

Submission to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

Justification for Change

We, the undersigned, are Australian citizens with decades of experience in many industries at the national and international level who believe this country needs better corporate governance to protect, foster and sustain our society and the environment. We believe a new corporate culture can be achieved through more appropriate corporate structures and more efficient company reporting that will deliver improved public benefits while protecting profitability.

This Royal Commission has amply demonstrated there are fundamental flaws in the culture of many corporations operating in Australia including some of our most revered and trusted institutions in the banking, superannuation and financial services sectors. There is little doubt these flaws also extend to other industry sectors which would also benefit from governance reform.

With regard to the Terms of reference of the Royal Commission we believe that, at the very least, the evidence presented to the Royal Commission to date, clearly meets the requirements of paragraph d):

- d) *“whether any findings in respect of the matters mentioned in paragraphs a), b) and c):*
- (i) are attributable to the particular culture and governance practices of a financial services entity or broader cultural or governance practices in the relevant industry or relevant subsector; or*
 - (ii) result from other practices, including risk management, recruitment and remuneration practices, of a financial services entity, or in the relevant industry or relevant subsector”*

Since the nineteenth century corporations have been granted legislative protection through limited liability and perpetual succession but there is no requirement for any societal *quid pro quo*. This largesse promoted better access to capital and provided shareholder protection but sadly economic growth and company prosperity has been sometimes accompanied by malfeasance, corruption and detrimental impacts on customers, stakeholders and the community.

While some corporations take their social responsibilities seriously, most are still focussed on profit alone. This **‘Shareholder primacy’** focus leads to a drive to maximise short-term profits and extravagant performance-based executive remuneration. It has given rise to a short-term corporate focus that has encouraged and rewarded unethical behaviour at the expense of long-term corporate wellbeing and community trust.

Corporations that take a **‘stakeholder primacy’**¹ approach have demonstrated time and again that on financial indicators they outperform other companies in their target market and in the wider investment environment. Companies with a focus on ‘public good’ or

¹ Stakeholders have been defined as members of the "groups without whose support the organization would cease to exist". Freeman, R. Edward; Reed, David L. (1983). "Stockholders and Stakeholders: A new perspective on Corporate Governance" (PDF). https://www.researchgate.net/profile/R_Freeman/publication/238325277_Stockholders_and_Stakeholders_A_New_Perspective_on_Corporate_Governance/links/5893a4b2a6fdcc45530c2ee7/Stockholders-and-Stakeholders-A-New-Perpective-on-Corporate-Governance.pdf

‘public benefit’ as well as profits, yield superior performance across all the accepted indices. Stakeholder primacy means recognising a range of stakeholders and interests including corporation workers, the community, customers, suppliers, government, the environment as well as shareholders.

We believe that the draft definition of “a social licence” put forward by the ASX, which was vigorously opposed by business leaders including from many of the very industries whose gross lapses in governance have been exposed by the Commission is a necessary but not sufficient step towards protecting society from the ulterior aims and ambitions of companies driven solely by shareholder interest:

“Preserving an entity’s social licence to operate requires the board and management of a listed entity to have regard to the views and interests of a broader range of stakeholders than just its security holders, including employees, customers, suppliers, creditors, regulators, consumers, taxpayers and the local communities in which it operates.

“Long-term and sustainable value creation is founded on the trust a listed entity has earned from these different stakeholders. Security holders understand this and expect boards and management to engage with these stakeholders and to be, and be seen to be, ‘good corporate citizens’.”²

We believe a more prescriptive approach is required to bring the general governance arrangements for all corporations operating in Australia to a more socially responsible model.

New Corporate Governance Models:

1 Integrated Reporting

2 B Corps

3 Benefit Corporations

4 Corporate Social Responsibility

1 Integrated Reporting A more holistic governance model must recognise all stakeholder needs and must have measurable outputs to allow relative performance to be compared. Regular reporting of corporate performance on standard parameters is essential to increase corporate transparency. “Integrated Reporting” provides a global standard for corporate reporting that is being adopted by large corporations and government agencies in over sixty countries. It requires comprehensive and auditable triple bottom line reporting but does not demand any change to existing corporate structures. Better reporting provides the mechanism for existing corporate performance to be comprehensively scrutinised and critically appraised to encourage improvements to current governance practices.³

