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From Corporation to Cooperation: A Meaningful Model for Corporate Purpose

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Abstract

In 2015, the United Nations adopted Sustainable Development Goals ('SDGs') with a full implementation target of 2030. The breadth and depth of the 17 Goals are significant, including ending poverty, offering quality education, affordable and clean energy, and responsible consumption and production, to name a few. Overlapping with the SDGs is the Planetary Boundary Framework ('PBF') designed to ensure a safe operating space for humanity while protecting Earth's biophysical systems and processes. The SDGs and PBF are integral for the continued development and survival of future generations of humanity, and indeed the planet. These are both ambitious agendas to implement requiring collaboration by all stakeholders and countries, however, it is becoming evident that corporate participation is critical to the achievement of both the SDGs and the PBF. Scholars and activists have increasingly emphasised a strengthening of corporate social responsibility ('CSR') regimes and a greater emphasis on shared purpose as key planks in aligning companies and company law with these critical sustainability goals. Although companies were historically formed to solve a societal problem, a focus on profit maximisation has resulted in unfavourable practices that impact marginalised communities and challenge the sustainability of communities and the planet. Contrasted with the corporation, another type of collective business model known as the cooperative appears to have maintained a set of principles and values that extend beyond profit to align with and support many of the SDGs and the PBF. In this article, we analyse the evolution of the company as contrasted with the cooperative to argue that corporate purpose could be defined by reference to cooperative principles, the SDGs, and the PBF to ensure corporations make meaningful contributions to society and the planet.

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I Introduction

This article contributes to the inter-disciplinary debate on reimagining corporate purpose by drawing together the themes of the Sustainable Development Goals ('SDGs'), the Planetary Boundary Framework ('PBF'), and business cooperative principles. In investigating the notion that our corporate laws and regulation are not fit for purpose, we use the cooperative, an analogous business structure, as our lens. We explore the overarching question: What can we learn from the cooperative model in articulating corporate purpose to improve the sustainability of the corporation as a business model?

A fundamental difference between corporations law and cooperatives law is how the organisation is defined, and how the law protects distinguishing features of the organisation.¹ In this article, distributing cooperatives are compared to corporations. A distributing cooperative represents a viable alternative to the corporation, as structurally both business forms are the most aligned, taking into account the range of other incorporated entities, including other cooperative forms. Distributing cooperatives are for-profit organisations that distribute profits to members in the form of dividends and rebates that either enhance member services or reduce costs.² In the case of the cooperative, competitiveness, success, and survival rely on the application of cooperative principles.³ This is exemplified by cooperatives' focus on community and social outcomes that have proven to be resilient despite a global financial crisis ('GFC')⁴ and COVID-19 pandemic.⁵

A cooperative is defined as an incorporated entity that meets members' common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled structure.⁶ It is observed that cooperative members are more likely to bail in and save a cooperative and members' jobs, rather than rely on an external bail-

¹ See Antonio Fici, 'The Essential Role of Cooperative Law' [2014] (4) *Dovenschmidt Quarterly* 147, 148.

² Distributing cooperatives can be contrasted with non-distributing cooperatives, which are a species of not-for-profit entities that retain any surplus to satisfy mission and statements of purpose. For a general overview of cooperatives and their structure see Todd Green, 'Co-operatives in Australia – An Overview' in Australian Bureau of Statistics, *Year Book Australia, 2012*, No 92 (Catalogue No 1301.0, 24 May 2012) 46 <<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/1301.0~2012~Main%20Features~Co-operatives%20in%20Australia%20-%20an%20overview~285>>.

³ See Sonia Novkovic, 'Defining the Co-operative Difference' (2008) 37(6) *The Journal of Socio-Economics* 2168.

⁴ See Johnston Birchall and Lou Hammond Ketilson, *Resilience of the Cooperative Business Model in Times of Crisis* (International Labour Organization, 2009).

⁵ Business Council of Co-operatives and Mutuals, *Leading the Resilience: Co-operative and Mutual Business through COVID-19* (Report, November 2020) 57 ('BCCM Resilience Report'); Carlo Borzaga, Chiara Carini and Ermanno Celeste Tortia, 'Co-operative Enterprise Anti-cyclicality and the Economic Crisis: A Comparative Analysis of Employment Dynamics in Italy' (2022) 93(3) *Annals of Public and Cooperative Economics* 551.

⁶ Defined in more detail in Section III.

out⁷ as seen with corporations.⁸ In the case of the corporation, free market capitalism policies of the last four decades, with their short-term profit-driven corporate agendas, have arguably resulted in inequitable resource allocation,⁹ environmental damage, and increased pressure on planetary systems.¹⁰ The question remains as to how should the profit-driven view of corporate entities adapt to better serve society.

The perennial debate as to the broader purpose of the corporation beyond shareholder primacy¹¹ has gained more traction in the twenty-first century in parallel with greater awareness of a potential ‘epoch’ referred to as the Anthropocene. The Anthropocene describes the current planetary age where human activity is the dominant influence on climate and the environment.¹² Human activity has created a plethora of sustainability issues for the planet. Evidence from the 2009 PBF suggests that human activities have altered the functioning of Earth

⁷ See BCCM Resilience Report (n 5) for examples, including: Peter Lock, Heritage Bank: ‘The co-operative and mutual sector probably tends to look after its people a little bit more and is more attuned to that approach. That comes through because we’re not driven by the profit-maximization motive. If you were completely driven by the profit motive, you’d be trying to cut your costs very, very quickly in COVID, whereas we’re trying to keep people, as much as we can, employed through this’ (at 40); similarly, David Fraser, Capricorn Society: ‘I believe that we’ve got a responsibility to our members to do what they can’t do for themselves. We have a different purpose to the investor owned model. There is a social purpose, and I generally believe that it has a real meaning’ (at 55). Support provided included early dividend payment, rebates, reduced fees and financial relief packages: at 54–55. See also Nick Romeo, ‘How Mondragon Became the World’s Largest Co-op’ *The New Yorker* (online, 22 August 2022) <<https://www.newyorker.com/business/currency/how-mondragon-became-the-worlds-largest-co-op>>.

⁸ The contrast in corporate attitude is evident in the following article by Gareth Hutchens: ‘JobKeeper Recipients Paying Millions in Bonuses to their Executives, Research Reveals’ *ABC News* (online, 10 September 2020) <https://www.abc.net.au/news/2020-09-10/25-companies-paid-executives-bonuses-despite-claiming-jobkeeper/12647688?utm_campaign=abc_news_web&utm_content=link&utm_medium=content_shared&utm_source=abc_news_web>.

⁹ Anthony Shorrocks, James Davies and Rodrigo Lluberas, *Global Wealth Report 2021* (Credit Suisse, June 2021).

¹⁰ See Stockholm Resilience Centre, ‘Planetary Boundaries’ (Web Page) <<https://www.stockholmresilience.org/research/planetary-boundaries.html>>; see especially Johan Rockström et al, ‘Planetary Boundaries: Exploring the Safe Operating Space for Humanity’ (2009) 14(2) *Ecology and Society* 32; Romy Zyngier, ‘Australia Has Overshot Three Planetary Boundaries Based on How We Use Land’ *The Conversation* (6 June 2022) <<https://theconversation.com/australia-has-overshot-three-planetary-boundaries-based-on-how-we-use-land-183728>>.

¹¹ This is a field of corporate law scholarship where we certainly stand on the shoulders of giants. With great respect to the scholarship since the beginning of this century, we reference some of the more contemporary literature that has inspired our thinking: Beate Sjøfjell and Mark B Taylor, ‘Clash of Norms: Shareholder Primacy vs Sustainable Corporate Purpose’ (2019) 13(3) *International and Comparative Corporate Law Journal* 40; Victoria Schnure Baumfield, ‘Stakeholder Theory from a Management Perspective: Bridging the Shareholder/Stakeholder Divide’ (2016) 31 *Australian Journal of Corporate Law* 187; Lorraine Talbot, ‘Trying to Save the World with Company Law? Some Problems’ (2016) 36(3) *Legal Studies* 513.

¹² Despite widespread support, debate continues over the commencement of the Anthropocene as an epoch. See PJ Crutzen, ‘We Live in the Anthropocene, So Will Our Grandchildren’ (2021) 91(1) *Herald of the Russian Academy of Sciences* 13, 15.

systems with six planetary boundaries now breached.¹³ The concept of planetary boundaries has since been used to develop global sustainability laws and policies.¹⁴ In this article, we reflect on whether the cooperative business structure, cooperative principles and guiding values provide a template to better organise for-profit corporations for a less destructive and more sustainable existence. These thoughts are contextualised within the corporate law discipline and the findings have global relevance.

The existing cooperative business structure, in contrast to the corporate structure, displays elements of sustainability through its seven definitional principles: voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education, training and information; cooperation among cooperatives; and concern for the community.¹⁵ Cooperative business structures demonstrate that a model for collective business cooperation has always existed and research interest in such alternative business models has increased in contemporary times.¹⁶ More broadly, potential frameworks for cooperative corporate purpose

¹³ Katherine Richardson et al, 'Earth Beyond Six of Nine Planetary Boundaries' (2023) 9(37) *Science Advances* eadh2458; Linn Persson et al, 'Outside the Safe Operating Space of the Planetary Boundary for Novel Entities' (2022) 56(3) *Environmental Science and Technology* 1510.

¹⁴ Louis J Kotzé and Duncan French, 'Staying Within the Planet's "Safe Operating Space"? Law and the Planetary Boundaries' in Duncan French and Louis J Kotzé (eds), *Research Handbook on Law, Governance and Planetary Boundaries* (Edward Elgar 2021) 1. For nitrogen policy examples in Europe and the USA, see Xuan Xi and Yulin Zhang, 'Implementation of Environmental Regulation Strategies for Nitrogen Pollution in River Basins: A Stakeholder Game Perspective' (2022) 29(27) *Environmental Science and Pollution Research* 41168; for Australia, see Anita Xie and Ilona Millar, 'Observations on Australia's Recent Performance Against International Environmental Laws' (2021) 35(7/8) *Australian Environment Review* 185.

¹⁵ The cooperative principles were officially recognised but not listed in the *Co-operation, Community Settlement, and Credit Act 1923* (NSW). The *Co-operatives Act 1992* (NSW) s 6 states that 'a reference to co-operative principles is a reference to the principles adopted by the International Co-operative Alliance' and provides a description of the six of the seven cooperative principles. The *Corporations Act 2001* (Cth) does not recognise cooperatives as separate entities although it does recognise a cooperative company when the company commits to the cooperative principles in its internal rules. The *Co-operatives National Law 2012* (adopted in New South Wales, for example, under the *Co-operatives (Adoption of National Law) Act 2012* (NSW)) s 10 adopts the text from the *Co-operatives Act 1992*. While the text is similar to the ICA text, note that the Australian spelling of cooperatives includes a hyphen and Australian law qualifies Principle 7 with additional text, 'While focusing on member needs', before the ICA text that co-operatives work for the sustainable development of their communities through policies accepted by their members: see International Cooperative Alliance, 'Cooperative Identity, Values and Principles' <<https://www.ica.coop/en/cooperatives/cooperative-identity>> (accessed 30 June 2024).

¹⁶ Andres Felipe Camargo Benavides and Michel Ehrenhard, 'Rediscovering the Cooperative Enterprise: A Systematic Review of Current Topics and Avenues for Future Research' (2021) 32(5) *Voluntas* 964, 964.

exist in the United Nations 17 SDGs,¹⁷ and the PBF¹⁸ developed by the Stockholm Resilience Centre.¹⁹

Currently, legislation that enables corporate registration and regulates the corporate form generally provides comprehensive instruction for corporate operations.²⁰ However, any statement as to the public interest in allowing incorporation or a requirement as to the purpose of the corporation is generally absent from such legislation. This vacuum around purpose is not evident in cooperative business structures where the mission is at the forefront. Consequently, by taking the cooperative business model as a starting point, the corporate purpose could be redefined by reference to the SDGs and the PBF to facilitate corporations that wish to make meaningful contributions to society and the planet through sustainability values.

Our contribution to the corporate purpose debate is threefold. First, we reflect on and align the corporate purpose debate through the lens of cooperative business structures. In doing so, we bring together a cross-disciplinary discussion of several relevant literatures, from law and business, in the hopes of adding fresh perspectives to the corporate purpose debate. Secondly, in aligning the corporate purpose debate through the lens of cooperative business structures, we show how shareholder primacy theory and stakeholder theory co-exist to enhance the longevity of the corporate form. Thirdly, we have selected two globally recognised sustainability frameworks (SDGs and PBF) as the basis of comparison of cooperative and corporate purpose.²¹ These overarching models of sustainability were chosen as evaluative frameworks because of their universality and credibility. The SDGs are socially orientated, people-focused goals derived from the much

¹⁷ See United Nations, 'Sustainable Development Goals – The 17 Goals' (Web Page) <<https://sdgs.un.org/goals>> ('Sustainable Development Goals – The 17 Goals').

¹⁸ See Rockström et al (n 10); Will Steffen et al, 'Planetary Boundaries: Guiding Human Development on a Changing Planet' (2015) 347(6223) *Science* 736.

¹⁹ Stockholm Resilience Centre (n 10).

²⁰ See *Corporations Act 2001* (Cth).

²¹ We thank the reviewer for suggesting other principles such as Global Reporting Index (GRI), Principles of Responsible Investing (PRI) and the Taskforce on Climate-Related Financial Disclosures (TCFD). However, we preferred to avoid voluntary disclosure-based regimes, due to the second order problem of 'greenwashing' – do companies who voluntarily sign on to these disclosure compacts actually do what they say they do? Greenwashing is a broad term to describe many forms of misleading environmental communication: Thomas P Lyon and A Wren Montgomery, 'The Means and End of Greenwash' (2015) 28(2) *Organization and Environment* 223; Lucia Gatti, Peter Seele and Lars Rademacher, 'Grey Zone In – Greenwash Out. A Review of Greenwashing Research and Implications for the Voluntary-Mandatory Transition of CSR' (2019) 4 *International Journal of Corporate Social Responsibility* 6. More recently, 'greenwashing' encompasses overstatements of environmental, social or governance disclosures according to a review by the Australian Securities and Investments Commission (ASIC) during 2021 of the socially responsible funds industry: Cathie Armour, 'What is "Greenwashing" and What Are Its Potential Threats?' *ASIC News Centre Article* (7 July 2021) <<https://asic.gov.au/about-asic/news-centre/articles/what-is-greenwashing-and-what-are-its-potential-threats/>>.

broader Global Compact principles,²² whereas the PBF reminds us to insert scientific learning into the scholarship²³ on sustainability. The physical and biophysical elements of the PBF provide a direct link to corporate and cooperative activity, recognising the physical damage to air, water, and land wrought by profit-making activity.

