The Current Status of Environmental Performance Reporting

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1. Introduction

"Triple bottom line" is used to denote the reporting of environmental, social and economic information to stakeholders.[1] The method by which triple bottom line reporting is emerging is consistent with the development of other directives concerning the environmental or social issues, being characterised by an absence of "command and control" rules and encouraged by a persuasive "carrot" philosophy. This philosophy presents the benefits of good corporate citizenship as the incentive for entities to create and abide by largely voluntary codes of conduct.

Following major corporate collapses such as Enron and Worldcom (or Ansett and HIH in Australia), the legislators have focussed on regulation concerned with good corporate governance practices. The spread of shareholding across the Australian community, combined with the downturn in share markets, has led to an upsurge and questioning of a company, Board and executive performances.[2] Legislative reforms have been concerned with ensuring that investors have access to timely, reliable *financial* information that is prepared on a consistent basis, and which is comparable with information provided by similar entities. Investors' best interests, have been framed in terms of investors' interests returns on investment rather than any broader concerns.

The recent findings in the James Hardie case have demonstrated that if a corporation has a lack of social conscience one of the consequences is likely to be an adverse *financial* impact on investor interests. Entities are no longer able to hide behind a corporate veil to distance themselves from social responsibility. James Hardie industries is potentially liable for the personal damage caused to employees' health, as a consequence of poor corporate operating policies for health and safety. There is every indication that financial consequences will result for corporation that do not adequately address their operating risks.[3]

Investors are now making active choices to turn away from corporations who do not take a proactive approach to managing their social and environmental risks. The "ethical investment" sector has already emerged and is likely to gain popularity even amongst less scrupulous investors, if its claims to "out-perform the market" continue to be fulfilled.[4]

This discussion paper considers the issues arising in relation to one aspect of triple bottom line reporting, being the public reporting of corporate environmental performance. It also identifies the response of three major Australian listed entities to stakeholder demands for information and considers their role in leading the way forward for other Australian corporations.

2. Statutory Obligations

It is appropriate to start by considering what statutory obligations are imposed upon corporations with respect to environmental reporting at both Commonwealth and State government levels in Australia.

2.1 Legislation

The Corporations Act 2001 contains only two direct obligations with respect to environmental reporting.

(a) In accordance with section 299(1)(f), directors are required to include a statement in their annual directors' report providing details about the entity's performance in relation to environmental regulation *if* the entity's operations are subject to any particular and significant environmental regulation under a law of the Commonwealth or of a State or Territory. Due to the vague wording of this obligation and the absence of comprehensive guidelines, the practical outcome of this legislative requirement is ordinarily a bland statement that the directors are not aware of any breaches of environmental regulation. [5]

1 Group of 100, 2003, "Sustainability a Guide to Triple Bottom Line Reporting" p4

2 Business Council of Australia, "Fresh Approaches to Communications between Companies and their Shareholders" A Discussion Paper, released 28 September 2004 (p6) available from www bca com au

3 See Para 3 1 below

4 See Para 8 below

5 This was one of the conclusions of the Parliamentary Joint Standing Committee on Corporations and Securities (1999) *Matters Arising from the Company Law Review Act 1998* (AGPS Canberra, October 1999), see Conclusions at para 3 33

(b) The Corporations Act also requires a disclosure of information to be made for certain financial products (known as a Product Disclosure Statement or 'PDS'). For products with an investment component, section 1013D requires the PDS to include a statement of the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of the investment. Section 1013DA provides that: "ASIC *may* develop guidelines that must be complied with where a *Product Disclosure Statement* makes any claim that labour standards or environmental, social or ethical considerations are taken into account ...." (Emphasis added). In December 2003 ASIC issued the first guidelines under this section. The following observations may be made on the application of these guidelines: [6]

- The "requirement" to refer to "guidelines" is concerned only with the offer of securities to investors.
- The ASIC guidelines deliberately adopt a non-prescriptive, principles-based approach.[7]
- The guidelines do not define *what* constitutes a labour standards or an environmental, social or ethical consideration, nor what is inferred by the term "taken into account". Instead the disclosure to be provided is regarding *which* standards and considerations have been taken into account and *how*.[8]
- As this is a new area of disclosure,[9] and perhaps in recognition of the fact that recognised criteria has not yet been "generally accepted" or codified, the guidelines require disclosure of the *methodology* for taking the standards or considerations into account where one exists (or disclosure of absence of a methodology) and the *weight* given to the standards or considerations if a weighting system is used.[10]
- In contrast, if there is no consideration taken regarding labour standards or environmental, social or ethical considerations, that fact must be clearly stated.[11]

Although comprehensive reporting on environmental issues is not mandatory, the ASIC guidelines put forward a number of "methodologies" whereby a fund manager can influence environmental reporting outcomes. These methodologies include:

- direct communication with companies by using influence or pressure through their voting rights;
- negative screening to abstain from investment in companies involved in certain activities; and
- an index-based approach, such that portfolios are constructed using established indices of environmentally and socially responsible companies.[12]

This regulatory approach means that fund managers, as a significant segment of the investor community, are forced to consider labour standards or environmental, social or ethical considerations, if only to make a conscious decision to *not* pursue their inquiry. As a consequence investors who do place value on labour standards or environmental, social or ethical considerations may move between fund managers to invest with those who are aligned with their own value system. This phenomenon is clearly demonstrated through the increase in the level of socially responsible investment.[13]

6 ASIC (2003) *Section 1013DA Disclosure Guidelines* (December 2003)

7 Ibid p2 para 3

8 Ibid p3 para 4

9 Ibid p2 para 3

10 Ibid p9 para 1 21

11 Ibid p9 para 1 24

12 Ibid pp16-17 para 2 16

13 Refer to section 8 2 below for further discussion

The Commonwealth government also has a role in setting national standards for various environmental factors, known as National Environment Protection Measures ('NEPMs'). One significant NEPM has established a National Pollutant Inventory, which requires corporations that operate industrial facilities in Australia to report their emissions of certain listed pollutants.[14] However, this is a limited obligation and it does not require reporting of actual impacts of those emissions, or accidental discharges.

