reference for the inquiry:

To inquire into and report on:

Corporate Responsibility and Triple-Bottom-Line reporting, for incorporated entities in Australia, with particular reference to:

a. The extent to which organisational decision-makers have an existing regard for the interests of stakeholders other than shareholders, and the broader community.

b. The extent to which organisational decision-makers should have regard for the interests of stakeholders other than shareholders, and the broader community.

c. The extent to which the current legal framework governing directors’ duties encourages or discourages them from having regard for the interests of stakeholders other than shareholders, and the broader community.

d. Whether revisions to the legal framework, particularly to the Corporations Act, are required to enable or encourage incorporated entities or directors to have regard for the interests of stakeholders other than shareholders, and the broader community. In considering this matter, the Committee will also have regard to obligations that exist in laws other than the Corporations Act.

e. Any alternative mechanisms, including voluntary measures that may enhance consideration of stakeholder interests by incorporated entities and/or their directors.

f. The appropriateness of reporting requirements associated with these issues.

g. Whether regulatory, legislative or other policy approaches in other countries could be adopted or adapted for Australia.

In inquiring into these matters, the Committee will consider both for profit and not-for-profit incorporated entities under the Corporations Act.

WITNESSES

Committee met at 5.21 pm

CHAIRMAN (Senator Chapman)—Today the committee will continue to hear evidence regarding its inquiry into corporate responsibility and relevant and related matters. This is the eighth public hearing of the committee. The committee expresses its gratitude to the contributors to this inquiry, including those who will be appearing before us as witnesses today. These are public proceedings, although the committee may agree to requests to have evidence heard in camera or may determine that certain evidence should be heard in camera. I remind witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to the committee, and such action may be treated by the parliament as a contempt. It is also a contempt to give false or misleading evidence to a committee. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken, and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may also be made at any other time.

[5.22 pm]

SARA, Ms Susan Jane, Manager, Corporate Affairs, Xstrata Copper, Xstrata

CHAIRMAN—Welcome. We have before us your submission, which we have numbered 17. Are there any alterations or additions you wish to make to the written submission?

Ms Sara—I would like to note that we launched another corporate social involvement program in Queensland this month, and I table this document for the committee.

CHAIRMAN—It is received by the committee. I invite you to make an opening statement, at the conclusion of which members of the committee will ask questions.

Ms Sara—Thank you for the opportunity to appear today on behalf of Xstrata. The submission which you have from Xstrata was prepared by me in conjunction with my colleagues from our other commodity businesses operating in Australia—that is, those of us from the copper, zinc and coal businesses. It also involved input from my colleagues in our London corporate affairs office. One key point that I would like to make today is that Xstrata has a published corporate social involvement policy, which elaborates on a commitment set out in the company’s business principles. It is an integral part of how we operate. As we detailed in our submission, we set aside a minimum of one per cent our pre-tax profits for corporate social involvement programs. In 2005, that amounted to almost $US25 million globally—more than double that of the previous year.

We undertake our corporate social involvement activities voluntarily in Australia and, in addition to the programs detailed in our submission, we have just launched another $A2.48 million three-year program in Queensland which focuses on the three areas of health, social and community, and education. This program, as with the one we developed in North Queensland in 2004, was also developed through a process of consultation with the communities in which we operate. In addition, our programs were benchmarked against those of other leading companies.

The Xstrata community partnership programs are deliberately long term in nature with initiatives being undertaken usually over at least a three-year time frame. Each year program outcomes are assessed, potential new initiatives are evaluated, and the programs will continue to expand and evolve. The program initiatives consist of partnerships with community organisations as well as local, state and federal governments. Through our corporate social involvement activities we focus on a commitment to community capacity building and sustainable development, developing productive relationships with community and business organisations, and producing meaningful outcomes for these communities.

We report on these activities as we do on our financial and operating performance, and our health, safety and environmental performance. Our corporate social involvement activities are fully audited as part of our annual sustainability reporting. In addition to our annual sustainability report a summary of our health, safety and environment and community, or HSEC, activities is now also being included in our annual financial report. This brings our report into line with best practice reporting and with EU and UK regulations, which will become mandatory from 2006. The annual financial report is of course fully audited and conforms to the listing rules of the Financial Services Authority in the UK. Our HSEC performance occurs in line with our published HSEC standards, which are broadly based on ICMM Principles and Elements and are in line with the Minerals Council of Australia’s *Enduring value: the Australian minerals industry framework for sustainable development*. In terms of corporate governance Xstrata has an HSEC board committee which comprises three non-executive directors and the chief executive of the company. It meets at least twice a year and is a subcommittee of the Xstrata board. Its duties include reviewing HSEC policies and performance.

As you would appreciate, Xstrata is a publicly listed entity in the UK and Switzerland and, as such, corporate reporting is managed from Europe. However, our business is highly devolved to the operational level and that also includes our corporate social involvement program development and operation. Reporting on these programs occurs not only in our group annual and sustainability reports, as I have mentioned, and on the company’s web site but also within publications such as the one that I have tabled today and in our divisional and site sustainability reports, which are all produced here in Australia.

In summary, Xstrata has a strong commitment to corporate social involvement. It is integral to the way we do business and how we engage with the communities in the regions where we operate. We are focused on positive outcomes from these activities and we report extensively on them. We believe that the introduction of regulations prescribing either mandatory reporting or the amount of money to be spent on these activities or the focus of the activities would be counterproductive and may in fact inadvertently lower the bar.

CHAIRMAN—I note that a portion of your written submission deals with your commitment to corporate social involvement and corporate social responsibility. As I read your submission you go on to detail your corporate social involvement activities but there is not a lot in regard to corporate social responsibility. As a corporation, what is your distinction between the two and can you expand a bit on your corporate social responsibility initiatives as distinct from your corporate social involvement initiatives?

Ms Sara—We tend to use the terms interchangeably. In that regard, I would refer to our corporate social involvement activity as being those of corporate social responsibility. We do not really make a distinction.

CHAIRMAN—To the extent that you are subject to regulation in this area, is it the UK regulations and/or the Swiss regulations?

Ms Sara—The UK regulations.

CHAIRMAN—Can you perhaps give us a little bit of insight as to how those regulations work compared with what you understand of the Australian ones?

Ms Sara—I do not profess to be an expert on the UK regulations, unfortunately. My colleagues in our London office are the ones that determine the structure and content of our annual and group sustainability reports. I would need to defer in terms of answering that to their expertise.

Ms BURKE—Do you think they would be happy if we put that question to them through you?

Ms Sara—I am sure they would. That would be no problem to follow up.

CHAIRMAN—Two issues have been raised at the hearings and discussed quite sensibly. The first issue is directors' duties and whether the current Australian Corporations Law is sufficiently permissive with regard to directors' capacity to take account of interests other than shareholders' interests or the interests of stakeholders other than shareholders. The second issue is corporate responsibility reporting and the nature of that—whether it should be voluntary or mandatory or whatever—but also the issue of a reporting framework irrespective of whether you have a voluntary or mandatory requirement—that is, a framework and the basis for reporting. Given thus far the absence of a standard reporting framework, from your experience, how seriously do you think the capital markets and the financial world take the reports of those companies that do report currently in Australia?

Ms Sara—I think they take them very seriously. I know our corporate affairs people in London engage with socially responsible investment analysts. Increasingly, analysts are concerned not only with organisations' financial and operating performance but also, of course, their HSEC performance as well. I think they do take those reports quite seriously. I think that even since the formation of our company only four years ago, since we listed, reporting requirements have become more onerous. We are required to provide more details. We, of course, would do that voluntarily, but I would say that, in the UK, these requirements have become in a mandatory sense more onerous.

CHAIRMAN—Does Xstrata link executive and management remuneration to the achievement of corporate responsibility outcomes in any way? If so, what is the nature of the link and how far down the management chain does it go?

Ms Sara—I think it goes a fair way down. I know that, certainly for those of us responsible for putting the programs together, it is directly linked to our remuneration. It certainly is with our senior management. I believe that within the operations it is a component certainly of management level. I am not sure about below management level though.

CHAIRMAN—Can you enlarge on the nature of the link or the measures that are used to link corporate social responsibility outcomes to the remuneration?

Ms Sara—Certainly in the area of health, safety, environment and community, it would vary depending on the nature of someone's role. But certainly all of our operational management have key performance indicators in the safety area linked directly to that site's safety performance. Similarly, with environmental reporting and environmental incidents, there are stipulations within their key performance indicators. I think I would have to say that, on the community level, it is probably lagging. I do not know that that is actually stipulated within management KPIs at this stage. It certainly would be at a very senior management level at site and within our management within the businesses. But I am not sure about below that.

CHAIRMAN—Another issue that has been raised in our evidence is what I might describe as short term-ism, the short-term nature these days of remuneration contracts for senior executives and also a focus on short-term share value rather than a longer term share value, which militates against corporate responsibility. I wonder what your view is on that.

Ms Sara—I certainly have not seen it within our organisation, because we have the commitment to set aside at least one per cent of our profits. That is regardless of how the company is performing, and it is directly aimed at getting away from that boom-bust cycle, so there will be a buffer within that area for us to rely upon in future years. Given that our programs are, generally, at least three years in duration, we tend to avoid just going in, putting together a program and then not continuing with it, because that is detrimental to the communities, so it is in our interests to make sure that we are looking at longer term capacity building.