In this article, we demonstrate how cooperative values can intermediate between corporate purpose and values of sustainability in a more meaningful way. This article suggests that engagement with the SDGs and the PBF would enhance the debate as to corporate purpose in the context of sustainable business. This action provides an opportunity for corporate law to establish an overarching corporate purpose for all businesses from a societal perspective and to refocus the lens through which we view the world to achieve a more equitable distribution, and sustainable use, of natural resources. The key elements that underpin the SDGs, people, prosperity, planet, partnership, and peace, illustrate the synergy that exists between cooperative business principles and the SDGs. It is timely to consider how the role of cooperation in cooperative business models can be applied to cooperative corporate purpose to help achieve economic, environmental, and social goals.

In embarking on the comparison of corporate purpose through the cooperative experience, Part II of this article evaluates the evolution of corporate purpose while Part III looks at the evolution of cooperative principles and values as contrasted with corporations. Part IV considers two frameworks for cooperative purpose, the SDGs and the PBF. Part V concludes by contending that to facilitate a future that is more sustainable and equitable, a holistic approach is needed that considers environmental, social, and resource aspects. Combining environmental and biophysical environmental limits with the United Nations SDGs identifies critical goals that, once met, can facilitate aspirational goals. Progress in meeting these goals could accelerate if frameworks based on cooperative principles, the SDGs, and PBF are adopted by corporations, balancing between collective wealth and private wealth. Ultimately, it is suggested that the development of a cooperative style of corporate purpose will support economic growth and address social and environmental problems.

²² The Global Compact principles ‘mark the beginning of a global corporate citizenship initiative’ by the UN in the early 2000s according to the speech by Kofi Annan referred to in Georg Kell, ‘The Global Compact: Selected Experiences and Reflections’ (2005) 59(1–2) *Journal of Business Ethics* 69, 69.

²³ Kotzé and French (n 14).

II A Precip of Corporate Purpose

A *What is a Corporation?*

A corporation as enabled in modern statutes is defined simply in terms of a business structure. A corporation is a legal entity that is created by a single person or collection of persons who apply through the statutory process. Generally, incorporation was available in Anglo-US settings by the mid to late eighteenth century, with unlimited liability partnerships or limited liability corporations the main two business structures available to for-profit entrepreneurs.²⁴ It has been argued that generally available incorporation and limited liability were only ever intended by the UK Parliament to be granted to genuinely entrepreneurial large-scale public enterprises with some public good,²⁵ nevertheless that is not how the House of Lords interpreted it in *Salomon v Salomon & Co Ltd*.²⁶ Ever since the *Salomon* case, the law treats a corporation, regardless of its antecedents, as a legal person that has standing to sue and be sued, distinct from its members and shareholders. The legal independence of a corporation prevents members and shareholders from accruing personal liability for corporate debts.

The limited liability protection for members afforded by domestic legislation such as Australia's *Corporations Act 2001* (Cth) has long been debated as an enabler for business operators and owners to utilise corporations to externalise losses or damage and personally avoid costs and fines associated with irresponsible corporate conduct. The corporate form has been used to cloak unethical business practices that cause financial harm to consumers of goods and services,²⁷ to shield harmful product liability claims of tort claimants,²⁸ and to defer

²⁴ Naomi R Lamoreaux, 'Partnerships, Corporations, and the Theory of the Firm' (1998) 88(2) *The American Economic Review* 66.

²⁵ Paddy Ireland, 'The Rise of the Limited Liability Company' (1984) 12 *International Journal of the Sociology of Law* 239; Michael J Whincop 'Overcoming Corporate Law: Instrumentalism, Pragmatism and the Separate Legal Entity Concept' (1997) 15(7) *Company and Securities Law Journal* 411, 419.

²⁶ *Salomon v Salomon & Co Ltd* [1897] AC 22.

²⁷ Demonstrated recently by the Royal Commission into banking and financial services in Australia, which uncovered many unethical business practices in the industry including the large corporate banks and insurers. See Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Justice Kenneth Hayne, Commissioner), *Final Report* (2019); John Singleton and James Reveley, 'How Exceptional Is Australian Financial Sector Misconduct? The Hayne Royal Commission Revisited' (2020) 14(2) *Law and Financial Markets Review* 77. Singleton and Reveley argue that Australia's corporate financial sector is no worse than other established financial markets such as US and UK, it is just that Australia held a Royal Commission that exposed its unethical practices.

²⁸ We refer here by way of example to the long-running corporate scandal involving the James Hardie Group of companies and the avoidance of long-term liabilities arising from asbestos-related disease in Australia. See Edwina Dunn, 'James Hardie: No Soul to Be Damned and No Body to Be Kicked' (2005) 27(2) *Sydney Law Review* 339; Phillip Lipton, 'The Mythology of *Salomon's Case* and the Law Dealing with the Tort Liabilities of Corporate

externalities from operations such as environmental damage.²⁹ Although it is not only business practices as performed by corporations that have these unethical or harmful impacts, the corporate form, limited liability, the separate legal entity doctrine and de-regulated corporate constitutions facilitate this behaviour. Corporate law scholarship is indebted to Professor Lorraine Talbot, who reminds us ‘that most critical scholars’ criticism of shareholder value is not a criticism of profit per se but of profit that is extracted in socially undesirable and destructive ways’.³⁰ The introduction of corporate purpose linked to SDGs and aligned with the planetary boundaries framework may encourage a change of mindset to correct this weakness, an argument that is further developed in Part III. In the meantime, we show how we link corporates with cooperatives to re-examine corporate purpose.

B Comparing the Role of Purpose

Corporate law focuses on the legality of corporate transactions while balancing the legal duties and responsibilities of corporations and those who own and manage them. The purpose of the corporation has been the subject of debate for over a century³¹ as the perceived need for a corporate structure has fluctuated from the imperative to achieve some public good in return for the privilege of incorporation, through to the profit imperative to accumulate wealth for its shareholders.³²

In Australian legal history, the formal requirement for incorporators to state a corporate purpose as a prerequisite for registration was abolished in the 1980s³³ and subsequent amendments abolished ultra

Groups: An Historical Perspective’ (2014) 40(2) *Monash University Law Review* 452; Lee Moerman and Sandra van der Laan, ‘Pursuing Shareholder Value: The Rhetoric of James Hardie’ (2007) 31(4) *Accounting Forum* 354.

²⁹ In recent news in Australia, on 24 May 2021, Senator Adam Bandt introduced a private member’s bill into the Commonwealth Parliament: Liability for Climate Change Damage (Make the Polluters Pay) Bill 2020. The Bill is listed as not proceeding: Parliament of Australia, ‘Liability for Climate Change Damage (Make the Polluters Pay) Bill 2020’ (Web Page)

<https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6700> (accessed 30 June 2024).

³⁰ Talbot (n 11) 513.

³¹ The centenary of *Salomon v Salomon & Co Ltd* [1897] AC 22 (HL) prompted a fresh round of reflection and debate as to the scope and utility of corporate personality. See John H Farrar, ‘Frankenstein Incorporated or Fools’ Parliament? Revisiting the Concept of the Corporation in Corporate Governance’ (1998) 10(2) *Bond Law Review* 142; Ross Grantham and Charles Rickett (eds), *Corporate Personality in the 20th Century* (Hart Publishing, 1998).

³² Jill E Fisch and Steven Davidoff Solomon, ‘Should Corporations Have a Purpose?’ (2021) 99(7) *Texas Law Review* 1309. See also John H Farrar, ‘A Conspiracy of Paper? William Paterson and the Mysterious Origins of Banking and Company Law’ (2020) 32(1) *Bond Law Review* 139 for an interesting history of the development of banking corporations. Although the demand for banking corporations was driven by exploration and discovery activities, the banks themselves were a result of demand for investment products.

³³ *Companies and Securities Legislation (Miscellaneous Amendments) Act 1983* (Cth); *Companies and Securities Legislation (Miscellaneous Amendments) Act 1985* (Cth).

vires and constructive notice, codified the common law indoor management rule from *Turquand's* case,³⁴ and instituted single member companies.³⁵ This statutory reform clawed back a century's worth of incorporation formality that insisted that a company was an association of persons that was formed for a stated purpose.³⁶ Arguably, the minimum standard for compliance for a stated purpose in a memorandum of association was generally in operational terms of the business and transactions that were in the scope of the company's remit, rather than statements of values or purpose more broadly. The Corporations and Markets Advisory Committee (CAMAC) resisted suggestions that Australia's corporate laws needed to adapt to societal values, concluding in its 2006 report: 'that, in general, it is in a company's own interests, in terms of enhancing its value or managing its risks over time, to take into account the environmental and social context in which it operates and the impact of its activities'.³⁷ However, more recently the Australian Securities Exchange (ASX) proposed addressing a 'social licence to operate' disclosure provision in its corporate governance guidelines. The ASX resiled from this position,³⁸ but in its current format, principle 3 recommends that listed companies '[i]nstil a culture of acting lawfully, ethically and responsibly'.³⁹ This recommendation essentially recognises that (listed) companies should articulate corporate values and link them to the company's goals. This requires companies to set an expectation by expressing the standards and behaviours expected from their directors, senior executives, and employees. Echoing the CAMAC report referred to above, acting 'ethically and responsibly' is broad enough to include acting sustainably. The predominant interpretation of corporate purpose is strongly linked to shareholder primacy norms and the concept of shareholder wealth maximisation,⁴⁰ which Sjäffjell and Mähönen suggest is at the heart of unsustainable business practice.⁴¹ This premise is supported by evidence of corporate (mis)behaviour that has breached planetary

³⁴ *Royal British Bank v Turquand* (1856) 119 ER 886 is a UK company law case. For readers interested in the Australian interpretation of what has become known as the 'indoor management rule', see TE Cain, 'The Rule in *Royal British Bank v Turquand* in 1989' (1989) 1(2) *Bond Law Review* 272.

³⁵ *Company Law Review Act 1998* (Cth).

³⁶ Larelle Chapple and Phillip Lipton, *Corporate Authority and Dealings with Officers and Agents* (Centre for Corporate Law and Securities Regulation and CCH Australia, 2002) ch 1.

³⁷ Corporations and Markets Advisory Committee (CAMAC), *The Social Responsibility of Corporations: Report* (2006) 168.

³⁸ Rosemary Teele Langford, 'Social Licence to Operate and Directors' Duties: Is There a Need for Change?' (2019) 37(3) *Company and Securities Law Journal* 200.

³⁹ ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations* (4th ed, 2019) 16.

⁴⁰ Sjäffjell and Taylor (n 11).

⁴¹ Beate Sjäffjell and Jukka Mähönen, 'Corporate Purpose and The Misleading Shareholder vs Stakeholder Dichotomy' *Blogging for Sustainability* (University of Oslo Faculty of Law, 16 April 2021) <<https://www.jus.uio.no/english/research/areas/companies/blog/companies-markets-and-sustainability/2021/corporate-purpose--sjaeffjell-mahonen.html>>.

environmental boundaries, disregarded the rights of disadvantaged peoples, and ignored the SDGs.⁴² Cooperatives, while capable of similar behaviour, appear restrained by their principles and values. Cooperatives strive to maximise member benefits beyond profit⁴³ by adding social and environmental considerations to their equation.

Early corporations were established with purpose aligned to their major activity.⁴⁴ If a corporation was successful when it conducted its business, profit followed but profit was secondary to corporate purpose. By way of example, Ford Motor Company was established to build motor cars not to make profit; the same is true when Australian Gas Light Company was formed to light the streets of Sydney,⁴⁵ or Google organised the world's information to make it universally accessible and useful. Mission, vision, and goals have all succumbed to marketing spin and obfuscated the purpose of a company with the neoliberal imperative of profit. Of course, companies must be profitable to remain in business, but the underlying purpose of a company and its financial performance are not the same thing and the two should not be confused. Grantham suggests that the 'company has proven itself a wonderful servant delivering up an ever-increasing level of material wellbeing in western society' and observes that the company has become vilified as 'an uncaring master that pollutes our air and rapes our landscapes'. His counsel that 'we must not forget that we still need the company to fulfil its original mission as a vehicle for wealth creation'⁴⁶ provides an homage to the corporation but this line of thought continues to place wealth ahead of responsible corporate behaviour. Two arguments are presented that provide more regard for the future of this planet if companies are more than vehicles for wealth creation: first, corporate social responsibility (CSR) can actually improve profitability of a

⁴² For example, BHP Ltd's Ok Tedi mining pollution during 1984–2013: see David Hyndman, 'Ok Tedi: New Guinea's Disaster Mine' (1988) 18(1) *The Ecologist* 24; Exxon Valdez oil pollution in 1989, see John F Piatt et al, 'Immediate Impact of the "Exxon Valdez" Oil Spill on Marine Birds' (1990) 107(2) *The Auk* 387; BP's Deepwater Horizon oil pollution in 2010: see James M Shultz et al, 'The 2010 Deepwater Horizon Oil Spill: The Trauma Signature of an Ecological Disaster' (2015) 42(1) *The Journal of Behavioral Health Services and Research* 58; Telstra's scandal in selling inappropriate phone plans to customers in indigenous communities, see *Australian Competition and Consumer Commission v Telstra Corporation Limited* (Federal Court proceedings VID754/2020, finalised by consent order; see ACCC, 'Telstra to Pay \$50m Penalty for Unconscionable Sales to Indigenous Consumers' (Media Release, 13 May 2021) <<https://www.accc.gov.au/media-release/telstra-to-pay-50m-penalty-for-unconscionable-sales-to-indigenous-consumers>>).

⁴³ Anu Puusa and Sanna Saastamoinen, 'Novel Ideology, but Business First?' (2021) 9(1) *Journal of Co-operative Organization and Management* 100135.

⁴⁴ Fisch and Davidoff Solomon (n 32).

⁴⁵ Jo Ginswick, 'Early Australian Capital Formation 1836–1850: A Case Study, The Australian Gaslight Company' (1960) 1 *Bulletin of the Business Archives Council of Australia* 22.

⁴⁶ Ross Grantham, 'People, Planet, and Profits: Re-Purposing the Company' (2021) 38(4) *Company and Securities Law Journal* 250, 273.

corporation⁴⁷ and secondly, from a position of relative privilege and wealth, the proponents of the corporate form have the luxury to reflect on the future, particularly given the global wealth disparity discussed next.