2.2 State Legislation

The most significant impacts of deficiencies in environmental management are often experienced at a local level.[15] An environmental impact, such as pollution in a local creek, might be considered highly unacceptable by local inhabitants, but have little relative importance for global investors. Therefore it is appropriate that environmental regulation and enforcement is also set at a local level. All State and Territory governments have established statutory pollution control schemes which exert considerable influence on the establishment and day to day management of industrial facilities. For instance, in Victoria, the *Environmental Protection Act* 1970 requires that any proposed industrial facilities that is likely to discharge pollutants must obtain a 'works approval' from the Environment Protection Authority ('EPA'). The facility must also obtain an annual discharge licences from the EPA which sets strict limits upon the quantity and quality of pollution discharges. Through these mechanisms the EPA is able to insist upon adherence to international standards and world best practice in issuing a discharge licence. The various fines, penalties and other remedies applicable under the *Environmental Protection Act* 1970 (Vic) are an important deterrent to any corporations or persons that might choose to ignore the environmental consequences of their acts or omissions. However, there is no comprehensive environmental reporting obligation at State level. One recent development which may provide a limited mechanism for public disclosure is the alternative sentencing provision introduced in s 67AC of the *Environmental Protection Act* 1970 (Vic). This rule allows a Court to order offenders to publicise an offence in a relevant newspaper, an annual report, or through specified restoration works.

It is interesting to consider whether action taken by a State EPA against a corporation might need to be reported in the directors' report under s299(1)(f) of the Corporations Act. One of the key considerations here is that information disclosed in a financial report is subject to considerations of "materiality". This concept is used to assess whether the financial statements provide a "true and fair" representation of the financial position of the company.[16] Under this rule, environmental outcomes which can be represented in monetary terms as less than 5% of reported profit are ordinarily deemed to be immaterial.[17] Thus it is unlikely that relatively small local actions against a large corporation would be reported from a financial reporting perspective.

3. Recent Developments in Corporate Governance

Since the major corporate collapses in 2001, public expectation regarding good corporate governance practices has been increasingly defined by legislation (for example CLERP 9[18] in Australia) and guidelines put forward by industry regulators (ASX Corporate Governance Council Principles of Good Corporate Governance and Best Practice Recommendations (ASX Best Practice)). Although the corporate governance focus in both legislation and guidelines is on financial performance, it is increasingly recognised that both social and environmental responsibilities and liabilities will impact on financial performance. However, environmental reporting, as a component of good corporate governance, is likely to be strongly influenced by the need to pacify investor anxiety, rather than a desire to be a good corporate citizen.

The duty of care and the standard of care expected from directors have been addressed in the courts over many years. Legal actions seeking recourse for breach of such a duty is not a new phenomenon.[19] Under section 181 of the Corporations Act 2001 directors have a fiduciary duty to act in good faith and in the best

14 The NPI is an environmental performance standard established under the *National Environment Protection Council Act* (Cwth) and implemented by separate legislation at State and Territory government levels

15 For example, consider Mobil Altona local impact as discussed in 5 3 below

16 Refer Australian Accounting Standard AASB 1031

17 An amount greater than 10% of reported profit is ordinarily deemed to be material Amounts between 5% and 10% may or may not be material depending on the nature of the item These benchmarks are only indicative for determining materiality and are not conclusive

18 Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004 – also known as CLERP 9

19 For example, see *AWA Ltd v Daniels* (1992) 10 ACLC 933

interests of the company and for a proper purpose. The Australian Securities & Investments Commission (ASIC) has frequently taken legal action against directors who have breached section 181. [20] Section 181 obligations are likely to be more broadly interpreted as the community's expectations of corporate governance responsibilities increases. [21]

A breach of duties has many ramifications ranging from financial penalties levied by the courts, the impact on the allegedly delinquent directors' future employment prospects, and the impact on the value of investments held by individuals, investment and superannuation fund through a rapid decline in share price.[22]

3.1 James Hardie Industries NV (Hardie)

The Special Commission of Inquiry into Hardie's creation of a fund to compensate victims of asbestos-related illnesses, which also prompted an ASIC investigation[23] (not yet concluded), provides a live case study into corporate responsibility.

As demonstrated by CLERP 9 reforms to the Corporations Act 2001 (s295A) and the ASX Best Practice, the chief executive officer and chief financial officer have primary responsibilities for risk management.[24] The practical allocation of responsibility is also demonstrated by the resignations of the former Hardie's CEO Peter Macdonald and former CFO Peter Shafron despite an earlier stance to disclaim any wrong-doing. The inquiry found that Macdonald *appeared* to have broken the Corporations law by engaging in misleading and deceptive conduct, and that both Macdonald and Shafron had breached the Trade Practices Act and the Fair Trading Act in addition to their duties as officers of the company.[25] The Special Commission of Inquiry's findings prompted ASIC to commence their own investigations into the circumstances surrounding James Hardies' creation of a fund to compensate victims of asbestos-related illnesses.

It is likely that Hardie will face criminal charges having stated that it had enough money in a fund to compensate thousands of asbestos victims. Announcements made to the ASX were considered "misleading and deceptive". The company should have set aside up to A$2.2 billion for compensation, being seven times the A$293 million fund it created in 2001.[26] Even though the company followed legal precedent by depending on limited liability for claims resting within the subsidiaries it seems likely that the courts will lift the veil of incorporation, which could thereby prompt changes to the law. As demonstrated in several asbestos injury cases,[27] Australian courts have already indicated that they may be prepared to lift the veil of subsidiary companies and make the parent liable for the subsidiaries torts.[28]

Perceived deficiencies in Hardie's responsibilities towards employees can be paralleled with expectations for future corporate environmental responsibilities.