Mr BOWEN—I was not clear from your submission whether you are involved in Xstrata's international operations, extraction in South-East Asia et cetera, so you might not be able to answer this question. I wonder whether you have any experience of the reporting that Oxfam does on the social impacts of mining operations in Asia, and whether you have any comments on the efficacy of what they do.

Ms Sara—Xstrata Copper is evaluating a project in the Philippines at the moment. We have an option to apply 62.5 per cent of the Tampakan copper-gold project in southern Mindanao in the Philippines. I am familiar with the work that Oxfam did with regard to the former WMC's involvement in that project some years ago. We also have an exploration project in Peru called Las Bambas, and the NGOs tend to be fairly active in that part of the world as well.

Mr BOWEN—It strikes me that what they do is quite good work and that there is a place for that sort of ombudsman role in the mining industry, or in many industries. It also strikes me—and they agreed when they appeared before us—that it is a role that would be more appropriately filled by government rather than a non-government organisation. You are the first mining company that has been before us while I have been in the hearings and I wanted to give you the opportunity to comment on whether you think that process of a mining industry ombudsman for their international operations is a fair one or one that is useful to the mining industry.

Ms Sara—Yes, I think they do perform a useful role. It is always a matter of striking a balance, however. Based on history, there have been some instances when NGOs may not have been well informed, but I think, generally speaking, they do raise awareness levels, which is always a good thing. It is up to resources companies to engage with NGOs in those parts of the world where they are active.

Mr BOWEN—That is encouraging. Thank you.

Mr BAKER—You might be able to help me, Chairman. What organisation was it in Sydney that showed pictures of some mining company operations?

Mr BOWEN—That was in Melbourne.

Ms BURKE—Was that the Oxfam people in Melbourne?

Mr BAKER—I am interested from a CSR perspective in that what we read here is great, but now it looks like we are seeing completely opposite ends of the spectrum.

Ms Sara—I do not know what pictures they showed you.

Mr BAKER—It was of some mining operations which showed how they carried out their work and how they left the environment. Are Xstrata's practices in Australia the same as what occurs overseas? It is great for the money to be going to CSR, but there is also the other aspect from the operational perspective.

Ms Sara—We are a global organisation that conforms to the standards within the countries where we operate, but we clearly have high standards when it comes to social and environmental performance. I am not quite sure what photographs you saw, but you can rest assured that they would not have been of any of our operations.

Mr BAKER—No, I was not insinuating that.

Ms Sara—We do have a responsibility on both the environmental and the social fronts, and we take that very seriously.

Ms BURKE—The NGOs who have appeared before the committee have argued that the level of responsibility for a company such as yours operating in these other environments should actually operate to the standard that we would expect here or in the United Kingdom, as opposed to the standard that is provided in those other countries.

Ms Sara—Yes.

Ms BURKE—The argument being that if that was the standard of their country that may be well and good and you might be legally meeting those requirements. But in a social responsible manner, you certainly would not be meeting the requirements of the Australian environment standards. And here in Australia we would not accept what was mentioned, and I can assure you that it was not Xstrata. It was a report of how they left the mine. It is a dysfunctional mine now, yet in the reports they claim, 'Yes, we've cleaned up. We've spent all this money reafforesting X, Y and Z.'

Mr BAKER—The water was polluted.

Ms Sara—There are certainly instances of that, unfortunately, which do tend to tar the industry with that brush. In fact, in the Philippines there is a strong antimining sentiment held by about 70 per cent of the population because of a previous incident at Marinduque, which is still fresh in the minds of everyone there. Unfortunately, it damages the industry as a whole. More recently with another mining company in the Philippines there was a small environmental incident, and it reopened the debate about mining companies and how they operate and whether they operate responsibly. We have been operating in Argentina for over 10 years and our socially responsible programs over there are second to none, I would have to say. I have been there and seen them, and the work that they are doing is fantastic.

Mr BAKER——This will be a difficult question for you to answer: as a mining company, do you have ideas about how the government can apply a consistent legal approach to Australian companies that operate overseas to continue best practice? Obviously we cannot control companies from overseas. How can we apply Australia's regulations and legal framework to Australian companies that operate overseas?

Ms Sara—I think certainly publicising the work that companies do within the resources and the financial services sector are two that spring to mind. I know that our peers have exemplary programs, as do a lot of the banks. I think it really behoves our industries to take a leadership role in promoting those to business as a whole and for government to support that promotion. Obviously the Prime Minister's Community Business Partnership Awards are a great example of that. I think more can be done along those lines and through industry organisations—the Minerals Council of Australia, again—and representative bodies should be promoting that within business. It should then be perceived as standard practice, because we certainly perceive it that way.

Ms BURKE—One of the things the committee has been grappling with in listening to evidence before it concerns the notion of corporate social responsibility reporting. You have drawn attention to what I would call the philanthropic activities of Xstrata by providing money, but that is only one subset of a whole range of reporting. There is environmental, health and safety, and how you deal with your other non-shareholder stakeholders—your staff, your customers and the countries that you are in. You are reporting on a range of those but not all of those, I would argue.

Ms Sara—We are reporting on all of those. Just to pick you up on 'philanthropic', we do not do philanthropy as such. They are partnerships in the sense that we actually work together with those organisations to develop programs. We do not just hand over money.

Ms BURKE—I understand that, but it would be seen as good projects in communities. I suppose I would term it that way. You are not just donating money; you are doing projects, but it is an endeavour. One of the things for us is that nowadays the capital market is looking at ethical investment coming along, and they are asking, 'Do we score Xstrata well because they are doing all these programs? But we have not looked at their environmental impact and we have not looked at how they have dealt with staff.' Do you get a tick for one thing and a cross for something else? How do you compare it, and how would you compare yourselves against other mining companies and then against other entities, like financial institutions, unless we have some sort of framework that everybody can compare—especially if you are in a capital market and you are recommending investing in something.

Ms Sara—Yes. There are the international industries which do rank and rate companies, and that would obviously be across all of those areas. But we certainly report on all of those areas that you mentioned through our sustainability reporting. Increasingly, as I mentioned, it is coming into the financial reporting side as well, so that someone who picks up a company's annual financial report but may not necessarily refer to the other document does get a sense of what is going on in the rest of the business on those other sides of the business. The human capital side, the employees and all that sort of engagement is increasingly being reported on through that as well.

Ms BURKE—Do you reckon people read your reports?

Ms Sara—We know that they do. They read the website as well, so it is up to us to make sure that the information is mirrored on that as well. But yes, they do.

Ms BURKE—You said at the outset that your reports—not just your financial reports but your other reports—are audited.

Ms Sara—Yes.

Ms BURKE—What sort of process do you go through for that?

Ms Sara—We go through site audits. Every site goes through a health safety environment community audit. The first one of those was conducted—we are a fairly young company—across all of our sites last year, and that will be followed up on, I think, a biannual basis across all of the sites. So it is a fairly rigorous process.

Ms BURKE—There is this notion about greenwash, where Xstrata can say, 'We've been environmentally responsible,' until someone goes and checks and says, 'Don't think so.' So again you are getting a tick for doing something well but it has not been verified. Just because you put out a nice glossy brochure does not mean you have actually achieved the outcome.

Ms Sara—Yes, that is absolutely right. The audit process is, as I said, very rigorous, and there are definitely areas where the auditors look at both systems and performance. Sometimes you can do really well in your performance, but you might not have the systems in place or vice versa. We actually look at those within our business unit. We have an HSEC committee within our business unit, and we are targeting improvements based on our audit from last year in each of those areas. As a management team, we are very focused on improving both our systems and our performance. So we cannot get away with too much.

Ms BURKE—Would you say that the majority of this reporting has been driven by the requirements in the UK or by the capital markets as well?

Ms Sara—Certainly at a group level. At the local level we tend to think about our local stakeholders, so that is why we produce publications for our local stakeholders. With the divisional and site sustainability reporting, that is required under the enduring value framework. We are signatories to enduring value through the Minerals Council, so that is a requirement under that code.

Ms BURKE—But in your opening statement you said that you did not think that there is any need to regulate this to say that companies must do this.

Ms Sara—No. We were doing a lot of those reports anyway because we felt it was good practice to communicate with our stakeholders at a local and a government level.

CHAIRMAN—There being no further questions, Ms Sara, thank you very much for your appearance before the committee and your assistance with our inquiry.

[5.51 pm]

COOPER, Mr Jeremy Ross, Deputy Chairman, Australian Securities and Investments Commission

BRINE, Mr Matthew, Manager, Governance and Insolvency Unit, Department of the Treasury

HACKETT, Mr Greg, Policy Analyst, Governance and Insolvency Unit, Department of the Treasury

MILLER, Mr Geoffrey, General Manager, Corporations and Financial Services Division, Department of the Treasury

MURPHY, Mr Jim, Executive Director, Markets Group, Department of the Treasury

CHAIRMAN—I welcome the witnesses from Treasury and the Australian Securities and Investment Commission. I advise you that the parliament has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis for that claim.

The committee has before it Treasury's submission, which is numbered 134, and ASIC's submission, which is numbered 58. Are there any alterations or additions you wish to make to the written submissions at this stage?

Mr Cooper—No.

CHAIRMAN—I invite you to make an opening statement—perhaps Mr Murphy first and then Mr Cooper.

Mr Murphy—Mr Brine has worked on the submission and will make an opening statement for us.