² Update to members on ASX Corporate Governance Council Principles and Recommendations <https://aicd.companydirectors.com.au/membership/the-boardroom-report/volume-16-issue-8/update-to-members-on-asx-corporate-governance-council-principles-and-recommendations>

³ Jane Diplock, Holistic or Integrated Thinking: Thinking for the 21st century http://www.sustainabilitymatters.co.nz/wp-content/uploads/2018/08/Jane-Diplock_Holistic-or-Integrated-Thinking-for-the-21st-Century_CA-ANZ_2018_07_19_Edited.pdf

An integrated report is a concise communication about how an organisation's strategy, governance, performance and prospects, in the context of its external environment, lead to the creation of value in the short, medium and long term.⁴

2 “B Corps” are an alternative approach. They are corporations which seek and obtain certification against a range of criteria dealing with stakeholder interests and must maintain that assessment to retain certification. They operate under normal corporation law. B Corps are assessed by B Lab. B Lab is a “nonprofit that serves a global movement of people using business as a force for good. B Lab’s initiatives include B Corp Certification, administration.”⁵

There are already thousands of B Corps in North and South America, Africa and Europe, Japan, New Zealand and Australia where voluntary certification is provided by an independent third party against agreed standards taking into account the interests of all stakeholders (see Attachment for the categories covered in the B Lab assessment). Two Australian B Corps have been assessed by B Lab as Best for the World. Note the attribution: “Best FOR the World”, not “best in the world”! B Corps are benefit corporations without the protection of statute.

3 Another initiative “**Benefit Corporations**” are created under statute and codify the triple-bottom-line principles of ‘people, planet and profit’ in the corporation’s governing documents. Corporations are enabled to voluntarily seek registration under that law, again subject to external auditing. The model US legislation defines ‘general public benefit’ as:

benefit corporations will have a ‘material positive impact on society and the environment, taken as a whole, as assessed against a third-party standard, from the business and operations of a benefit corporation.’⁶

Already a number of countries have begun legislating for Benefit Corporations. Some countries use different terms. In Britain legislation has been enacted for philanthropic organisations termed Community Interest Corporations.⁷ In the US some 35 States and DC have legislated to enable registration of benefit corporations, as has Italy. Argentina, Brazil, Colombia, Canada, Chile, Portugal and Taiwan have legislation under consideration.

A critical matter in proving the value of Benefit Corporations and B Corps is oversight. Given the failure of many multi-national auditing corporations to adequately assess corporate culture and actions there should be stringent requirements for any auditing body. We believe that ASIC would be a logical organisation to perform this role.

4 The voluntary “**Corporate Social Responsibility**” (CSR) concept has been adopted by some corporations into their ‘visions’ or ‘missions’, but take up on a national level has been poor as demonstrated by evidence before the Commission. A more robust imperative by government is needed to ensure corporate social responsibilities are addressed and companies are publicly accountable for their broader societal and environmental impacts.

⁴ Integrated Reporting <IR>, <http://integratedreporting.org>

⁵ About B Lab <https://bcorporation.net/about-b-lab>

⁶ Model Benefit Corporation Legislation 2013 s 102, available at http://benefitcorp.net/sites/default/files/documents/Model_Benefit_Corp_Legislation.pdf .

⁷ There are already more than 14,000 such community interest corporations according to the CIC Annual report.

Recommendations

The Royal Commission should recognise the failings of the current legislative framework for corporate governance as has been demonstrated by the evidence before it and call upon the Government to:

- Introduce legislation by mid 2019 to provide for Benefit Corporations based on the US model.
- Introduce legislation requiring integrated reporting by all corporations operating in Australia with ASIC given the power and responsibility to audit compliance.
- Empower ASIC to require all corporations to report annually to agreed comprehensive international standards incorporating social and environmental performance measures as outlined in the governance model 1 above and to audit same.
- Until the passage of legislation enabling benefit corporations direct ASIC to actively promote B Corps as a way to encourage socially responsible corporate governance.