The legacy of four decades of free market capitalism has prioritised profit and altered the concentration and distribution of wealth. Indeed, just in the past two decades there has been a shift. In 2010, wealthy individuals, defined by a wealth range greater than USD \$1,000,000, were estimated to number 0.5 per cent of the global population yet they collectively accounted for 35.6 per cent of global wealth.⁴⁸ Geographically, an imbalance was evident, seen in the 2021 distribution of global wealth where 56 per cent of total global household wealth was held by 16 per cent of the adults living in North America and Europe.⁴⁹ The wealth disparity continues as the assets of 53 per cent of global adults were valued at less than USD \$10,000. Put simply, by 2022, over half the world population shared two per cent of the global wealth, and 44.5 per cent of global wealth was held by 1 per cent of the population.⁵⁰ Such wealth concentration reinforces inequality, exacerbated by financial globalisation that allows complex corporate structures to obfuscate the money trail.⁵¹ The global wealth data provides an impetus for a change of mindset: one that allows profit to exist to facilitate community needs and legislative reforms that support more sustainable business. Profit in this environment is important for the economic viability of the common purpose but is not necessarily the dominant driver, instead supporting the notion that cooperative action sustains the enterprise through common purpose.⁵²

The next section focuses on the shareholder and stakeholder roles in a modern context. We show how fundamental differences have developed under free market capitalism, which lays the foundation for a later argument on how corporate purpose might be linked to SDGs to result in more sustainable practices.

C Shareholders, Stakeholders, and Purpose

The underlying principle of shareholder theory is that companies are only accountable to shareholders and their role is to deliver profit to

⁴⁷ Yusheng Kong, Alex Antwi-Adjei and Jonas Bawuah, 'A Systematic Review of the Business Case for Corporate Social Responsibility and Firm Performance' (2020) 27(2) *Corporate Social Responsibility and Environmental Management* 444.

⁴⁸ Giles Keating et al, *Global Wealth Report 2010* (Credit Suisse, October 2010) 5.

⁴⁹ Shorrocks, Davies and Lluberas (n 9) 17.

⁵⁰ Anthony Shorrocks, James Davies and Rodrigo Lluberas, *Global Wealth Report 2023* (UBS, 2023).

⁵¹ Bronwyn McCredie, Kerrie Sadiq and Larelle Chapple, 'Navigating the Fourth Industrial Revolution: Taxing Automation for Fiscal Sustainability' (2019) 44(4) *Australian Journal of Management* 648.

⁵² Donal McKillop et al, 'Cooperative Financial Institutions: A Review of the Literature' (2020) 71 *International Review of Financial Analysis* 101520, 6.

shareholders. Friedman makes two assumptions.⁵³ First, that corporations have a responsibility to conduct their business in a manner that will make as much money as possible while conforming to the rules of society, and secondly, spending corporation money on anything but this purpose will reduce both corporation profits and the price of its stock. Fifty years on, these may be flawed assumptions with evidence that corporations can be rewarded for corporate social responsibility and punished for poor behaviour.⁵⁴ Corporate shareholder roles are potentially bifurcate: to support the purpose of the company through the investment of shares, or the more likely scenario, to invest in company shares for personal financial gain. This nuance in investment practice has led to serious ramifications when considering that much of the capital backing for large-scale polluting and destructive activities is facilitated by the particular characteristics, persistence and longevity of the corporate form.⁵⁵

In contrast, stakeholder theory can be traced from early work by Adam Smith, and Berle and Means, although credit for modern stakeholder theory⁵⁶ is widely attributed to American business ethicist, R. Edward Freeman after his seminal work 'Strategic Management: A Stakeholder Approach' was published in 1984.⁵⁷ Until this point, a management focus on generating profit for shareholders often ignored social responsibility to consumers, customers, suppliers, and employees.⁵⁸ One stand out exception is *Parke v Daily News*⁵⁹, to the extent that when management exercised a pro-social discretion to approve ex gratia payments to redundant employees, shareholders successfully challenged this plan. Stakeholder theory gained prominence in the 1980s to challenge shareholder theory, when it recognised the importance of including societal interests into business operations.⁶⁰ Specifically, stakeholder theory provides a fresh narrative

⁵³ Milton Friedman, 'A Friedman Doctrine: The Social Responsibility of Business Is to Increase Its Profits' *The New York Times* (13 September 1970) <<https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html>> (reprinted as Milton Friedman, 'The Social Responsibility of Business Is to Increase Its Profits' in Walter Ch Zimmerli, Klaus Richter and Markus Holzinger (eds), *Corporate Ethics and Corporate Governance* (Springer, 2007) 173.

⁵⁴ Paul Redmond, 'Directors' Duties and Corporate Social Responsiveness' (2012) 35(1) *University of New South Wales Law Journal* 317.

⁵⁵ Langford (n 38) 204.

⁵⁶ Baumfield (n 11).

⁵⁷ R Edward Freeman, *Strategic Management: A Stakeholder Approach* (Cambridge University Press, 1984). Freeman reflected on stakeholder theory in R Edward Freeman, Robert Phillips and Rajendra Sisodia, 'Tensions in Stakeholder Theory' (2020) 59(2) *Business and Society* 213.

⁵⁸ Samuel Mansell, 'Shareholder Theory and Kant's "Duty of Beneficence"' (2013) 117(3) *Journal of Business Ethics* 583; Freeman, Phillips and Sisodia (n 57).

⁵⁹ *Parke v Daily News* [1962] Ch 927.

⁶⁰ R Edward Freeman and Sergiy Dmytriiev, 'Corporate Social Responsibility and Stakeholder Theory: Learning From Each Other' [2017] (1) *Symphony Emerging Issues in Management* 7.

to understand linkages between how value is created and traded, how ethical action is connected to capitalism, and then how managers can understand and address these problems.⁶¹ These ideas resonate with cooperative values and ethical values as discussed later.

Stakeholder theory gained traction during the 1990s. Building on stakeholder theory, Donaldson and Preston⁶² developed stakeholder typologies focussed on how stakeholders behaved (descriptive accuracy), how the behaviour affected performance (instrumental power), and from that, derived expectations as to how organisations should behave (normative validity). Jones and Wicks later proposed a normative ethics approach by converging instrumental and normative aspects of the theory.⁶³ In this way stakeholder theory facilitates and explains corporate sustainability, evidenced by the surge in number of benefit corporations⁶⁴ and renewed investor interest in cooperatives.⁶⁵ A modern stakeholder view, as described by Freeman,⁶⁶ has more recently become mainstream with increasing numbers of corporations considering their fundamental commitment to a much broader group and revising their public statements, and reporting voluntarily on a broad range of non-financial metrics.⁶⁷ Furthermore, recent evidence suggests that CSR reporting is a value-enhancing exercise,⁶⁸ from which we can infer shareholder influence on companies' choice to report on these broader responsibilities in consumer and environmental supply chains. Corporations that cause harm can expect to pay a penalty, with the James Hardie corporation an interesting example. In the article

⁶¹ Freeman (n 57); R Edward Freeman et al, *Stakeholder Theory: The State of the Art* (Cambridge University Press, 2010); Bidhan L Parmar et al, 'Stakeholder Theory: The State of the Art' (2010) 4(1) *Academy of Management Annals* 403.

⁶² Thomas Donaldson and Lee E Preston, 'The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications' (1995) 20(1) *Academy of Management Review* 65.

⁶³ Thomas M Jones and Andrew C Wicks, 'Convergent Stakeholder Theory' (1999) 24(2) *Academy of Management Review* 206.

⁶⁴ Harwell Wells, 'The Purpose of a Corporation: A Brief History' *The Temple 10-Q: Temple's Business Law Magazine* <<https://www2.law.temple.edu/10q/purpose-corporation-brief-history/>> (accessed 30 June 2024).

⁶⁵ Mathew Lawrence, Andrew Pendleton and Sara Mahmoud, *Co-operatives Unleashed: Doubling the Size of the UK's Co-operative Sector* (New Economics Foundation, 2018) 13; Brian Henehan and Bruce Anderson, *New Cooperative Development* (Cornell University, 2019); Benavides and Ehrenhard (n 16); Grant Lurie, Noah Spector and Daisy Vanags, *Climate Leadership in the Eleventh Hour: The United Nations Global Compact – Accenture CEO Study on Sustainability* (2021) 20.

⁶⁶ Freeman (n 57).

⁶⁷ For example, the Global Reporting Initiative <https://www.globalreporting.org/> (accessed 30 June 2024), the Carbon Disclosure Project <https://www.cdp.net/en> (accessed 30 June 2024) and Value Reporting Foundation <https://www.sasb.org/about/> (accessed 30 June 2024) are three leading independent not for profit organisations that promote and publish companies' voluntary responses to a range of CSR metrics and carbon emissions and reduction strategies.

⁶⁸ Ioannis Ioannou and George Serafeim, 'The Consequences of Mandatory Corporate Sustainability Reporting' in Abigail McWilliams et al (eds), *The Oxford Handbook of Corporate Social Responsibility: Psychological and Organizational Perspectives* (Oxford University Press, 2019) 452.

by Redmond,⁶⁹ Sealy's 1987 comments that '*company law (at least as it stands, but probably in any form it could potentially take) must acknowledge that it has no mechanism to ensure the fulfilment of obligations of social responsibility*' are compared with social expectations and stakeholder claims derived from contemporary CSR standards and norms of responsibility. Redmond's discussion illustrates the tensions between societal expectations, the discharge of directors' duties, and corporate responsibility in the context of shareholder value and risk management. More recently, several authors have demonstrated that special-purpose legislation is not required to regulate corporate purpose, as companies can use their constitutions to adopt purposes that can shape directors' duties to extend beyond wealth maximisation.⁷⁰ Evidence is also provided of the evolution of the corporate form by natural adaptation, akin to revitalisation, rather than a radical reformulation of Australian corporate law. This strand of corporate law theory supports the transposition of cooperative values to corporations. The following sections on cooperatives and the frameworks for sustainable cooperative purpose develop this argument.

III Evolution of Business Cooperation

A Cooperatives

The evolution of cooperatives is strongly associated with need and social dislocation⁷¹ with three key factors identified: a) disrupted economic conditions, such as war, depression or new technology; b) the networking power held by members; and c) their influence of and on legislative and judicial processes that propel government, economic and public policy.⁷² Cooperatives are renowned for the provision of services that benefit communities and can take a variety of forms. To be as comprehensive as possible, cooperatives generally are classified into

⁶⁹ Redmond (n 54) 339, citing LS Sealy, 'Directors' "Wider" Responsibilities - Problems Conceptual, Practical and Procedural' (1987) 13(3) *Monash University Law Review* 164, 176 (footnote omitted).

⁷⁰ Victoria Schnure Baumfield, 'The Australian Paradox: Conservative Corporate Law in a Progressive Culture' in Beate Sjøfjell and Christopher M Bruner (eds), *Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability* (Cambridge University Press, 2019) 161, pt 2.3 ('The Corporate Objective'); Victoria Schnure Baumfield, 'How Change Happens: The Benefit Corporation in the United States and Considerations for Australia' in Beate Sjøfjell and Irene Lynch Fannon (eds), *Creating Corporate Sustainability: Gender as an Agent for Change* (Cambridge University Press, 2018); Rosemary Teele Langford, 'Purpose-Based Governance: A New Paradigm' (2020) 43(3) *University of New South Wales Law Journal* 954; Rosemary Teele Langford, 'Use of the Corporate Form for Public Benefit: Revitalisation of Australian Corporations Law' (2020) 43(3) *University of New South Wales Law Journal* 977.

⁷¹ Brett Fairbairn, *The Meaning of Rochdale: The Rochdale Pioneers and the Co-operative Principles* (University of Saskatchewan Centre for the Study of Cooperatives Occasional Paper, 1994).

⁷² GF Ortmann and RP King, 'Agricultural Cooperatives I: History, Theory and Problems' (2007) 46(1) *Agrekon* 18.

the following segments: agricultural, consumer (in retail and wholesale), employee-owned, financial, producer, and service,⁷³ although three broad categories — consumer, agricultural and financial — are commonly used to define cooperatives by member interest.⁷⁴ Cooperatives can aggregate goods or services supplied or required by members and consolidate bargaining power⁷⁵ either in the distribution, marketing, or purchase phases.⁷⁶ The focus of this article is on Australian distributing cooperatives, analogous to the corporation as financial operational surplus can be distributed to *shareholder* members either as dividends or in member rebates.

In an evolutionary sense, the sixth cooperative principle that specifies cooperation among cooperatives distinguishes cooperatives from corporations. Cooperation has evolved over the centuries and confers a survival advantage⁷⁷ for individuals, communities, and organisations. The cooperative as a business form has capitalised on this attribute, with global recognition for this oldest and most successful

⁷³ For a general understanding of cooperatives, see Johnston Birchall, ‘A “Member-Owned Business” Approach to the Classification of Co-operatives and Mutuals’ in Diarmuid McDonnell and Elizabeth Macknight (eds), *The Co-operative Model in Practice: International Perspectives* (Co-operative Education Trust Scotland, University of Aberdeen, 2012); Richard O’Leary and Sam Byrne, *Co-operatives in Australia: A Manual, The Purpose, Start-Up Process, Planning and Running of a Co-operative in Australia* (Co-operative Federation of NSW, 2nd ed, 2017) 16. These sources describe several sectors where a diverse range of business activities and operations use the cooperative model. In primary industries such as agriculture, fishing and forestry, producer cooperatives coordinate production inputs (fertiliser, herbicides etc) or outputs (food, timber, etc). In retail and wholesale trades (supermarkets, pharmacies, and other retail outlets), members benefit from, and contribute to, its operation. At the community level, cooperatives offer services to members in health care, childcare, homecare and nursing, housing, roadside assistance, electricity generation from wind energy, and community recreation facilities. Financial services can be provided by co-operative/mutual banks, credit unions, building societies and friendly societies.

⁷⁴ Birchall (n 73) 67; Greg Patmore and Nikola Balnave, *A Global History of Co-operative Business* (Routledge, 2018). More recently, Greg Patmore, Nikola Balnave and Olivera Marjanovic advocate for a business cooperative to be recognised in ‘Business Co-operatives in Australia: “Unlikely Soil for a Co-operative Movement”’ (2023) 24(1) *Enterprise and Society* 149.

⁷⁵ Birchall and Ketilson (n 4) 10.

⁷⁶ George Jacob Holyoake, *The History of Co-operation* (TF Unwin, rev and completed, 1908).