Mr Brine—Thank you for the opportunity to speak to Treasury's submission to the inquiry. I would like to speak briefly about the current regulatory framework and the economic drivers that might encourage corporations to adopt corporate social responsibility practices. Australia's regulatory framework generally allows for the officers of a corporation to exercise their powers and discharge their duties in the interests of community stakeholders, provided that this is also in the best interests of the corporation. Within broad parameters, it is left to the officers of individual corporations to evaluate and choose between alternative courses of conduct. The devolution of business decisions to expert company officers is one of the key advantages of the corporation as a vehicle for conducting economic activity. In this context, corporate social responsibility or CSR can be characterised as a means of encouraging an improved understanding of the importance of sustainable business practices across all key decision makers in a corporation.

There are a number of economic drivers that may encourage the adoption of such business practices, including the need to attract and retain employees, reputation management, appropriate management of risk, improving competitiveness and market positioning, enhancing operational efficiency, developing investor relations and improving access to capital. There is also some evidence that these drivers have led to the adoption of CSR by Australian businesses. For example, ABS data suggests that Australian businesses gave $1.5 billion to the community in 2000-01, or 1.7 per cent of operating profits before tax. Most of this, $1.3 billion, was in the form of sponsorships and donations.

Moving forward, the challenge is to identify and remove obstacles to the economic influences that would otherwise encourage the officers of corporations to adopt sustainable business practices. Specifically there may be opportunities to assist the promotion of CSR as being relevant, adaptable, able to be integrated into the existing structures and beneficial to businesses of all sizes. The Department of Families, Community Services and Indigenous Affairs has implemented a number of initiatives in this area.

In relation to non-financial reporting, the regulatory framework requires, of public companies, reports including a review of operation and the results of operations and, of publicly listed companies, disclosure of all information that members would reasonably require to make an informed assessment of the operations, the financial position and the business strategies and prospects of the entity. These disclosure requirements have been expressed in broad terms so as to enable directors to make their own assessments of the information needs of members of companies and to tailor their disclosures accordingly.

There is considerable flexibility as to the form and content of the disclosure to allow for differing information needs. Non-binding guidance is provided through the G100 publication *Guide to Review of Operations and Financial Condition*. The economic drivers discussed earlier may encourage a corporation to provide further non-financial information about its operations. The Department of the Environment and Heritage has a range of initiatives aimed at facilitating improved voluntary reporting. In conclusion, the current regulatory framework permits the adoption of sustainable business practices by the officers of corporations and allows flexibility in mechanisms for reporting of non-financial information.

Mr Cooper—Thank you for the opportunity to give some brief background to our submission by way of an opening statement. There are roughly 1.45 million companies in Australia. ASIC's position is that these issues are relevant only to a very small proportion of those companies. It can be very difficult to speak with any coherence about these issues when you are talking about a proprietary company that might own a newsagency and those sorts of businesses, which make up a very large proportion of the corporate landscape.

By way of summary, ASIC's position is that no change to the current law is required. The UK proposal in clause 156 of the Company Law Reform Bill, which I am sure you have heard about in many of the submissions, to increase the duty of loyalty to include other stakeholders is not an attractive proposal in ASIC's opinion. We recognise that principle 10 of the ASX best practice corporate governance principles already deals with how stakeholders, and people who have legitimate claims in relation to a listed entity, are to be dealt with. In time I think we will see that that mechanism provides an adequate way in which listed companies can make disclosure about these sorts of issues.

There are some very vexing terminology problems and challenges in turning what are very worthy and interesting concepts—such as what a stakeholder is, what sustainability means, what triple bottom line reporting is and what we really mean by corporate social responsibility itself—into things that create binding legal rights and obligations on our companies. We think, by way of conclusion, that a combination of the forces of globalisation, the enormous value that corporations put on their brands and the weight also that professional and retail investors now place on these issues are already doing the job, ably supported by the common law.

CHAIRMAN—Can you elaborate, Mr Cooper, on your comment in your submission to the Corporations and Markets Advisory Committee inquiry that:

... from ASIC's point of view—

sustainability reporting—

may be a better regulatory tool, than directors' duties, to shape the environmental, social and economic impact of corporate behaviour.

Senator WONG—There is a division. I wonder if we could possibly suspend for a short time.

CHAIRMAN—Excuse us.

Proceedings suspended from 5.59 pm to 6.08 pm

CHAIRMAN—The committee will resume. I think Mr Cooper was about to answer a question.

Senator WONG—If he can remember it.

Mr Cooper—I am ready to answer it.

CHAIRMAN—You have had plenty of time to prepare.

Mr Cooper—It ought to be my best answer so far. ASIC's answer to that question is that as an enforcement regulator on the one hand and a disclosure regulator on the hand we can see great problems in opening up very well settled law as to what the duties of directors are. If it were felt absolutely necessary by the government—and this is a government decision—to have some change to the system, we would prefer a tightly focused disclosure solution rather than opening up the whole question of directors' duties. The upset to business of actually changing the law would be too great: 'What are we supposed to do? Who are these stakeholders? How do we rank the priority of one stakeholder against the other?' There would be all those questions. We see problems there. With our enforcement hats on, we see that if we are not careful that we might build areas into which directors who had done something wrong could go and sit and say, ‘Actually, the reason we did this was because of these new stakeholder rules.’ That is the answer.

CHAIRMAN—This might be a question to both ASIC and Treasury. What is your response to what I will call the Meredith Hellicar view of directors’ duties, as was put in the James Hardie case?

Mr Cooper—I would love to be in a position to counter those suggestions, but because James Hardie is one of our major enforcement cases I will have to hand over to my colleague from Treasury.

Senator WONG—You could give a hypothetical view.

Mr Cooper—Without going into the detail, that example is so extreme that it unbalances the discussion.

Senator WONG—We do not have to make it specific to Hardie’s. You could comment on your view about the correctness or otherwise of the proposition that directors duties do not permit regard being had to those stakeholder issues which not just the company mentions but others might put forward.

Mr Cooper—I do not agree with that as a general proposition. You still have to run the slide rule over it as to whether it is in the best interests of the company as a whole. But, as we see in modern corporate life, that takes into account all measure of considerations. If a sensible case for taking that action were put it would be well within the current regime.

Ms BURKE—So there is nothing precluding directors from considering other stakeholders in their decision making.

Mr Cooper—Absolutely, and it is of course where the company has gone.

Mr Murphy—It is hard to understand the decision of the directors of James Hardie. We qualify that statement by saying we have not seen the legal advice and nor do we know what persuaded the board of James Hardie to take the action they did. That action would be of surprise to most people in the corporate world. I suppose, if you are looking at it from a strictly legal point of view, there was quite a good discussion of the legal views in the CAMAC discussion paper. What I suppose is the Australian view of the law is set out in the Austin, Ramsay and Ford text. If you take their view, the board of James Hardie could have taken account of various stakeholders. You have to be careful in this area, and we regard corporate social responsibility as a very important area, of having one poor decision seek to make law. But we can understand why the community is pretty concerned about the outcome which you got out of the James Hardie issue.

Mr Cooper—To add by way of addendum, a much more remote example is where corporate Australia gave very generously along with other citizens for a tsunami in a foreign country, which stretched the connection between the activities and the corporation much more than the example we were just talking about.

CHAIRMAN—Given that some have that view, is there a misunderstanding or a misperception of directors' duties on the part of some and, if so, is there anything that needs to be done to clarify that?

Mr Cooper—As the corporate regulator, we have not seen tangible evidence that there is a genuine misconception. These things are matters of degree. It is good that people talk about things that are not black and white. But we do not see a genuine problem that is crying out to be fixed.

Senator WONG—But it is not necessarily something that you would prioritise in terms of regulation because it is not a regulated matter.

Mr Cooper—Regarding section 180, we are talking about black letter law, although it is relatively subjective sometimes as to how it works in particular situations. Certainly a core part of it is the corporate governance teeth, I guess, that ASIC has. Our role in these matters is through the directors' duties provisions in the act.

Senator WONG—Perhaps you misunderstood my question. I am happy to come back to it later, if you want to finish, Chairman.

CHAIRMAN—Again, Jeremy, your submission states that reforms designed to define the various classes of stakeholders that might be considered to have a legitimate claim on the attention and resources of companies would pose potential difficulties for ASIC's ability to successfully enforce such provisions. Do you have any trouble enforcing the existing provisions and, if so, what difficulties do you currently have?

Mr Cooper—I suppose the thing about directors' duties is that they seek to apply general principles with an element of subjectivity so that you must consider general duties but, in the shoes of particular directors, in particular companies, at particular points in time. So there is a degree of fuzziness about how the rules work, but I would not have thought there was any particular problem at the moment, because, as I said, what we see in the act is a codification of principles that have been around for a very long time. The concern is about changing them without good reason.

CHAIRMAN—You also say in your submission that you foresee potential practical difficulties if the parliament were to amend the Corporations Act so that corporate officers were obliged or explicitly encouraged to take a wide range of stakeholders' interests into account. Does 'explicitly encourage' also include the situation of a permissive amendment to clarify that directors may take into consideration the interests of stakeholders?

Mr Cooper—They are two quite different regimes, but, again, I think it is still our position that we do not see the need to go in and amend those provisions even on the permissive model. We just do not see the need to do that.

CHAIRMAN—I have a couple of questions for Treasury. Given the current absence of a standard reporting framework in Australia for non-financial information, how seriously do you think the financial markets currently take the information that is published by companies that do report on these aspects?

