THE HAL CLOUGH LECTURE FOR 2002

Corporate Social Responsibility or Civil Society Regulation?

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Introduction

Business corporations traditionally face two groups which regulate their behaviour. The marketplace, which includes business competitors, and government. Now there is a new regulator, civil society, or more particularly Non-Government Organisations (NGOs) such as Greenpeace, Amnesty International the Councils of Social Service and the like. The tools that NGOs use to regulate business are very different to the market and government; they are, in the first instance, neither price nor law. Often they are just ideas expressed in a strange new language: the language of Corporate Social Responsibility (CSR) or its many aliases like Corporate Citizenship, the Triple Bottom Line, the Stakeholder Corporation and so on. This language, these ideas are seductive, they appear benign. But make no mistake—Corporate Social Responsibility is really Civil Society Regulation in disguise.

Civil Society Regulation occurs where NGOs set the standards for business behaviour. Corporations choose to adopt or not to adopt these standards at their risk. While governments have the power of legislation, the ability of civil society organisations to regulate business behaviour through naming and shaming is becoming more powerful.[1]

CSR is a serious challenge to Australian corporations and to the Australian electorate. It is an assault on the interests and rights of 'real' stakeholders, those who have invested in or are creditors of corporations. It occurs when managers bow to pressure from interests that have no contract with the corporation, whether by way of employment, or supply of goods or services, or through ownership. CSR is also an assault on the interests of the electorate. It occurs by undermining the formal democratic consensus as to what constitutes reasonable business behaviour. It also occurs when governments grant NGOs such status that it enables them to set themselves up as judges of corporate behaviour. CSR proponents want to change society in ways that they have hitherto been unable to do through the parliament and the courts. Corporations that indulge CSR, without the express sanction of their shareholders, are quite literally, misguided.

Some concepts of the corporation are so misguided, they regard the corporation as no more than a process for grievance-settlement in society at large. For example,

> One of the most significant things that companies could do to make themselves good 'stakeholder corporations' is to ensure they give … rights to external review, to stakeholders (and stakeholder groups) with legitimate complaints about the company. The right to access justice—to be able to make claims against individuals and institutions in order to advance *shared ideals of social and political life* [my emphasis] and to rectify relations that have gone wrong—is an essential part of citizenship in a contemporary democracy.[2]

And further,

> We are unnecessarily constrained by the belief that the representative institutions and legal system of the state should be the exclusive or even the primary, home of political deliberation.[3]

These ideas challenge the corporation and the role it has fulfilled in the modern capitalist economy, indeed even in the highly state-regulated modern capitalist economy. The view that all stakeholders have, *prima facie*, an entitlement to a managerial role in a corporation is regarded by some as 'socialism by another name'.[4] Indeed, a problem with CSR, in particular stakeholder theory, is the difficulty of adjudicating between not only the demands of stakeholders who have a contractual relationship with the corporation, but those who do not. All corporations accept the need to deal with traditional stakeholders, and the law provides the means of settling disputes with each. But CSR invites two further impositions. First, it counts as a stakeholder anyone who wants a piece of a corporation. To paraphrase one manager's view, 'a stakeholder is anyone who can do you damage.' Second, it attacks the very purpose of the corporation—its commercial relationship with the market and its owners.

Corporations combat these misguided ideologies with some difficulty. The ideologies' proponents apparently want no more than to enlist the help of corporations to build a better world, one with less exploitation, or a sustainable environment, and so on. To be against CSR is, therefore, to be a rapacious capitalist. The difficulties in fighting 'goodness' have become so apparent that some corporations have decided to embrace 'goodness'. Some engage in 'stakeholder dialogue', or seek to work 'beyond compliance', or seek to enter a state of 'corporate citizenship'. Corporations embrace these dialogues as a means of enhancing their reputation, or of at least avoiding damage to it. No doubt, from time to time, some corporations use these dialogues for competitive advantage.

Under current law, responsibility of the board of directors and managers is to the shareholders; they have a fiduciary duty to them. The new CSR deal is that the fiduciary duty should be extended to society, that entities other than the owners should have some claim if the corporation fails to fulfil a socially desirable role. One of the real risks in incorporating the views of too many, over and above contractual obligations, is that it gives managers the opportunity to neglect their fundamental duties. Acting for different causes may provide an excuse not to deliver maximum shareholder benefit.

