

TRACING THE HISTORICAL DEVELOPMENT OF CORPORATE SOCIAL RESPONSIBILITY AND CORPORATE SOCIAL REPORTING

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The concept of Corporate Social Responsibility does not have a precise meaning. Some would describe Corporate Social Responsibility as corporate compliance with the spirit as well as the letter of the law and others may refer to it as a business approach by which an organisation takes into account the manner in which its activities may impact upon different stakeholders. Even though there is not one definition for Corporate Social Responsibility, a concern with this notion has existed for centuries. For instance, Corporate Social Responsibility dates from the Code of Hammurabi in Babylon millennia ago. Its evolution is reflected in the different guidelines instituted to help companies in their corporate social reporting. This paper provides an overview of the historical development of Corporate Social Responsibility and most specifically corporate social reporting. It also reviews recent trends and developments in corporate reporting standards and guidelines, and includes a brief overview of socially responsible investment, a topic of recent interest.

I INTRODUCTION CORPORATE SOCIAL RESPONSIBILITY

What is a corporation? In *The Devil's Dictionary*, a satirical publication, Ambrose Bierce defined a corporation as 'an ingenious device for

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obtaining individual profit without individual responsibility'.³ However, such a statement does not reflect the current positions of corporations in Australia. Even though s 124 of the *Corporations Act 2001* (Cth) notes that 'a company has the legal capacity and powers of an individual [...]', a company can also be primarily⁴ or secondarily⁵ liable for torts and crime. More recently, a company has even been convicted for manslaughter.⁶ Further, many modern social commentators would resent Bierce's pessimistic perspective. For instance, ten years ago leading sociologist Daniel Bell stated that 'to think of the business corporation simply as an economic instrument is to fail totally to understand the meaning of the social changes of the last half century'.⁷ This statement illustrates the significance of Corporate Social Responsibility and the need to incorporate it into the legal system to improve the way corporations function and interact with society. It has become apparent that there is a current and ongoing paradigm shift in economic and financial standards toward more socially responsible practices.

High profile corporate collapses such as Enron, WorldCom and HIH have led to a heightened awareness and a sense of urgency about this issue. More recently, the collapse of Lehman Brothers and the crash of the global financial market have shed new light on the shady practices of certain financial institutions. As a result, calls for new regulations to deal with the current crisis have been made. In the United States, for instance, the former Federal Reserve chairman, Alan Greenspan,⁸ advised the US Congress that he was shocked by the breakdown of the US market and that he was partially wrong for opposing regulation of the market. Additionally, Greenspan mentioned the need for the introduction of new regulation in the areas of fraud, settlement, and securitization to re-establish financial stability.⁹

³ Ambrose Bierce, *The Devil's Dictionary* (2007), 30.

⁴ *Lennard's Carrying Company Ltd v Asiatic Petroleum Co Ltd* [1915] AC 705.

⁵ *Lloyd v Grace, Smith & Co Ltd* [1912] AC 716.

⁶ *R v ICR Haulage Ltd* [1944] KB 551, 556.

⁷ Daniel Bell, *The Coming of Post-Industrial Society: A Venture in Social Forecasting* (1999), 289.

⁸ Alan Greenspan is one of the supporters of deregulation of the market.

⁹ Mark Felsenthal, 'Greenspan "Shocked" at Credit System Breakdown' (23 October 2008) <http://news.yahoo.com/s/nm/20081023/bs_nm/us_financial_greenspan> at 17 November 2008.

When considering all the corporate collapses that are taking place with more frequency all around the globe due to the dishonest, deceitful and negligent practices of these financial institutions, it is no longer appropriate for companies to blatantly denounce social responsibility and proclaim that their sole purpose is profit maximisation.

Many companies have gradually realised the importance of Corporate Social Responsibility, with 88 per cent of the executives interviewed in 2005 noting that this notion is central to their corporate decision making.¹⁰ Such a statistic shows that companies are evolving towards becoming 'good citizens'. Many companies in Australia have started accepting Corporate Social Responsibility. For instance, BHP Billiton has noted the importance of Corporate Social Responsibility:

The dynamic nature [of the corporate responsibility] agenda provides an opportunity for corporate groups such as ours to seek competitive advantage, by exploring new ways of approaching and engaging in relationships with their key stakeholders.¹¹

But for many companies, Corporate Social Responsibility is still a vast and unfamiliar dimension, with no clear definition of what it is and what it covers. Certain descriptions of Corporate Social Responsibility centre around the corporate compliance of a business with the spirit as well as the letter of the law while other descriptions may refer to this notion as a business approach by which an organisation takes into account the manner in which its activities may impact different stakeholders.¹² For instance, the European Union Green paper defined Corporate Social Responsibility as 'a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis'.¹³

¹⁰ Economist Intelligence Unit, *The Importance of Corporate Social Responsibility* (2005), 5.

¹¹ *Ibid* 17.

¹² Corporations and Markets Advisory Committee, *The Social Responsibility of Corporations Report* (December 2006), 13.

¹³ The European Commission, *Promoting a European Framework for Corporate Social Responsibility*, European Union Green Paper (July 2001) 8.

In 1972 Wallich, on the other hand, defined the term Corporate Social Responsibility as ‘a condition in which the corporation is at least in some measure a free agent. To the extent that any of the foregoing social objectives are imposed on the corporation by law, the corporation exercises no responsibility when it implements them’.¹⁴ Even though there is no consensus on the exact definition of Corporate Social Responsibility, this paper adopts the view that Corporate Social Responsibility relates to the effort corporations make above and beyond regulation to balance the needs of stakeholders with the need to make a profit (as explained later). However, while the notion of Corporate Social Responsibility seems to be embraced today, historically, there has been an ideological movement that opposed this concept.

Opposition to Corporate Social Responsibility traditionally comes from advocates of laissez-faire capitalism. The most prominent exponent was the late Milton Friedman, who even went in 1975 to Chile to convince Augusto Pinochet to adopt free market capitalism.¹⁵ Friedman opposed the concept of Corporate Social Responsibility for the following reasons:¹⁶

- corporations, unlike real people, cannot be said to have social responsibilities;
- company directors are merely shareholders’ agents, hence their sole purpose should be to maximise shareholders’ wealth;
- company directors, not being the owners of corporations, do not have the right to spend shareholders’ money on matters that are not related to profit-generating; and
- it is difficult to decide the appropriate social duties corporations should be responsible for, since one man’s good is another’s evil.

Friedman argued that those who take Corporate Social Responsibility seriously are in fact ‘preaching pure and unadulterated socialism’ and ‘are

¹⁴ Henry G Manne and Henry C Wallich, *The Modern Corporation and Social Responsibility* (1972) 40.

¹⁵ Robert B Reich, *Supercapitalism: The Transformation of Business, Democracy, and Every Day Life* (2008), 3.

¹⁶ Milton Friedman, ‘A Friedman doctrine: The social responsibility of business is to increase its profits’ (September 13, 1970), *New York Times*, 17.

unwitting puppets of the intellectual forces that have been undermining the basis of a free society these past decades'.¹⁷ Friedman's famous quote regarding social responsibility is:

There is one and only one social responsibility of business — to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud.¹⁸

Friedman's view of Corporate Social Responsibility has been the subject of debate for several decades. However, given the current global emphasis on the importance of Corporate Social Responsibility, it is unlikely that any corporation that strictly adhered to Friedman's view could survive in the modern corporate environment. Other arguments against Corporate Social Responsibility tend to follow Friedman's logic. They include:

- the idea of Darwinian capitalism, which advocates 'survival of the fittest', thereby negating the need for corporations to be socially responsible;¹⁹
- the idea that society should not force a for-profit corporation to perform duties outside its prescribed nature (that is: to maximize corporate value), just as a not-for-profit organisation should not be forced to make profit;
- the idea that companies' expenses in terms of social responsibility ultimately fall on their stakeholders (for example: charging customers higher prices for goods and services to compensate for companies' social responsibilities expenses); and
- the notion that it is the responsibility of government, instead of corporations, to take care of society and get rid of externalities — such as environmental pollution.

Australian corporate law seems to support such a theoretical perspective because directors are not encouraged to involve their companies in

¹⁷ *Ibid.*

¹⁸ Friedman, above n 14, 17.

¹⁹ Jerry Bergman, 'Darwin's Influence on Ruthless Laissez-Faire Capitalism', March 2001 <<http://www.icr.org/i/pdf/imp/imp-333.pdf> > at 29 January 2008.

Corporate Social Responsibility related activities except if the benefit is obvious to them. Reich noted that some corporations are socially responsible in order to impress and attract new clients, not for the social good.²⁰ The Australian *Corporations Act 2001* (Cth) and general laws support such a view. Directors, for instance, have a duty to act for the best interest of the company they are working for.²¹ This means that they do not owe a duty toward the employees of a company²² nor do they usually owe a duty to creditors of the company,²³ nor do they have to consider the interest of different stakeholders. Accordingly, questions have been raised in relation to the proper basis of corporate philanthropy — as to whether corporate philanthropy is considered as a form of Corporate Social Responsibility. For instance, former Chief Justice Sir Gerard Brennan observed that there is a tension between corporate donation or corporate charitable activities and directors' duties, noting that:

There are sound reasons of policy for imposing a limitation on directors' powers to donate corporate assets. Investors, whose charitable inclinations are diverse, do not authorize directors to dispose of corporate assets to charitable objects of the directors' choice. The choice should remain with the individual investor when he or she obtains his or her share of the distributed profits. From the moral viewpoint, there is no virtue in a director's resolution to dispose of corporate assets to a charitable object. Virtue consists of the giving of what is one's own, not in the giving of assets that belong to another.²⁴

As a consequence, most corporate structures in the world do not encourage such an eventuality; they are designed to reward directors when the company's profit increases, by tying directors' remuneration

²⁰ Reich, above n 13, 168, 169.

²¹ *Corporations Act 2001* (Cth), s 181; *Greenhalgh v. Arderne Cinemas Ltd* [1951] Ch 286.