Mr Murphy—It is difficult to say, but I think there is an advantage. It is a growing trend that companies will report on non-financial information, especially companies that are seeking to operate in the market and which have various interest groups, be they particular consumers or whatever. The previous witness was talking about Xstrata reporting. Why do they do it—because there is a benefit in mining companies reporting non-financial information. There is an advantage to a lot of companies in reporting non-financial information. It is to their advantage. So I think overall we would say that it is a good development, but it is probably a development that should be allowed to evolve.

Mr Cooper—I would make an addendum there. It is really apropos of mining companies. In the act since 1998 there has been a specific provision that requires companies that have significant environmental regulation sitting on them to make specific reports about how they are going in complying with that. I think for some time now we have had very good Australian disclosure by our miners addressing those issues. That is a very important piece of structure that is already there.

CHAIRMAN—What is Treasury's general view of the current level of non-financial reporting in Australia? Your submission seems a little ambivalent in that regard.

Mr Murphy—We have not really done a complete survey. But I would say our view is that it is an evolving thing. The current level is reasonable and probably building up.

Mr Brine—I think we do not compare well internationally. It is increasing, though. We are not quite sure why we do not compare well internationally. We do not think there is anything in the regulatory framework that is discouraging it. That would suggest that perhaps there is a perceived lack of demand for it. In my experience of attending conferences recently with investment bankers, they are talking more and more about their interest in the long-term performance of businesses, which I think ties into a desire to see this sort of information made available. I think that employees are more and more wanting to find out information about the corporate social responsibility activity of companies. A good example is law graduates. They seem to be very interested in the pro bono work that their firms are undertaking. So it would seem that there is a growing interest in this.

One issue that we constantly grapple with is, on the one hand, making sure that companies have the flexibility to tailor it to the people who need the information and, on the other hand, improving consistency and comparability across them. Senator Ian Campbell is working with the ASX—it is at a very early stage—and they are trying to look at how to strike a bit of a balance there. Perhaps out of that exercise—and with more standardisation and a little bit of leadership—there will be a greater level of non-financial reporting out of the top ASX listed companies.

CHAIRMAN—How did that reference from Minister Campbell come about, given that he is Minister for the Environment and Heritage? Is it really just focussing on environmental reporting or is it focussing on the broader corporate responsibility issues and, if so, why didn't it come from Treasury or some other part of the government?

Mr Murphy—The current minister for environment has always been very interested in these issues, and I suppose he just took the initiative. After consultations with ministers, he was a proponent of the establishment of the ASX Corporate Governance Council.

CHAIRMAN—From his previous portfolio?

Mr Murphy—Yes. There are also other things in play here.

Mr Brine—The environment department has been doing a lot of work on the Global Reporting Initiative, and I think that fits in with it.

Mr Murphy—There is social responsibility indexes around which certain large corporates are voluntarily involved in. There is the St James ethics index. Companies need to report on their financial information and the focus should be on their financial information. We are in a current situation where people are complaining about the amount of information in annual reports. The companies say they have to produce too much information. The shareholders say that it is too voluminous. The government has been criticised over the requirements for disclosure of executive remuneration. I think we have to make sure that any non-financial information is seen as supplementary, not as the main game for corporates. They cannot be bypassing by being philanthropic, and bypass their actual responsibilities to report on their financial information.

CHAIRMAN—Dr Gary Johns put the view to us—and I will paraphrase what he said—that this was almost a passing fad. The extent to which companies were engaging in corporate responsibility was really a response to some pressure groups in the community and perhaps to forestall the likelihood of legislative or regulatory action in this area, and they should be ignoring it and getting on with their main game of providing returns to shareholders. I do not know what your reaction is to that.

Mr Murphy—I do not think that is right. There are a couple of things on that. The first is that, given the state of the Australian economy, they might have the opportunity to look elsewhere to do other things. The second is that I think it is the role of the corporation. I think everyone said that if you look at the CAMAC report and Treasury’s submission. It is the important role the corporation has within the community. Over time the community will be better educated and will expect more, so its expectations rise up in comparison to the actions of corporations. I think it is also a very significant trend at the moment given increased interest and concern about environmental issues. Given that the corporate form is the major business entity within the community, I do not see it as a passing fad. I think you might find that it is what is expected of corporations. It will be to their detriment if they do not go down that path, especially major corporations—the banks, the mining companies and the funds managers and that type of thing.

CHAIRMAN—In Treasury’s submission, at page 13, you suggest that there are practical difficulties in quantifying the benefits to the community resulting from a greater disclosure of non-financial information. Given that the ASX Corporate Governance Council, which we have just referred to, is currently undertaking a cost benefit analysis as part of its general review of the principles of good governance, are there any suggestions you have made to the working group that they should take in order to achieve a reliable cost benefit analysis in this area?

Mr Brine—I think it is a problem we have throughout the corporate governance area. While we can always estimate the cost to some degree of accuracy, it is very difficult to estimate the benefits of improved governance. You might cite things like increased access to finance, improved longer term performance, increased access to foreign markets and greater access to employees. It is very difficult to put a dollar figure on those to measure up against the dollar figure of perhaps having people there fulfilling these reporting requirements.

Mr Cooper—I will give you an example. I read recently that the SEC thought that Sarbanes-Oxley was going to cost about US$91,000 for the average company to comply with; the figures now show it is somewhere between $4 and $5 million. It is pretty difficult to project what some of these things are going to cost.

CHAIRMAN—One of the issues that has been raised with us is the problem of short-termism, for want of a better description, and the conflict between that and trying to get a longer term view taken of the welfare of the corporation. In that context, one of the issues that has been raised with us is that of capital gains tax and how changes to capital gains tax might encourage a longer term view than the current capital gains tax concessions. Perhaps having a capital gains tax regime that reduces over time in terms of the length of ownership of equities as a means of encouraging the corporation to take a longer term view of shareholder benefits.

Mr Murphy—So the question is: if capital gains tax inhibits their investment in certain—

CHAIRMAN—It would perhaps encourage shareholders to hold shares for a longer period of time and thereby encourage their directors to take a longer term view of shareholder value.

Mr Murphy—We could look into that. I am a bit sceptical, but we would have to think about it. We could talk to our tax people. I am not sure what it will do.

Mr Brine—I think there is an issue of education of institutional investors. I mentioned earlier that there is a growing view amongst institutional investors that they need to start thinking about things like the greenhouse impact of the companies they are investing in if they are going to grow value in these companies over a very long time. To the extent that government can take a leadership role in providing information and making that kind of analysis easier, I think that would be a very useful path to go down. With tax incentives, there is always the risk that you are going to give rise to unintended consequences by having different tax rates for different types of transaction.

Mr Murphy—If you are looking at it from the point of view of a company investing in socially responsible things, that should run the gauntlet. They should be choosing—and that is consistent with directors' duties—to invest in matters which improve the wellbeing of the company as a whole. The test is whether shareholders actually believe that that is in the best interests of the company. Realistically, I do not know whether it is a matter of trying to change the taxation to ensure shareholders keep their investments in the particular corporation. It is really for the corporation to choose to act in a socially responsible way which the majority of their shareholders fully support. That is the position we have got to, and maybe that is not a bad thing.

Senator WONG—With respect, I think you have misunderstood the question. What has been put to us is this: if you define or conceptualise corporate responsibility as being about sustainable business practices—frankly, the words Mr Brine used in his opening statement—and include in that a regard being had to long-term value, longer term risks, such as environmental risks, even directors of companies who want to do that are not necessarily rewarded by the financial markets or by the investment community for doing so. In other words, investors do not necessarily place the same value on longer term risks and longer term value growth as a company may want.

CHAIRMAN—Particularly institutional investors.

Senator WONG—That is correct.

CHAIRMAN—Once they have reached the 12-month qualifying period for the CGT concession, they are more likely to trade their shares rather than hold them for a longer term.

Senator WONG—The point that has been put to us is not so much that CGT causes short-term approaches, but one of the drivers of the short-term approach—and, to turn it around, one of the drivers of sustainable business practices—surely is the pull, as it were, from investors.

Mr Murphy—We can comment in general terms. They are behavioural consequences; you really need some factual information to go either way. You talk about institutional investors. Yes, there will always be certain institutional investors who adopt the short-term approach. However—

Senator WONG—This is not a mad leftie position; this is a position where a number of companies, and even the BCA, say: 'The focus should not just be on us; the focus should also be on investors. If investors actually rewarded more some of the behaviour that we think we should be engaging in'—I am not talking about philanthropy; I think that is a different issue, frankly. If investors rewarded sustainable business practices, managing long-term risks and looking at the long-term value of the company, you might have a different approach by more corporations.

Mr Cooper—These issues are not unique to Australia. I think I would be urging the committee—

Senator WONG—No, I think the question is—I will start from somewhere else. Mr Brine, you started by talking about what the economic drivers for the adoption of corporate responsibility are. I think you used the phrase 'sustainable business practice'. I would be interested in Treasury's views as to what you think those economic drivers are.

Mr Brine—Some very useful work has been done by the World Economic Forum and Business in the Community in the UK. The first one they identified was employee recruitment, and that certainly matches what I have heard from talking to people. The next factor they have identified is to assist their executive in learning and innovating. The next is that it assists reputation management for the corporation. The next is that it assists them profile and manage their risks, if they can identify and reduce avoidable losses. They feel it assists competitiveness and market positioning, and there are a number of organisations around that have carved out their market position solely by their CSR practices. They believe it assists operational efficiency, investor relations and access to capital, which is getting to the point you were discussing earlier. The conclusion they reached is the investment community increasingly views corporate social responsibility as an indicator of long-term risk management and good governance practices. Finally, there is the licence to operate issue.