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John Diplock, [REDACTED]

References

United States

Model Benefit Corporation Legislation (US)

http://benefitcorp.net/sites/default/files/documents/Model_Benefit_Corp_Legislation.pdf

Certified B Corps and Benefit Corporations

<https://www.bcorporation.net/what-are-b-corps/certified-b-corps-and-benefit-corporations>

Mastering the Benefit Corporation (Lawyerly description of how to do it)

https://www.americanbar.org/publications/blt/2016/07/02_montgomery.html

Benefit Corporations in the United States and Community Interest Companies in the United Kingdom: Does Social Enterprise Actually Work? Michelle Cho

Northwestern Journal of International Law & Business, Winter 2017

<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?referer=https://www.google.com.au/&httpsredir=1&article=1808&context=njilb>

Small Business B Corp Basics: Requirements & Costs

<https://humaninterest.com/blog/small-business-b-corp-basics-requirements-costs/>

B Corps & Benefit Corporations: Understanding the implications for companies and investors

<https://static1.squarespace.com/static/5143211de4b038607dd318cb/t/5923fc459de4b-b42e1ea118b/1495530609724/B+Corps+Report+v7-anonymised-companies-no-danone.pdf>

Financial performance of Benefit Corporations

Master Thesis Accounting & Control Erasmus School of Economics Erasmus University Rotterdam 16-3-2016 https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwiT7ozWnrTd-AhWGbN4KHcjgA-MQFjAAegQIABAC&url=https%3A%2F%2Fthesis.eur.nl%2Fpub%2F33796%2FMA817-Stiphout-van-327670.pdf&usg=AOvVaw0ciirWwAewEBtczy_1_2q3

The First European Benefit Corporation: blurring the lines between ‘social’ and ‘business’

<https://www.bwbllp.com/file/benefit-corporation-article-june-16-pdf>

Australia

Social Impact Hub <http://www.socialimpacthub.org>

ProBono Australian B Corps on Top of the World

<https://probonoaustralia.com.au/news/2015/04/australian-b-corps-on-top-of-the-world/>

Benefit corporations: A sophisticated and worthy reform

[https://www.dropbox.com/s/kba6l7ga8xdw7ws/Benefit corporations worthy reform February 2016.pdf?dl=0](https://www.dropbox.com/s/kba6l7ga8xdw7ws/Benefit%20corporations%20worthy%20reform%20February%202016.pdf?dl=0)

B Lab, The Non-Profit Behind B Corps

<http://bcorporation.com.au/what-are-b-corps/the-non-profit-behind-b-corps-au> (See Appendix for the range of criteria assessed).

Criteria considered in B Lab assessment form, below.

Where to find Australian B Corps <https://www.google.com/maps/d/viewer?mid=194Uxsl3knKso4OUpofbsd5hyzdY&ll=-33.90253545273913%2C151.22698649093036&z=14>

UK

Companies (Audit, Investigations and Community Enterprise) Act 2004 - which created CICs - and the Community Interest Company Regulations 2005, which regulates them. The Community Interest Company (Amendment) Regulations 2009

<https://www.communitycompanies.co.uk/cic-and-other-legislation>

Regulator of Community Interest Companies Annual Report 2017 - 2018

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727053/cic-18-6-community-interest-companies-annual-report-2017-2018.pdf

2016 Q3 Research B Corporation Benefits? The impact of B Corporation certification on organisations' performance and growth

<http://www.tsiconsultancy.com/wp-content/uploads/2016/01/TSIC-B-Corp-Research-Final.pdf>

Attachment

Criteria considered in B Lab assessment form

Corporate accountability

- Mission and Engagement
- Governance
- Anti-corruption
- Transparency
- Governance metrics

Workers

- Metrics
- Compensation and wages
- Worker Benefits
- Training and education
- Worker Ownership

Work environment

- Management and worker communication
- Job Flexibility/Corporate culture

Community

- Community metrics
- Suppliers & Distributors
- Diversity
- Civic engagement and giving

Environment

- Environment metrics
- Land, Office, Plant
- Inputs
- Outputs

Socially and Environmentally-focussed businesses

Governance business models

- Social enterprise

Worker business models

- Worker ownership

Community business model

- Community and Products and services
- Arts/Media

Serving those in need

Basic services

Health

Education

Economic opportunity/Empowerment

Flow of capital

Community business models - Practices

Workforce development

Supply chain

Local

Producer cooperative'

Charitable giving

Environment produces and services

Renewable or cleaner-burning energy

Energy and water efficiency

Waste reduction

Land and wild life conservation

Toxic/hazardous substance reduction. pollution prevention and remediation

Education, measurement and consulting

Disclosure questionnaire

Industries

Practices

Outcomes

Penalties