²² *Parke v Daily News* [1962] Ch 927; Part 5.8A of the *Corporations Act 2001* (Cth), give certain protection to employees.

²³ *Walker v Wimborne* (1976) 137 CLR 1. Directors may owe a duty to creditors if the company is insolvent. Under Statute, s 588G of the *Corporations Act 2001* (Cth) may also grant certain protection to creditors in case of insolvency of the company.

²⁴ Hon Sir Gerard Brennan, 'Law Values and Charity' (2002) 76 *Australian Law Journal* 492, 497.

to companies' profit performance; and they penalize directors by threat of replacement or worse, by threat of hostile takeover if the company does not generate a high amount of profit. Thus, directors ultimately have a duty to maximize the shareholders' profit. However, directors may choose to take other interests into account at their own peril.²⁵ For this reason, if corporate directors are to be more socially responsible, an adjusted legal system (that takes Corporate Social Responsibility and reporting more seriously), well-established guidelines, and proper reward-punishment system should be in place in order to protect the interest of directors and clarify their position. Further, it is difficult to demand that every company director behave in a 'socially responsible' manner, because it is hard to justify what is 'socially responsible' and what is not, and what to do when there is a conflict between profit-maximization and being socially responsible; or worse, being punished for being socially responsible in a profit-diminishing way.

When faced with Friedman's arguments, Corporate Social Responsibility advocates provide many reasons in support of their cause. However, there is no universally accepted theoretical framework for Corporate Social Responsibility or corporate social reporting. Some of the current theoretical arguments that support Corporate Social Responsibility include:²⁶

- economic considerations — socially responsible corporations send positive signals to all their stakeholders and differentiate themselves from competitors, thereby enhancing their long and short-term profits;
- human resource considerations — socially responsible corporations attract higher quality staff;
- legal considerations — socially responsible corporations can avoid interference in their business; and
- ethical and philanthropic considerations — corporations have general responsibilities to the societies they function in. The fourth point stems from the idea of 'noblesse oblige' (the

²⁵ Bryan Horrigan, '21st Century Corporate Social Responsibility Trends - An Emerging Comparative Body of Law and Regulation on Corporate Responsibility, Governance, and Sustainability' (2007) 4 *Macquarie Journal of Business Law* 85, 106.

²⁶ Corporations and Markets Advisory Committee, above n 10, 34-54.

obligation of nobility), the idea that a corporation as an entity is far more powerful than any single individual, and hence bears greater responsibility toward society.

Advocates, such as Suchman,²⁷ O'Donovan²⁸ and Freeman,²⁹ believe that the justification for Corporate Social Responsibility in general, and for corporate social reporting in particular, is found in legitimacy theory,³⁰ stakeholder theory³¹ and, institutional theory.³²

²⁷ Marc Suchman, 'Managing legitimacy: Strategic and Institutional Approaches', (1995) 20 (3) *Academy of Management Review* 571.

²⁸ Gary O'Donovan, 'Environmental Disclosures in the Annual Report: Extending the applicability and predictive power of legitimacy theory', (2002) 15(3) *Accounting, Auditing and Accountability Journal*, 344, 349

²⁹ Edward Freeman, *Strategic Management: A Stakeholder Approach* (Boston, Pitman, 1984).

³⁰ Legitimacy theory is the most widely used framework to explain and justify disclosures with regard to the environmental and social behaviors of firms. Suchman defines legitimacy 'as a generalised perception or assumption that the actions of an entity are desirable proper or appropriate within some socially constructed systems of norms, values, beliefs and definitions'. Central to legitimacy theory is the notion of 'social contract'. Mark C Suchman, 'Managing legitimacy: Strategic and Institutional Approaches', (1995) 20(3) *Academy of Management Review* 571, 574; Geoff Deegan, 'The Legitimising Effect of Social and Environmental Disclosures - a Theoretical Foundation' (2002) 15(3) *Accounting, Auditing and Accountability Journal* 282, 293.

³¹ The stakeholder theory argues that corporations serve a broader public purpose since the impact of corporations on employees, the environment, the local community and shareholders has increased over time. Accordingly, the impact of corporations is very influential on society they should be accountable to many more sectors of society than solely their shareholders. Jeffrey S Harrison, and Edward R Freeman, 'Stakeholders, Social Responsibility, and Performance: Empirical Evidence and Theoretical Perspectives', (1999) 42(5) *Academy of management Journal* 479; Anne Lawrence, James Weber and James Post, *Business and Society* (McGraw-Hill 11 ed, 2005).

³² Institutional theory delves into different aspects of social structure. Following this theory, organisations will change their structure of operations to conform to the external expectations in relation to what forms or structures are acceptable to the public. The concept that best captures this theory is isomorphism. This is the process that forces one corporation to conform to

Discussing these theories is beyond the scope of this paper.

Further, other advocates, such as Brown, believe that multiple bottom lines are the key to justifying and understanding Corporate Social Responsibility. Brown in particular determined that there is a need to shift 'from an organisation conscious of a single purpose (profit) to one conscious of a multiplicity of purposes (economic, environmental, and even political).'³³ One popular model of Corporate Social Responsibility proposed by Carroll³⁴ and later adopted by Loew et al,³⁵ has offered a multi-level perspective of Corporate Social Responsibility. According to this framework, in order to understand this concept, one needs to take into consideration the four levels of Corporate Social Responsibility.

The pyramid depicted in Figure 1 on the following page illustrates these levels.

other corporations when facing the same set of environmental conditions; Paul DiMaggio and Walter Powell, 'The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields' (1983) 48(2) *American Sociological Review* 147; Richard Scott, 'Institutional Theory: Contributing to a Theoretical Research Program' (August 2004) <<http://www.si.umich.edu/ICOS/Institutional%20Theory%20Oxford04.pdf>> at 30 December 2008.

³³ Courtney C Brown, *Beyond the Bottom Line* (Macmillan Publishing, 1979), 20.

³⁴ Archie B Carroll, 'The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders' (1991) 34(4) *Business Horizons*, 39.

³⁵ Thomas Loew, Kathrin Ankele, Sabine Braun and Jens Clausen, 'Significance of the CSR debate for sustainability and the requirements for companies' (2004) <<http://www.4sustainability.org/downloads/Loew-et-al-2004-CSR-Study-Summary.pdf>> at 17 November 2008.



Figure 1: Levels of social responsibility³⁶

Some of the levels in Figure 1 are mandatory; others are just desirable to include in a company's behaviour.

Profit-making is the fundamental requirement of any corporate entity. Accordingly, the most fundamental consideration of social responsibility is at the economic level. Amongst the most important stakeholders within a corporation are the shareholders, since they are in fact the true owners of the corporation. This is consistent with 'agency theory' which states that the managers of a corporation must keep the shareholders' best economic interest in mind when making any decision. It also complies with the Friedmanite neo-liberal doctrine that the main objective of any Corporate Social Responsibility activity is to increase the corporation's profits either in the short term or the long term.³⁷

When a corporation has conducted itself in a socially responsible manner, it is sending positive signals to its various stakeholders. These positive

³⁶ The pyramid is adapted from Carroll, above n 32. The different layers of the pyramid have been explained in the next paragraphs.

³⁷ Bryane Michael, 'Corporate Social Responsibility in International Development: An Overview and Critique' (2003).¹⁰ *Corporate Social Responsibility and Environmental Management*, 115.

signals might increase its short and long-term profits, for example, by increasing the product or service demanded by its consumers, or by attracting highly-skilled workers.

Along with the objective of profit-making, corporations must comply with the legal systems they operate within. Hence, the legal requirements of social responsibility are mandatory. The American Law Institute noted that ‘even if corporate profit and shareholder gain are not thereby enhanced, the corporation, in the conduct of its business, is obliged, to the same extent as a natural person, to act within the boundaries set by the law.’³⁸ However, it is important for companies not just to apply the letter of the law but also the spirit of the law. The perfect example of this can be found in Enron’s rosy and glossy corporate responsibility annual report, which, for instance, notes the following:

Enron’s Code of Ethics is published in English, Spanish, and Portuguese and distributed with universal acknowledgement and agreement to comply by its employees. Among other areas of coverage, the Code of Ethics specifically reinforces Enron’s Principles of Human Rights and the Environmental, Health and Safety Principles; and *states that business is to be conducted in compliance with all applicable local and national laws and regulations, and with the highest professional and ethical standards.*³⁹

As illustrated in this statement, Enron was viewed as a good corporate citizen and was considered to have a solid Corporate Social Responsibility performance through its environmental record, triple bottom line reporting, codes of conduct and philanthropic contributions.⁴⁰ Ultimately, even though this corporation seemed to tick all the relevant boxes that were needed to show compliance with the law and to give the impression that it was a paragon of corporate responsibility and ethics, its organisational culture was based on greed, jealousy and selfishness.⁴¹

³⁸ The American Law Institute, *Principles of Corporate Governance: Analysis and Recommendations* (1994) Volume 1, 55.

³⁹ Enron, Corporate Responsibility Annual Report, 9, <<http://www.enron.com/corp/pressroom/responsibility/CRANNUAL.pdf>> at 14 February 2006.

⁴⁰ David Vogel, *The Market for Virtue: The Potential and Limits of Corporate Social Responsibility* (2005) 38.

⁴¹ Ronald R Sins and Johannes Brinkmann, ‘Enron Ethics (Or: Culture

As for ethics, while there is no mandatory requirement for corporations to behave ethically, it is desirable for corporations to do so. Corporations are encouraged 'to do what is right, just and fair'.⁴² A number of corporations claim to be ethical but, due to the fact that corporate social reporting is voluntary, accountability is absent. For instance, Lehman Brothers received in 2005 a Corporate Social Responsibility award from the Foreign Policy Association.⁴³ Further, the organisation claimed in its annual report in 2007 the following:

A strong corporate citizenship is a key element of our culture. We actively leverage our intellectual capital, network of global relationships and financial strength to help address today's critical issues.⁴⁴

With the collapse of this institution, it is becoming apparent that the practices of the company were not necessarily in compliance with the law nor were they for the benefit of consumers.⁴⁵

Finally, in relation to philanthropy, some academics, such as Michael Porter, do not differentiate between philanthropy and Corporate Social Responsibility. However, these two notions are not the same and should not be treated as one.⁴⁶ Philanthropy only reflects a small part of Corporate Social Responsibility.