No corporation wants to be singled out for attack by NGOs for not being socially responsible. Most corporate responses to CSR are designed to forestall the new 'democratic dialogues' and the interference in corporate objectives they imply. They are designed to ward off regulation. They may in fact just aid the introduction of 'soft' law, which in time turns into 'hard' law. A primary assumption of CSR is that governments—through the sale of government businesses and some industrial and financial deregulation—have withdrawn from their duty to protect citizens from the impact of the market economy. This misrepresents the fact that corporate regulation has increased substantially in the period of so-called deregulation. A second assumption is that international corporations are now more powerful than nation-states. Coca-Cola may be the biggest brand name in the world, and it no doubt will fight to protect its market and brand name, but in the final analysis it just makes soft drink! Coca-Cola's power to change society is less than a government with tax revenues a fraction of Coke's assets.

The one hope for corporations to keep civil society regulation to a minimum is to work with shareholders and government. Corporate social responsibility is no more and no less than an instrument used by non-corporates to gain leverage over corporations for political purposes. Any political control over corporations should be exercised by the Parliament and the courts and based on the broad consensus on which those processes rely.

Responses to CSR

The issue for corporations, acting both individually and in concert, is how to respond to civil society regulation. The wrong responses will weaken the commercial purpose and strength of individual corporations, the market sector as a whole and the democratic regulatory environment in which they operate. The right response will maintain the commercial purpose of corporations and the democratic nature of the regulatory environment. At the heart of the strategy is to make the NGOs prove their *bona fides*: question the extent to which they represent anyone or anything; question the size of their membership; question the source of their funds; and question their expertise. In other words, question their standing and their legitimacy. There are four steps to this strategy:

Support the resolution of issues, not organisations. Corporations should not fund those advocacy NGOs that undermine them. If they believe there is a need for engagement, then make contact directly with the real interests involved, for example locals, not with established political activists. If there are technical issues involved, then fund the science or the experts, not the advocates.

CSR Lite	CSR Gold	CSR Premium
Corporate philanthropy and positioning	Ethical investment Reputation indexes	Scientific credibility Government involvement
'Business as usual'	'Reputation games'	'Civil socialism'
Shareholders not affected Stakeholders not affected	Where stakeholders become judge and jury, they gain power	Shareholders/electorate lose power Stakeholders and civil regulators gain power
Foundations *ANZ Infrastructure Services* *Ansett Frequent Flyers*	*FTSE4Good* *Ethical investment* *Good Reputation Index* *CalPERS*	*Financial Services Reform Act* *WWF and The Great Barrier Reef* *Greenpeace and the Olympics*

Invoke a protocol. If it is worthwhile, or otherwise unavoidable to deal with NGOs, then do so through a protocol. A protocol requires the NGO to prove its standing by way of expertise or representation, and in so doing requires a disclosure of relevant NGO information to shareholders.

Disclose dealings with NGOs as a cost of compliance. Inform the shareholders of the cost of civil society regulation as a cost of doing business, not as a down payment on 'corporate citizenship' or 'social responsibility'. Do not argue a false case; argue that you obtained the least-cost solution to a compliance problem.

Fund the intellectual arguments against CSR. The CSR bandwagon is already rolling through the universities and being discussed in various forums with the sponsorship of some corporations. The resources that NGOs devote to advocacy, in many cases their sole purpose, is probably as much as corporations, which have most of their money tied up in the business. There is rarely a voice raised in criticism of CSR. Those voices need to be assisted.

CSR Lite

These responses can be used against any activities that constitute CSR. To better understand the nature of the challenge it is worth recognising the enormous variety of activities that constitute CSR. The foregoing diagram suggests three levels of CSR, ranging from lite to heavy.

Some activities cause no essential disturbance to shareholder value, for example, the disbursement of funds for charitable purposes through a Foundation. This is classic philanthropy, and such activities could be labelled 'CSR Lite'. These activities do not pretend to change the nature of the business, it is a 'business-as-usual scenario'. Of course, there are business foundations that have become distinctly anti-business. The Ford Foundation and the Turner Foundation come to mind. And a cautionary tale, even at the Lite end of the spectrum: there is a tendency for corporates to use the language of CSR for marketing purposes. This encourages the media and NGOs to push the barrow.

For example, the ABC's George Negus recently interviewed[5] John Clarke, managing director of ANZ Infrastructure Services on the bank's investment in wind power. Negus asked, 'Is this part of the whole triple-bottom-line thing … the whole social responsibility in investment?