3.2 Oil Spills

In 1989, when nearly 11 million gallons of oil in the Exxon Valdez oil spill caused extensive environmental damage through injury to fish, wildlife and land in the spill region, "corporate governance" was a term that had not yet come to life. The legislative response at that time was directed at the structure of tankers entering the Prince William Sound, requiring that they should all be double-hulled by the year 2015. Various other contingency plans were also put in place in the event of another spill in the region.[29]

20 Refer to ASIC web site www asic gov au for reports of current investigations

21 ASIC Media Release 04-305 re ASIC investigation of James Hardie Industries NV, Mr Jeff Lucy, Chairman ASIC stated "ASIC is deeply concerned about the serious corporate governance issues that have been raised "

22 Refer to Appendix 1 to observe the decline in price of James Hardie Industries shares over the six month period to October 2004

23 ASIC Media Release 04-305 "ASIC investigates James Hardie over asbestos fund" available from www asic gov au

24 CEO and CFO declarations are required by Corporations Act 2001 section 295A and ASX Corporate Governance Best Practice Principle 7

25 Australian Financial Review 22 October 2004 "James Hardie CEO Macdonald quits" found at www afr com/articles/2004/10/22/1098316824202 html

26 Yahoo! Finance 21 September 2004, Update 3 – "Australia's Hardie may face charges over asbestos" found at http //au dailnews yahoo com/finance/20040921/reutersfinance/1095749209-1141686319 html

27 For example refer Briggs v James Hardie & Co Pty Ltd (1989) ACLC 841 and James Hardie & Co Pty Ltd v Hall (1998) 43 NSWLR 554

28 Lipton & Herzberg, 2003, Understanding Company Law, page 46

29 Refer www evostc state ak us/facts/prevention html

The Exxon Valdez settlement comprised both criminal charges and civil claims being:[30]

- US$150 million fine, being the largest fine ever imposed for environmental crime. However, the courts forgave US$125 million in recognition of Exxon's cooperation in cleaning up the spill and paying private claims. The remaining US$25 million was divided between the North American Wetlands Conservation Fund and the national Victim of Crime Fund.
- US$100 million criminal restitution divided between federal and state governments.
- US$900 million civil settlement with annual payments stretched over a 10 year period, with the final payment made in September 2001.

In addition, the settlement allowed for a "reopener window" up to September 2006 during which claims for up to an additional US $100 million can be made by the governments to restore resources that suffered any loss or decline as a result of the oil spill, which could not have been known or anticipated in 2001, at the time of the settlement.

Clearly, there can be a far-reaching and substantial financial impact when environmental responsibilities are not properly addressed. In business environments that demands "good" corporate governance, environmental risks cannot be ignored. In contrast, where there is no regulation the response to environmental responsibilities is inadequate. A contradictory corporate response results from a lack of regulation as evidenced by Shell Nigeria and Shell Alberta, Canada.

In Nigeria there is no government environmental regulatory intervention, therefore it is cheaper for Shell and other oil companies operating in Nigeria to pay 11 cents per every 1000 cf of gas flared per year, than to turn off the gas, save the environment and lives of the people in the community. Nigeria alone accounts for more than 28% of the total gas flared in the world.[31] These gas emissions contribute to global warming. In contrast, Shell in Alberta is working to decrease gas emissions, coincidently complying with the demands of the Alberta government.[32]

3.3 Implications for environmental performance reporting

The Hardie investigation anticipates that traditional legal structures that have previously provided corporate protection may be brought down when the quality of "governance" is questionable and directors have been perceived to engage in misleading and deceptive conduct. Where regulators and legislators perceive public pressure to compensate for a breach of duty of care they have responded. In fact "moral obligation rather than legal liability" is gaining more importance[33] and PM John Howard is reported as stating that "If there are changes to the law that are needed, those changes will be made."[34]

Corporations clearly respond to the legislative environment in which they operate. In accordance with previously acceptable corporate behaviour, Hardie per se, did not have any legal liability in respect of asbestos-related illnesses[35] as it simply followed a strategy to maximise shareholder returns, restricting liability within a separate limited liability subsidiary. Similarly, oil companies can be seen to respond to legislative pressure to address environmental issues, but focus on profits first if there is a choice.

Environmental performance reporting by corporations is permeated by these issues which cause directors to balance regulation and public expectations in their voluntary reporting. Unfortunately, as demonstrated above in the contradictory actions of Shell, accountability relationships continue to be the driving force for environmental management rather than a corporate desire to for good citizenship.

Environmental performance reports need to be evaluated in this context.

30 Refer www evostc state ak us/facts/settlement html

31 World Bank Report as referred to by Research Consortium on Africa 2002, found at www researchafrica org/rcanla2 htm

32 Research Consortium on Africa 2002, "Shell Oil Company decrease gas emissions" found at www researchafrica org/rcanla2 htm

33 As reported in AFR 22 September 2004, "PM expects ASIC statement on Hardie" Commissioner David Jackson, re government inquiry into the James Hardie Industries Medical Research and Compensation Fund found at www afr com/articles/2004/09/22/1095651361531 html

34 As reported in AFR 22 September 2004 "PM expects ASIC statement on Hardie", Prime Minister John Howard, re government inquiry into the James Hardie Industries Medical Research and Compensation Fund found at www afr com/articles/2004/09/22/1095651361531 html

35 As reported in AFR 23 September 2004, "Asbestos Carr lacks leadership" by John Durie "In the QC's opinion Hardie's corporate structure is legally correct and the chances of anyone claiming damages against the company are slim" Refer to www afr com/premium/articles/2004/09/22/1095651395517 html