While companies are not required to be charitable or to be good corporate citizens, it is desirable that they act as good citizens and that they have a positive impact on the community. However, there are certain limits to the application of the top two levels of social responsibility (ethical and charitable), because they cannot be applied without taking into consideration the lower two levels (economic and legal). A balance

Matters More than Codes)' (2003) 45 *Journal of Business Ethics*, 243, 243.

⁴² Carroll, above n 32, 44.

⁴³ Lehman Brothers, Award Recognition (2005), <http://www.lehman.com/who/awards/2005_detail.htm> at 17 November 2008.

⁴⁴ Lehman Brothers, *Annual Report 2007*, 7.

⁴⁵ Brian Ross and Alice Gomstyn, 'Lehman Brothers Boss Defends \$484 Million in Salary Bonus' (6 October 2008) <<http://uncleyap.blogspot.com/2008/10/greed-lehman-bro-nkf-familee-leegimes.html>> at 17 November 2008.

⁴⁶ Michael Hopkins, *Corporate Social Responsibility and International Development: Is Business the Solution* (2007), 113.

should be struck between these elements. For example, it is acceptable and desirable for a corporation to engage in sponsorship activities and other community programs if those activities will increase the shareholders' profits. In those cases, directors will weigh up and attempt to comply with all four levels.

On the other hand, not every charitable action of a company is applauded or is considered as legitimate act of Corporate Social Responsibility. As a result, activities of a purely charitable nature that do not benefit the company as a whole are not legitimate. For example, if a company spends money on a charity supported by the managing director's wife, such behaviour may involve a breach of two directors' duties — the duty to avoid conflict of interest and the duty to act in good faith for the best interest of the company. Accordingly, such conduct breaches the governing laws.

As a consequence, this paper adopts the definition of Corporate Social Responsibility that was put forward by Deborah Doane. Corporate Social Responsibility can be seen 'as the efforts corporations make above and beyond regulation' (the legal level) 'to balance the needs of stakeholders' (charitable/ethical levels) 'with the need to make a profit' (economic level).⁴⁷ Such a definition represents the levels of Corporate Social Responsibility presented in Figure 1.

One of the ways we can observe the commitment of companies to Corporate Social Responsibility is through their corporate reporting. Corporate social reports are addressed to different stakeholders such as shareholders, consumers and creditors. They are intended to convey information about the company's performance and prospects in relation to social and environmental issues. In most countries, they are voluntary and their content is not regulated. There are a number of codes and guidelines that have been put in place to give guidance to companies in relation to this matter.⁴⁸ This article looks at the history of Corporate Social Responsibility and reporting in order to trace its evolution over

⁴⁷ Deborah Doane, 'The Myth of CSR: The Problem with Assuming that Companies Can Do Well While also Doing Good Is that Markets Don't Really Work that Way', (Fall 2005) *Stanford Social Innovation Review*, 23, 23.

⁴⁸ These codes and guidelines will be discussed in more detail later on in this paper. Corporations and Markets Advisory Committee, *The Social Responsibility of Corporations Report* (December 2006), 24-27.

time. Despite the concept of Corporate Social Responsibility existing for a long time (as it will be illustrated in the next paragraph), the incorporation of Corporate Social Responsibility and corporate social reporting into the legal system of different countries has been very slow due to the controversy that surrounds this topic.⁴⁹ For example, even though in France, the concept of Corporate Social Responsibility and corporate social reporting has been viewed as a very important since the 1970s,⁵⁰ mandatory corporate social reporting has only been introduced into the system some thirty years later (in 2004) for companies listed on the *premier marché*.⁵¹ For this reason, it is important to trace when the movement towards Corporate Social Responsibility and reporting started in order to see how it has evolved and to understand the differences between today's trends and the previous corporate environment. This paper also reviews recent trends and developments in corporate reporting standards and guidelines, and includes a brief overview of socially responsible investment, a topic of recent interest.

II THE EVOLUTION OF CORPORATE SOCIAL REPORTING

A historical look may provide assistance in understanding the barriers that stopped the implementation of Corporate Social Responsibility and reporting into the corporate system. After all, it is only by looking at history that a better understanding of the current system can be gained. Corporate social reporting has evolved in Western Europe over several decades.⁵² Today, numerous organisations, including the United Nations, the European Union, national governments, and public interest groups require corporations to publish reports on Corporate Social Responsibility.

⁴⁹ Vassilios P Filios, 'Corporate Social Responsibility and Public Accountability' (1984) 3(4) *Journal of Business Ethics*, 305-314.

⁵⁰ Alain Chevalier, *Bilan Social de L'entreprise* (1976). Conseil Economic et Social, *Avis Adopte Par le Conseil Economic et Social au Cours de sa Seance du 26 Mai 1999*, <<http://www.conseil-economique-et-social.fr/rapport/doclon/99052609.PDF>> at 30 December 2008.

⁵¹ *Rapport de Mission Remis an Gouvernement: Bilan Critique de l'Application par les Enterprises de l'article 116 de la loi NRE*, April 2004 <http://www.orse.org/fr/home/download/rapport_NRE.pdf> at 30 December 2008.

⁵² Carol Adams, Wan Ying Hill and Clare B Roberts, 'Corporate Social Reporting Practices in Western Europe: Legitimizing Corporate Behaviour' (1998) 30(1) *British Accounting Review* 1, 1.

However, the need for Corporate Social Responsibility and reporting can be traced to ancient times. Even though the concept of a corporation only emerged much later, the ancient Code of Hammurabi already contained an element of Corporate Social Responsibility in relation to businesses in Babylon. For example, if a man built a house badly, and it fell and killed someone, the builder was to be slain. Hammurabi implemented the rule of ‘an eye for an eye’ for individuals and for the businesses they were running. Furthermore, roots of Corporate Social Responsibility may also be found in Japan with the Meiji restoration in 1868 with the development of concepts such as *shobaido* (the way of doing business) and *shonindo* (the way of the merchant).⁵³ In ancient Japan during the Edo era (1603-1868), merchants were relegated to the bottom of societal hierarchy, only above the outcast members of society — this hierarchy only began to crumble when a former merchant, Baigan Ishida, developed the concept of *shonindo* (the way of merchant) in combination with an ethical system called *shingaku* (heart learning), which held honest merchants on the same moral plane to the well-respected *samurai* (warriors). It is also interesting to note that with the modern Japanese word *kaisha* (company), when the syllables are reversed, *shakai*, it means society — implying a kind of mirror relationship between the two. Accordingly, the notion of Corporate Social Responsibility is not new.

Further, corporate social reporting has been present in Australia and around the world since at least the nineteenth century. For example, a look at the reporting of US Steel illustrates the fact that this company has been conducting such reporting since the beginning of the twentieth century.⁵⁴ Further, as early as 1850, Levi Strauss & Co noted in its reports its commitment to provide a quality product, the best possible working condition for its employees, and community services.⁵⁵ All this led Hogner to note that ‘corporate social reporting is an old idea with a

⁵³ The Economist Intelligence Unit, *The Way of the Merchant: Corporate Social Responsibility in Japan* (2005) 4.

⁵⁴ Robert H Hogner, ‘Corporate Social reporting: eight decades of development at US Steel’, (1982) 4 *Research in Corporate Performance and Policy*, 243-250.

⁵⁵ Walter A Haas, ‘Corporate Social Responsibility: A New Term for an Old Concept with New Significance’ in Thornton Bradshaw and David Vogel (ed), *Corporations and their Critics: Issues and Answers to the Problems of Corporate Social Responsibility* (1981) 133.

practical base.’⁵⁶ Similarly, Lewis, Parker and Sutcliffe found evidence that Corporate Social Responsibility toward employees dated back to at least 1919.⁵⁷ Additionally, Guthrie and Parker looked at the history of corporate social reporting in BHP from 1885 to 1985 and found that BHP corporate reports exhibited a variable pattern of total social disclosure levels over their history. Even though there seemed to be a lack of environmental disclosure in the annual reports of the company until the 1950s, human resources and community involvement did form part of the reports, and the company was prepared to disclose bad news from time to time.⁵⁸

However, worldwide interest in corporate social reporting has fluctuated over time. The acknowledgement of corporate social reporting started to be felt after the end of World War II,⁵⁹ and the evolution of this notion can be roughly divided into four phases, characterised by varying levels of interest in conceptual and practical developments.⁶⁰

A Phase 1: from 1945 to the Late 1960s

The collapse of capitalism during the great depression reinforced the belief that companies were a necessary evil and that there was a malignant concentration of power in their hands.⁶¹ However, different companies’ profiles were improved during World War II due to companies’ proclaiming their patriotism to their country.⁶² For instance, Peter Drucker noted that the corporate form has ‘emerged as the

⁵⁶ Hogner, above n 52, 248.

⁵⁷ N Lewis, L Parker and P Sutcliffe, ‘Financial Reporting to Employees: the Pattern of Development 1919 to 1979’ (1984) 9 *Accounting, Organizations and Society*, 275.

⁵⁸ James Guthrie and Lee D Parker, ‘Corporate Social Reporting: A Rebuttal of Legitimacy Theory’ (1989) 19 *Accounting and Business Research* 342, 351.

⁵⁹ William C Frederick, *Corporation, be Good! The Story of Corporate Social Responsibility* (2006).

⁶⁰ Ariane B Antal, Meinolf Dierkes, Keith McMillan and Lutz Marz, ‘Corporate Social Reporting Revisited’, <<http://skylla.wz-berlin.de/pdf/2002/ii02-105.pdf>> at 7 December 2006.

⁶¹ Laurence Goodwyn, *The Populist Movement: A Short History of the Agrarian Revolt in America* (1987).