⁷⁷ Joshua Greene, *Moral Tribes: Emotion, Reason, and the Gap Between Us and Them* (Penguin, 2013).

form of mutual business⁷⁸ based on social objectives.⁷⁹ Antecedents lie in medieval grassroot organisations in Western Europe, North America, and Japan⁸⁰ and early formal structures such as ShorePorters Society,⁸¹ and Rochdale Society of Equitable Pioneers ('Rochdale').⁸² Rochdale is likely the most recognised cooperative in the history of the cooperative movement, largely due to its success and the codification of its guiding principles,⁸³ however credit for the success of the modern cooperative movement is conferred on Welsh social reformer, Robert Owen.⁸⁴ It was the development and documentation of the Rochdale principles, values, and ethical values⁸⁵ around the same time (mid-

⁷⁸ There is some flexibility in the definition of a mutual as there are several types of mutual organisation. First are the financial mutuals regulated by the Australian Prudential Regulation Authority. These businesses include insurance companies and some types of credit unions. Second are the mutual organisations that operate as clubs, historical examples of which include roadside assistance organisations. They differ from corporations by the distribution and use of funds. The blurred definition comes from mutuals being member-owned organisations, similar to cooperatives. Cooperatives however have state regulators unless they are registered as a corporation that operates under cooperative principles. The Australian Parliamentary Committee on Co-operatives, Mutuals and Member-owned Firms in their 2016 report extended the 2012 statement by Graeme Nuttall in a report for the UK Department for Business, Innovation and Skills that '[a]ll co-operatives are mutuals, but not all mutuals are co-operatives' with the addition of 'but both are member-owned firms': Parliament of Australia, Senate Economics References Committee, *Cooperative, Mutual and Member-Owned Firms* (Report, March 2016) 3, citing UK Government, *Sharing Success: The Nuttall Review of Employee Ownership* (2012) Annexe A – Background to the Review, 74.

⁷⁹ See Rita Rhodes, *Empire and Co-operation: How the British Empire Used Co-operatives in Its Development Strategies 1900–1970* (John Donald, 2012).

⁸⁰ Patrizia Battilani and Harm G Schröter (eds), *The Cooperative Business Movement, 1950 to the Present* (Cambridge University Press, 2012); John Curl, *For All the People: Uncovering the Hidden History of Cooperation, Cooperative Movements, and Communalism in America* (PM Press, 2nd ed, 2012) ch 1 ('Early Cooperation in the Americas'); Alain Mélo, "'Fruitières Comtoises'" (Franche-Comté, France), From Village Associations to an Agro-Industrial District: A Mountain Story?" (2015) 103-1 *Journal of Alpine Research* 103; Akira Kurimoto and Yashavantha Dongre, 'Emerging Asian Pacific Cooperative Models from a Global History Perspective' in Morris Altman et al (eds), *Waking the Asian Pacific Co-operative Potential* (Academic Press, 2020) 35.

⁸¹ Established in 1498 in the Port of Aberdeen Scotland for the removal, haulage, and storage of goods. See Shore Porters Society, 'History' (Web Page) <https://www.shoreporters.com/history/> (accessed 30 June 2024).

⁸² Established in 1844 to provide a high quality, unadulterated line of grocery goods. See Mervyn Wilson, Linda Shaw and Gillian Loneran, *Our Story: Rochdale Pioneers Museum* (Co-operative Heritage Trust, 2012); Wim Van Opstal, 'Rochdale Society of Equitable Pioneers' in Helmut K Anheier and Stefan Toepler (eds), *International Encyclopedia of Civil Society* (Springer, 2010) 1326 <https://link.springer.com/referenceworkentry/10.1007%2F978-0-387-93996-4_820>.

⁸³ See Nikola Balnave and Greg Patmore, 'The Outsider Consumer Co-operative: Lessons from the Community Co-operative Store (Nuriotpa), 1944–2010' (2015) 57(8) *Business History* 1133 ('The Outsider Consumer Co-operative'); Richard C Williams, *The Co-operative Movement: Globalization from Below* (Routledge, 2007); Wilson, Shaw and Loneran (n 82); Johnston Birchall, 'Defining Co-operative Enterprise: Towards a Taxonomy of Member-Owned Business' in Tim Mazzarol et al (eds), *Research Handbook on Sustainable Co-operative Enterprise: Case Studies of Organisational Resilience in the Co-operative Business Model* (Edward Elgar Publishing, 2014) 51; Fairbairn (n 71); Ortmann and King (n 72).

⁸⁴ Robert Owen (1771–1858), known as the Father of Cooperation, was heavily involved in the trade union movement and establishing cooperative communities.

⁸⁵ The contemporary version of the Rochdale ethical values is enshrined in the values promulgated by the International Cooperative Alliance (ICA). The ICA cooperative values are

1800s) that general incorporation of limited liability companies was legislated in the UK that allowed the cooperative to evolve as a genuine alternative to the corporation. Further analysis of the principles can be found in the next section.

In the wake of Rochdale, the cooperative movement spread around the globe.⁸⁶ Specifically, around 12% of the global workforce (employed population) work in one of three million cooperatives worldwide with estimates that USD 2.1 trillion is generated from the 300 largest global cooperatives.⁸⁷ The world's most successful cooperative is Spain's Mondragon, a voluntary association of ninety-five autonomous cooperatives across a range of industries established in 1956.⁸⁸ Mondragon is a global entity that employs over 80,000 people, conducts business across 150 countries and operates 141 plants in 37 countries.⁸⁹ Despite the magnitude of its operations, the ethical code that underpins the behaviour of this behemoth is to conduct business 'focused on people and committed to society'.⁹⁰

Australia's largest cooperative, Consolidated Bulk Handling Limited (CBH), is another company that has adapted cooperative principles for the company structure.⁹¹ According to its 2021 Annual Report, CBH has 3600 grain grower members (shareholders), employs 1100 permanent staff, and, during harvest, employs an additional 1800 staff on a casual basis. The cooperative's assets include a rail fleet, one hundred grain receival sites, four port terminals and flour mills in Victoria, South Australia, Western Australia, the Philippines, Indonesia, Vietnam, and Malaysia. CBH is proof cooperatives can be competitive and successful, as evidenced by the \$133.8 million profit recorded in its 2021 financial statements. Similar to Mondragon, CBH's core purpose is to sustainably create and return value to its members and the grain-growing communities in Western Australia (WA).

Cooperatives are also noteworthy from a longevity perspective.⁹² In Australia, longevity comparisons of the fifty largest cooperatives to the fifty largest listed share-based corporations revealed a 25 per cent increase in average cooperative age: 82 years for cooperatives

self-help, self-responsibility, democracy, equality, equity, and solidarity, and the ethical values are honesty, openness, social responsibility and caring for others. The role of the ICA is discussed in more detail in section III.B below.

⁸⁶ Williams (n 83).

⁸⁷ See generally ICA website, International Cooperative Alliance, 'Facts and Figures' (Web Page) <<https://www.ica.coop/en/cooperatives/facts-and-figures>>.

⁸⁸ Romeo (n 7).

⁸⁹ See generally Mondragon website, Mondragon, 'About Us' (Web Page) <<https://www.mondragon-corporation.com/en/about-us/>>.

⁹⁰ Ibid.

⁹¹ See CBH, 'CBH Group' (Web Page) <<https://cbh.com.au/>>; Consolidated Bulk Handling Group, *Annual Report 2021* see <<https://www.cbh.com.au/our-co-operative/annual-reports>> 7.

⁹² Johnston Birchall, 'The Potential of Co-operatives During the Current Recession: Theorizing Comparative Advantage' (2013) 2(1) *Journal of Entrepreneurial and Organizational Diversity* 1.

compared to corporations' 65 years.⁹³ The ability of cooperatives to weather a crisis through shared risk and reward, such as the 2008 GFC and 2020 COVID-19 pandemic, suggests this business form is longer-lasting, more productive and more profitable in general than non-cooperative forms of enterprise.⁹⁴ It is the characteristic of resilience that has played an instrumental role in cooperatives' longevity.⁹⁵

B Comparing Principles and Purpose

In examining the evolution of cooperative principles and values as contrasted with corporations, this section compares the statutory history of regulation of cooperatives with that of corporations. The recognition and application of cooperative principles preceded legislative recognition.⁹⁶ British colonisation of Australia introduced English statute and common law⁹⁷ with subsequent development of juridical and political cultures typical of common law settler societies.⁹⁸ One such culture was built on the Rochdale principles of cooperation, transferred into Australia in the 1800s.⁹⁹

A significant event for the Australian colony was the 1901 federation, which recognised the existing colony states as states in the Commonwealth of Australia, an important process in the development of self-government for the colony. The resultant Constitution was very specific and restrictive on the federal Parliament's power to make laws for business entities¹⁰⁰ as states sought to maintain control over trade and commerce in their own jurisdiction.¹⁰¹ Preceding federation, consensus between the states was reached for federal coordination of post, telecommunications, taxation, and general coordination of commercial enterprises across the continent.¹⁰² Consequently, the

⁹³ BCCM Resilience Report (n 5) 13, 48, 51.

⁹⁴ Lawrence et al (n 65).

⁹⁵ Birchall and Ketilson (n 4).

⁹⁶ RA Hughes, 'Co-operatives in Australia: The Political Context of the 1923 Initiative' (1992) 66(1) *Australian Law Journal* 27.

⁹⁷ Systems of law and custom developed by Aboriginal peoples over 60,000 years were ignored when Australia was declared *terra nullius* under the British annexation of Australia. See Irene Watson, 'What is the Mainstream? The Laws of First Nations Peoples' (2017) in Ron Levy et al (eds) *New Directions for Law in Australia: Essays in Contemporary Law Reform* (ANU Press, 2017) 213.

⁹⁸ Ian Hunter, 'Natural Law, Historiography, and Aboriginal Sovereignty' (2007) 11(2) *Legal History* 137.

⁹⁹ Nikola Balnave and Greg Patmore, 'Rochdale Consumer Co-operatives in Australia: Decline and Survival' (2012) 54(6) *Business History* 986 ('Rochdale Consumer Co-operatives in Australia').

¹⁰⁰ See Commonwealth of Australia Constitution Act 1900 s 51(xx), which only relates to foreign, trading and financial corporations formed within the limits of the Commonwealth.

¹⁰¹ Patrizia Battilani, Nikola Balnave and Greg Patmore, 'Consumer Co-operatives in Australia and Italy' in Anthony Jensen, Greg Patmore and Ermanno Tortia (eds), *Cooperative Enterprises in Australia and Italy: Comparative Analysis and Theoretical Insights* (Firenze University Press, 2015) 57.

¹⁰² *Ibid.*

Australian Constitution included section 51(xx), commonly known as the 'Corporations Power'. The High Court in *Huddart Parker & Co Pty Ltd v Moorehead* found 'laws with respect to trade and commerce within the limits of the various states is reserved to the states exclusively except so far as the exercise of that power by the Commonwealth is incidental to the execution of some other power of the Commonwealth'.¹⁰³ The Corporations Power ensured law-making powers for cooperatives and corporations remained with the states.¹⁰⁴ However, a century later the introduction of the *Corporations Act 2001* (Cth) proved a defining event between the two business forms, when the power to make laws for corporations (but not cooperatives as a class) was referred to the Commonwealth's jurisdiction.¹⁰⁵ While this strengthened the role of the corporation in Australia, it did little for cooperatives, which remained under the aegis of the states.¹⁰⁶ The argument that cooperatives are a type of corporation, and thus qualify for consideration by both Commonwealth and states under s 51 of the Constitution, has been posited by Apps.¹⁰⁷

In an operational sense, corporations and cooperatives are similar with guidance on meetings, shares, directors, officers and employees provided in model rules. As Apps notes, there is a mirror-like relationship between the legal characteristics of both organisations with consistency evident in a separate legal personality, the privilege of limited liability for shareholders, and under certain conditions the ability to raise capital from the public.¹⁰⁸ The treatment of members' rights differs, however, as the corporation's replaceable rules (section 140 of the *Corporations Act 2001* (Cth)) are more focused on rights members exercise as shareholders (for example, the right to vote by poll is calculated according the shares held, and the right to transfer shares) whereas the model rules for distributing cooperatives provide extensive guidance on the treatment of members (for example, qualification for membership and expulsion from membership). It is interesting to note that the focus on members in the cooperative model rules is more

¹⁰³ *Huddart, Parker & Co Pty Ltd v Moorehead* (1909) 8 CLR 330. This has been effectively upheld in more contemporary times in *NSW v The Commonwealth* (1990) 169 CLR 482.

¹⁰⁴ Troy Sarina, 'Australia' in Dante Cracogna, Antonio Fici and Hagen Henrý (eds), *International Handbook of Cooperative Law* (Springer, 2013) 207.

¹⁰⁵ Rob McQueen, 'Why High Court Judges Make Poor Historians: The Corporations Act Case and Early Attempts to Establish a National System of Company Regulation in Australia' (1990) 19(3) *Federal Law Review* 245.

¹⁰⁶ Gary Lewis, *The Democracy Principle: Farmer Co-operatives in Twentieth Century Australia* (Gary Lewis, 2006); Ann Apps, 'Legislating for Co-operative Identity: The New Co-operatives National Law in Australia' (2016) 34(1) *Company and Securities Law Journal* 6.

¹⁰⁷ Apps (n 106).

¹⁰⁸ Key provisions from the Corporations Act are reflected in the *Cooperatives (Adoption of National Law) Act 2012* (NSW) in Pt 1.

aligned to the model rules for incorporated associations, as is the presence of purpose, however this point is discussed later.¹⁰⁹

Australia's separate legal systems for the six states and two territories, and the additional layer imposed by federalism at the Commonwealth level, created fragmented cooperative legislation, inconsistent laws, regulations, and administration that negatively impacted the development of cooperatives.¹¹⁰ Several attempts to standardise cooperative law were carried out. First, the Cooperatives Laws Agreement, signed in 1996 by the Standing Committee of Attorneys-General, relied on a set of Core Consistent Provisions to enact uniform cooperatives legislation using the *Cooperatives Act 1996* (Vic) as the model legislation.¹¹¹ However, inconsistent application of these provisions by the states and territories eroded the potential value of this legislation.¹¹² The Core Consistent Provisions, although not successful, were the precursor to the Australian Uniform Cooperatives Laws Agreement (AUCLA). The Ministerial Council on Consumer Affairs, comprised of state and territory Ministers with responsibility for cooperatives, attempted to implement nationally uniform cooperative legislation without changing the conceptual nature of the cooperative. The substance of the AUCLA was to provide uniformity in cooperative law and its administration at best, or, if the scheme was not adopted by a state or territory, then ensure there was consistency with the existing state legislation and CNL. AUCLA was executed in 2011¹¹³ followed by the promulgation in 2012 of the Co-operatives National Law (CNL) as template legislation by New South Wales.