4. The Frameworks for Environmental Reporting

4.1 The Global Reporting Initiative (GRI)

The GRI was launched in 1997 as a joint initiative of the US non-governmental organisation Coalition for Environmentally Responsible Economies (CERES) and the United Nations Environment Program[36] and continues to work towards the harmonisation of disclosure. The GRI Guidelines do not provide performance standards or methodologies, but present reporting principles to guide organisations in the preparation of sustainability reports to enable balanced reporting that is comparable and supported.[37]

The GRI Framework provides a range of specific environmental performance indicators:[38]:

- materials
- energy
- water
- biodiversity
- emissions, effluents and waste
- suppliers
- products and services
- compliance
- transport
- overall environmental expenditure

A key factor in applying the GRI Guidelines is transparency, achieved through continuing stakeholder dialogue. The information to be provided is both descriptive and quantitative providing information regarding strategy, management structure, stakeholder engagement and performance indicators. On balance the qualitative context will be important for understanding any quantitative measures. Given the extensive scope of information there is a need to present environmental reports in a manner that will promote their understandability and useability. Hence stakeholder identification and engagement underlies the ability of an organisation to provide quality environmental reports.

4.2 Triple Bottom Line Reporting in Australia – Environment Australia[39]

This publication "complements the Global Reporting Initiative's work by providing Australian organisations with tangible and easy to use methodologies for measuring performance against key environmental indicators."[40] The guide provides environmental management indicators and environmental performance indicators. Environmental management systems must address the specific risks and priorities of individual entities to demonstrate how they have adhered to both environmental regulation and voluntary standards of good corporate citizenship. In contrast environmental performance indicators can be used to quantify environmental impacts and provide tangible measures of environmental outcomes.

However, these "tangible measures" are not readily understandable by a lay-person without specialist skills. Often the "success" of environmental initiatives can only be understood from an appreciation of relative performance from year to year rather than comparison with an optimal level. For example, *zero* greenhouse gas emissions would be the optimal level of emissions when considering environmental impact. However, zero emissions may not feasible from a corporate perspective as a zero level is likely

36 Global Reporting Initiative 2002 "Sustainability Reporting Guidelines" p i found at www globalreporting org

37 Ibid p8

38 Ibid p36

39 Environment Australia (2003) "Triple Bottom Line Reporting in Australia, A Guide to Reporting Against Environmental Indicators" (Dept of Environment and Heritage, June 2003) This is one of the latest in a range of guidelines which provide an Australian perspective on disclosure of environmental performance, eg see Environment Australia (2000) "A Framework for Public Environmental Reporting, and Australian Approach"

40 Dr David Kemp, Department of the Environment and Heritage, June 2003 "Triple Bottom Line Reporting in Australia" piii

to correspond with zero corporate activity. Therefore to demonstrate environmental performance *regarding* reducing greenhouse emissions, a range of possible information is recommended[41] including:

- Operational improvements
- Measures to transform greenhouse gases into less greenhouse-intensive outputs
- Energy conservation programs
- Reduction targets

The reduction of greenhouse emissions is just one aspect of reporting environmental performance in respect of energy use. The range of information to be provided for any segment of environmental performance is not only extensive but requires specific expertise for a proper understanding and appreciation of issues. Equally, the *omission* of information could change the reader's views on the success or otherwise. These factors also contribute negatively to the feasibility of independent audit of environmental reports.[42]

4.3 The Mays Report – An Investor Perspective

The Mays Report adopts an investor perspective and views sustainability as an important indicator of corporate performance and risk profile, with many potential linkages to maximising shareholder value.[43] For the purpose of integrating sustainability into investment evaluation, this Report identifies the following four key areas for assessing corporate sustainability:[44]

- Economic partners - shareholders, suppliers and customers
- Employees in the workplace
- Social responsibility to the community
- Environmental responsibility to the physical environment.

The Report identified the following areas to be key indicators of environmental responsibility:[45]

- Product life cycle and demand
- Biodiversity
- Energy
- Resource use
- Waste.

Environmental performance reporting is only one factor in the equation for balancing risks and opportunities. However, in contrast to many other corporate risks and opportunities, adverse environmental impacts will often be irreversible in the short term and may carry long term penalties.[46]

4.4 Group of 100 – the Corporate Perspective

The Group of 100 is an association of Australia's senior finance executives representing the major companies and government-owned enterprises in Australia. Recent changes to legislation and regulation identify the CEO and CFO as having specific responsibilities for risk management.[47] The CEO and CFO effectively bear responsibility for ensuring that all financial consequences have been taken into account (including adverse financial impacts of environmental misdemeanours) to present a

41 Department of the Environment and Heritage, June 2003 "Triple Bottom Line Reporting in Australia" p33

42 Verification of Environmental Reports is considered in section 5

43 Department of the Environment and Heritage, 2003, "Corporate Sustainability – an Investor Perspective, Mays Report" p8

44 Ibid p16

45 Note 44 above, Mays Report, , p16

46 See above re the Exxon Valdez oil spill in 1989, not yet fully settled

47 Refer para 3 1 above

financial report that is "true and fair".[48] It is appropriate that the Group of 100 should be concerned with "sustainability" as inadequate sustainability reporting systems will reflect on their ability to present "true and fair" financial reports.

In 2003 the Group of 100 produced "Sustainability: A Guide to Triple Bottom Line Reporting" which acknowledges that the CFO is likely to be given the role of assuring the accuracy and integrity of non-financial data contained in the report.[49] Given the specialist nature of many metrics used for triple-bottom line reporting, this cannot be deemed an easy task.

Key issues raised in this guide include:[50]

- Alignment of triple bottom line initiatives with strategy
- The selection of appropriate performance indicators that also reflect the corporations own strategic objectives and the requirements of key stakeholder groups

It also considers that TBL reports should have the following qualities and characteristics to be able to present objective, balanced and credible information:[51]

- Reliability
- Usefulness
- Consistency of presentation
- Full disclosure
- Reproducıble
- Auditability

The review of example environmental reports in section 6 below suggests that these qualitative characteristics are still largely "work-in-progress".