⁶² Roland Merchant, *Creating the Corporate Soul: The Rise of Public Relations and Corporate Imagery in American Big Business* (1999), 68.

representative and determining socioeconomic institution which sets the pattern' for the way of life and the mode of living of society.⁶³ With the end of the war, a number of prominent academics, such as Donald K Davids, were strong advocates of Corporate Social Responsibility and Reporting. Such support reflected a pervasive cold war ideology.

The consensus by 1949 was that Soviet Communism represented an attack against capitalism and Western power and dominance. Soviet Communism was also viewed as a danger to the American way of life. As a result, business leaders declared that their responsibility is not only to their company but also to the world.⁶⁴ Further, it was viewed by some that, if companies did not go beyond the bottom line, civilization will be threatened.⁶⁵

Additionally, due to the strong support that the Harvard Law School provided to the concept of Corporate Social Responsibility, a new generation of businessman became advocates of this notion and they tried to implement it in their businesses.⁶⁶

In 1953, Howard R. Bowen's book, *Social Responsibilities of the Businessman*, is considered by some as the beginning of the modern period of literature on this subject.⁶⁷ In it, Bowen raised the following question: 'What responsibilities to society may businessmen reasonably be expected to assume?'⁶⁸ His answer was, to ensure that firms make a profit while all along keeping society in mind. The decade of the 1960s saw a significant growth in attempts to formalize or more accurately state the meaning of Corporate Social Responsibility. One of the prominent writers in that era on this topic was Keith Davis who described Corporate Social Responsibility as 'the businessman's decisions and actions taken for reasons at least partially beyond the firm's direct

⁶³ Peter F Drucker, *Concept of the Corporation* (1946), 21.

⁶⁴ Bert Spector, 'Business Responsibilities in a Divided World: The Cold War Roots of the Corporate Social Responsibility Movement' (2008) 9(2), *Enterprise and Society* 314, 319.

⁶⁵ Wallace B Donham, 'The Social Significance of Business' (1927) 5 *Harvard Business Review*, 406, 406.

⁶⁶ Spector, above n 62, 315.

⁶⁷ Archie B Carroll, 'Corporate Social Responsibility: Evolution of a Definition Construct' (1999) 38 (3) *Business and Society*, 268, 269.

⁶⁸ Howard R Bowen, *Social Responsibilities of the Businessman* (New York University Press, 1953), xi.

economic or technical interest... which need to be commensurate with the company's social power'.⁶⁹ Further, in 1963, Joseph W. McGuire observed:

The idea of social responsibility supposes that the corporation has not only economic and legal obligations but also certain responsibilities to society which extend beyond these obligations.⁷⁰

In addition to the Cold War ideology, a number of other factors led to the endorsement of Corporate Social Responsibility which impacted on corporate social reporting from the late 1950s to the late 1960s by the western industrialised societies.

First, from the late 1950s to the late 1960s, public faith in government dwindled due to the fact that a number of government initiatives to help the community resulted in failure, leaving people disillusioned. As a consequence, members of the general public looked to corporations to deal with problems which they felt that the government was incapable of managing and, as a result, pressure grew on companies to take into consideration corporate social issues. For instance, it was hoped that policies such as the Urban Coalition could make a major impact on minority unemployment.⁷¹

Second, in the mid to late 1960s, capitalism was fighting a battle for legitimacy. There was growing interest in corporate ethics, corporate power, social responsibility and ecological degradation. Many movements in that decade pushed organisations to be more socially responsible. This period saw the emergence of the green movement, the

⁶⁹ Keith Davis, 'Can Business Afford To Ignore Social Responsibilities?' (Spring 1960) 2 *California Management Review* 70, 70-71.

⁷⁰ Joseph W McGuire, *Business and Society*, (McGraw-Hill, 1963), p 144.

⁷¹ Waldemar A Nielsen, 'Midcontinent Perspectives: Corporate Social Responsibility' 13 November 1978, <<http://www.umkc.edu/whmckc/PUBLICATIONS/MCP/MCPPDF/Nielsen-11-13-78.pdf>> at 17 November 2007; Urban coalition consists of urban entrepreneurs seeking to support causes that may affect a number of stakeholders. One of these urban coalitions attempted to improve the employment position for black people. H Robert and J Olson, 'Employment Discrimination Litigation: New Priorities in the Struggle for Black Equality' (1970) 6 *Harvard Civil Rights-Civil Liberties Law Review* 20, 20.

nuclear disarmament protests, the 1968 Paris riots, labour disputes, and the rise of trade unions in the US.⁷²

Third, criticism of standard Gross National Product (GNP) accounts led to the development of social indicators on the quality of life to supplement traditional data.⁷³

Fourth, the 1950s and 1960s saw the emergence of a generation of businessmen who were able and willing to support the concept of Corporate Social Responsibility. For example, in 1951, Frank Abrams, who was the chairman of Standard Oil of New Jersey, proclaimed that ‘the job of management is to maintain an equitable and working balance among the claims of the various directly affected interest groups... stockholders, employees, customers, and the public at large. Business managers are gaining professional status partly because they see in their work the basic responsibilities [to the public] that other professional men have long recognized in theirs.’⁷⁴ Further, Chief Executive Officers viewed themselves as ‘corporate statesmen’ that had a responsibility to balance the interests of shareholders, consumers, employees and the general public.⁷⁵

Additionally, in 1946, a *Fortune* magazine survey proposed that having ‘social consciousness’ meant that managers were responsible for the consequences of their actions to different stakeholders and not only to shareholders; their responsibility extended beyond the mere profit and loss statement to extend to a bigger sphere. In the survey, 93.5 per cent of the businessmen agreed with the statement.⁷⁶

⁷² Rob Gray, ‘The Social Accounting Project and Accounting Organizations and Society: Privileging Engagement, Imaginings, New Accountings and Pragmatism over Critique’ (2002) 27 *Accounting, Organizations and Society* 687, 690; William J Moore and Robert J Newman, ‘On the Prospects for American Trade Union Growth: A Cross Section Analysis’ (1975) 57(4) *The Review of Economics and Statistics*, 635.

⁷³ C Krebsbach and M Dierkes, (1974): ‘Evaluierung Sozialer Programme — Entscheidungsgrundlage für die Politische Planung.’ In: *Battelle Information*, No. 20, 28-35.

⁷⁴ Quoted in Reich, above n 13, 45.

⁷⁵ *Ibid* 27.

⁷⁶ Archie B Carroll, ‘Corporate Social Responsibility: Evolution of a Definition Construct’ (1999) 38 (3) *Business and Society*, 268, 270.

Finally, in the late 1950s and early 1960s, some companies started publishing corporate social reports. For example, the Dutch company, Gist Brocades, which had a tradition of progressive social policies, started publishing social reports from 1959.⁷⁷

All of these reasons motivated people to take into consideration Corporate Social Responsibility, and they pushed companies toward corporate social reporting.

B Phase 2: the Late 1960s to Late 1970s

With the end of World War II, Keynesian welfare was recognised and became accepted by governments around the world. The Keynesian welfare state assumes that government expenditure leads to public spending, which stimulates the economy and results in higher tax revenue leading to more generous social spending.⁷⁸ Marwick observed that the Keynesian welfare state was considered as the 'totality of schemes and services through which central government, together with the local authorities, assumed a major responsibility for dealing with all the different types of social problems which beset individual citizens'.⁷⁹

The rise of the Keynesian welfare state was apparent in the 1960s with the implementation in England and Wales of the Seebohm Report (1968) and the adoption in Scotland of the Kilbrandon Report (1964). Similarly, in the same period, Australia pursued a Keynesian path by using labour market and economic policy to achieve social goals.⁸⁰ As a consequence, in the 1970s, public interest in Corporate Social Responsibility and corporate social reporting increased. It became a fashionable phrase in business and socio-political circles.

Further, in view of the rise of the Keynesian welfare state, the 1970s witnessed a re-examination of the relations between the corporations

⁷⁷ Hein Shreuder, 'Employees and the Corporate Social Report: The Dutch Case' (1981) 52 (2) *Accounting Review*, 294, 295.

⁷⁸ John M Keynes, *The General Theory of Employment, Interest and Money* (1st ed 1973, reprint 1998); Elfriede I Sangkuhl, *Rethinking the Taxation of Corporations* (2008), PhD thesis, 42.

⁷⁹ Arthur Marwick, *British Society Since 1945* (1990), 45.

⁸⁰ John Harris and Catherine McDonald, 'Post-Fordism, the Welfare State and the Personal Social Services: A Comparison of Australia and Britain' (2000) 30 *British Journal of Social Work* 51, 54-55.

and society based on a new awareness of the positive and negative social impacts of business activities. Reporting indicators of social performance and assessment criteria were designed by businesses and the academic community and were tested by innovative companies. Interest in corporate social reporting was high, business journals frequently carried articles on new approaches, and analysts and experts tried to evaluate social reports and the information they provided.⁸¹ Many institutional investors in Europe and America who were interviewed for a study on the importance on Corporate Social Responsibility observed that an appropriate concern for Corporate Social Responsibility on the part of the company is a sign of good management and, accordingly, consistent with and necessary for good investment.⁸² For instance, a university executive committee policy resolution noted the importance of Corporate Social Responsibility:

The Committee deems it prudent to invest only in the securities of corporations in whose management it has confidence as being not only able and efficient but also responsible to the public interest because these are the corporations that will produce the best long-term result.⁸³

There were also several attempts to gather data on the social performance of corporations based on reports by private research groups, such as the Council of Economic Priorities, and by statutory agencies, such as the Federal Trade Commission.⁸⁴ On 14 April 1975, the US Securities and Exchange Commission conducted a hearing on the issue of corporate social disclosure. US District Judge Charles Richey directed the Commission to hold these hearings in order to make a decision on how it would respond to a court suit charging it with failure ‘to adopt

⁸¹ Meinolf Dierkes, Ariane B Antal, ‘Wither Corporate Social Reporting: Is It Time to Legislate?’ (1986) 28 (3) *California Management Review*, 106, 106.