If you look at the market incentives, the value of security, in simple terms, is the discounted cash flow you can expect from that asset. In assessing that discounted cash flow, you would look at the long-term discount appropriately. To the extent the information is available, you would expect the market would be taking that into account. The question is: is the information available?

Senator WONG—Which leads onto my next question. I have read some of the documents you are talking about; I think they have even been submitted to us or we have been referred to them. If the hypothetical perfect investor wanted to maximise their return over the long term in a company—it may have particular stakeholders which may provide a risk et cetera, staff retention and turnover, executive retention and turnover and those sorts of things—they would want, would they not, to know about things like long-term risk management and putting environmental risk or social risk in particular; would you agree with that?

Mr Brine—That is a reasonable proposition. I think you would be worried about investing in a corporation that did not have these risk management plans.

Senator WONG—Do you think that is really how the Australian market operates in practice?

Mr Brine—I think it is heading that way. The ASX corporate governance guidelines will help.

Mr Cooper—It is evolving. It is quite new.

Senator WONG—Would you agree that comparable and verifiable non-financial information might be important information for the market to consider if we think that investors want to take this approach?

Mr Brine—With all other things being constant, it would be useful if the non-financial information was comparable and presented in a consistent format.

Senator WONG—And verifiable presumably.

Mr Brine—Yes.

Senator WONG—Mr Brine, you made the point, and it is consistent with the evidence given to us, that we actually lag comparable economies, certainly in terms of reporting.

Mr Brine—Yes.

Senator WONG—You also referred to the business community in the UK. There has been a very choice by the Blair government to prioritise corporate responsibility as a policy area. There is a minister, a lot of research work has been done and there has been a lot of encouragement of companies to go down this path. Would you agree that the government action there has had some effect in changing behaviour?

Mr Brine—Yes, they have a number of useful programs. While we have not finished this work yet, we have been working with the Department of the Environment and Heritage and the Department of Families, Community Services and Indigenous Affairs. What we have found is that, while the activities are not occurring in a single department, a lot of the types of things that are being undertaken in the UK have also been undertaken in Australia.

Senator WONG—Therefore, what is your view about non-financial reporting?

Mr Brine—Our view is that we do not have sufficient understanding about what the users of non-financial information need at this point in time in order to step in and mandate that.

Senator WONG—I have to say that from our end it looks a little bit like Treasury has not wanted to be involved. The references were from the environment minister, the sustainability reporting from the department of the environment et cetera. That could just be a view from this side of the table, but I have to say that it looks as though Treasury regard this as a very low priority. If that is not correct, let me know. It is not being driven clearly out of Treasury.

Mr Brine—The sustainability debate within government is driven by Treasury. GRI was initially an environmental reporting mechanism and it evolved to cover other aspects of assessment.

Senator WONG—What do you mean by ‘sustainability debate’? Do you mean it in the way that we have been describing it: companies looking at long-term value, long-term risk? Is that what you mean?

Mr Murphy—No—a much broader policy discussion on sustainability of the Australian economy in various elements, whether it is environment, governance or security—any of those things. That is another point.

Mr Brine—The department of the environment has a dedicated division—it may be slightly smaller than that. They have dedicated units looking purely at non-financial reporting.

Mr Murphy—The treasury minister gives the reference to CAMAC. We can talk in woolly terms about these things, but when it gets down to it—

Senator WONG—What do you mean by ‘woolly terms’?

Mr Murphy—We can talk in terms of social responsibility. Even people here have said, ‘How do you define social responsibility?’

Senator WONG—I would like to make a point, because I am getting a little tired of this. Would you all agree that ‘the best interests of the company’ is a term that will be defined according to the facts of the particular situation and the particular company involved? Would you agree with that?

Mr Brine—Yes. That is how it has worked for hundreds of years.

Senator WONG—Correct. So therefore one could argue that is woolly?

Mr Murphy—No. I think you can look at judicial decisions, but social—

Senator WONG—Yes, because we have had a hundred years of common law decisions—more actually.

Mr Cooper—I think that is the point, though, because we have got to a stage—

Senator WONG—That is the point. Mr Cooper, I want to be really clear, because I do not want to have this argument again. In this discussion, I am actually not arguing for mandating, but I would like to have a discussion about this 'We can't do it because it's woolly.' It seems to me that, if you want to talk about things like who are stakeholders and what is sustainability—

Mr Murphy—No, I was not making that point.

Senator WONG—If I could finish, Mr Murphy—

Mr Murphy—I think you stopped me from speaking.

Senator WONG—I want to finish this point, which is that I would have thought that who the stakeholders are is something that a particular company would have to work out. Is that correct? What they regard as sustainability is something that a particular company will need to consider, just as the best interests of the company is something a company needs to consider. I find it a little difficult when people say, 'We don't want to do this because it is woolly,' when it seems to me that they assert that one concept has a greater definitional clarity and that other concepts have no definitional clarity and that therefore they should not be prioritised.

Mr Murphy—I do not agree with that position; I do not know whether people have said to you, 'You can't do this because it's woolly.' The point I was trying to make was that Treasury has given a reference to CAMAC, which is the body which gives advice to Treasury, ministers and the government in terms of corporate regulation, because of the importance it places on corporate social responsibility. One hopes that through that reference and this committee's work we can clarify this and put a bit more transparency into these concepts. That would be of long-term benefit. It is up to the committee to decide what recommendation it wants to make, but one would hope that the benefit we are going to get out of this public debate will be that it will give some guidance to companies.

Mr Cooper—If I can support that, what CAMAC has produced out of this snow storm—if you go on the Internet and look up 'corporate social responsibility', it is huge—is one of the best and most well put together discussion papers I have seen on this subject.

Senator WONG—I want to turn to this issue in Treasury. I will go back to tax briefly, and I do not particularly want to get bogged in the CGT. Has there been some analysis done of the effect of particular taxation regimes on corporate behaviour in this context? For example, CGT has been raised and depreciation has been raised. I do not have a particular view about those, but—talking about economic drivers—we all know that taxation is a driver of behaviour change. Has there been some coherent analysis done on whether or not particular aspects of the taxation regime might affect companies' considerations of their business practices in this context?

Mr Murphy—I do not know. To assist the committee, maybe the best thing we can do is check that out. If we find that work has been done and we can put our hands on it, we will give you a supplementary submission on that. That is the best we can do. We are just not sure.

Senator WONG—Has there been any economic modelling of sustainability risks, such as climate change or water?

Mr Murphy—There may be.

Senator WONG—Are you aware of anything in that area, Mr Brine?

Mr Brine—I was thinking that if it has been done it would have been done at a fairly high level and would not necessarily be tied to the CSR debate.

Mr Murphy—What is it particularly? Is it modelling on the sustainability of things like water? There has been a fair bit of work done on water, because that is a significant—

Senator WONG—The CEO of IAG suggested that there should be some economic modelling of risks from climate change.

Mr Murphy—From flood?

Senator WONG—Climate change.

Mr Murphy—Yes.

Senator WONG—There are various subsets of weather activities that you can put into the category.

Mr Murphy—Michael Hawker might do that.

Senator WONG—Yes.

Mr Murphy—Flood insurance.

Senator WONG—I have to say that a number of companies that have appeared before us have talked about the fact that one of the things they seek to manage is their exposure in whatever particular area of environmental risk. I wonder if there has been a macro level analysis by Treasury of that. What are the quantifiable risks to the Australian economy and the Australian corporate sector of climate change and a diminishing water supply?

Mr Murphy—There has been a fair bit of work done on climate change. Treasury has a view, but that would be done in the department of environment.

Senator WONG—What is Treasury’s view?

Mr Murphy—That goes into another policy area, but Treasury has very well-formed views on climate change and issues like that. It has given its policy advice to the government.

Senator WONG—I am not actually trying to play political games to find out what your advice is. I am interested in knowing whether or not it is regarded as a risk that needs to be managed and whether you have actually done any economic modelling of that.

Mr Murphy—It is regarded as a risk and it is of interest to Treasury. We have people working on environmental issues and climate change.

Senator WONG—Has there been modelling done?

Mr Murphy—There would have been. I take note of what Mr Brine said. It would probably be at a high level. If you are going to get into any really detailed modelling, it would probably be done in a reference of the Productivity Commission or something like that. We can check to see whether there have been any references.

Senator WONG—I presume that advice to government is not something that is public.

Mr Murphy—Anything that goes to the Productivity Commission becomes public but—

Senator WONG—Apart from references to the PC, is it something that has been disseminated to companies or discussed more broadly?

Mr Brine—No, we have not undertaken an education campaign. We meet regularly with Environment, and they have been undertaking programs to meet with businesses—and I am sure they explained this to you—explaining the economic impacts and long-term business costs of some of their decisions, even to the stage where they are advising them about how to get the most energy effectiveness out of their buildings.

Senator WONG—I refer to the cost-benefit analysis that was referred to before, the one that the ASX corporate governance council is engaged in. Your department are involved in that working group, aren't you?

Mr Murphy—The environment department is.

Senator WONG—I thought Treasury was. So you are not?

Mr Murphy—No. We do not usually get involved with the ASX corporate governance council.

Senator WONG—So you are not aware of whether that sort of information is going to be included in the cost-benefit analysis?

Mr Brine—No.

Senator WONG—Mr Cooper, I turn to the comment that you made about mining companies. Just remind me of the section of the act as to environment risk where you have to report it.