Over the ensuing eight years, the CNL or consistent legislation was adopted by states and territories. In the period leading up to the adoption of the CNL, there was a flurry of legislative activity as states and

¹⁰⁹ See model rules from the Queensland Government publications portal for: (a) distributing cooperatives: Queensland Government, 'Model Rules for Distributing Co-operatives with Share Capital' (last updated 30 November 2020) <<https://www.publications.qld.gov.au/dataset/oft-registered-cooperative-forms/resource/223b5a94-1d3c-43a6-9342-c39ae2b1c677>>, and (b) incorporated associations: <<https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/9a54beb5-8288-4ddd-847b-459a97822119/modelrules.pdf?ETag=35e771c0b5a7c7b2383926b287ed7232>>, and the ASIC website for (c) corporations' replaceable rules: ASIC 'Replaceable Rules Outlined' (Information Sheet 63) <<https://asic.gov.au/for-business/registering-a-company/steps-to-register-a-company/constitution-and-replaceable-rules/replaceable-rules-outlined>>.

¹¹⁰ Apps (n 106).

¹¹¹ Parliament of Western Australia, Legislative Assembly, Standing Committee on Uniform Legislation and Intergovernmental Agreements, *Co-operatives Law* (22nd Report, 1998) 8.

¹¹² Ministerial Council for Consumer Affairs, 'Co-operatives: A National Approach', Decision Making Regulatory Impact Statement (2011) 2.

¹¹³ Ministerial Council for Consumer Affairs, 'Australian Uniform Co-operative Laws Agreement' <www.fairtrading.nsw.gov.au/_data/assets/pdf_file/0020/370433/Australian_uniform_cooperative_laws_agreement_signed.pdf>.

territories prepared their legislation to be consistent with the CNL and then prepared for the adoption of the CNL.

The state of WA adopted a different path to the CNL, using the *Co-operatives Amendment Act 2016* (WA) to amend its *Co-operatives Act 2009* (WA), resulting in legislation consistent with the CNL. Despite the adoption of the CNL, underlying inconsistencies remain in the CNL across state and territory jurisdictions — especially WA,¹¹⁴ making it tempting to suggest déjà vu with AUCLA.

At the international level, cooperative law relies on the commonly accepted definition of a cooperative expressed in the 1995 International Cooperative Alliance (ICA) Statement on the Cooperative Identity, namely *an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise*. The ICA operates as an independent global networking organisation, registered under Belgium Law as an international non-profit association for cooperatives and allied organisations, and is not a regulatory body. The ICA's mission and objects are intertwined as it seeks to unite, represent and serve cooperatives globally while it acts as custodian of, and maintains the Cooperative Identity, principles and values. Members are required to conform to the ICA Statement on the Cooperative Identity; Australian members include the Business Council of Co-operatives and Mutuals (BCCM), the Capricorn Society Ltd, and Consolidated Bulk Handling Limited (CBH Group).

The ICA definition was adopted in the United Nations Guidelines for Cooperatives and the International Labour Organisation Recommendation No. 193.¹¹⁵ The Statement on Cooperative Identity is distinct from a cooperative's legal identity, the latter being determined by the legal systems or policy decisions of a nation-state whereas the

¹¹⁴ Apps (n 106); William Hall, 'Worker Co-operatives and Australian Law' (2020) 38(1) *Company and Securities Law Journal* 4; Guzyal Hill, 'Avoiding a "Catch 22" – Major Lessons From a Meta-Analysis of Reports of the Parliament of Western Australia on Threats to Sovereignty by National Uniform Legislation' (2021) 33(1) *Bond Law Review* 37.

¹¹⁵ These three definitions are identical and are often cited in cooperative literature: International Cooperative Alliance, 'What Is a Cooperative?' (Web Page) <<https://ica.coop/en/cooperatives/what-is-a-cooperative>>; UN, United Nations Guidelines Aimed at Creating a Supportive Environment for the Development of Cooperatives, 'Cooperatives in Social Development' (Web Page) <https://www.un.org/development/desa/cooperatives/what-we-do/55-2.html>; and International Labour Organization, Recommendation 193 Concerning the Promotion of Cooperatives, ILO Cooperatives' (Web Page) <https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R193>. For a comprehensive review of the definition of a cooperative society, see also Hans-H Münkner, 'How Co-operative are Social Co-operatives?' (2016) 38 *Cooperativismo e Economía Social* 33, 42ff; Hagen Henry, *Guidelines for Cooperative Legislation* (International Labour Organization, 2nd rev ed, 2005) 94 ('*Guidelines*'); Johnston Birchall, *People-Centred Businesses: Co-operatives, Mutuals and the Idea of Membership* (Palgrave Macmillan, 2011) ch 1. The definition by Patmore et al (n 74) includes a commercial nuance with a member-owned business definition but this does not detract from the ICA, ILO and UN definition, which stands largely as the official definition worldwide for cooperatives.

Statement on Cooperative Identity transcends national boundaries and is international in scope.¹¹⁶ The Statement on Cooperative Identity is composed of the cooperative definition, the seven cooperative principles of voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education, training and information; cooperation among cooperatives; and concern for community; five values of self-help, self-responsibility, democracy, equity and solidarity, and equality; and the four ethical values of honesty, openness, caring for others, and social responsibility. The Statement on Cooperative Identity lacks the binding force of conventions and treaties despite being adopted in the 2001 UN Guidelines for Cooperatives but provides the operating parameters for cooperatives.¹¹⁷

While the ICA definition is widely accepted, it is absent from the Australian CNL. Rather, the CNL states a ‘*co-operative* is a body registered under this Law as applying under the CNL Act of this jurisdiction as a co-operative (including a co-operative group)’. Nevertheless, Part 1.3 cites the ICA seven cooperative principles close to verbatim¹¹⁸ followed by encouragement to interpret provisions within the CNL in a manner that promotes the cooperative principles in preference to a construction that does not.¹¹⁹ Accordingly, although the CNL does not define ‘cooperative’ in terms of the overarching ICA principles, the ICA principles are authoritative as to identifying the incorporators’ intent upon registration and the interpretation of extant laws.

Scholars have wrangled with the interplay of cooperative values, principles, and Cooperative Identity, for decades. One explanation given for this confusion is the diversity of cooperative form.¹²⁰ The Statement on Cooperative Identity was a strong signal by the world apex organisation, the ICA, toward international harmonisation.¹²¹ The

¹¹⁶ Ann Apps, ‘Why Can’t We Co-operate? The Impact of Law and Regulation on the Development and Growth of Co-operative Enterprise in Australia’ (PhD thesis, University of Newcastle, 2023).

¹¹⁷ Hagen Henry, *Guidelines* (n 115).

¹¹⁸ See n 15 for the explanation as to how and where the ICA principles are embedded in the CNL.

¹¹⁹ See *Co-operatives (Adoption of National Law) Act 2012* (NSW) Appendix <http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/conla2012373/sch98.html>.

¹²⁰ Thomas Earl Geu and James B Dean, ‘The New Uniform Limited Cooperative Association Act: A Capital Idea for Principled Self-Help Value Added Firms, Community-Based Economic Development, and Low-Profit Joint Ventures’ (2009) 44(1) *Real Property, Trust and Estate Law Journal* 55.

¹²¹ Frank Avsec, ‘Local and Global Dimensions of Farmers’ Cooperatives and Cooperative Law’ (2018, 18-22 September 2018) *XV World Congress of Agricultural Law, Contemporary Challenges of Agricultural Law: Among Globalisation, Regionalisation and Locality (introductory considerations)*. *Przegląd Prawa Rolnego*, 296 <<https://wcal2018.syskonf.pl/conf-data/WCAL2018/files/15UMAU%20-%20Book%20of%20Articles.pdf>>.

principles operationalise the values¹²² and provide cultural and behavioural aspects. As such, they can only foster and encourage decision making, and compliance with the ICA Statement on Cooperative Identity.¹²³ The use of globally agreed principles that rely on a foundation of shared values makes cooperatives unique as an enterprise model.¹²⁴

Differences exist in the interpretation and adoption of cooperative principles around the world despite the calls for harmonisation and the global nature of the Statement on the Cooperative Identity. For example, the voluntary unification of cooperative law for all member states represented in the European Cooperative Society¹²⁵ via Council Regulation (EC) No 1435/2003 created a complex hierarchy of rules that failed to standardise or harmonise cooperative law across the various European jurisdictions. A similar situation exists in other countries' attempts to harmonise cooperative laws, seen in the Uniform Limited Cooperative Association Act in the USA (2007) (amended in 2013), the Framework Act for Cooperatives in Latin America (2009), the Statute of the Mercosur Cooperatives (2009), the Uniform Act on Cooperatives of the Organization for the Harmonization of Business Law in Africa (OHADA) (2010), the Principles of European Cooperative Law, and the Co-operatives National Law in Australia (2012).¹²⁶ Somewhat differently, Italy defined cooperatives in its Constitution of 1948, France regulated cooperatives with the general law of 1947 (L 1947), and Spain adopted national cooperative law along with 15 regional laws and six branch decrees. Portugal defined cooperatives in Article 2.1 of the Portuguese Cooperative Code law No. 119/2015, Germany regulated cooperatives with a general co-operative societies Act, and the Republic of Korea adopted a Framework Act on Cooperatives.¹²⁷ In summary, the legal frameworks available to cooperatives include general cooperative laws, cooperative laws for use by federal states, states, or provinces; general codes to regulate

¹²² Jerker Nilsson, 'The Nature of Cooperative Values and Principles: Transaction Cost Theoretical Explanations' (1996) 67(4) *Annals of Public and Cooperative Economics* 633.

¹²³ Andrea Minto, 'The Spirit of the Law over Its Letter: The Role of Culture and Social Norms in Shielding Cooperative Banks from Systemic Shocks' (2016) 10(1) *Law and Financial Markets Review* 16.

¹²⁴ Hagen Henry, *Guidelines* (n 115).

¹²⁵ A European Cooperative Society (SCE) is a form of cooperative available in the European Union (EU). An SCE is: "an optional legal form of a cooperative. It aims to facilitate cooperatives' cross-border and trans-national activities. The members of an SCE cannot all be based in one country. The SCE is required to unite residents from more than one EU country." European Commission, 'European Cooperative Society (SCE)' (Web Page) <https://single-market-economy.ec.europa.eu/sectors/proximity-and-social-economy/social-economy-eu/cooperatives/european-cooperative-society_sce_en>.

¹²⁶ Avsec (n 121).

¹²⁷ Münkner (n 115).

cooperatives; and ‘special laws for special types of co-operatives’.¹²⁸ The consistent theme across these frameworks is the application of cooperative principles.¹²⁹

C *Members and Purpose*

Cooperatives are dual-purpose organisations - an association for the benefit of members and a business enterprise that conducts economic activities. These two elements polarise viewpoints; the non-profit sector is sceptical of the economic orientation of cooperatives while the business sector is suspicious of a cooperative’s social orientation.¹³⁰ The suggestion that cooperatives are ‘*enfants terribles*’ portrays an embarrassed reaction by laissez-faire capitalism reliant on a dominant economic system to a curious organisational form that blends social and economic organisational elements,¹³¹ albeit with an underlying tension between economic viability and social responsibility.¹³² The symbiotic relationship of a cooperative requires both social and business elements to thrive if the cooperative is to be successful.¹³³

Cooperative membership is unique for its democratic approach to the management of the cooperative, operationalised by each member having an equal number of shares, which translates into ‘one vote per member’. In contrast, corporation shareholders’ votes are directly linked to the number of shares held, thus allowing powerful individualistic blocs to be established within the corporation, a situation that should not be possible in a cooperative. Governance of cooperatives is more democratic, based on one vote per member regardless of equity stake. Although corporations share some of these membership characteristics, they generally fail to deliver in the context of care for the community, the seventh ICA principle. The BHP Ok Tedi crisis in Papua New Guinea, which unfolded over the decades 1970s to 1990s, illustrates this point: BHP released sediments containing heavy

¹²⁸ Hans-H Münkner, *Ten Lectures on Co-operative Law* (LIT Verlag, 2nd rev ed, 2016) 6 (‘*Ten Lectures*’).

¹²⁹ While there is consensus in the ICA on the principles, the cooperative principles have been subject to several minor revisions: at the 1937, 1966 and 1995 ICA Congresses. Diversity exists in the number and type of principles adopted across jurisdictions. See Johnston Birchall, ‘Cooperative Principles Ten Years On’ (2005) 98(2) *Review of International Co-operation (ICA General Assembly Edition)* 45 (‘Cooperative Principles Ten Years On’).

¹³⁰ Yair Levi and Peter Davis, ‘Cooperatives as the “Enfants Terribles” of Economics: Some Implications for the Social Economy’ (2008) 37(6) *The Journal of Socio-Economics* 2178.

¹³¹ *Ibid.*

¹³² Jos Bijman, ‘Agricultural Cooperatives and Market Orientation: A Challenging Combination?’ in Adam Lindgreen et al (eds), *Market Orientation: Transforming Food and Agribusiness around the Customer* (Gower Publishing, 2010) 119; Levi and Davis (n 130); Charity Samantha Vo, ‘Between the Local and the Global: An Analysis of Economic Tensions in Cooperatives’ Practices’ (2019) 62(1) *International Social Work* 212.

¹³³ Brett Fairbairn, ‘History from the Ecological Perspective: Gaia Theory and the Problem of Cooperatives in Turn-of-the-Century Germany’ (1994) 99(4) *The American Historical Review* 1203, 1218.

metals into the lower Ok Tedi River and Fly River with little regard for the thirty thousand indigenous people living in communities downstream of the mine or the surrounding environment, which suffered an ecological disaster.¹³⁴

The contribution of core values and principles to sustainable and inclusive business practice is the underlying *raison d'être* of cooperatives.¹³⁵ Cooperatives derive their unique structure through characteristics that restrict ownership, control and benefits to members,¹³⁶ thus a sense of community develops around a shared purpose. Adoption of the seven universal cooperative principles is enshrined in cooperative laws and rules¹³⁷ such as the CNL; the rules reinforce the cooperative principles of democratic member control and member economic participation.

While cooperative membership is open and voluntary, it can be subject to membership conditions. For example, to join a fruit growing distributing cooperative, members will need to grow, and supply to the cooperative, the amount of fruit specified in the cooperative rules. Cooperative members must also comply with active membership provisions and resolutions that require members to guarantee a pre-determined participation in the primary activities of the cooperative as a supplier or consumer of cooperative goods and services.¹³⁸ Patronage¹³⁹ (loosely, the amount of trade the member has with the cooperative) and active membership conditions are integral to distributing cooperatives and form the basis for the distribution of surplus funds to members. Whereas corporations pay a dividend on each share held at the board's discretion,¹⁴⁰ cooperative payments to

¹³⁴ David Hyndman, 'Academic Responsibilities and Representation of the Ok Tedi Crisis in Postcolonial Papua New Guinea' (2001) 13(1) *The Contemporary Pacific* 33; Hyndman (n 42).