⁸² Edward H Bowman and Mason Haire, ‘Social Impact Disclosure and Corporate Annual Reports’ (1976) 1(1) *Accounting, Organizations and Society*, 11, 13.

⁸³ Edward H Bowman, *University Investing and Corporate Responsibility* (Massachusetts Institute of Technology, 1971), 20.

⁸⁴ Kavasseri V Ramanathan, ‘Toward A Theory of Corporate Social Accounting’ (1976) 51 (3) *The Accounting Review* 516, 517.

regulations requiring broader disclosure in the environmental and equal opportunity areas'.⁸⁵

The UK Accounting Standards Steering Commission produced what is considered as the most radical restatement from the accounting profession of how corporate disclosure would be improved by social and environmental reporting.⁸⁶ At the same time, the US accounting profession published texts supporting corporate social reporting. In France, Alain Chevalier issued *Le Bilan Social de l'Entreprise* in the 1970s.⁸⁷ This publication led to a major movement in relation to Corporate Social Responsibility and resulted in the use of mandatory reporting in France in relation to public companies listed on the stock exchange.⁸⁸

In the 1970s, corporate social reporting gained momentum. Public pressure and the level of criticism of the business system had risen sharply during that period and played a partial role in the development of the concept of Corporate Social Responsibility. The performance of businesses, and the powers and privileges allocated to the big corporations, were called into question due to the birth of what some may call 'supercapitalism' which replaced democratic capitalism.⁸⁹ As a result of supercapitalism, large firms became more competitive, global and innovative.⁹⁰ Further, with the acceleration of globalisation, the number of transnational corporations increased and resulted in a massive exploitation of developing countries.⁹¹ All this led to the emergence of the New Social Movements (NSMs). Such movements embodied 'community-based coalitions that are made up of a combination of labour, environmental groups, students, human rights groups, and NGOs.

⁸⁵ Bowman and Haire, above n 80, 11.

⁸⁶ The Institute of Chartered Accountants, 'UK Accounting Standards: The History and Development of UK Accounting Standards' <http://www.icaew.com/index.cfm?AUB=TB2I_7019,MNXI_7019> at 1 January 2008.

⁸⁷ Xavier Chevalier, *Le Bilan Social de L'Entreprise* (1977).

⁸⁸ *Article 116 de la loi Nouvelles Regulations Economic.*

⁸⁹ Thomas Jones, 'Corporate Social Responsibility Revisited, Redefined' (1980) 22(3) *California Management Review* 59-67, 59; Reich above n 13, 7.

⁹⁰ Reich, above n 13, 7.

⁹¹ Victoria Carty, 'Technology and Counter-Hegemonic Movements: The Case of Nike Corporation' (2002) 1(2) *Social Movement Studies* 129,129.

Their mission is to make issues such as equity, dignity, well-being and sustainability as important as profitability and capital accumulation, and to ultimately create a global civil movement'.⁹² In short, NSMs aim for the creation of a global civil society movement and as such they became vocal critics of capitalism.

As a consequence, more and more companies voluntarily joined the social reporting movement, partly because such reporting seemed a possible answer to any criticism directed at them.⁹³ In certain cases, companies included statements of enforced compliance with the law or regulations in their annual reports:

During the past three years the Company has expended almost \$25 million for improvement of facilities to protect ecology and to comply with federal health and safety regulations.⁹⁴

In other cases, the tone was one more committed to Corporate Social Responsibility:

We remain committed, as ever, to environmental improvement ... Our society is becoming more aware each day of the difficult choices environmental regulations present. The challenge to our company is to consider these difficult choices objectively, for the benefit of all.⁹⁵

Other companies went a step further:

As a leader in the food industry and a corporation conscious of its public responsibility, we have historically installed environmental control equipment in our Company facilities. The Costs for such equipment will increase as local and federal regulations become more stringent.⁹⁶

An annual survey showed that 298 of the Fortune 500 industrial firms disclosed some type of social performance data in their 1973 annual reports.⁹⁷

⁹² Ibid 132.

⁹³ Antal, Dierkes, McMillan and Marz, above n 58, 6.

⁹⁴ Bowman and Haire, above n 80, 16.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Thomas Beresford, *Compilation of Social Measurement Disclosures in Fortune 500 Annual Reports - 1973* (Ernst & Ernst, 1973).

The majority of these disclosures were in the category of environmental control.⁹⁸

Organisations started to use corporate social reports as a management and communication tool with stakeholders such as their employees. For instance, Campbell Soup Company's 1975 annual report included a new section titled Corporate Citizenship. This section described the company's charitable contributions, minority enterprises, work with youth and the elderly, and a special museum project for the bicentennial celebration.⁹⁹

Organisations were also encouraged to be good corporate citizens. In 1977, for example, the monthly magazine *PW* put up a prize for the best social report of the year. Social reports were published by different types of organisations such as state owned organisations, accounting firms, universities, and corporate divisions.¹⁰⁰

Additionally, certain organisations used corporate pressure to generate change. For example, after Leon Sullivan joined the board of directors of General Motors, he used his position in the company to oppose apartheid and the South African government's policy of segregation.¹⁰¹ Sullivan stated:

Starting with the work place, I tightened the screws step by step and raised the bar step by step. Eventually I got to the point where I said that companies must practice corporate civil disobedience against the laws and I threatened South Africa and said in two years Mandela must be freed, apartheid must end, and blacks must vote or else I'll bring every American company I can out of South Africa.¹⁰²

⁹⁸ Ramanathan, above n 82, 517.

⁹⁹ Fred L Fry and Robert Hock, 'Who Claims Corporate Responsibility? The Biggest and the Worst' (1976) 18 *Business & Society Review* 62, 62.

¹⁰⁰ Shreuder, above n 75, 295.

¹⁰¹ 'The Sullivan Principles' <<http://muweb.marshall.edu/revleonsullivan/principled/principles.htm>> at 17 November 2008.

¹⁰² 'The Global Sullivan Principles' <<http://www.thesullivanfoundation.org/gsp/default.asp>> at 17 November 2008.

In 1977, the Sullivan principles were developed. These principles demanded equal treatment of all employees irrespective of their race and a number of organisations joined this movement.¹⁰³

Studies conducted from the late 1960s to the mid 1980s comparing corporate social performance in France, Germany, Canada and the US showed significant differences in corporate social reporting and performance associated with firm size and sphere of economic activity. A general tendency was found for larger corporations to put greater emphasis on social policy and performance. However, in certain instances, such as the importance of women to management and the magnitude of corporate social philanthropy, the data showed that smaller corporations (though still relatively large) tended to outperform the giants.¹⁰⁴

C Phase 3: The Late 1970s to the Late 1990s

Interest in social reporting started to evaporate from the late 1970s to the late 1990s. Although the companies that had pioneered concepts of corporate social reporting continued their efforts in that area, few companies joined their cause.¹⁰⁵ An economic crisis in 1976 in England gave impetus to the critics of Keynesianism from the neo-liberal right and a de-legitimation of the Keynesian welfare state. Public expenditure was no longer considered as a solution but a problem. As a result, the Labour government stressed on the importance of the pursuit of efficacy and it attempted to win trade union support by continuing the Keynesian welfare state's benefit and services. However, in 1978/79, this strategy backfired and led to massive public sector strikes. With the coming of Conservative Thatcher government, the British welfare system was exposed to a neo-liberal agenda of privatization and deregulation. The Conservative government believed that this new agenda would replace the failing of the Keynesian welfare state.¹⁰⁶

¹⁰³ 'The Sullivan Principles' <<http://muweb.marshall.edu/revleonsullivan/principled/principles.htm>> at 17 November 2008.

¹⁰⁴ Lee Preston, Francoise Rey and Meinolf Dierkes, 'Comparing Corporate Social Performance: Germany, France, Canada and the US' (1978) 20 (4) *California Management Review*, 40, 48.

¹⁰⁵ Dierkes and Antal, above n 79, 107.

¹⁰⁶ Harris and McDonald, above n 78, 56-7.

Similarly, the Keynesian welfare state declined in Australia. During 1983 to 1996, the Commonwealth labor government sought to restructure the economy to deal with its lagging growth and to promote its global fitness by moving away from the Keynesian welfare state.¹⁰⁷ Additionally, in the US, in the 1980s, the Reagan administration pulled away from the Keynesian economics when dealing with the financial crisis that was precipitated by the Vietnam War. It is interesting to note that before that date, the US governments had been committed to the Keynesian welfare state.¹⁰⁸

Further, in the 1980s, fewer definitions of Corporate Social Responsibility were put forward. Even though there was no consensus in relation to the definition of Corporate Social Responsibility, in the 1990s, there was a move toward alternative themes that were related and sometimes based on Corporate Social Responsibility such as stakeholder theory, business ethics theory and corporate citizenship.¹⁰⁹ Calls for the development of a uniform reporting system seemed to fall on deaf ears. One of the reasons was the resistance of organized groups to the concept of regulating corporate social reporting. Certain international labor groups opposed specific proposals for universal rules of corporate social reporting, noting that such rules might interfere with the ability of unions to negotiate local or international collective bargaining agreements with individual employers or specific industries.¹¹⁰

Another reason for the stagnation of the corporate social reporting movement was the collapse of the former socialist economies and the resulting development of neo-liberal economic policies in those governments and this had a direct effect on Corporate Social Responsibility because Corporate Social Responsibility is the end goal of Corporate Social reporting — reporting is one basic means towards achieving it.

¹⁰⁷ Ibid.

¹⁰⁸ Charles Noble, 'The Never Ending War on the Welfare State' (1999) <http://www.logosjournal.com/noble_neocon.htm> at 17 November 2008.

¹⁰⁹ Carroll, above n 32, 292.

¹¹⁰ Abid Aslam, 'Backgrounder: Corporate Social Responsibility' *Initiative for Policy dialogue*, <http://www2.gsb.columbia.edu/ipd/j_corporatesocial.html> at 9 December 2006.