Mr Cooper—It is to 299(1)(f).

Senator WONG—Did you think the fact that that exists has encouraged more of the resources sector to report more broadly on the issues generally?

Mr Cooper—No. This is empirical, rather than being based on in-depth research. I think that with the forces that we are seeing a lot of the amelioration and improvement in these things is actually global. A lot of our large mining companies are multiregulated. Take BHP Billiton: it is regulated by all sorts of things. Because it is a DLC structure, there are UK and Australian requirements but it operates around the world, including in the US, so as an entity it absorbs a lot of these principles of regulatory systems. What tends to happen is that it brings the whole entity up to the highest level of regulation in any one of those areas, so to say that a provision in the Corporations Act has driven that change is ignoring the global forces.

Senator WONG—Or other regulation that might come into play?

Mr Cooper—Yes, and commonsense. With these big companies, one of the most important areas of value for them is their reputation and the value of their brand, so these things matter. On our own doorstep, events like Ok Tedi and so on demonstrate that these things are real and they are very important. It is not so much a matter of whether companies are reporting on these things; it is whether they are actually doing them.

Senator WONG—That is a view, Mr Cooper, and I agree with you. If people are going to report, I would like it to be comparable and verifiable, otherwise I do not really see the point in reporting other than as a PR exercise. Isn’t reporting one of the ways that you might potentially encourage behavioural change?

Mr Cooper—Potentially, yes. The ideal regulatory system would be one where people realise that it is in their own and the community’s interests to simply do these things and that you need regulation.

Senator WONG—I agree. But given the pretty compelling evidence before this committee that we lag behind comparable economies in terms of (a) activity and (b) reporting on this stuff, how do you say we should try to get to the point that you have just described?

Mr Cooper—I must admit that I have not had a lot of time to think about that. I am not familiar with that observation. That comes as a bit of a surprise, to be honest.

Senator WONG—I was interested in your opinion. I think you said, ‘My view is that companies understand this.’ I then have to ask you on what basis you say that. Apart from your interaction with companies as the corporate regulator, has there been any survey?

Mr Cooper—Done empirically, yes.

Senator WONG—What do you mean by ‘empirically’?

Mr Cooper—The interactions that we have with significant companies and what they tell us when we sit down and talk about these issues.

Senator WONG—But you have not talked to them about whether they understand what sustainability means?

Mr Cooper—No.

Senator WONG—As to whether they understand their directors' duties—and they can take into account stakeholders' duties—you have not asked them that?

Mr Cooper—No. We talk about our specific regulatory business. We do have conversations with companies about how they cope with different regulatory systems.

Senator WONG—I asked you, 'How do we get there?' If you want to take that on notice or do not wish to answer—

Mr Cooper—I keep going back to this global thing. There is no point in Australia cooking up its own little unique system here, because these issues are global.

Senator WONG—I agree with that. In fact, one would say some of the global companies are probably being driven by their participation in markets other than Australia, frankly.

Mr Cooper—Correct. You can point to the very large global companies like BP, GE and 3M. They might not be the best examples, but what is driving them is the realisation that behaving without regard to these sorts of principles causes them immense commercial damage. So economic forces play a part and professional analysts, the community, the media and governments make judgments on these organisations if they do not do the right thing. Take the Nike sweatshop labour issues and other things like that.

Senator WONG—That is a good example. To me this comes back to the role of government. We cannot assume markets can do something if they do not have the information. The reason something happened around Nike was that a book was written and there was a lot of publicity around the allegations. Some might say that a lot of their competitors were pretty lucky the book was not written about them and everyone focused on Nike because that is what people knew about.

Mr Cooper—But I put to you that the power of that—

Senator WONG—So we rely on people writing a book about sweatshops in China?

Mr Cooper—This is what social change is about. It is not always creating more laws that gets some of these results.

Senator WONG—Did I say that?

Mr Cooper—No, I am just making our position clear. You asked how we can fix this.

Senator WONG—Surely there is a middle ground between relying on somebody getting a book contract to write about sweatshops in China and mandating something.

Mr Cooper—But in annual reports you do not often read, ‘See page 57 for all of our dodgy behaviour around the world where we have broken a whole lot of laws.’ Disclosure does not tend to produce those kinds of results. So I think the real solution is a commercial one. Again, my proposition is that it is only the very largest companies that these sorts of discussions are relevant to, and they are already getting it in spades.

Senator WONG—We might have to disagree on that.

Mr Brine—One useful development might be the CRI, which is administered by the St James Ethics Centre. That is a mechanism that they have put together to—

Senator WONG—We have heard from them.

Mr Brine—That is a verified—

Senator WONG—I agree. It seems to me that, if you had some mechanism that elicited comparable and verifiable information, it might actually go some way to harnessing market mechanisms. My point is that I am not sure we necessarily harness market mechanisms. We say, ‘The market will sort it out,’ but we do not necessarily put out the right signals around what investors know and the choices that they make.

Mr Murphy—We have looked at the St James ethics index. Our preliminary view—we are probably going to wait for this committee’s report before we form a full view—is that there is value in it. The information they get out, which is audited by Ernst and Young, actually matches up with other information which we hear in the market, such as who has good corporate practices and who is socially responsible vis-a-vis those who are not as good. And we did not just do that out of curiosity; ministers asked us to talk to the St James Ethics Centre.

Senator WONG—Do you have a view about the GRI?

Mr Brine—It is a very detailed reporting mechanism, and I think our initial concern would be that a one-size-fits-all approach may not be the best across all, even listed, companies. That would be our initial concern. I think we would be conscious of that trade-off between companies providing information which is tailored to the needs of users and, on the other hand, consistency. GRI gets you consistency. But it is a very detailed and costly reporting requirement.

Senator WONG—We had evidence that the GRI version 4 or 3—I cannot remember where we are up to—is trying to address that issue about how you might build in more flexibility within the model to cater for the needs of smaller companies and companies in different sectors. Is Treasury across that, and do you have a view?

Mr Brine—I do not think we have had an opportunity yet to look at the new iteration. We know they have done work like the High 5! project, which was aimed at small business. I do not think the business community has had a lot of time to experiment with that new iteration of GRI, so we have not had feedback on that latest one.

Senator WONG—Moving off mandating reporting, which seems to have been the suggestion, do you think there is benefit in some sort of guidance being established to try and enable better comparability and better quality information?

Mr Brine—Yes.

Senator WONG—How could you do that?

Mr Brine—I think that there is opportunity for the government to take a leadership role in promoting the options that are available. The GRI does seem to be the world leading initiative.

Senator WONG—It is winning the numbers war, I suppose.

Mr Brine—Yes. One of the key advantages here, which was touched on before, is that you want information that can be presented to investors in other countries and is comparable with what they are asking from their own large corporations and the GRI would certainly seem to get you there. I think there is a role for the government to play where there are costs that can be removed by the government, perhaps in providing advice on how to apply GRI. I think it would be very useful if the government could make people who were interested in non-financial reporting aware of GRI and how to use it.

Senator WONG—So it is essentially a capacity building, resourcing sort of approach.

Mr Brine—Yes.

Senator WONG—It is fairly consistent with some of the evidence to the committee about what has been done internationally.

Mr Brine—Yes.

Senator WONG—I will go to the directors' duties issues very briefly. A couple of times the proposition for a safe harbour provision has been raised. Probably, in fairness, that has been a bit of a reaction to the suggestion that has been made by some that we think we cannot take into account stakeholder issues. I appreciate that is not your view of the law, Mr Murphy. I have to say it is not mine either. But the issue is that one might be dealing with a legal position versus the perception of a legal position, and lawyers tend to give fairly conservative advice.

One of the options obviously that Mr Beerworth proposed in his evidence to us was changes to the business judgment rule. If you have seen the *Hansard* you may recall he talked about the fact that when the Treasurer introduces this, if it is regarded as a success, the government will consider introducing it more generally. Do you have a view about this proposition?

Mr Murphy—That he wants to extend the safe harbour so it specifically covers—

Senator WONG—He wants to extend the business judgment rule to apply to stakeholders. Is that an easy way to put it: to have it apply to the situation where directors have regard to the interest of stakeholders?

Mr Brine—If you look at the safe harbour in section 180, there is a requirement that directors act in good faith for the safe harbour to apply. So simply extending that safe harbour to include section 181 obviously would not work. So then the question is: could we look more generally at a safe harbour or a proxy which a director—

Senator WONG—Can you explain what you just meant when you said that it would not work to extend 180?

Mr Brine—Subsection 180(2) provides that there is a safe harbour or that the statutory duty of care and diligence is taken to be met by a company officer provided a business judgment is made in good faith and for a proper purpose and that there is no material personal interest or gain for themselves. That first requirement—and it probably gets to the fundamental nature of fiduciary duties—is that for the safe harbour to apply the judgment must be exercised in good faith and for a proper purpose. So if we look at extending that concession to section 181, straightaway we see the problem that the concession to section 181 only applies if the business judgment is made in good faith and for a proper purpose, which is what the section 181 test is. So that concession—simply extending it—would be problematical.

The next thing we looked at was whether a proxy or a simple measure or some steps could put in place to say that if the directors have undertaken the steps then we could generally say they have acted in good faith. We found it very difficult to identify what those steps would be because good faith is such a fundamental notion to fiduciary duties. For example, you might argue that if you give money to a charity that should be deemed to be in good faith and for a proper purpose. But you can envisage situations where—

Senator WONG—I understand, but a safe harbour provision more generally?