4.5 Specific Environmental Accountability - Climate Change and Energy

In addıtion to the above examples of trends in third party monitoring more specific environmental attention is being given to certain aspects of environmental performance. This action is indicative of the breadth and depth of environmental concerns and heralds the dawning of a new age of environmental reporting inquiry that is likely to closely follow the establishment of any general global benchmarks.

Climate change risk and energy usage have been identified as critical issues by.

- Environmental Business Australia (EBA), comprising forty of Australia's senior business and industry executives, top scientists, health official, church leaders and environmentalists, have called on the federal government to take decisive action to control climate change. They claim that climate change is the "biggest security threat that humans have ever faced" with "no precedent in history to draw from" such that "Australia needs a long-term strategy to reduce greenhouse gas emission by at least 60 per cent by the middle of this century".[52] This proposal indicates the need for monitoring and possibly reporting of the specific environmental impacts of greenhouse gas emission.
- The World Business Council for Sustainable Development (WBCSD) report that energy demand could double or triple by 2050 and therefore commencing the process towards sustainable energy is now critical.[53] The call for concrete action by corporations also indicates the need for corporate accountability for establishing and following a strategy for changes in energy supply and demand to help the move towards sustainable energy usage.

48 Refer Corporatıons Act 2001 sectıon 295A

49 Group of 100, 2003, "Sustaınabılıty a Guıde to Trıple Bottom Lıne Reportıng" p7 and 31

50 Ibıd p7

51 Ibıd p19

52 Envıronment Busıness Australıa, letter to Federal Government, www envıronmentbusıness com au

53 World Busıness Councıl for Sustaınable Development, "Facts and trends to 2050 Energy and clımate change" 2004 www wbcsd org

4.6 Other Environmental Reporting Standards

There are numerous environmental frameworks at a global and local level, including frameworks for specific industries and industry best practice. Environmental Management Systems accreditated under ISO 14001 may be implemented voluntarily or in accordance with local industrial regulation. These are also useful tools for managing and reporting environmental performance, as they is generally require strict measurement of environmental outcomes and open communication with local community stakeholders.

Environmental reporting is ultimately concerned with corporate behaviour and therefore, despite numerous points of reference, it is ultimately the values held by relevant stakeholders that will prompt action and determine whether or not the corporate behaviour is acceptable. [54]

4.6 Future Developments for Environmental Reporting Benchmarks

There is evidence of significant activity by local and international groups pushing toward harmonisation of acceptable environmental reporting practices. Examples include:

- The United Nations Environmental Programme's (UNEP) study of the financial impact of sustainable development warned that financial analysts and the investment community needed to consider environmental, social and governance issues to deflect a threat to stock markets. To enable appropriate consideration of these issues UNEP has announced that it will work with major institutional investors to develop a set of globally recognised principles for responsible investment by September 2005.[55]
- The International Standards Organisation (ISO) Advisory Group on Social Responsibility has commenced work to join two existing social accountability-rating systems, AccountAbility's AA1000 and Social Accountability International SA8000, to produce a guidance document for an international standard for corporate social responsibility. [56]
- The OECD has published series of papers as a framework to address the various conceptual, measurement and statistical policy issues that arise when applying accounting frameworks to the complex problem of measuring sustainable development. This publication was developed after a workshop to compare projects launched by OECD countries and international organisations to extend economic accounting schemes to environmental and social proceedings.[57]

5. Verification of Environmental Reports

5.1 The issue of mandatory reporting

Corporations law recognises that the managers of a corporation are responsible for the proper use of resources (assets or cash) contributed by investors. To mitigate conflicts of interests between owners and managers, an independent auditor is called upon to provide an opinion as to whether the financial performance is being fairly reported. The Corporations Act 2001 mandates that audited financial statements must be prepared and lodged for any company that is not categorised as a "small" proprietary company.[58] The threshold to determine "small" or "large" for financial reporting and audit are set at relatively low levels. [59]

54 Stakeholder action is discussed below in section 8

55 United Nations Environment Programme, "Responsible Investment Initiative," 2004 www un org/News/Press/docs/2004/unep237 doc htm

56 ISO, Assuring Corporate Social Responsibility, June 2004 www iso org/iso/en/info/Conferences/SRConference/communique htm

57 OECD, "Measuring Sustainable Development Integrated Economic, Environmental and Social Frameworks" July 2004 www oecdwash org

58 ASIC may provide Class Order Relief from reporting requirements in certain circumstances

59 The definition of "small" is provided in section 45A(2) such that any company that does not meet two of the following criteria cannot be considered as small

(a) the consolidated gross operating revenue for the financial year of the company and the entities it controls (if any) is less than $10 million,

(b) the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) is less than $5 million,

(c) the company and the entities it controls (if any) have fewer than 50 employees at the end of the financial year

Corporations also use natural resources (such as air and water) contributed by 'third parties' such as local and global communities, but the appropriate means of identifying, controlling or reporting conflicts of interest between corporations and communities has not yet been agreed. Environmental reports do not follow uniform standards to determine the nature, extent or scope of information to be provided. A meaningful comparison of environmental reporting performance is still subject to numerous suppositions.[60]

The nature and extent of environmental reporting is entirely governed by the integrity and ethical values of the multitude of individuals that govern corporations. There is no single threshold to mandate the reporting or public disclosure of environmental matters and no legal requirement or process for the independent verification of the information reported. Although certain "criteria" for environmental reporting are evolving and gaining recognition, the accountability relationships are not clearly addressed.