Such policies gave corporations the freedom to increase ‘shareholder value’ at the expense of other stakeholders. All this, along with the globalisation of business strategies, fostered reservation and at times hostility toward the concept of Corporate Social Responsibility.¹¹¹

Despite such resistance, certain approaches and concepts in relation to corporate social reporting were developed. For instance, Donna J. Wood expanded and set forth a corporate social performance model that takes into consideration Corporate Social Responsibility.¹¹²

D Phase 4: the Late 1990s to the Present

The 1990-2000s period has started with the global hegemony of neo-liberalism — when the hype is about the reduction of barriers to free trade and deregulation. The ideas from 1989 Washington Consensus were also increasing in its popularity. The same period also had countervailing battles over free trade between the G7/8 and G77 in the World Trade Organisation (WTO) and Foreign Direct Investment (FDI) context. Further, the 1998 Organisation for Economic Co-operation and Development (OECD)’s Multilateral Agreement on Investment (MAI) fiasco had demonstrated that governments were still not ready to make their governance of investment more uniform.

The experience of the 2000s greatly dimmed the luster of neo-liberalism, climaxing with the 2008 global share market crisis. It has become apparent that free-market strategies had failed to solve social problems, and that simply maximising shareholder value did not automatically improve and strengthen the welfare of society. Widespread corporate irresponsibility such as the high profile corporate collapses of Enron and Lehman Brothers, the health controversy of James Hardie’s asbestos products; combined with the increasing concern of climate change and product safety issues — have fuelled the awareness of corporate responsibility and the needs of proper corporate social reporting. Different stakeholders have started to step up and adopt the concept of Corporate Social Responsibility and corporate social reporting. Additionally, the development of the internet made it easier for people to gain access to information about a company’s social and environmental performance, and allowed different groups to communicate and interact.

¹¹¹ Antal, Dierkes, McMillan and Marz, above n 58.

¹¹² Donna J Wood, ‘Corporate Social Performance Revisited’ (1991) 16 *Academy of Management Review* 691-718.

As a result, investors were able to exert pressure on companies to be more socially responsible.¹¹³

Today, increasing numbers of shareholders bring proposals before annual meetings of corporations all over the world. Some pressure groups even buy shares in companies to engage in this kind of shareholder activism. In Australia, s 249D of the *Corporations Act 2001* (Cth) requires directors of a company to call a members' meeting on the request of members with at least 5 per cent of the votes cast at the general meeting or at least 100 members who are entitled to vote during the meeting (the last requirement is referred to as the '100 members' rule'). The 100 members' rule has been abused by a number of pressure groups. For example, in the case of NRMA Insurance, it resulted in the calling of five special general meetings by a minority of shareholders who constituted 0.005 per cent of the members of the company. Arranging each meeting cost the company \$4.5 million.¹¹⁴ Clearly, in certain cases, shareholder activism due to pressure groups imposes a huge cost on the finances of a company. However, such a move can have a positive impact as it may encourage a company to be more socially active and may motivate companies to report on Corporate Social Responsibility issues because shareholders, who are bringing these matters to the attention of the directors of the company, are interested in the topic. Further, examples such as in the case of NRMA, illustrate a move toward corporate socially responsible investing.¹¹⁵

As noted in the introduction, there are a number of standards and codes that have been developed to guide companies on the different aspects of Corporate Social Responsibility and reporting. The next sections look at these issues in more detail. They consider the rise in corporate social reporting, the emergence of social investment and the different Codes and Guidelines available to corporations in relation to corporate social reporting.

¹¹³ Antal, Dierkes, McMillan and Marz, above n 58.

¹¹⁴ Robert Austin and Ian Ramsay, *Principles of Company Law* (13th ed, 2007) 282.

¹¹⁵ Horrigan, above n 23, 107. This will be discussed in more detail later on in the paper.

1 Recent Trends in Corporate Social Responsibility Reporting

There has been a significant increase in the level of corporate responsibility reporting in most countries in recent years. A survey by KPMG (2005) for the period 2002 to 2005 showed a 19 per cent increase in corporate responsibility reporting in the top 250 companies of the Global Fortune 500, and an 18 per cent increase in the top 100 companies in 16 countries (Australia, Belgium, Canada, Denmark, Finland, France, Germany, Italy, Japan, Netherlands, Norway, South Africa, Spain, Sweden, the United Kingdom and the United States). The two countries with the highest separate corporate responsibility reporting in 2005 were Japan (80 per cent) and the United Kingdom (71 per cent). From 2002 to 2005, South Africa showed a tremendous increase (of 17 per cent) in corporate responsibility reporting. Italy, Spain, Canada and France showed a nearly two-fold increase since 2002.¹¹⁶ The KPMG report also showed a significant change in the type of corporate responsibility reporting conducted. It changed from predominantly environmental reporting up until 1999 to sustainability (social, environmental and economic) reporting in recent years.¹¹⁷

KPMG's 2005 survey results also highlighted a range of drivers for corporate social reporting that businesses considered important. These drivers were economic considerations (74 per cent), ethical considerations (53 per cent), innovation and learning (53 per cent), employee motivation (47 per cent), risk management or risk reduction (47 per cent), access to capital or increased shareholder value (39 per cent), reputation or brand (27 per cent), market position improvement (21 per cent), strengthened supplier relationships (13 per cent), cost saving (9 per cent), improved relationships with governmental authorities (9 per cent), and other reasons (11 per cent).¹¹⁸ Clearly, economic reasons were the most common driver for *sustainability* reporting, which makes sense, since company directors are obliged to maximise shareholders' long-term and short-term wealth, and profit-making is at the core of all business entities. This is consistent with the four-level Corporate Social

¹¹⁶ KPMG. 'International Survey of Corporate Responsibility Reporting 2005' (2005) <http://www.kpmg.nl/Docs/Corporate_Site/Publicaties/International_Survey_Corporate_Responsibility_2005.pdf> at 1 January 2009.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

Responsibility pyramid proposed by Loew et al discussed earlier in this paper, in which economic considerations are deemed a fundamental consideration of corporate responsibility.¹¹⁹

2 *The Emergence of Socially Responsible Investment*

With the increasing interest in Corporate Social Responsibility, a new class of investment has attracted more attention than ever — the socially responsible investment (sometimes used interchangeably with the term ‘ethical investment’). Although more has been heard recently regarding socially responsible investments, the concept itself is not new. It has its roots in 18th century religions and 1960s anti-war sentiments.

At the core of socially responsible investment is the fundamental idea that investments that are deemed harmful and unethical to society should be screened out from investment portfolios, regardless of how potentially profitable they are. Typically this means avoiding investing in companies that are involved in firearms, military weapons, alcohol, tobacco, gambling and so on. Even though there are certain issues that are by their nature contrary to both international law and many state laws such as environmental degradation and child exploitation, the notion of ethics can at times be subjective — what is considered as ethical and socially responsible to one person might be considered as unethical and socially irresponsible to the next. For example, how we judge a pharmaceutical company that produces contraceptives or one that uses nuclear energy in the production process sometimes is largely a matter of perspectives. To bring the argument to the extreme, it is possible to even argue that investing is greed.

Nowadays socially responsible investment mainly focuses on *sustainability* — a term used to describe the capacity of maintaining a certain process or state indefinitely. In recent years, indexes have been established to respond to investors’ increasing demand for socially responsible investment. The Dow Jones Sustainability Index (DJSI) launched in 1999, the FTSE4Good Index launched in 2001, and KLD’s Domini 400 Social Index launched in 1990, are among the most popular investment indexes in this category. Trade organisations are set up around the world supporting the notion of socially responsible investment, such as the Social Investment Forum in the US, EuroSIF in the EU,

¹¹⁹ Loew, Ankele, Braun and Clausen, above n 33.

the Responsible Investment Association of Australasia in Australia and Asia, and the Association for Sustainable and Responsible Investment in Asia. On a national scale, the British Government's Pension Disclosure Regulation, which came into effect in July 2000 and which amended the 1995 Pensions Act, requires all UK occupational pension funds to disclose the degree to which they take into account ethical, social, and environmental considerations.¹²⁰ On a global scale, the United Nations Environment Program has launched a voluntary 'Principles for Responsible Investment'¹²¹ in partnership with UNEP Finance Initiative and the UN Global Compact in 2006. In recent years, there has also been a rise of Islamic investment principles with special focus on social and ethical dimensions of business; as well as the individual roles and responsibilities of various stakeholders.¹²²

Some researchers claim that socially responsible investment is important in attracting capital and increasing shareholders' wealth in the capital market.¹²³ According to the Social Investment Forum, in the US socially responsible investment assets rose more than 324 per cent from 639 billion in 1995 to \$2.71 trillion in 2007; while during the same period, non-socially responsible investment assets under professional management only increased for less than 260 percent from \$7 trillion to \$25.1 trillion.¹²⁴ Other research also shows that between 1998-2005 US companies that best care about employees' welfare (an aspect of being

¹²⁰ Sustainability Investment News (2000), 'UK Pension Funds Embrace Social Responsibility', <<http://www.socialfunds.com/news/article.cgi/article391.html>> at 25 December 2008.

¹²¹ United Nations, 'Principles for Responsible Investment' (2006), <<http://www.unpri.org/files/pri.pdf>> at 23 December 2008.

¹²² Rafik Issa Beekun and Jamal Badawi, 'Balancing Ethical Responsibility among Multiple Organisational Stakeholders: The Islamic Perspective' (2005) 60 *Journal of Business Ethics*.131-145.

¹²³ Glen Dowell, Stuart Hart and Bernard Yeung, 'Do Corporate Environmental Standards Create or Destroy Market Value?' (2000) 46 *Management Science* 1059-1074; Mark Orlitzky, Frank Schmidt and Sara Rynes, 'Corporate Social and Financial Performance: a Meta-analysis' (2003) 24(3) *Organization Studies*, 403-441; Pietra Rivoli, 'Making a Difference or Making a Statement? Finance Research and Socially Responsible Investment' (2003) 13(3) *Business Ethics Quarterly*, 271-287.