Mr Cooper—That is what Mr Beerworth was saying.

Senator WONG—No, he was not. He was giving one option about how to deal with it.

Mr Cooper—Correct. You have to work through his logic to get to that. The real business judgment rule is the one that sits on all the state acts. It is not the Corporations Act that causes the problem; it is the myriad of state acts that create strict liability—

Senator WONG—Do you think that there is merit in a safe harbour provision—let us leave aside how it might be drafted at this stage or where exactly it would go—which clarified that in the best interests of the company it is permissible for directors to take into account long-term sustainable risks or environmental risks or appropriate stakeholders?

Mr Cooper—No.

Senator WONG—Why?

Mr Cooper—It is not a proper catalyst. You can argue, as I said before, that if you think that the state legislation creating all these problems is intolerable, then the business judgment rule fixes that. But if we tweaked the Corporations Act to permit people to have regard to some of these other interests would you automatically then need to have to decide that a business judgment rule—

Senator WONG—No.

Mr Cooper—That is what Mr Beerworth was saying. If you get to that logical point—

Senator WONG—I asked you a different question. I asked for your views about having a provision that indicated that directors were permitted to do this—in other words, clarify it.

Mr Cooper—I am not over the threshold of needing the clarification. I do not see any evidence other than people's assertions—

Senator WONG—Meredith Hellicar and the advice provided—

Mr Cooper—I think we have dealt with that.

Senator WONG—But you cannot just deal with that. If the view within the business community is that legally they are not able to have regard to stakeholders—

Mr Cooper—Mr Beerworth pointed out in his paper that that is not so.

Senator WONG—Let me finish. I am not asking you now about Mr Beerworth. If there is a view that having regard to stakeholder issues is not permitted—

Mr Cooper—I do not accept that premise.

Senator WONG—You do not accept that any company director in Australia thinks that—come on!

CHAIRMAN—It is not a matter of whether any do; it is a matter of whether it is a significant number.

Mr Cooper—It is whether, statistically, there is a credible issue to be dealt with, and I am not sure we have got over that threshold.

Senator WONG—Forget about whether or not they should or whether or not we agree there is a need. Do you have legal difficulties with the permissive provision?

Mr Cooper—Yes.

Senator WONG—Why?

Mr Cooper—Because, with our enforcement regulator hat on, given that our task is to enforce directors' duties—and I am using fairly blunt language here—and given the number of excuses a director can come up with where we think that there has been wrongdoing, it increases (1) the number of excuses and (2) the level of uncertainty about what is what.

Senator WONG—I would accept that if it were like the UK provision that was suggested, if you have a list of things. I accept what you are saying about uncertainty. But, if ‘permissive’ is simply articulating the law as it is, I have trouble with what you are now telling me.

Mr Cooper—It is like this: ‘Why did you do that?’ ‘There are these new provisions that allow you to talk about stakeholders.’ ‘What do you mean?’ You go off on a great big journey about what a stakeholder is, and it is all on the balance of probabilities as to whether or not they ought to be punished and we end up with a regulatory problem.

Senator WONG—That is the view of the agency, is it?

Mr Cooper—We are raising that. We are not saying it is insoluble but we are saying that that is a potential problem.

Senator WONG—Sorry, I took your evidence as being that you do not agree with it and you do not want it. Is that ASIC’s view?

Mr Cooper—On balance, yes. We do not.

Senator WONG—That is the commission’s view?

Mr Cooper—Yes.

Senator WONG—Is that the Treasurer’s view?

Mr Cooper—I do not know.

Senator WONG—Mr Murphy?

Mr Murphy—I think our view would be that the current law, the way it is at the moment, gives ample justification to directors to act in socially responsible ways. You do not need to amend the business judgment rule.

Senator WONG—Finally, we heard last night about procurement guidelines and the sustainability principles in—I have forgotten what your procurement guidelines are. CPG, are they—Commonwealth procurement guidelines?

Mr Murphy—Yes.

Senator WONG—Treasury has no role in monitoring that, has it?

Mr Murphy—They are administered by the Department of Finance and Administration, but they apply across the board, of course.

Senator WONG—There is an Audit Office report which is fairly damning, frankly, of the compliance with them. Does Treasury comply with the sustainability aspects of the guidelines?

Mr Murphy—I would hope so.

Senator WONG—You would be in a very small minority if you did.

Mr Murphy—Right—I had better not say anything in case we have not! I would have thought that—

Mr Brine—Treasury's internal Treasury procurement procedures manual alerts project officers to the impact of environmental legislation and green procurement guidelines and refers officers to further guidance on their applicability.

Senator WONG—Did you get a tick or a cross from the Audit Office? FaCSIA is coming next and I think they might have got a tick.

Mr Murphy—They are pretty good corporate citizens over in Community Services.

Mr Hackett—In terms of compliance with the ecologically sustainable development guidelines and the EPBC Act, we do comply. Our annual report contains information on that.

Senator WONG—So you report it. That was one aspect of them.

Mr Hackett—And we have information on our green procurement in our annual report.

Senator WONG—Can we go back, Mr Brine, to our discussion earlier on what government can do. Do you think one of the things government can do is to provide leadership with its behaviour?

Mr Brine—Yes. When we talk about standards, the business community ask: 'But what's the government doing? Is the government adhering to the same standards?' There is a reasonable expectation that the government will take a leadership role in these sorts of things.

Senator WONG—I think the evidence we heard on Monday night is that the agencies are doing worse than the companies in reporting.

Mr Cooper—Does that prove my theory that the economic imperative is what really drives these behaviours?

Senator WONG—We can have a very long and interesting relationship over the years, Mr Cooper! You are a brave man.

CHAIRMAN—There being no further questions, I thank each of you for appearing before the committee and for your contribution to our inquiry.

[7.10 pm]**HUNTER, Mr Stephen, Deputy Secretary, Department of Families, Community Services and Indigenous Affairs**

McKENZIE, Ms Cate, Group Manager, Communities, Department of Families, Community Services and Indigenous Affairs

CHAIRMAN—Welcome. I advise you that the parliament has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunities to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis for the claim. Having said that, I invite you to make an opening statement, at the conclusion of which I am sure we will have some questions.

Mr Hunter—Thank you for the opportunity to speak to FaCSIA's submission to the inquiry. I will be brief. I will touch on FaCSIA's role in relation to encouraging corporate social responsibility, give several practical examples of our activities as a department and finally remark on recent evidence and trends in corporate social responsibility in Australia, with specific reference to corporate philanthropy and corporate community involvement.

The role of the Department of Families, Community Services and Indigenous Affairs in encouraging corporate social responsibility is directly related to its purpose—that is, to improve the lives of Australians by helping to build the capacity and wellbeing of individuals, families and communities, with particular reference to Indigenous Australians. One of the outcomes we seek to achieve is more resilient communities. Encouraging corporate social responsibility is a means to serve this outcome.

Our role in encouraging corporate social responsibility is best characterised as one of leadership through awareness raising, research, facilitation, advocacy and setting an example. The primary vehicle for our work in this area is the Prime Minister's Community Business Partnership, established by the Prime Minister in 1999. The partnership is chaired by the Prime Minister. Its deputy chair is the Minister for Families, Community Services and Indigenous Affairs. It comprises a group of prominent Australians from the community and business sectors. It works to foster community business partnerships and promote corporate giving and corporate social responsibility. It has, as the Prime Minister has remarked, a catalytic role. Examples of its work in awareness raising are the Prime Minister's Awards for Excellence in Community Business Partnerships, Community Business Partnership Week and a corporate social responsibility essay competition. We also have a website and other communications activities.

The partnership's work in the facilitation of financial giving and community business partnerships includes two major initiatives. The Workplace Giving Australia initiative encourages medium and large businesses and Australian Public Service departments to establish workplace giving programs. The National Community Business Partnership Brokerage Service, which was seed-funded in 2003, has facilitated the development and expansion of around 200 community and business partnerships across Australia.

The partnership has also played an advocacy role by making recommendations to government, including in relation to taxation arrangements for individuals, families and business philanthropy. Examples of changes adopted by the government as a result of the work of the partnership are the introduction of a new form of charitable fund—prescribed private funds—in 2001 and the arrangements that enable Australians who make a regular pre-tax donation to a deductible gift recipient through payroll deductions to get an immediate tax benefit.

The partnership has also commissioned significant research to underpin its work and help in awareness raising. The most recent was the Giving Australia: Research on Philanthropy in Australian project, released in October 2005.

FaCSIA itself has taken a number of initiatives as examples of practical leadership. They include the FaCSIA triple bottom line report, which was the first by an Australian government department. We also have a number of partnerships with the banking sector in family income management activities for Indigenous communities and we work with disability business services to assist them in their commercial success, particularly through the marketing of their services to public and private purchasers.

Finally, I will just touch on some recent trends. Corporate social responsibility giving trends are positive. For example, the number of community business partnerships is growing. Around 300 nominations for the Prime Minister’s awards are received each year and about 25 per cent of those have been formed in the previous two years. There has been a significant increase in the amount of funding that business invests in community partnerships, rising from $195 million in 2000-2001 to $561 million in 2003-04. Since the introduction of prescribed private funds in 2001, 312 funds have been approved by the government, with a corpus under investment of around $334 million and grants of $52 million being made to charitable organisations.