¹³⁵ Fredrick O Wanyama, *Cooperatives and the Sustainable Development Goals: A Contribution to the Post-2015 Development Debate* (International Labour Organization Background Paper, 2014).

¹³⁶ Birchall, 'Cooperative Principles Ten Years On' (n 129).

¹³⁷ Münkner, *Ten Lectures* (n 128) 33.

¹³⁸ *Co-operatives (Adoption of National Law) Act 2012* (NSW) s 146 (meaning of 'active membership provisions and resolutions'); s 149 (for primary activities); and s 150 (for active membership related to primary activity).

¹³⁹ Patronage is often cited in cooperative literature but rarely defined. See Elena Alexandra Mamouni Limmios et al, 'Financial Instruments and Equity Structures for Raising Capital in Co-operatives' (2016) 12(1) *Journal of Accounting and Organizational Change* 50; for reasons behind cooperative patronage, see Gashaw Tadesse Abate, 'Drivers of Agricultural Cooperative Formation and Farmers' Membership and Patronage Decisions in Ethiopia' (2018) 6(2) *Journal of Co-operative Organization and Management* 53. Patronage has also been linked to membership: see Shahid Ghauri, Tim Mazzarol and Geoffrey N Soutar, 'Why Do SMEs Join Co-operatives? A Comparison of SME Owner-Managers and Co-operative Executives Views' (2021) 9(1) *Journal of Co-operative Organization and Management* 100128. The *Oxford English Dictionary* (online at 28 September 2022) definition of 'patronage' includes: 'Custom given to a business, shop, restaurant, theatre, etc.; the giving of such custom'.

¹⁴⁰ *Corporations Act 2001* (Cth) s 254T.

members are based on the patronage (measured by transactions) between the member and the cooperative.¹⁴¹

Cooperatives differ from corporations as the sovereignty of collective membership takes precedence over the right of capital. This hierarchy prioritises members and member value over profit and creates a management style where decision making, governance, risks and rewards are distributed differently.¹⁴² The distributing cooperative is an unusual business form as it allows competitors to join together to combat market threats.¹⁴³ For example, small fruit-producing companies (consider a family-run orchard) will place produce in terminal markets and compete against other fruit-producing companies. However, if these companies supply fruit to the same cooperative, they become allies in a sense as they attempt to collectively improve market volume and allow the cooperative to compete on their behalf in the market. This scenario is transferable to other industries such as independent liquor outlets or grocery stores whereby the stores join with other retailers, potentially competitors, to improve their purchasing power.¹⁴⁴

Despite the benefits Australian cooperatives offer, the cooperative business structure has not been adopted at the same rate as corporations with ebbs and flows in popularity evident.¹⁴⁵ Reasons identified by researchers include fragmented state legislation,¹⁴⁶ the inability to maintain an effective national organisation and form alliances with the national labour movement,¹⁴⁷ and the absence of a ministerial portfolio or champion for the sector.¹⁴⁸ Suggestions that cooperatives are parochial, antiquated, and self-interested are countered with values including community-focused, democratic, a catalyst for local economic development, and a powerful local-global movement.¹⁴⁹ Although these descriptions seem overly effusive, and polarised, they illustrate the diversity that exists in cooperatives. It is this diversity that

¹⁴¹ Levi and Davis (n 130).

¹⁴² Lawrence et al (n 65) 9.

¹⁴³ Patmore et al (n 74) suggest business cooperatives should be classified as a separate entity in cooperative taxonomy. Although Patmore et al do not include agricultural cooperatives in their classification, a previous study revealed a horticultural cooperative composed of companies behaved similarly to the business cooperative, see Linda Louise Bennison, 'Accountability in a Horticultural Marketing Co-Operative: Perceptions from Grower Members' (MPhil thesis, Queensland University of Technology, 2019) <https://eprints.qut.edu.au/136515/> and Linda Bennison, Alexandra Williamson and Larelle Chapple, 'How Accountability of Australian Farmer Co-operative Members Hinges on the Farm Gate' (2024) 57(1) *Journal of Co-operative Studies* 24.

¹⁴⁴ Patmore et al (n 74).

¹⁴⁵ Patmore and Balnave posit this as a cause for a weaker cooperative sector in comparison to the United States and United Kingdom: see Patmore et al (n 74).

¹⁴⁶ Apps (n 106).

¹⁴⁷ Balnave and Patmore (n 83).

¹⁴⁸ Hill (n 114).

¹⁴⁹ Jo-Anne Lee, Brian Smallshaw, and Ana Maria Peredo, 'Rethinking Co-operatives: Japanese-Canadian Fishing Co-operatives' (2017) 52(4) *Community Development Journal* 540.

is critically important as it helps shape the nature of society. According to Joseph Stiglitz, joint winner of the 2001 Nobel Prize in Economic Sciences and former senior vice president and chief economist of the World Bank,¹⁵⁰ cooperatives, along with non-government organisations (NGOs) such as universities and not-for-profit organisations, provide ‘a rich ecology of institutional arrangements’ – so critical for a successful society. The inclusion of cooperatives in the world of commerce showcases an alternative organisational form in the private versus public debate that does not rely on excessive myopia and greed.¹⁵¹ This is confirmed by recent flaws that have become evident with free market capitalism where a focus on profit has resulted in inequality from the unequal distribution and ownership of global assets.¹⁵²

Cooperatives are people-centric organisations where cooperative principles guide the organisation to operate in a more sustainable manner, emphasising the importance of values. With a primary purpose of providing benefits and value to members, this organisational focus is in stark contrast with corporations, where profit and shareholder primacy dominate.¹⁵³ In the next section we explore how cooperative frameworks that reference the SDGs and the PBF might be applied to corporations to ensure corporations make meaningful contributions to society and the planet.

IV Frameworks for Sustainable Cooperative Purpose

Elaborate reporting measures have been developed to help organisations identify and quantify benefits and risks to the environment and to society that extend beyond organisational performance. Environmental Social and Governance (ESG) reporting encourages more responsible use of capitalism to address climate change threats and safeguard society. Financial and non-financial reporting can adopt different forms: the Global Reporting Initiative can measure impacts on climate change, human rights, and corruption; the International Financial Reporting Standards Foundation’s Integrated Reporting explains relationships between financial, intellectual, and manufactured relationships and human, social and natural capital. The UN-ratified International Sustainability Standards Board is promulgating globally harmonised disclosure standards, which are

¹⁵⁰ See Nobel Prize Outreach, ‘Joseph E Stiglitz, Facts’ *The Nobel Prize* (Web Page) <<https://www.nobelprize.org/prizes/economic-sciences/2001/stiglitz/facts/>>.

¹⁵¹ Joseph E Stiglitz, *People, Power, and Profits: Progressive Capitalism for an Age of Discontent* (Penguin Books, 2019) 245.

¹⁵² McCredie et al (n 51).

¹⁵³ Anu Puusa, Kaarina Mönkkönen and Antti Varis, ‘Mission Lost? Dilemmatic Dual Nature of Co-operatives’ (2013) 1(1) *Journal of Co-operative Organization and Management* 6.

poised to become mandatory at various jurisdictional levels.¹⁵⁴ However, given the choice of reporting frameworks, some argue that these ESG measurements obfuscate insight and erode value to decision makers by the myriad of competing measurements and reporting requirements that have become another income stream for the financial and accounting professions with little benefit to society.¹⁵⁵

Companies, in general, have shown an adaptability to recognise their broader responsibilities to the environment, although it is a threat to the legitimacy of environmental reporting that many companies are doing little more than publishing well-crafted CSR reports and purpose statements without meaningful contributions to societal needs, referred to more colloquially as “greenwashing”.¹⁵⁶ In this part of the article, therefore, we consider two intertwined frameworks for ensuring that purpose statements are meaningful, objectively verifiable, and provide valuable contributions to society and the planet. First, the United Nations SDGs are considered followed by the PBF. These frameworks can provide a normative structure for corporations, analogous to the cooperative values and principles discussed in Section III.

A Sustainable Development Goals

Consensus has grown in recent decades on the dangers posed by climate change, understanding of the role of mankind in disturbing planetary processes, and recognition that inaction is no longer an option if serious if not cataclysmic environmental outcomes on Earth are to be avoided.¹⁵⁷ To that end, in 2015, 193 countries signed a global political agreement, the UN SDGs for 2030.¹⁵⁸ The SDGs extended the earlier Millennium Development Goals (‘MDGs’) which were formulated to

¹⁵⁴ See for more detail: Natania Locke, ‘International Developments in Mandatory Sustainability Disclosure and What It Means for Australian Corporate Disclosure’ (2023) 39 *Australian Journal of Corporate Law* 163.

¹⁵⁵ Janek Ratnatunga, ‘Escaping the ESG Reporting Maze – Prioritise on Emissions Only’ *Certified Management Accountants Australia New Zealand* (CEO Blog, 12 August 2022) <<https://cmaaustralia.edu.au/ontarget/escaping-the-esg-reporting-maze-prioritise-on-emissions-only/>>; Carol A Adams, *Sustainable Development Goals Disclosure (SDGD) Recommendations: Feedback on the Consultation Responses* (Association of Chartered Certified Accountants, International Integrated Reporting Council and World Benchmarking Alliance, 2020) <https://drcaroladams.net/content/wp-content/uploads/2020/01/Adams_2020_Feedback-on-the-consultation.pdf>; Sanjai Bhagat, ‘An Inconvenient Truth About ESG Investing’, *Harvard Business Review* (Article, March 31 2022) <<https://hbr.org/2022/03/an-inconvenient-truth-about-esg-investing>>.

¹⁵⁶ Gatti et al (n 21).

¹⁵⁷ See Jan Bebbington and Jeffrey Unerman, ‘Achieving the United Nations Sustainable Development Goals: An Enabling Role for Accounting Research’ (2018) 31(1) *Accounting, Auditing and Accountability Journal* 2; Jan Bebbington and Jeffrey Unerman, ‘Advancing Research into Accounting and the UN Sustainable Development Goals’ (2020) 33(7) *Accounting, Auditing and Accountability Journal* 1657; Jeffrey D Sachs, ‘From Millennium Development Goals to Sustainable Development Goals’ (2012) 379(9832) *The Lancet* 2206.

¹⁵⁸ Claus Stig Pedersen, ‘The UN Sustainable Development Goals (SDGs) Are a Great Gift to Business!’ (2018) 69 *Procedia CIRP* 21.

guide the global development agenda from 2000 to 2015. An analysis of the outcomes from the MDGs was succinctly put as ‘progress for people, regress for the planet’.¹⁵⁹

The SDGs, as successor to the MDGs, provide a plan to end extreme poverty, tackle inequality and justice, and protect the planet. Thus, the eight interlinked MDGs were extended to 17 goals: (1) No Poverty; (2) Zero Hunger; (3) Good Health and Well-being; (4) Quality Education; (5) Gender Equality; (6) Clean Water and Sanitation; (7) Affordable and Clean Energy; (8) Decent Work and Economic Growth; (9) Industry, Innovation and Infrastructure; (10) Reduced Inequality; (11) Sustainable Cities and Communities; (12) Responsible Consumption and Production; (13) Climate Action; (14) Life Below Water; (15) Life on Land; (16) Peace, Justice and Strong Institutions; and (17) Partnerships for the Goals.

At the heart of the sustainability concept is the proposition that a stable, functioning Earth system is essential for life.¹⁶⁰ The UN SDGs represent an urgent call for action by all countries to reduce inequality, spur economic growth, improve health and education, and responsibly and sustainably manage the natural environment.¹⁶¹ However, progress on the SDGs is difficult to achieve unless there is collaboration by all countries and stakeholders. An SDG Fund of approximately USD \$70 million was established as an international multi-donor and multi-agency development cooperation mechanism in 2014 to implement the 2030 Agenda in 23 countries. The SDGs, established by the UN General Assembly, and made more ‘actionable’ in 2017, are designed to achieve a better and more sustainable future for all.¹⁶²

The SDGs apply to all signatory countries regardless of their stage of development. Although the SDGs are not legally enforceable, the Australian SDGs summits co-hosted by the Australian Council for International Development, the Australian Council of Social Service, the UN Association of Australia, the Global Compact Network Australia, and the Sustainable Development Solutions Network Australia/Pacific demonstrated commitment from 150 decision makers and leaders of business, academia, and international development for future summits, working groups, ongoing communication and mapping performance against the SDGs.¹⁶³ The adoption of SDGs at the country

¹⁵⁹ Jan Vandemoortele, 'From Simple-Minded MDGs to Muddle-Headed SDGs' (2018) 5(1) *Development Studies Research* 83.

¹⁶⁰ Linxiu Wu et al, 'A Planetary Boundary-Based Environmental Footprint Family: From Impacts to Boundaries' (2021) 785 *Science of the Total Environment* 147383.

¹⁶¹ See generally, United Nations, 'Sustainable Development Goals – The 17 Goals' (n 17).

¹⁶² See The Global Goals, <<https://www.globalgoals.org/>>.

¹⁶³ See the list of participating organisations in Australian Council for International Development et al, *The Australian SDGs Summit: On the Road to Implementation, Outcomes Report* (7 September 2016) 18–19 <<https://www.acoss.org.au/wp-content/uploads/2016/12/FINAL-Australian-SDGs-Summit-Outcomes-Document.pdf>>; and UN Global Compact Network

level is complemented by a commitment to provide data from regular progress reviews to national, regional, and global reports.¹⁶⁴ However, the action from and between federal, state, and local government, business, civil society, and academia necessary for success has been mixed. Good results with health and education have been offset by poor progress with climate change and reducing inequalities.¹⁶⁵ Nevertheless, the SDG reporting aim, to provide a transparent and accountable means to monitor and compare Australia's and other signatory countries' progress,¹⁶⁶ is commendable.

The SDGs are included in a UN resolution known as the 2030 Agenda as the goals are intended to be achieved by the year 2030. This is an ambitious target, and it has been recognised that the private sector needs to be mobilised if the goals are to be achieved.¹⁶⁷ Business's contribution to and engagement with the SDGs is the subject of regular reporting. For example, in 2021 results were published by the United Nations Global Compact and Accenture Strategy. The 2021 study of 1232 chief executive officers (CEOs), drawn from 21 industries spanning 113 countries, concluded that CEOs believed business was 'not doing enough' and, in many cases, companies and industries were not meaningfully contributing to the 2030 attainment of the SDGs.¹⁶⁸ 82 percent of CEOs identified a lack of clarity from policymakers and Government around the climate change target cap of a 1.5 degree Celsius rise in temperature. Action taken by 57 per cent of businesses to implement sustainability into their operations was counterbalanced by the 43 per cent that were not taking action. Indicative of weakened confidence during the Covid-19 pandemic, the CEOs questioned the ability of business to provide a truly global response as current actions from the pandemic were seen as disjointed, unprepared, and occasionally contradictory across industries and sectors. In comparison, the 2019 Global Compact Report revealed 71 per cent of CEOs held the view that, with increased commitment and action, 'business can play a critical role in contributing to the Global Goals'.¹⁶⁹ The lever for action by business is likely to come from customers, consumers, employees, investors and shareholders. The outlook on the SDGs, according to the 2021 report's introduction, makes for grim reading. According to Sanda

Australia, '2nd Australian SDGs Summit' (Web Page)
 <<https://unglobalcompact.org.au/events/2nd-australian-sdgs-summit/>>

¹⁶⁴ See Cameron Allen et al, 'Assessing National Progress and Priorities for the Sustainable Development Goals (SDGs): Experience from Australia' (2020) 15(2) *Sustainability Science* 521.