Clarke responded, 'Well, certainly … we believe … we can get a balance and long-term equilibrium between the community, the environment and our stakeholders.' Clarke was happy enough to use the language of CSR. His real answer as to why ANZ were in the business of wind power came later in the interview. He said, 'of course, you've got a long-term power purchase agreement with the retailers, which [is] required under the renewable legislation.'

The triple bottom line or socially responsible investment were not the motivating factors, they were only a convenient cover for an investment made viable by legislation. The facts are clear but why hand political power to the ABC and the environmentalists when the economics are secure? The bank's reputation is secure only as long as the investment is secure. The indulgence with fashionable statement hands power to those who want the corporation to do things that are not, and should not be, its responsibility.

Some uses of the CSR label are much more brazen. In her presentation to the second National Conference on Corporate Citizenship held in November 2000, Gina Hanson, corporate citizenship manager of Ansett Airlines, related a scheme for soaking up Ansett's massive liability in Frequent Flyer points. Hanson suggested that, to relieve Ansett of the dual burdens of the points and the many calls on Ansett for free travel from persons in need, St Vincent de Paul should open an FFP account. Customers could donate their points to the account, the needy could apply to St Vincent de Paul to draw on them. The gain for the airline was that the seats would be allotted at non-peak times. 'It would really help our business and ease our situation with regards to accommodating customers by having those points burnt up in other hours.'[6] This was a bright idea never acted upon, but it was patently a business deal. It was mistaken to suggest it was anything other than that.

CSR Gold

CSR Gold represents medium-strength interference in shareholder value. Of concern are schemes which generate measures of performance for the investor under the rubric of CSR—for example, so-called ethical investment or a corporate reputation index. Where these schemes are voluntary and transparent, there is not too much cause for concern. For example, the FTSE4Good Index measures corporation performance on environmental sustainability, relationships with stakeholders and support for universal human rights. The assessment is undertaken in a reasonably objective manner by independent analysts. But even here there are problems. Embarrassingly, WorldCom was ranked in the top 50 companies in the world, and ranked 23rd in the USA as at June 2001. FTSE was not to know then what it now knows about WorldCom, but having held itself out as an assessor of ethics, it is assumed it knew what it was doing. Of course, in this case, the same would hold true for financial performance analysts.

Apart from the problems of poor prediction, there is enormous scope to use information and misinformation to play 'reputation games'. In such games, measures of performance become especially problematic where the claims are false, and where those who set and judge the measures of performance are not impartial. These problems are multiplied when the schemes are compulsory.

The issue of false claims becomes particularly problematic in ethical or socially responsible investment. While the promoters of Socially Responsible Investment (SRI) funds maintain that there is no trade-off between financial returns and the pursuit of non-financial goals such as environmental sustainability and labour relations, their claims are based on outdated, overseas research and fail to consider the extra management and screening costs associated with SRI funds.

Two Australian analysts, Ali and Gold,[7] provided the first independent examination of the performance of SRI funds in Australia. They found that excluding 'sinful' industries—such as alcohol and gambling (which the majority of Australian SRI Funds do)—between 1994 and 2001 would have resulted in a performance shortfall of 0.70 per cent per year, reducing the broad market return from 12.7 per cent to 12 per cent. They also found that 'investors in Australian SRI Funds generally face additional fee imposts, compared with investors in mainstream Australian, managed investment schemes or superannuation funds. This is largely attributable to fund managers passing on to investors the development and marketing costs for SRI funds and the fees paid to external service providers (primarily, index vendors and SRI research providers)'.[8] In other words, the available evidence indicates that SRI funds impose a significant cost on, and yield a lower net return to, investors than do non-SRI funds.

On the issue of impartiality, The Good Reputation Index published in *The Sydney Morning Herald* and *The Age* attempts to measure the social, environmental, labour, ethical as well as the financial and public relations reputations of the top 100 companies operating in Australia and New Zealand. It is designed as a tool for Civil Society Regulators and as a guide to corporations in their deliberations about Corporate Social Responsibility.

