



CORPORATE SOCIAL RESPONSIBILITY

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There are some who argue that the only way to survive the next wave of innovation will be to better understand and engage with our natural, social and financial resources. Richard Branson, in his bestseller “*Screw Business as Usual*”, exhorts us to stop doing business as usual, as it is wrecking the planet, and to transform companies into a force for good. Michael Porter, the acclaimed Harvard Professor, has been talking in recent years about his own take on this, “Creating Shared Value”, which is based on the premise that the competitiveness of a company and the health of the communities around it are mutually dependent.

The result is that Corporate Social Responsibility (“**CSR**”) has become a hot topic for business owners and boards, and organisations big and small are adopting CSR statements, amid growing cynicism from the public that it is all a green-wash. Litigation and Insolvency Partner, Sarah Davies, considers the legal framework for CSR and what this means for businesses operating in Australia.

RISK MANAGEMENT

CSR is generally understood to mean that companies have a degree of responsibility, not only for the economic consequences of their activities, but also for the social and environmental implications. “Social Accounting” or “Triple Bottom Line Accounting” are methods of measuring, monitoring, and reporting to stakeholders about the social and environmental effects of the organisation’s actions. In that way, it is intended to provide a more holistic view of the organisation’s activities.

Despite the rhetoric, the conundrum for many boards and managers is that there is a lack of empirical evidence to support the financial benefit to the business of adopting CSR. On one view, wealth maximisation for the owners (whether they are the business founders or shareholders) is the goal of every business. But whether companies wish to promote themselves as being good corporate citizens or not, there is a sound risk mitigation argument that supports the focus on CSR activities. That is because one of the welcome outcomes of the CSR process is that it effectively identifies and monitors risk within the organisation.

CURRENT FRAMEWORK

While there is no specific CSR reporting requirement under Australian law, organisations are becoming aware of community pressure to report on factors other than the financial bottom line. There are already many laws in Australia that regulate the behaviour of businesses. Some important examples include:

- **Work Health & Safety:** The *Work Health and Safety* legislation in each State provides that any person conducting a business owes significant duties to ensure the health and safety of employees and other people who may be put at risk as a consequence of the business activities.
- **Fair Work:** The *Fair Work Act* provides that employees are granted a safety net of minimum statutory employment conditions and, for many employees, the right to make a claim for reinstatement or compensation if they are

unfairly dismissed from employment (that is, the dismissal was harsh, unjust or unreasonable and involved an employee under the wage threshold). All employees are protected from unlawful termination (that is, a termination for discriminatory reasons).

Bullying: The *Fair Work Act* also aims to prevent workplace bullying and to require employers to take steps to eradicate cultures that encourage bullying.

Anti-discrimination: There are Federal and State Acts that prohibit discrimination and harassment in the workplace and require employers to provide equal employment opportunities. The Human Rights Commission resolves complaints of discrimination or breaches of human rights under Federal laws.

Gender equality: The *Workplace Gender Equality Act* aims to promote and improve gender equality (including equal remuneration) in the workplace. It requires non-public sector employers with 100 or more staff to submit a report to the Workplace Gender Equality Agency each year.

Australian Consumer Law: The *Australian Consumer Law* sets out a national body of law in relation to unfair business practices such as misleading and deceptive conduct, consumer guarantees when buying goods and services, and product safety laws.

Anti-competitive behaviour: The *Competition and Consumer Act* prevents anti-competitive behaviour between businesses, such as anti-competitive agreements, imposing minimum resale prices, misuse of market power and predatory pricing. The Australian Competition and Consumer Commission published comprehensive guides about these issues.

Marketing restrictions: There are a number of other laws governing the way a business can go about its activities, including the *Do Not Call Register Act*, the *Spam Act*, various telemarketing standards established under the *Telecommunications Act*, and the *Privacy Act*.

Annual Reports: The *Corporations Act* provides that if a company is subject to any significant environmental legislation, then the annual directors' report must give details of its compliance with the legislation. It has been suggested that this might extend to the likely impact of climate change on the business.

Product disclosure statements: The *Corporations Act* also requires that a product

disclosure statement relating to an investment product must include a statement about the extent to which labour standards or environmental, social or ethical considerations will be taken into account in assessing the investment. It is increasingly likely that institutional investors will look to CSR reports to make decisions about the quality of the management team, and the company's longevity and profitability.

Listed companies: At least in the listed environment, companies need to have regard to CSR in light of the *ASX Corporate Governance Principles and Recommendations*. Principle 3 is that companies should promote ethical and responsible decision making. It is arguable that this will include the sustainability of the business having regard to its environmental impact.

Environmental protection: Each of the States has a raft of environmental protection legislation that deals with the protection of certain environments, the process for approval of developments, and prosecution of breaches. If you operate in an industry where environmental impact is likely to occur, then it is a very good idea to be familiar with the operation of the various laws. The *Federal Environment Protection and Biodiversity Conservation Act* seeks to protect aspects of the environment that are of national significance by putting in place a process for the assessment and approval of activities that are likely to have significant impacts on the environment. The *National Greenhouse and Energy Reporting Act* also imposes reporting obligations on companies to report on greenhouse gas emissions, energy use and energy production if they meet certain thresholds. It will be interesting to see what effect the repeal of the carbon tax has on this legislation, and whether or not the wind-back of some of this legislation is on the agenda for the Abbott government.

Green buildings: In addition, as the Federal and State governments drive towards reducing greenhouse gas emissions, businesses face a raft of government initiatives designed to make buildings more energy efficient.

REPUTATIONAL DAMAGE

Even without specific human rights legislation, businesses that operate within Australia have a lot to comply with. So despite consumer cynicism, there are good reasons to adopt an appropriate CSR strategy that can help minimize the risk of failing to identify and monitor these legal obligations.

Business owners and directors need not pursue profit maximisation to the exclusion of all other goals, but the reality is that CSR is often only considered an option where it has a neutral or positive impact on profitability.

However, there are good arguments to suggest that those controlling the business must consider the impact the organisation has on other stakeholders if they want to manage potential reputational damage. That becomes even more relevant considering the power of publishing

platforms such as social media, where negative publicity can spread quickly and exponentially, and can remain accessible online indefinitely.

In addition, government departments and large corporations are increasingly requiring suppliers to have CSR policies in place as a condition of tendering for their work, so having a CSR framework in place becomes less about the legal requirements and more of a commercial incentive.



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