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.*

¹⁶⁷ Timothy B Palmer and David J Flanagan, 'The Sustainable Company: Looking at Goals for People, Planet and Profits' (2016) 37(6) *Journal of Business Strategy* 28.

¹⁶⁸ See Lurie et al (n 65); Apurv Gupta, *The Decade to Deliver: A Call To Business Action, The United Nations Global Compact – Accenture Strategy CEO Study on Sustainability* (2019) 7.

¹⁶⁹ Gupta (n 168) 12.

Ojiambo, current Assistant Secretary-General and then-Executive Director of the UN Global Compact, and Peter Lacy, Chief Responsibility Officer and Global Sustainability Services Lead at Accenture:

“we are on the precipice of catastrophe. Our 2019 CEO Study found that business leaders were severely off track to deliver on their climate goals. Today, the picture is even bleaker.”¹⁷⁰

It would appear that the level of urgency called for in 2019 by the UN Secretary-General, António Guterres, for ‘a much deeper, faster and more ambitious response ... to unleash the social and economic transformation needed to achieve our 2030 goals’¹⁷¹ needs to be maintained if not accelerated by businesses as the UN social progress index estimates a lag of 62 years in meeting the SDGs.¹⁷²

Whatever the corporate motivation — bolstering legitimacy or appeasing stakeholders — engagement on a voluntary basis with the SDGs can build a stronger sense of mission. To date, support for the SDGs is found across disciplines such as science, business, and law to name a few.¹⁷³ Cooperatives provide proof that economic and societal activities can be combined in a business structure. The argument we propose is that corporations could use and refer to the SDGs, PBF framework and cooperative principles to define their purpose.¹⁷⁴ This approach provides corporations with a practical framework to guide their business activities and a benchmark for assessing the purposes of organisations.¹⁷⁵ Accordingly, echoing the various works by Baumfield, and by Langford,¹⁷⁶ this does not require a change in the law, but companies may institute powerful symbolic action by using their corporate constitution or other public disclosure opportunities¹⁷⁷ to commit to the SDGs. Companies that do so are ‘ahead of the curve’ if it comes to more formal legal intervention in mandating CSR.¹⁷⁸

¹⁷⁰ Lurie et al (n 65) 4.

¹⁷¹ Gupta (n 168) 16.

¹⁷² Dima Jamali, Ralf Barkemeyer, Georges Samara, Stefan Markovic, ‘The SDGs: A Change Agenda Shaping the Future of Business and Humanity at Large’ (2022) 31(4) *Business Ethics, the Environment & Responsibility* 899, 899.

¹⁷³ Bebbington and Unerman (n 157); McCredie et al (n 51) 650.

¹⁷⁴ Wanyama (n 135); Jürgen Schwettmann, ‘The Role of Cooperatives in Achieving the Sustainable Development Goals – The Economic Dimension’ (Workshop Paper, United Nations DESA Expert Group Meeting and Workshop on Cooperatives, 8–10 December 2014) <<http://www.un.org/esa/socdev/documents/2014/coopsegm/Schwettmann.pdf>>; Yichen Shen et al, ‘Role of Co-operatives in Facilitating the Implementation of the Sustainable Development Goals – An Experience from Nova Scotia, Canada’ (Inter-Agency Taskforce on Social and Solidarity Economy International Conference, 25–26 June 2019) <https://knowledgehub.unsse.org/wp-content/uploads/2019/05/206_Shen_Role-of-Co-operatives-in-Facilitating_En.pdf>.

¹⁷⁵ Shen et al (n 174).

¹⁷⁶ Baumfield (n 70); Langford (n 70).

¹⁷⁷ See Ratnatunga (n 155) for examples of reporting frameworks.

¹⁷⁸ Although Australia has little appetite to change the law (see CAMAC (n 37)), as noted earlier, influential governance bodies such as the market operator (ASX) can exert pressure on

B Planetary Boundary Framework and the Interplay with the SDGs

The planetary boundaries concept was developed in 2009 by the Stockholm Resilience Group¹⁷⁹ to estimate a safe operating space for humanity within the confines of the functioning of the Earth System.¹⁸⁰ The nine environmental planetary boundaries identified in the PBF are climate change, novel entities (chemical pollution), stratospheric ozone depletion, atmospheric aerosol loading, ocean acidification, biogeochemical flows (phosphorus, nitrogen), freshwater use, land system change, and biosphere integrity. As a simple explanation of how Earth systems are interconnected, consider two chain reactions (flows) from an application of nitrogen fertiliser to boost productivity in agricultural production systems. First, nitrous oxide emitted from the fertiliser converts to nitrogen oxide and contributes to the hole in the ozone layer above Antarctica.¹⁸¹ Second, excess nitrogen can leach into waterways causing eutrophication, where excessive plant growth results in algal blooms that compete with marine life for oxygen and potentially releases toxins, both of which kill fish and seagrass and destroy habitat, reducing biodiversity. Decomposition of algae and plant matter releases carbon dioxide where flows to oceans increase acidification and impair the ocean's ability to function as a sink for CO₂.¹⁸² The current trajectory of increased atmospheric carbon dioxide concentrations if left unchecked will fuel more frequent and severe climatic events with the potential to make the planet uninhabitable or result in a collapse of the food chain, neither of which is in the best interests of humankind.

The PBF is a framework that has potential to guide corporate purpose. The relatively stable environment of the past 10-12 millennia described as the Holocene epoch has been disrupted by human activity described by many, but not officially ratified, as the Anthropocene.¹⁸³ The importance of the PBF research is that it provides a scientific basis to understand the interconnectedness of the planetary boundaries. As the PBF reveals how systems are interconnected, research findings have

companies to comply and report (see the social licence to operate discussion, ASX Corporate Governance Council (n 39)).

¹⁷⁹ Stockholm Resilience Centre (n 10).

¹⁸⁰ Rockström et al (n 10).

¹⁸¹ Claudia Mohr provides a succinct editorial piece on nitrogen and its devastating effect on the environment: see Claudia Mohr, 'When Science and Politics Come Together: From Depletion to Recovery of the Stratospheric Ozone Hole' (2021) 50(1) *Ambio*, 31.

¹⁸² See Rowan F Sage, 'Global Change Biology: A Primer' (2020) 26(1) *Global Change Biology* 3 or, for a simpler explanation, see the United States National Ocean Service website, 'What Is Eutrophication?' (Web Page) <<https://oceanservice.noaa.gov/facts/eutrophication.html>>.

¹⁸³ The Holocene is a geological time period that is complementary to human development due to warm stable conditions conducive to agriculture. For more on the transition from the Holocene to an anthropogenic era, see Rockstrom et al (n 10); Crutzen (n 12) and Persson et al (n 13).

shown that human activity has the potential to amplify these processes,¹⁸⁴ which creates a depressing outlook for the future.

Human perturbation has altered the functioning of Earth systems. Six planetary boundaries have been breached to date: (1) biosphere integrity; (2) climate change; (3) novel entities; (4) land system change; (5) biogeochemical flows of phosphorus and nitrogen; and, more recently, (6) freshwater change.¹⁸⁵ Much of the blame is levelled at land clearing, the resultant loss of biodiversity, the liberation of carbon primarily from burning fossil fuels, the production of synthetic fertilisers especially phosphorus and nitrogen, and chemical pollution.¹⁸⁶ However, an opportunity exists to incorporate the science of planetary boundaries and the global sustainability goals and policies to create a corporate purpose aligned with the cooperative principles. The seventh principle, care for the community, if defined in the widest sense to include the environment, could challenge some of the heinous acts committed by corporations in their pursuit of profit.

For the purpose of the arguments herein, we suggest corporations could (re)adopt corporate purpose albeit with a societal perspective and refocus the lens through which they view the world to achieve a more equitable distribution, and sustainable use, of natural resources. A schematic representation of how this could work is shown in Figure 1. The inner circle consists of the planetary boundaries and known breaches developed by the Stockholm Institute. The outer ring of the circle categorises the planetary boundaries identified as resources, effect, and emission, using the work of Steffen et al.¹⁸⁷ The SDGs are aligned to the inner or outer circles depending on their connectedness to the environmental planetary boundaries. The final stage is the identification of SDGs aligned to the ICA cooperative principles, below the circle, or the outer ring of the biophysical processes as these SDGs are reliant on sustainable functioning planetary boundaries.

¹⁸⁴ Steven J Lade et al, 'Human Impacts on Planetary Boundaries Amplified by Earth System Interactions' (2020) 3(2) *Nature Sustainability* 119.

¹⁸⁵ Stockholm Resilience Centre (n 10).

¹⁸⁶ Persson et al (n 13).

¹⁸⁷ Steffen et al (n 18).

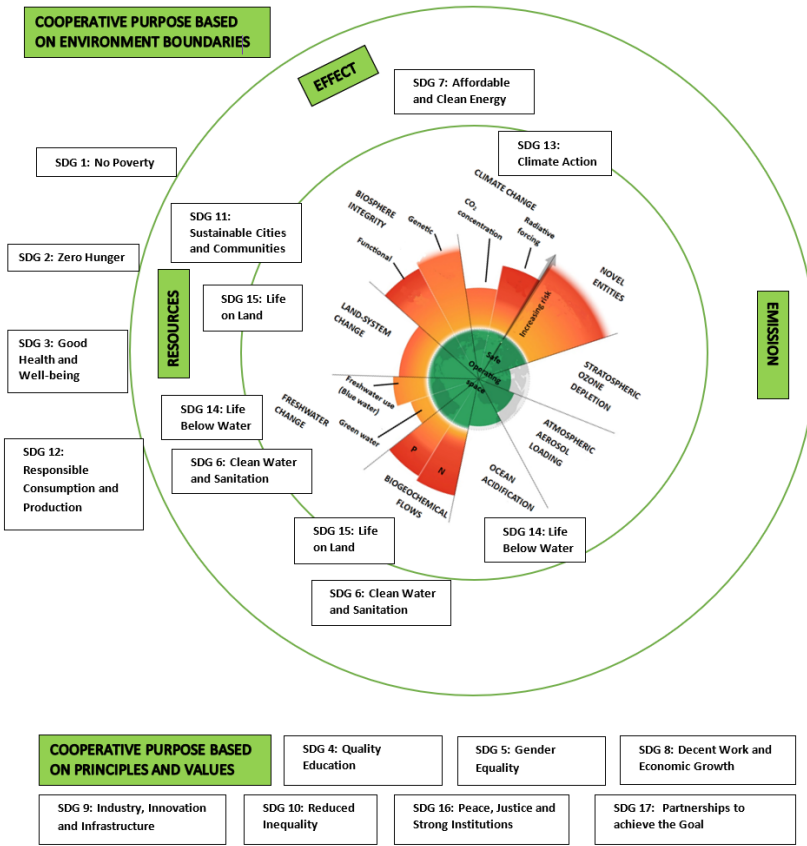


Figure 1: Adaptation of the design by Azote for Stockholm Resilience Centre, based on analysis in Richardson et al. (2023) linked to biophysical processes, and overlaid with the United Nations Sustainable Development Goals and ICA cooperative principles. (PBF attribution creative commons license by-nc-nd 3.0).

Although the PBF is more in the nature of a physical system, interpolation of SDGs into such a physical system requires adaptation rather than strict adherence to the original frameworks. Resource allocation provides a nexus between the planetary framework of resources and the SDGs such as SDG6 *Clean water*, SDG11 *Sustainable cities*, SDG14 *Life below land*, and SDG15 *Life on land*. Sustainable production systems require healthy functioning land systems that use freshwater responsibly. If the SDGs in the inner resources ring are managed for the best interest of the planet, then it is likely we can achieve the SDGs in the resources outer ring. When food production systems generate sufficient food of high nutritional value it will help achieve SDG1 *No poverty*, SDG2 *Zero hunger*, SDG3 *Good health and well-being*, and SDG12 *Responsible consumption and production*. In

contrast, the planetary framework for climate change aligns well with SDG7 *Affordable and clean energy*, and SDG13 *Climate action*. Life on land and below water and clean water and sanitation (SDGs 15, 14 and 6, respectively) can impact the biogeochemical flows. Some SDGs intersect with several planetary boundaries.

Managing the remaining SDGs is more complex due to the intricacies of SDG interconnectedness. If purpose was reintroduced to corporations, and companies aligned with the SDGs and/or operated according to the ICA principles and values as expected of cooperatives, a more cooperative effort to protect, if not save, the planet would be possible. The way forward will not be easy. By way of example, when it comes to emissions, SDG7 *Affordable and clean energy* and SDG13 *Climate action* are linked in the emission category. However, variations in policy settings and assumptions will impact the attainment of goals where conflict exists such as in energy provision and climate change prevention.¹⁸⁸ Due to the breadth of the SDGs, it is likely trade-offs will be made that undermine the achievability of the SDGs and confirm the research by Allen and colleagues that Australia is likely to fall well short of meeting its 2030 SDGs.¹⁸⁹

The complexity of the task is summed up by Professor Tim Reeves, former Director General International of the Maize and Wheat Improvement Centre, who points out the difficulty between balancing affordable food with profitable farming. An increasing population requires more food to be produced from less land, and with less water, and less energy rich inputs.¹⁹⁰ This confluence of requirements creates a truly complex agricultural policy dilemma faced by many governments around the world and is operationalised on a daily basis by multinational food-producing corporations.

The question arises as to the role of the state versus the role of multinationals in wicked regulatory problems and how principles might be involved, and systems managed. One such example is the establishment of the Global Food Safety Initiative (GFSI) in 2000. Following the outbreak of *bovine spongiform encephalopathy* (mad cow disease) in the 1980s, and dioxin crises in the 1990s, collaboration between global food industry leaders occurred to reduce food safety

¹⁸⁸ David Griggs et al, 'Sustainable Development Goals for People and Planet' (2013) 495(7441) *Nature* 305.