¹²⁴ Social Investment Forum, '2007 Report on Socially Responsible Investing Trends in the United States' (2007) <http://www.socialinvest.org/pdf/SRI_Trends_ExecSummary_2007.pdf>, at 23 April 2008.

socially responsible) earned an annualised return of 14 per cent per year, over double the market return¹²⁵; and that corporate environmental commitment has enhanced corporate financial performance¹²⁶. Others are not so optimistic regarding the profitability of this type of investment.¹²⁷ Research using a dataset starting from January 1991 to December 2003 has found that socially responsible investment funds in many European and Asia-Pacific countries strongly underperform domestic benchmark portfolios by about 5 per cent¹²⁸ per annum.¹²⁹

Although there have not yet been any conclusive empirical results indicating whether socially responsible investment portfolios outperform the traditional investment portfolios, the increase in public demand for socially responsible investment has sent a strong message to all companies that investors are increasingly concerned about the issue of Corporate Social Responsibility. This has been supported by a surge of investor activism in recent decades. This has, to a certain

¹²⁵ Alex Edmans, 'Does the Stock Market Fully Value Intangibles? Employee Satisfaction and Equity Price' (2007), Social Investment Forum 2007 Moskowitz Prize Winning Report, <<http://www.socialinvest.org/resources/research/documents/Moskowitz2007Paper.pdf>>, at 28 August 2008.

¹²⁶ Mark Orlitzky, Frank Schmidt and Sara Rynes, 'Corporate Social and Financial Performance: A Meta-analysis', Social Investment Forum 2004 Moskowitz Prize Winning Report, (2004) <<http://www.socialinvest.org/pdf/research/Moskowitz/2004%20Winning%20Paper%20-%20Moskowitz.pdf>> at 28 August 2008; Glen Dowell, Stuart Hart and Bernard Yeung, 'Do Corporate Global Environmental Standards Create or Destroy Market Value?' (2001) Social Investment Forum 2001 Moskowitz Prize Winning Report, <http://www.socialinvest.org/pdf/research/Moskowitz/2001_summary.pdf>, at 28 August 2008.

¹²⁷ Mark Schwartz, 'The "Ethics" of Ethical Investing' (2003) 43(3) *Journal of Business Ethics* 195- 213; Abigail McWilliams and Donald Siegel, 'Corporate Social Responsibility and Financial Performance: Correlation or Misspecification?' (2000) 21(5) *Strategic Management Journal*, 603-609.

¹²⁸ The average risk-adjusted returns of the SRI funds in Belgium, France, Ireland, Japan, Norway, Singapore, and Sweden are lower than -5 per cent per annum; passive portfolios of European firms complying with ethical requirements have significantly underperformed benchmark rise factors by about 4.5 per cent per annum.

¹²⁹ Luc Renneboog, Jenke Ter Horst, Chendi Zhang, 'The Price of Ethics: Evidence from Socially Responsible Mutual Funds' (2007), ECGI Working Paper Series in Finance Working Paper N0.168/2007, May 2007

extent, enhanced the attractiveness to corporations to focus more on socially responsible investment.

One of the main reasons why the socially responsible investment still does not rank equally as mainstream investment is its lack of quantitative research in the field. Quantitative research in the area of socially responsible investments is still in its infant stage. It is a work-in-progress and by no means comprehensive at this stage. Indeed, the effectiveness of the so-called socially responsible investment indexes has often been questioned on a few aspects: the inconsistency of choice of measurement criteria among different indexes; unreliable data; and a low response rate in surveys which leads to response bias.¹³⁰ It is also apparent that there are significant inconsistencies between the measurement criteria used in the Dow Jones Sustainability Indexes (DJSI), the FTSE4Good Index, and the Domini 400 Social Index. For example, the DJSI includes many different aspects of the economic dimension, while the FTSE4Good and Domini 400 contain no economic dimension at all. Some of the data collected by the indexes is based on inexpensive and publicly available information, which might not provide good proxies for the social or environmental effects they are intended to reflect.¹³¹ To complicate the issue further, most of these ratings rely on surveys (which traditionally have a low response rate) and self-reported company data that have not been verified externally.¹³² The lack of reliable, valid and comparable measurements has led some researchers¹³³ to conclude that the practice of measuring and publicising companies' social performance is not an ideal way to measure Corporate Social Responsibility; it is a mere ratings game. Without sound financially or legally justifiable reasons, it would be impossible for large mainstream institutional investors with the burden to diversify sizeable portfolios to justify any inclusion of socially responsible stocks or indexes.

¹³⁰ Aaron Chatterji and David Levine, *Breaking Down the Wall of Codes: Evaluating Non-financial Performance Measurement* (2005).

¹³¹ *Ibid.*

¹³² Michael Porter and Mark Kramer, 'Strategy and Society: The Link Between Competitive Advantage and Corporate Social Responsibility' (2006) 84(12), *Harvard Business Review*, 78-92.

¹³³ *Ibid*; Chatterji and Levine above n 128.

3 Recent Developments in Corporate Reporting Standards and Guidelines

Friedman's famous proclamation that companies have no further responsibility than to make money for their shareholders is virtually untenable today in light of growing concerns as to climate change, unsafe products and hazardous working environments. At the G8 Summit of world leaders in 2007, world leaders committed their countries to 'promoting and strengthening corporate and other forms of social responsibility' as one of four priority areas for action, through 'internationally agreed Corporate Social Responsibility and labour standards'.¹³⁴

There are numerous mandatory and voluntary national and international standards and guidelines that currently exist for companies to demonstrate good business citizenship. However, it is unclear whether this abundant supply is a blessing or curse to the world of Corporate Social Responsibility. There are both mandatory and voluntary standards and guidelines that companies need to take into consideration. For example, corporate social reporting in Australia is considered voluntary in principle. However, certain mandatory requirements are imposed by the corporations laws (such as s 299(1)(f) of the *Corporations Act 2001* (Cth)) and environmental laws.¹³⁵ Further, the Rudd government has introduced on December 2008 a maximum cut of 15 per cent by 2020 of the greenhouse gas emissions if the rest of the world signs a climate pact.¹³⁶ On the other hand, in France, legislation requires all

¹³⁴ G8 Summit, 'Growth and Responsibility in the World Economy', (2007), G8 Summit Declaration.

¹³⁵ A discussion of the problems that may arise from the application of these laws is beyond the scope of this paper. For more information on this topic look at: Robert L Burritt, 'Environmental Reporting in Australia: Current Practices and Issues for the Future' (2002) 11(6) *Business Strategy and the Environment*, 391-406; Geoffrey Frost and Linda English, 'Mandatory Corporate Environmental Reporting in Australia: Contested Introduction Belies Effectiveness of its Application' <<http://www.australianreview.net/digest/2002/11/frost.html>> at 30 December 2008; Karen Bubna-Litic, 'Environmental Reporting as a Communications Tool: A Question of Enforcement?' (2008) 20(1) *Journal of Environmental Law*, 69-85.

¹³⁶ This figure has been criticized by environmental groups; AAP, 'Rudd Attracts Widespread Condemnation Over ETS' (15 December 2008) <http://www.livenews.com.au/articles/2008/12/15/Rudd_attracts_widespread_condemnation_over_ETS> at 30 December 2008.

French companies listed on the *premier marché* to include information on how they are addressing the social and environmental impact of their activities in their annual reports. The law also indicates what information should be included in the report.¹³⁷

In addition to complying with the different reporting requirements, modern businesses are pressured to publish voluntary reports. Some of the more prominent voluntary international standards and guidelines include the Global Reporting Initiative (GRI), the United Nations Global Compact, the International Financial Corporation Equator Principles, AccountAbility's AA1000, Social Accountability International SA8000, and ISO14000. At the national level, there are the European Union Eco-Management and Audit Scheme (EMAS) in Europe, Triple Bottom Line Reporting in Australia, Environmental Reporting Guidelines in Japan, the King II Code on Corporate Governance 2002 in South Africa, the Public Environmental Reporting Initiative (PERI) in the United Kingdom, and the list goes on.

The myriad of voluntary domestic and international standards and guidelines differ from one another in terms of their focus and criteria — causing a dilemma for companies as to which guidelines they should subscribe to. Companies usually choose to adopt international voluntary standards or guidelines that are well established, and well tailored to their needs.

Not all Corporate Social Responsibility codes or guidelines are created equal and comparable. For example, a quick comparison between GRI guideline and Global Compact has shown their differences: the GRI guideline consists of six core values (which are designed as indicator protocols), namely economic, environment, human rights, labour, product responsibility, and society; while the UN Global Compact's ten principles only comprises four core values, namely human rights, labour standards, environment, and anti-corruption. One notable strength of the GRI guideline is its focus on the societies and communities that companies operate in, including entering, operating, and exiting. Companies that have subscribed to GRI guidelines are recommended to report on the (primarily social) impacts of their operations such as community health and safety regarding infrastructure, hazardous

¹³⁷ In 2004, the French government asked Orée, Orse and EpE to report on the method by which French companies are applying section 116 of the *Nouvelles Regulations Economic*.

materials, emissions and discharges, and health and disease; involuntary resettlement, physical and economic displacement and livelihood restoration; and local culture, gender, indigenous peoples, and cultural heritage.¹³⁸ How the voluntary Corporate Social Responsibility codes and guidelines are derived also greatly vary. For example, the UN Global Compact's ten principles are derived from the Universal Declaration of Human Rights, The International Labour Organisation's Declaration on Fundamental Principles and Rights at Work, The Rio Declaration on Environment and Development, and The United Nations Convention Against Corruption.¹³⁹ On the other hand, the GRI Guidelines were created through a multi-stakeholder engagement process that involved experts from many sectors across all geographic constituencies.¹⁴⁰

The GRI's Sustainability Reporting Guidelines (the G3) has become increasingly popular nowadays. The GRI was initially convened in 1997 by the Coalition for Environmentally Responsible Economies (CERES) with a mission to elevate sustainability reporting to equivalency with financial reporting. In general, the GRI Sustainability Reporting Guidelines recommend specific information related to environmental, social and economic performance. The GRI published its first Sustainability Reporting Guidelines (G1) in 2000 and the second version (G2) in 2002. The third and current version (G3) was published in 2006. Each version builds on the previous version in the hope of providing a better framework for corporate responsibility reporting.¹⁴¹

The GRI's aim is to make sustainability reporting as common and widespread as financial reporting. This goal is not overly ambitious: as of 1 November 2005, GRI guidelines have been translated into 10 languages, and have been adopted by 750 organisations in more than 50 countries.¹⁴² A survey conducted by KPMG (2005) showed that

¹³⁸ Global Reporting Initiative (2006), 'Sustainability Reporting Guidelines', <http://www.globalreporting.org/NR/rdonlyres/A6A44E7F-5D57-4340-B521-69CCAA70DC2/0/G3_IP_Society.pdf> at 23 December 2008.