Interestingly, it was shareholder (and stakeholder) activism rather than a legal mandate that led to the CEO and CFO of James Hardie Industries tendering their resignations after unions and asbestos victim groups campaigned to put ethical pressure on investors, calling on them to "dump" their shareholdings.[61]

5.2 Local vs Global Reporting Priorities

The nature and extent of environmental reporting is also impacted by differing needs at a local and global level. Environmental issues have both local and global impact that result in different priorities and different timeframes for action. For example, offensive odours permeating from a local operation, such as an oil refinery, may require relatively urgent action in the short-term due to the impact on the amenity of nearby residential zones. In contrast, the emission of excess CO_2 and the long term impact on the atmosphere is more likely to be addressed in international agreements such as the Kyoto Protocol.

In Victoria, the interests of local communities have been given recognition through Neighbourhood Environment Improvement Plans which were introduced into the *Environment Protection Act* 1970 in 2001. These plans capture input and commitment from a number of parties such as government agencies, community, industry and business.[62] The scope of responsibilities and the reporting of environmental accountability in these small-scale plans cross many traditional boundaries. For example, the Mobil Refinery at Altona has made a commitment to the Stony Creek Neighbourhood EIP. Therefore Mobile Exxon, a global corporation, reports to stakeholders not only at a global level, but also to local communities regarding local environmental issues.

As a global corporation, the only practical means of environmental reporting to investors in global capital markets is in terms of environmental *policy*, and in respect of any wide-scale environmental impacts. In contrast, local responsibilities, such as Mobil's responsibilities to the local community around Stony Creek, can only be communicated to local stakeholders in a meaningful way in terms of *actual* action and outcomes. Global investors have no knowledge, and perhaps little interest, in a small polluted creek somewhere in Australia. In contrast, an oil-spill could cause extensive environmental damage and attract significant disruption in world markets by environmental activists. However, the technological ability to communicate quickly and effectively with local communities all around the world means that global corporations cannot afford to ignore the voices and needs of small local communities, which together could deliver adverse messages to both markets and investors. Hence, global corporations are being seen to actively engage in local proactive environmental action.

60 Refer to section 4 for further discussion of environmental reporting frameworks

61 As reported by Marcus Priest, AFR 27 September 2004, "Hardie investors asked for help" found at www afr com/premium/articles/2004/09/26/1096137101161 html

62 Refer to Foreword to Neighbourhood EIP for Stony Creek, Cr Bill Horrocks, Mayor, Maribyrnong City Council

6. Recent Examples of Environmental Reporting in Australia

The section looks at the environmental reports of:

1. Westpac Banking Corporation – a recognised leader in sustainability reporting
2. Telstra Corporation Ltd – a corporation that impacts on practically every Australian home
3. James Hardie Industries NV – a company in the spotlight for alleged misleading and deceptive behaviour concerning social issues

6.1 Westpac Banking Corporation

Westpac is a recognised leader in Sustainability Reporting both in Australia and globally. According to the 2004/2005 Dow Jones Sustainability Index (DJSI), Westpac has led the global banking community on corporate sustainability for the third year in a row.[63] The Westpac Social Impact Report 2004 contains a four page listing of performance indicators and associated reporting frameworks that have been considered in preparing the report, thereby demonstrating Westpac's recognition of the depth and breadth of social and environmental considerations.[64]

The predominantly qualitative nature of the DJSI is demonstrated by the factors found noteworthy of comment in the survey results, as copied in the table below.

- *Formulating responsible business practices at board level and integrating those values into its Code of Conduct*
- *Producing excellent corporate culture aimed at avoiding conflict situations with customers or other interest groups*
- *Actively contributing to systematic change in the financial services industry and the economy at large*
- *Successfully tackling direct and indirect environmental impacts*
- *Increasing commitment to employees, underlined by its performance in various labour practice indicators*
- *Transparent reporting of controversial finance projects with potential high environmental and social impacts and investments raising ethical concerns.*

Source www westpac com au/internet/publish nsf/Content/WINU+Archive+media+release+03+September+2004

Westpac environmental policies include a wide range of positive statements regarding their commitment to the environment, environmental regulation and legislation, operations and business practices, lending policies and environmental governance.

Most impressively Westpac includes information on stakeholder dialogue and lists details of 19 organisations who are members of their Community Consultative Council, including EPA Victoria, Landcare Australia, The Wilderness Society, Australian Council of Trade Unions, Mission Australia, Reconciliation Australia and Commonwealth Department of the Environment and Heritage. Corporate governance for social responsibility is clearly defined, articulated to, and formed in consultation with, stakeholders.

Source 2004 Westpac Social Impact Report, page 10

63 As referred to and linked from www westpac com au

64 Refer to Appendix 2 for copies of the environmental performance indicators from Westpac Social Impact Report 2004

Westpac also provides quantitative environmental indicators with comparative information since 2001. Although the reported metrics may hold little meaning for lay-persons, the relative decreases in metrics (for example for CO2 emissions, energy use, paper use and water use) deliver a clear message that environmental management systems are working.[65]

Westpac also provides three independent assurance reports regarding information contained in Westpac's Social Impact Report.[66] These are:

- Social Assurance Statement prepared by "Social Auditors"
- Environmental Assurance Statement prepared by "Environmental Auditors"
- Financial Audit Report prepared by auditors of Westpac's financial report.

While these statements appear to be comprehensive and prepared using appropriate rigour, only the technical abilities and procedures applied by auditors of financial reports are regulated. While "social auditors" and "environmental auditors" are presumed to hold appropriate qualifications, there is no regulatory certification for a required competencies.

Interestingly Westpac Social Impact Report 2004 comprises data and statements for the period 1 October 2002 to 30 September 2003.[67] This form of reporting contrasts with financial reporting, where a 2004 report would refer to a 2004 financial year. Given that environmental management systems form the basis of environmental reports, and that environmental systems need to act "before the event" rather than after an adverse impact, it seems strange that this reporting timelag should exist, perhaps due to prioritisation in preparation of an entity's financial information.