¹⁸⁹ Cameron Allen et al, 'Greater Gains for Australia by Tackling All SDGs but the Last Steps Will Be the Most Challenging' (2019) 2(11) *Nature Sustainability* 1041.

¹⁹⁰ Timothy G Reeves, 'Fifty Years in Pursuit of Agricultural Sustainability – An Ever “Moving Target”' (Donald Oration, 18th Australian Agronomy Conference, 24–28 September 2017) <www.agronomyaustraliaproceedings.org/images/sampled/2017/Donal%20Oration_ASA_2017_Reeves_Tim_Final.pdf>; Timothy Reeves, 'Meeting the Challenges of Global Food and Nutritional Security' (2017) 202 *ATSE Focus* 36.

risks, and audit duplications and cost.¹⁹¹ The GFSI vision, to provide safe food for consumers everywhere via global food safety management systems, uses standards, accreditation, and certification¹⁹² with auditing carried out by external third parties. Whilst the state has an interest in the international standards and their application, it does not participate in the regulatory sense. While involvement with GFSI is voluntary, compliance is through accreditation with a range of food safety schemes operating globally, including: Primus GFS Global Aquaculture Alliance Seafood, Global Gap, Food Safety System Certification (FSSC) 22000, Global Red Meat Standard, Canadagap, Safe Quality Food (SQF), Brand Reputation through Compliance Global Standard (BRCGS), International Featured Standards (IFS) and Japan Food Safety Management Association.¹⁹³ The GFSI demonstrates the shift occurring in regulatory systems on the global stage and the potential for cooperation, suggestive of a glimmer of hope for how the United Nations SDGs could be adopted in a regulatory role.

C *Towards a Sustainable Corporate Purpose*

Purpose plays an important role in people-centric organisations such as cooperatives and associations. Corporations are also about people – shareholders, employees, stakeholders, and the myriad communities that support and surround corporations. Advances in technology since the Industrial Revolution have altered how people live and work, particularly in Australia where the introduction of motorised vehicles overcame the tyranny of distance and re-engineered the boundaries of communities.

Two centuries on, corporate law scholarship¹⁹⁴ is still rigorously debating several issues related to corporate purpose. First, are our laws and regulations facilitating the tipping point into the Anthropocene age? If so, we cannot persist with capitalism, as structured by corporations, to continue as ‘business as usual’.¹⁹⁵ Secondly, is limited liability a

¹⁹¹ Nadia Chammem et al, ‘Food Crises and Food Safety Incidents in European Union, United States, and Maghreb Area: Current Risk Communication Strategies and New Approaches’ (2018) 101(4) *Journal of AOAC International* 923.

¹⁹² See SAI Global, ‘Global Food Safety Initiative (GFSI), Standards & Schemes’ (Web Page) <<https://saiassurance.com.au/global-food-safety-initiative>>.

¹⁹³ See Safe Food Alliance, ‘What Is GFSI?’ (Web Page) <<https://safefoodalliance.com/food-safety-resources/what-is-gfsi/>>.

¹⁹⁴ Taking the *Joint Stock Companies Act 1844* (UK) as the starting place for modern company law, although some US states had legislated to permit incorporation earlier in the 19th century, and some nations permitted bank charters earlier in the 18th century. See Farrar (n 32); Phillip Lipton, ‘The Introduction of Limited Liability into the English and Australian Colonial Companies Acts: Inevitable Progression or Chaotic History?’ (2018) 41(3) *Melbourne University Law Review* 1278.

¹⁹⁵ Christine Parker, ‘From Responsive Regulation to Ecological Compliance: Meta-regulation and the Existential Challenge of Corporate Compliance’ in Benjamin van Rooij and D Daniel Sokol (eds), *The Cambridge Handbook of Compliance* (Cambridge University Press, 2021) 37, 45.

causal connection to large-scale harm? Limited liability, a crucial characteristic of the modern company, may be economically efficient for investors but allows companies to externalise some of the cost of doing business, i.e., harm, to involuntary creditors and society at large.¹⁹⁶ Sophisticated players (large-scale project managers and banks) use limited liability to avoid financial as well as social and environmental risks of activities.¹⁹⁷ Thirdly, is the formulation of the fiduciary duty imposed on directors personally too narrow? The dominantly narrow view of fiduciary constraint views the interests of the company (ie, its shareholders) in a fiscal light, whereas there is ‘ample space’ for directors ‘to interpret their duties in balancing the various interests and demands in the overall interest of the company’.¹⁹⁸ When corporate purpose is coupled to the SDGs, and management is aligned to cooperative principles and values, a framework exists for a more sustainable existence that will keep humanity within the safe limits of the planetary boundaries. This is not an idealistic suggestion as profit does not have to be sacrificed in this process. Mondragon and CBH have shown that large cooperatives can be successful. Moreover, it is how we operationalise care for the community that will underpin more responsible behaviour – ideally community encompasses the environment, our flora, and fauna. It is a proactive approach to sustainability as evidence has shown a reactive approach, repairing climate disasters, is costly and not always effective.

The interaction of the SDGs, the PBF and cooperative principles with a sustainable corporate purpose can be demonstrated via example. Industrial societies and to a large extent the corporate form are implicated in the erosion of environmental quality and stability by dumping waste and effluent into waterways and airsheds, actions that threaten the resilience and functioning of Earth systems.¹⁹⁹ Contamination of land and water resources directly threatens the SDGs that relate to biological production systems, either natural or man-made. When production systems are damaged it then becomes more difficult to meet hunger, poverty and well-being targets. A downward spiral in effect, or, as some would say, a race to the bottom.

However, linking SDGs with biophysical processes illustrates the point that there is no goal or process for profit for the sake of private wealth generation. SDGs with a social base are outside the physical system however they are still strongly reliant on the function of healthy planetary boundaries. Consequently, corporations have an opportunity

¹⁹⁶ Lipton (n 194) 1280; Peta Spender, ‘Weapons of Mass Dispassion: James Hardie and Corporate Law’ (2005) 14(2) *Griffith Law Review* 280, 285.

¹⁹⁷ Shalanda H Baker, ‘Adaptive Law in the Anthropocene’ (2015) 90(2) *Chicago-Kent Law Review* 563, 575.

¹⁹⁸ Sjäffjell and Taylor (n 11) 51.

¹⁹⁹ Steffen et al (n 18); Rockström et al (n 10).

to reorientate themselves, introduce and meet social objectives, and distance their purpose and operations from an obsession with profit at any cost, which has resulted in widespread pollution in the past. As our central argument, we consider that re-introducing purpose and focusing on the SDGs will facilitate a strong sense of community and cooperation that will alter the growth at any cost trajectory towards an economic model with sustainable and equitable human well-being as the goal.²⁰⁰

Proof that a cooperative approach works is the Montreal Protocol (1987). In 1974, researchers proposed that the chemical group, chlorofluorocarbons known as CFCs, were contributing to environmental damage and creating a hole in the ozone layer.²⁰¹ To combat the risk that chlorofluorocarbons posed to humanity, the Montreal Protocol regulated the production and consumption of these chemicals. The agreement was signed in 1987 and is unique for being the only UN treaty ratified by all 198 UN member states on Earth”.²⁰² The Protocol is described as a ‘landmark achievement’ for the integration of environmental leadership and international scientific cooperation²⁰³ that provided a framework for global compliance on the international level. Simple but effective. In a crisis, the way forward was via cooperation.

Profitable activities that threaten food security, human and ecosystem health, and ultimately economic prosperity²⁰⁴ need to be viewed in a different light. If every corporation had a purpose that was entwined with the SDGs, we could evaluate how corporate activities align with the SDGs. Instead of complex ESG or accounting systems that are artificial constructs and easily manipulated, the solution could be for annual reports to document how company activities have supported the SDGs. While this may sound a little lame and ineffective, it does deliver society with a rather large stick to wield against corporations that ignore the SDGs — companies would have to defend claims when a perceived breach occurred. Simplicity and urgency are the criteria for this suggestion. Admittedly there are multiple ways in

²⁰⁰ Daniel W O’Neill et al, ‘A Good Life for All Within Planetary Boundaries’ (2018) 1(2) *Nature Sustainability* 88.

²⁰¹ Mario Molina, Sherwood Rowland and Paul Crutzen were jointly awarded the Nobel Prize in Chemistry 1995 ‘for their work in atmospheric chemistry, particularly concerning the formation and decomposition of ozone’: Nobel Prize Outreach, ‘The Nobel Prize in Chemistry 1995’ (Web Page) <<https://www.nobelprize.org/prizes/chemistry/1995/summary/>>.

²⁰² The UN Environment Programme website has a summary of the Montreal Protocol that provides a succinct history and future suggestions: see ‘About Montreal Protocol’ (Web Page) <<https://www.unep.org/ozonaction/who-we-are/about-montreal-protocol>>.

²⁰³ Greg Whitesides, ‘Learning from Success: Lessons in Science and Diplomacy from the Montreal Protocol’ *Science and Diplomacy* (Article, 10 August 2020) <<https://www.sciencediplomacy.org/article/2020/learning-success-lessons-in-science-and-diplomacy-montreal-protocol>>.

²⁰⁴ Xin Zhang et al, ‘Managing Nitrogen for Sustainable Development’ (2015) 528(7580) *Nature* 51.

which to interpret and draw links between the SDGs and planetary boundaries as it is a subjective process that invokes personal philosophies; however we have science to define, benchmark, and monitor planetary boundaries.

V Conclusion

The Anthropocene, the planetary period where human activity has been the dominant influence on Earth's climate and environment, has created a plethora of sustainability issues for the planet. By briefly traversing the corporate purpose debate and comparing the development of large-scale enterprises through corporate reform, we argue that there is much to learn from the cooperative business structure. A focus on SDGs, the PBF, and cooperative principles and guiding values, provides a model to better organise corporations for a less destructive existence.

The renewed interest in cooperatives as a vehicle for member participation suggests a level of dissatisfaction exists with corporations. It may be time to re-engineer the corporation to meet societal expectations and explore how corporations can be more cooperative. Hence, we identify and illustrate that using the cooperative as a model for corporations will accelerate progress with the UN SDGs.

As a business model, there is much to commend cooperatives to the corporate world. Resilience evident during recent crises such as the COVID-19 global pandemic and the Global Financial Crisis has been attributed to the unique membership structure of cooperatives,²⁰⁵ to which we add risk aversion practices, and the propensity for cooperatives and members to bail in for the general good. As self-help organisations, cooperatives were recognised during the GFC and COVID-19 pandemic for their care of members and the community. Collective action by some cooperatives reduced the hours worked by each employee to ensure all employees maintained their job.²⁰⁶ Depending on the cooperative, hardship and financial assistance packages were also made available for members. This is in stark contrast to the behaviour of 13 ASX listed companies that used JobKeeper payments to underpin extraordinary profit,²⁰⁷ again highlighting a fundamental difference in values – care for the corporation's profits compared to care for the community's well-being.

²⁰⁵ Ann Hoyt and Tito Menzani, 'The International Cooperative Movement: A Quiet Giant' in Patrizia Battilani and Harm G Schröter (eds), *The Cooperative Business Movement, 1950 to the Present* (Cambridge University Press, 2012) 23, 57.

²⁰⁶ See BCCM Resilience Report (n 5).

²⁰⁷ Charlotte Grieve, 'The ASX-Listed Companies Keeping JobKeeper Despite Making Profits' *Sydney Morning Herald* (3 September 2021) <<https://www.smh.com.au/business/companies/the-asx-listed-companies-keeping-jobkeeper-despite-making-profits-20210902-p58ob7.html>>. See also Hutchins (n 8).

Cooperative values and principles underpin sustainable and stable employment²⁰⁸ with a degree of resilience conferred on 12 per cent of the global workforce and the communities they support. The cooperative model – with its differing ownership and governance model generating different outcomes – should be ubiquitous in an economy that is successful at democratising ownership and sustaining purposeful enterprise at scale. A growing cooperative sector, be it corporations that are cooperatives, or the traditional cooperative, would be one of many factors that could catalyse systemic change. But a flourishing sector will also be a symptom of a different type of economy emerging, one where thriving businesses are organised so they address deep democratic deficits generated by current patterns of ownership, and operate with values of participation and community control, while placing a primacy on social and ecological goals. Cooperative flourishing in a more democratic, equitable, sustainable economy would advance what Raymond Williams called ‘the long revolution’²⁰⁹ – the difficult and ongoing struggle to build a society defined by democratic, open and purposeful relationships, where hierarchies of power and illegitimate authority are replaced with values of co-operation, dignity and solidarity in an equitable, democratic and sustainable economy. Scaling democratic forms of ownership through co-operative expansion is critical to that endeavour.

The analysis in this article seeks to show that for-profit and for-purpose imperatives have co-existed successfully in cooperative organisations. Cooperative organisations are financially viable and have demonstrated longevity as legal and commercial structures.

As a result of this article, we encourage further discussion and debate through rigorous research on the following thoughts that have not been thoroughly canvassed in this article. First, as university teachers and researchers based in Australia, we observe but cannot explain why cooperatives as a business or legal topic seem to have disappeared from our business and law curricula.²¹⁰ Second, there have been some points raised throughout as to the similarities and differences between the regulation of corporations and cooperatives. In Australia’s federal legal system, the relative trajectories of legal regulation of corporates and cooperatives are of ongoing interest. Alongside this second point, further research could delve into the relative benefits of national regulation with a national regulator, as has occurred in Australia with the companies’ regulator (ASIC) and the charities’

²⁰⁸ Lighton Dube, Revaux Numbwa and Emmanuel Guveya, ‘Determinants of Crop Diversification Amongst Agricultural Co-operators in Dundwa Agricultural Camp, Choma District, Zambia’ (2016) 6(1) *Asian Journal of Agriculture and Rural Development* 1.

²⁰⁹ Raymond Williams, *The Long Revolution* (Columbia University Press, 1961).

²¹⁰ Ann Apps and Linda Bennison, ‘The Silent Treatment - A Study into the Omission of Co-operative Law from Curricula in Australian Law and Business Schools’ (ICA CCR Global and European Research Conference, 10-13 July 2023).

regulator, the Australian Charities and Not-for-profits Commission (ACNC). Third, as we deal with waves of COVID-19 pandemic variants, it will be interesting for future research to investigate whether cooperative businesses have distinguished themselves from traditional corporations in responding to challenges brought about by supply chain disruptions and their otherwise adaptability in meeting members' needs and expectations beyond financial gain. Finally, scholarly discourse on the 'wicked problem' wrought by large-scale commercial activities that damage the planet and society, how legal solutions may discipline corporations, and whether the integration of cooperative principles into the corporate purpose debate will prove to be constructive, is welcomed.