¹³⁹ United Nations Global Compact (2008), 'The Ten Principles', <<http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>> at 23 November 2008.

¹⁴⁰ Global Reporting Initiatives (2008), 'About GRI', <<http://www.globalreporting.org/AboutGRI/>> at 18 November 2008.

¹⁴¹ Global Reporting Initiative (GRI), <<http://www.globalreporting.org/Home>> at 1 January 2008.

¹⁴² Judy Henderson, 'Perfect Timing' (2006) 87 *CSR Reform Issues*, <<http://>

40 per cent of the major international companies surveyed based the contents of their corporate responsibility reports on the GRI guidelines — rendering the GRI guidelines by far the most widely used single source.¹⁴³ A unique characteristic of the GRI guidelines is that they are established via a multi-stakeholder, consensus-seeking process — an attempt to take into consideration the interests of a wide spectrum of stakeholder groups. Of course, even when companies follow the same guideline (for instance, the GRI's) each will interpret the criteria in a different manner. For instance, French companies had difficulties implementing all the guidelines in the Global Reporting Initiative because some were too Anglo-Saxon and not relevant in France.¹⁴⁴

The standard of social responsible reporting has evolved rather rapidly in these few years — from the initially rather ill-defined or self-defined criteria to, over time, increasing certification of the reports and of 'social auditing' by independent bodies such as SAI (Social Accountability International) and ISEAL (International Social and Environmental Accreditation and Labelling Alliance). Voluntary Corporate Social Responsibility reporting (with its usual accompaniment of glossy promotional brochures) is a good starting point; yet let us not forget that Enron, prior to its ignominious collapse, was among the first companies to issue a corporate responsibility report, ranked as one of US's hundred best employers, received several environmental awards, had a board committee that oversaw social and environmental issues,¹⁴⁵ and was known for its philanthropic contributions.¹⁴⁶

www.globalreporting.org/services/researchlibrary/journalcollection> at 23 December 2008.

¹⁴³ KPMG. 'International Survey of Corporate Responsibility Reporting 2005' (2005) <http://www.kpmg.nl/Docs/Corporate_Site/Publicaties/International_Survey_Corporate_Responsibility_2005.pdf> at 1 January 2009.

¹⁴⁴ Mallen Baker, 'CSR Reporting Faces its Next Challenge' 85 *Business Respect* (29 Jul 2005) <http://www.mallenbaker.net/csr/CSRfiles/page.php?Story_ID=1478> at 1 January 2009.

¹⁴⁵ Alison Maitland, 'Scandals Draw Attention to "Superficial" Measures"', *The Financial Times*, December 10, 2002, 1.

¹⁴⁶ Rick Cohen, 'Corporate Giving: De-Cloaking Stealth Philanthropy', *The Nonprofit Quarterly*, Volume 9, Issue 3, Fall 2002, <http://www.ncrp.org/downloads/RickCohen/RC-030102-NPQ-Corporate_Giving.pdf> at 4 January 2009.

At the core of Corporate Social Responsibility reporting is the Corporate Social Responsibility Codes — how and by whom the various Corporate Social Responsibility codes are constructed, how transparent they are, and how accountable the corporation is to demonstrate fidelity to its own undertakings. Corporate Social Responsibility Codes usually are based on several types of normative principles. For example, the old Sullivan principle, Caux, OECD and the contemporary Global Compact principles which mirror four types of international laws — human rights, environmental duties, labour standards and anti-corruption duties. At the moment, most Corporate Social Responsibility codes are self-imposed and voluntary, and only a few countries (France, South Africa and Germany) have state-imposed law which is externally imposed and mandatory.

Multinational corporations, when faced with strong public criticisms towards their Corporate Social Responsibility issues, often resort to adopting voluntary Corporate Social Responsibility codes which appear to address the critics' concerns. However, due to their voluntary nature, these Corporate Social Responsibility codes often suffer from a number of flaws as pointed out by Sethi:¹⁴⁷ (1) they lack specific content; (2) ignore the rights of key stakeholders in their dealings with the company; (3) are not integrated into the organisation's reward structure, operating procedures, or corporate culture; and (4) do not provide reliable and believable commitment or framework for the corporation to communicate to external parties about its efforts and success in meeting the code's objectives.

Furthermore, the lack of standardisation among different codes of conduct also raises the issue of inconsistency. For example, in regards to the issue of child labour, although all codes of conduct unanimously prohibit the use of child labour, there is a discrepancy between the different codes in relation to the minimum age for child labour, which ranges between 14 and 18 depending on the codes used.¹⁴⁸

¹⁴⁷ Sethi, S. Prakash, 'Standards for Corporate Conduct in the International Arena: Challenges and Opportunities for Multinational Corporations' (2002), *Business and Society Review*, 107(1), pp.20-40.

¹⁴⁸ Smith, Gare and Feldman, 'Company Codes of Conduct and International Standards: An Analytical Comparison' (2003), The World Bank Group, <http://ec.europa.eu/employment_social/soc-dial/csr/pdf/worldbank_codes_part1_en.pdf> at 20 November 2007. For example, the minimum age threshold is 14 years according to World Responsible Apparel Production

There is also a lack of external independent auditing to audit companies' self-proclaimed compliance and adherence to the socially responsible criteria. For example, even though the quoted socially responsible investing in the US for major investing institutions total US\$2.1 trillion in 1999, or approximately 13 per cent of the total invested assets under management, the figure is highly questionable for two reasons, as pointed out by Sturm and Badde:¹⁴⁹ (1) the figures rely on managers' self-declaration of 'social screens' application; and (2) 96 per cent of the so-called 'social screens' are merely an avoidance screening for tobacco, which is sufficient to qualify as socially responsible investment.

The various issues inherent in our currently largely voluntary Corporate Social Responsibility Codes prompt the burning question of whether Corporate Social Responsibility as a voluntary form of self-regulation is meaningful.

III CONCLUDING REMARKS

As it can be seen from this paper, the notions of Corporate Social Responsibility and corporate social reporting are not new. It is a fact that Corporate Social Responsibility and reporting have evolved and interest in these notions has fluctuated over time. Accordingly, it is important to remember that studies into Corporate Social Responsibility and reporting should take into consideration the history of Corporate Social Responsibility to avoid falling in the traps of the past.

From a historical perspective, it may be seen that Corporate Social Responsibility and corporate social reporting are being increasingly embraced. However, the reality is that these notions still suffer many problems and the cycle of interest and disinterest in them is bound to

(WRAP); while it is usually 15 according to Social Accountability International (SA8000) and Ethical Trading Initiative (ETI). Among firms, the minimum age threshold is 16 (or 15 if the domestic law in the country of manufacture allows) for New Balance; It is 18 for Nike's footwear production. It is important to note that Queensland has Child labor laws (*Child Employment Act 2006* (Qld)), which means that this area is regulated outside of the scope of corporate social responsibility.

¹⁴⁹ Sturm, Andreas and Badde, 'Socially Responsible Investment by Pension Funds — A State-of-the-Knowledge Report', The International Labour Organisation (ILO), <<http://www.ellipson.com/files/studies/Socially%20Responsible%20Investm.pdf>> at 3 March 2003.

repeat itself. The reason behind this is that, all through the history of Corporate Social Responsibility and corporate social reporting, people have not agreed on a definition in relation to the concept of Corporate Social Responsibility. Nor have they agreed on a justification in relation to this notion. As a consequence, businesses will continue interpreting their obligations in relation to corporate social reporting in a different manner. Some will take the reporting requirement seriously, and other will not do so. A solution has to be implemented in the Australian legal system to deal with the above-mentioned problems. Such a solution may be found in mandatory reporting and the setting of standards that have to be followed by everyone.

If Lord Chancellor Thurlow asks today the question on whether ‘you ever expect a corporation to have a conscience, when it has no soul to be damned and no body to be kicked’,¹⁵⁰ the answer will be yes due to society’s current expectation that companies should become socially and environmentally responsible. It is no longer appropriate for companies to turn a blind eye on the issue of Corporate Social Responsibility. The era when Milton Friedman could proudly proclaim the ‘shareholder supremacy’ argument has long gone — what was applicable in 1970 is no longer appropriate for the modern day corporate setting. Whether companies should engage in social responsibility due to the goodness of their hearts or as a stepping-stone in their endless quest of profit should play second fiddle to the end results — a more balanced approach to the view of corporate profit and Corporate Social Responsibility.

Perhaps it is time to ask ourselves, whether it is still sufficient to leave this area to largely voluntary corporate practice or whether the indicators and mechanisms are now of such maturity and/or social conditions have now changed so much that binding obligations should now be adopted. As noted before, mandatory reporting may be the way to remedy the problems that surround the concept of Corporate Social Responsibility and reporting. From a law reform perspective, this may sound a daunting task but it has been achieved by different countries, and there is no reason not to adopt such a system in Australia and around the world. It is time for corporations to mirror the society they exist in. Bottom lines, while of great importance, need to be tempered with the need of the community the corporations exist in.

¹⁵⁰ Lord Chancellor Thurlow (1731–1806) cited in John Poynder, *Literary Extracts* (1844) Vol 1, 268.