6.2 Telstra Environmental Reporting

Telstra has an environmental policy that is clearly articulated to include objectives such as efficient energy use, minimise waste, minimise impact to air, water, land, sound, visual quality, flora and fauna, training and resource allocation, supply chain management and open communication to address community and government concerns.[68]

Telstra produces a Corporate Social Responsibility Report, which contains information about environmental management and performance and a separate, more comprehensive, Environmental Performance Report. Telstra has produced its Environmental Performance Report for public scrutiny for the past four years. This report provides a performance index for a broad range of factors comprising environmental performance with detailed information regarding programs and targets status reports and results.[69] The information is largely descriptive and it is relatively difficult to ascertain boundaries regarding Telstra's interest or consideration of the issues arising.

Telstra has a dedicated telephone number for any public inquiries on environmental matters, including complaints and a separate access mechanism whereby environmental agencies can contact Telstra and receive information by entering a username and password, but does not name any stakeholder groups.

Telstra includes "significant results" in the introduction to their environmental performance report. However, it is difficult to attribute meaning to their achievements. For example:

- Telstra saved approximately 31,092 tonnes CO2 equivalent in greenhouse gas emissions through energy management actions, introduction of LPG fuelled vehicles and recycling of waste. Issues arising in an evaluation of this statement include consideration of what time period is being reported, the methodology for measurement, and the relative improvement on savings in prior periods.
- Recycling of more that 14.9 million White pages and Yellow Pages against a target of 14.7 million – how many directories are issued each year and what percentage is being recycled?

65 Refer to Appendix 2 for copies of the environmental performance indicators from Westpac Social Impact Report 2004

66 Refer to Appendix 2 for copies of these reports copied from Westpac Social Impact Report 2004

67 Westpac Social Impact Report 2004, Environmental Assurance Statement, p 76

68 Refer www telstra com au/environment/index htm

69 Includes a performance index for resources (materials, energy and water), emissions and wastes, land use and planning, products and services, suppliers and contractors, transport, compliance

Various initiatives are also reported. Four examples of Telstra's commitment to environmental management and performance are provided on page 21 of their Corporate Social Responsibility Report 2003. In brief, these commitments are:

- To facilitate mobile handset and battery recycling through brochures and their website, and working with dealers and customers
- Introduction of mobile handset recycling bins in regional areas
- Continued recycling of directories into a range of environmentally friendly products
- Donation of $500 for every percentage of old directories recycled in 2003 through the book muncher program towards a Landcare Australia project to protect and restore a section of the Murray River.

There are obvious deficiencies in these commitments:

- Recycling of mobile handsets by working with dealers and customers is directly contradictory to their selling strategy whereby consumers are encouraged to regularly update their mobile phones.
- Mobile handset recycling bins are not actively promoted in the metropolitan area, which probably has a greater turnover of mobile phones than regional areas.
- The Landcare Australia project is capped at $35,000. The level of this contribution would not bear mention in any other part of Telstra's financial reporting due to its miniscule proportion and immateriality.[70]

Overall, although the environmental reporting information appears to be well structured and presented, the uncertainties regarding commitment, which arise from inconsistencies in Telstra's actions and objectives as discussed above, cause a high level of doubt as to how important environmental considerations actually impact operating strategies.

6.3 James Hardie Industries NV (Hardie)

In the light of the recent investigations,[71] it is useful to consider how this company continues to address its social and environmental responsibilities.

Hardie includes various "comfort" statements on its web site under "Investor Relations" [72] These statements are not without merit, as despite current investigations, the company was found to be legally correct in its approach towards compensation claims.[73] However, environmental policies reflect a corporate culture that is still largely based on qualitative assessment and therefore corporate culture in terms of social responsibility cannot be ignored in an evaluation of commitment to environmental policy and goals.

The Hardie annual report contains brief narrative descriptions of policies and processes regarding energy, water and resource conservation, renewable and recyclable resources, minimising waste, and reducing pollution. Information about their on-going commitment in each of these areas has been provided for at least the last three years with a noticeable absence of data, statistics or any reference to accountability frameworks.

The lack of quantitative information calls into question the quality of the company's environmental management system. Either the company has an EMS that controls and measures environmental impacts and that information has not been made publicly available, or, their EMS is not concerned with measurement of environmental outcomes.

70 Refer Australian Accounting Standards, AASB 1031, Materiality

71 Refer section 3 1 above

72 For example
- "We think it is important that our behaviour reflects the spirit, as well as the letter, of the law and we aim to govern the company in a way that meets or exceeds appropriate community expectations "
- "Good corporate governance is about fundamental issues of trust and credibility"
- "The Board requires employees to comply with the spirit as well as the letter of all laws "

Refer www ir jameshardie com au

73 As reported in AFR 23 September 2004, "Asbestos Carr lacks leadership" by John Durie "In the QC's opinion Hardie's corporate structure is legally correct and the chances of anyone claiming damages against the company are slim" Refer to www afr com/premium/articles/2004/09/22/1095651395517 html

7. Third Party Ratings

Third party assessment of environmental performance of corporations is gaining momentum, interest and credibility. Numerous environmental interest groups operate in capital markets, international governments and bodies, and local governments and communities. Free availability of information via the internet means that these bodies can examine and report their findings regarding transparency and accountability of corporate environmental responsibilities, and thereby encourage the push for higher standards of environmental reporting.

The discussion below provides examples of this "pull strategy" that is driving corporate environmental reporting from various different directions.

7.1 Dow Jones Sustainability Index Review

Asset managers in fourteen countries currently license the Dow Jones Sustainability Index (DJSI) family, which provide benchmarks for assessment of companies' economic, environmental and social performance, and can therefore be used to influence investment decisions for a variety of sustainability based portfolios.