CHAIRMAN—Generally, the practice of corporate responsibility activities has moved from what might be largely termed philanthropic activity alone to a broader model of social, environmental responsibility, long-term sustainability of the corporation and the like and to programs that are embedded into corporate operating systems. We have received one criticism with regard to the community business partnership arrangements. One of the submissions states:

… it lacks the resources, authority and profile to lift the understanding of corporate citizenship in Australia above its more narrow focus on corporate philanthropy.

What is your response to that sort of criticism?

Mr Hunter—It is certainly true that the partnership has put a great deal of work into encouraging philanthropy but, as the outline of its activities that I have just given suggests, it has taken a broader view than that. For example, it has done some work, including with the Business Council of Australia, to articulate the business case for corporate social responsibility and the various elements of that. Also, through the promotion of community and business partnerships, it is not in that area simply focusing on philanthropy; it is actually talking about and encouraging engagement between companies, corporations and communities, whether they be represented through non-government organisations or in other ways, to build relationships and develop the resilience and general wellbeing of communities. I think it has taken a broader view than one of philanthropy alone.

CHAIRMAN—In contrast to the Australian approach, the UK government coordinates and implements its policy on corporate responsibility through a single department—in its case, the Department of Trade and Industry. Some of the submissions have recommended that we should adopt a similar approach in Australia—for example, that the appropriate place to run corporate responsibility policy might be through the Department of Industry, Tourism and Resources. Do you find that there is a lot of crossover of responsibility between your department and other departments in running the partnership policy and programs or in the broader approach to corporate responsibility? If so, would there be any significant advantages in having a single agency run within Australia?

Mr Hunter—We certainly work closely with other agencies which take an interest in corporate social responsibility issues. Of course, the Treasury and the Department of the Environment and Heritage are important players in that regard. There is cross-government coordination and working together, and we maintain a keen interest in what each other is doing. As to the question of whether a single department having responsibility for it would be a good idea, I think those things are a matter for the government, but I am sure the government will be very interested in the committee's conclusions in that regard.

CHAIRMAN—Regarding KPMG's submission, their sustainability report for 2005 showed that, of Australia's top 100 listed companies, about 23 per cent produce sustainability reports. In contrast, the recent ANAO report on green procurement found that only two departments, yours and DEH, prepared sustainability reports. That was out of 71 government agencies that were surveyed, which represents about three per cent. So it would appear that government departments are lagging significantly behind the private sector as far as sustainability reporting is concerned. Should departments be setting a better example? If so, how can we encourage them to do so?

Mr Hunter—Part of our work is to encourage departments to play a stronger role in their social responsibility areas. Indeed, the *Triple bottom line* report is particularly intended to set an example. Again, the work that we have done through the community business partnership, in encouraging departments to establish or deepen and broaden their workplace giving programs, is also an example. I would not like to comment on the performance of other departments against a particular measure.

CHAIRMAN—Your submission refers to elements of taxation reform that have been implemented by the government, based on the recommendations of the partnership—the private charitable fund, pretax donations, deductible gift recipients, and the like. We have heard suggestions from other witnesses that there could be other tax reforms, with regard to both philanthropic issues and, for example, as we have just discussed with Treasury and ASIC, changes to capital gains tax to provide a longer term focus for investors. Have you had any indication of support from members of the partnership or individuals for further tax reform?

Mr Hunter—I am certainly aware that members of the partnership continue to take an interest in taxation reform. While I am not personally aware of the details of their current work, I feel confident in saying that they would continue to develop possibilities for consideration by the government.

CHAIRMAN—Is that as it relates to corporate responsibility and philanthropy or are you talking about broader taxation issues?

Mr Hunter—I am speaking more broadly. Unfortunately, I do not have the details of exactly what they have under consideration at this time. As to whether it relates specifically to corporate social responsibility, I would need to take that on notice.

CHAIRMAN—Thank you.

Senator WONG—I am interested in how you determine areas of priority for partnership? Does FaCSIA or someone else within government suggest particular policy areas of priority—locational areas, target groups or whatever—for the partnership program to focus on and try and develop a partnership with business? How is that done? Rather than being demand driven, is it more supply driven in the sense that, in the areas that the businesses are prepared to do something, that is where you go?

Mr Hunter—To give you an example in the workplace giving field, we have tended to focus on both Australian government departments and larger organisations with significant payrolls. Generally speaking, I think that is where companies are interested and willing to take up corporate social responsibility initiatives. I do not believe we have been short of companies that are interested in that.

Senator WONG—I suppose what I am clarifying is whether there is a process of saying: ‘What are the areas of need where we’—that is, the government—‘think we ought to focus our attention? We are going to go out and try to engage business around that.’ Let us take the northern suburbs of Adelaide for example. There are very high levels of youth unemployment and intergenerational unemployment. You are from FaCSIA so you would know that. Would you say, ‘We are going to try to work out how we might get some sort of partnership arrangements for various things in Elizabeth,’ or ‘Let’s go and talk to companies and see what they want to do.’

Mr Hunter—It is a bit of both.

Senator WONG—Do you actually have a process there for the first part? Who determines those priorities?

Mr Hunter—The partnership itself, for example, has funded some work which has been focusing in particular on communities in stress.

Senator WONG—Is this your research project that you referred to in your submission or are they more at a macro level?

Mr Hunter—I am just trying to recall the exact one. Unless I can find it as we go along, I will come back to you about that. Just in relation to the general priority setting, for example, elements of the Prime Minister’s Community Business Partnership awards are directed at large business, medium sized business and small business. It is also state by state so it attempts to also cover Australia geographically. But I think the answer to your question is that it is a relatively broad brush approach. It is not structured around particular priorities.

Senator WONG—So you would tend to look for opportunities where companies might be interested in doing something rather than doing it more the other way around?

Mr Hunter—Yes, but encouraging companies generally. In many cases what we are about through the research, awareness-raising and promotion of the general concept of corporate social responsibility is that companies pick it up and run with it rather than necessarily having to have a formal partnership or relationship.

Senator WONG—But do you engage with that?

Mr Hunter—With the way in which the companies then pick it up and run with it?

Senator WONG—Yes.

Mr Hunter—Yes, around some particular aspects. I would use the workplace giving side of things as an example. We actually engage with individual companies to provide them with advice and assistance.

Senator WONG—About how they might go about it?

Mr Hunter—Yes.

Senator WONG—Would it be correct to say—and I am not suggesting you do not do other things—that it is primarily philanthropic? Would you agree that the focus is primarily philanthropic? Companies might give to and engage with a charity and ask their staff to do volunteer work for a particular charity. But the company itself is not necessarily engaged in the front-line delivery of assistance.

Mr Hunter—As I mentioned before, there is a very strong philanthropic element in the way the work of the community business partnership is done. But it has not been restricted to that. So, for example, there is the general idea of encouraging companies to develop partnerships in their own communities, whether broadly or narrowly, to serve a range of objectives for the companies, and someone has to work that out. It goes beyond philanthropy, I think.

Senator WONG—I am not at all trying to be critical of FaCSIA here, but it really goes back to the question that the chairperson asked. From my perspective, it seems that what we are engaged in is looking at ways in which companies can encourage more sustainable business behaviour. It seems to me that sustainable business behaviour means that you have regard to your stakeholders and environmental risk. That may mean different things for different companies with regard to how you choose to engage in that. There are those who would say that having the corporate responsibility program in a community services department means that business as a whole is really not going to engage with it or be drawn to it particularly. Maybe the good businesses or those who wish to will engage in philanthropy or workplace giving or whatever you do, but it is never going to be core business.

Mr Hunter—I must say I had never thought about that before you posed the question. But when companies, in the modern language of this, think about sustainability, I think they now typically think about the economic, the environmental and the social dimensions. There are many more dimensions, but people tend to divide it up into that triangle. If that is correct, if that is the way they think about it, I think they might have thought it odd that the department which had responsibility for the social policy dimension was not involved.

Senator WONG—I am glad you do still think you have that!

Mr Hunter—So I would not have thought that that was a barrier to it, because I think people's understanding of it has those dimensions.

Senator WONG—Regardless of what criticisms people might make of the structure of the particular program, from your involvement in it do you think that government can make a difference through education, through capacity building, through dialogue in actually changing corporate behaviour?

Mr Hunter—I think so. With the development of these ideas and these concepts, you are in an adoption phase, essentially. The notion of a corporate social responsibility is a relatively new one, and awareness raising and research and the other sorts of things that I have mentioned can actually have quite a big impact when you are in that phase of the development of ideas and practices within communities and businesses. So I would say that in this phase, yes, encouragement can be a very effective tool.

Senator WONG—What are the most effective things government can do? In terms of your experience of this program, what have been the most effective things governments have done in terms of encouraging companies to engage with the community?

Mr Hunter—This initiative has been going since 1999, so it is early days.

Senator WONG—That is a very public-servant comment, I have to say, Mr Hunter!

Mr Hunter—Well, it is, especially using the tools that we do. In terms of the most effective things, certainly in my own experience—and perhaps this is a bit personal—attending, for example, the Prime Minister's Community Business Partnership awards and having a very large room full of prominent Australian businesspeople seeing what others are doing, often their competitors, and getting plaudits for, is powerful, not just in terms of their thinking about their competitive position but also in terms of—

Senator WONG—Best practice demonstrations, essentially.

Mr Hunter—Yes, ideas and those sorts of things. So I would say that is particularly effective.

Senator WONG—Thanks very much.

CHAIRMAN—Thanks, Mr Hunter and Ms McKenzie, for appearing before the committee and for your contribution to our inquiry. It has been very helpful.

Committee adjourned at 7.33 pm