The DJSI annual review[74] in 2004 findings included:

- There is evidence that sustainability strategies are being integrated into core business strategies including new principles in codes of conduct, wider scope and coverage of environmental and social performance measures and alignment of sustainability targets with remuneration plans.
- Corporations are extending their sustainability policies and practices to include supply chain management, thereby addressing the environmental and social standards of suppliers that are chosen as business associates.
- Sustainability reporting is increasingly included with the entity's annual report, there is a growing trend for external verification of the sustainability report.
- Corporatıons are actively working towards and achieving reduction in greenhouse gas emissions, energy usage, water consumption and are reducing their levels of waste.

7.2 The Accountability Rating® Global index

AccountAbility[75] and csrnetwork[76] have developed a global index to evaluate how the world's 100 largest companies account for their ımpact on society and the environment. This 'Accountability Rating Tool' provides insight as to how these major global corporations are accounting for their long-term impact on socıety and the environment. However, the average score for the global 100 was a disappointing 24% arising from a wide distribution of scores ranging from the highest score of 67% to a low of 1%. [77]

7.3 Australia - Government monitoring

The Australian Department of Environment & Heritage has recently examined the extent of sustainability reporting undertaken by Australia's largest companies. As "sustainability reports" do not have any prescribed format or content this project identified the terms of reference used, the extent of external verification, and the benefits and impediments associated with producing a sustainability report.[78]

The findings included:

- Information in respect of "sustainability" was presented in a range of different reports including titles such as "triple bottom line reports", "environmental reports" and "community reports".

74 Dow Jones Sustaınabılıty Index Revıew, September 2004, www sustaınabılıty-ındex com/

75 AccountAbılıty ıs an ınternatıonal non-profit ınstıtute that brıngs together members and partners from busıness, cıvıl socıety and the publıc sector from across the world, see www accountabılıty org uk

76 The csrnetwork ıs one of the UK s leadıng CSR consultancıes, www csrnetwork com

77 Refer Appendıx 3 for the Accountabılıty Ratıngs for the Global 100

78 Australıan Department of Envıronment & Herıtage (2004) *The State of Sustaınabılıty Reportıng ın Australıa 2004*, accessed at www deh gov au/ındustry/corporate/reportıng/survey html

- 509 companies were researched; 32 out of 116 companies producing sustainability reports had or will have their report independently verified; 40 companies made use of the GRI guidelines.
- The most frequently cited benefits of producing a sustainability report was to enhance reputation, gain confidence of investors, insurers and financial institutions, to improve operations and management and to improve risk management.
- Impediments to producing a sustainability report, and verification of that report most frequently identified were cost and resource constraints.

7.4 Socially Responsible Investors

As investment in managed funds has grown over recent years, there has been a corresponding increase of interest in ethical or socially responsible investment. Between 2001 and 2003 the level of social responsible investment in Australia doubled, and was estimated to be at least $21.3 billion at 30 June 2003.[79]

Investors comprise both institutional and private investors and it is evident that both groups support socially responsible investment. The government is also promoting sustainability as an investment tool by demonstrating that sustainability behaviour contributes to risk minimisation and asset management, and sustainability reporting offers insight into business efficiency and management competency.[80]

Governance research commissioned by two superannuation funds found that 90% of companies in the S&P/ASX200 Index do not provide information on the management of energy use including greenhouse gas emissions in corporate disclosures."[81] Hence the call by superannuation funds for companies to improve the governance and reporting of energy use including greenhouse gas emissions.

8. Conclusion

The nature and extent of environmental impact will vary with the size and nature of the entity's operation. However, in the absence of a board that has environmental considerations as its priority, this accountability relationship only arises when there is pressure to respond to stakeholder groups.

A wide range of stakeholder groups with an interest in environmental issues is critical to the ongoing development and adoption of comprehensive reporting frameworks for entities engaging in environmental reporting. Although reporting frameworks are available they are not always used as standard reference points, therefore evaluation of environmental performance is still very subjective.

This is clearly demonstrated even when quantitative performance indicators are published as, even for global leaders such as Westpac, there is no indication as to whether or not all operating locations are meeting suitable standards of environmental performance. Environmental impact is always felt most harshly at a local level first.

On 23 September 2004 GRI issued clarification in respect of "in accordance" expectations.[82] This statement clarified when and how reporting "in accordance" with GRI could be provided. This clarification requires the CEO or board to acknowledge that a report prepared in accordance with GRI guidelines represents a balanced and reasonable presentation of the organisation's economic, environmental and social performance. It further clarifies that use of the term "balanced and reasonable" is the result of extensive discussion and feedback during the GRI's public consultation process.

79 Ethical Investment Association, October 2003 "Socially Responsible Investment in Australia – 2003" as referred to in Business Council of Australia, "Fresh Approaches to Communications between Companies and their Shareholders" A Discussion Paper, released 28 September 2004 (p15) available from www bca com au

80 Australian Government, Department of the Environment and Heritage, 2003, "Corporate Sustainability – an Investor Perspective, Mays Report" p6

81 Media Release by Public Sector and Commonwealth Superannuation Schemes (PSS/CSS) and Catholic Superannuation Fund (CSF) as referred to in Business Council of Australia, "Fresh Approaches to Communications between Companies and their Shareholders" A Discussion Paper, released 28 September 2004 (p15) available from www bca com au

82 Refer www globalreporting org/guidelines/reports/IAclarification asp

This clarification raises two important points in conclusion, for all aspects of environmental reporting:

- The CEO and board have responsibility for overseeing the *scope* of environmental performance.
- "Balanced and reasonable" is a qualitative consideration that can only be evaluated in context.

The extent of stakeholders' dialogue will provide "context" and impact on the extent of "balance" and "reasonableness" that is taken into account, by the CEO and board, in producing high quality environmental management systems, as the prerequisite to high quality environmental reports.

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Appendices (not included)

Note – these three appendices have not been reproduced in this issue to save space but copies may be obtained from the editor.

Appendix 1 James Hardie Industries NV Chart of daily prices over 6 months to October 2004

Appendix 2 Extracts for Westpac Social Impact Report 2004

Appendix 3 Accountability Ratings for the Global 100