In constructing the index, the Fairfax Press adopted what is now the standard methodology—basing the index on the views of high-profile NGOs, the likes of Greenpeace, Amnesty International, the ACTU and so on. And it included the views of most of the leading lights of the corporate social responsibility industry, like the St. James Ethics Centre. The IPA was not invited to be a judge! An analysis of the data[9] shows that, according to the Index and therefore the CSR regulators:

- *Financial performance and social responsibility are inversely related.* Only one of the top ten most socially responsible corporations is ranked among the top 20 firms in terms of financial performance. Conversely, just three of the top ten financial performers were ranked in the top 20 in terms of social responsibility.
- *Government protection and direction is good and market competition is bad.* Five of the top 10 most socially responsible corporations are government-controlled. Two, Australia Post (ranked 1st) and Queensland Rail (ranked 5th), are government-owned monopolies. Telstra is partially government-owned and heavily regulated. Holden and Ford are sustained by taxpayer subsidies. None of the top ten financial corporations are government-owned or subsidised and all face vigorously competitive markets.
- *Funding social activists is a key to social responsibility.* Each of the highly ranked socially responsible corporations donates heavily to corporate social responsibility groups (including many of the organisations who acted as judges for the Index). Westpac (ranked 2nd), Alcoa (ranked 6th) and ING (ranked 10th) are not simply generous financial contributors, but are also strong promoters of the triple bottom line. Westpac has taken the lead in promoting ethical investment in Australia and ING has taken a similar approach around the world. One must at least suspect that their high ranking is a reward for their contribution to the cause.

The tussle between corporations and NGOs over corporate reputation has reached new heights. It is now a game of cat and mouse, with shareholders having to pay to bribe the civil society regulators.

CSR Premium

The greatest potential to disturb shareholder returns and to let in the civil society regulators occurs in CSR Premium. These cases may involve private investment decisions based on prejudice, or flawed legislation which purports to do no more than assist disclosure but in fact imposes behaviour, or the improper use of scientific analysis, or where government simply hands its responsibility directly to an NGO. In these instances, those stakeholders who have made no significant contribution to the corporation's activities gain power at the expense of shareholders and creditors. They also gain power at the expense of the electorate through Parliament. These are instances of 'civil socialism'.

SRI investment managers fall well and truly into CSR Premium when, in addition to misleading investors on the costs and benefits of the fund, they deny their members investment opportunities, by pursuing other agendas. CalPERS, the Californian Public Employees' Retirement System is the world's largest pension fund. CalPERS has US$150 billion in assets and has long been a champion of CSR causes. Unfortunately for California's public servants, it also has a very poor investment record, losing around US$20 billion in the first two years of this decade. It was one of the largest investors in, and losers from, Enron and WorldCom.

Earlier this year, at the instigation of its union trustees, it withdrew its investment from a number of countries, in particular, Malaysia. It kept its investments in Argentina, and now stands to lose considerable pension funds because of the collapse of the Argentinian economy. It appears to have withdrawn funds from the healthier Malaysian economy on the basis of labour standards issues. The assessment of labour standards was undertaken for CalPERS by an unnamed NGO which did not publish its methodology. Clearly however, the methodology was flawed because it did not recognise the facts that Malaysian wages doubled in the 1990s and that unemployment is below 3%. In fact, there are around 1.7 million guest workers out of a workforce of just 6 million, so a lot of poor people are being provided with employment because of investment in Malaysia. The suspicion is that the report reflected the fact that industry unions are discouraged in Malaysia (although enterprise unions exist) and Malaysia competes with California in electronics. In other words, US unions have used their members' funds, and the cover of CSR ideology, to indulge in some old-fashioned protectionism.

Closer to home, and perhaps more serious, the *Financial Services Reform Act* of 2001(FSRA)[10] is a legislative step into the brave new world of CSR. The Act seeks to place open-ended moral restraints on private investment decisions which, if they were applied to individuals, would be an outrage. The Act includes disclosure provisions in the offer of financial products designed to give prospective investors sufficient financial information to decide whether or not to invest.

The provision applies particular disclosure requirements to all superannuation, life insurance and managed investment products. The requirement is that the financial institution concerned disclose for every product the extent to which it has taken into account labour standards and environmental, social and ethical considerations. The requirement is thus imposed on approximately $650 billion of Australian savings, including the principal form of government-enforced savings—superannuation.

That may be reasonable if objective standards comparable with those for financial reporting, where auditors are sued for incompetence and gaoled for malfeasance, existed. Of course they do not. Nevertheless, disclosure requires the institution to formulate and express its attitudes and practices to matters that range from difficult to impossible to define. It is open to businesses to state that they do not take these matters into account in their investment decisions. No institution, however, will state that it does not take such matters into account—in part, because if they did, NGOs and the media would label them as unethical or anti-social. Silence would be treated as guilt. More importantly, businesses in reality almost always 'take into account' these issues to some degree, so a nil return would in most cases be untruthful. The normal investment selection processes involve winnowing out fraudulent (that is unethical) propositions or those with high risk exposures arising from their corporate practices. NGOs would exert pressure for highly detailed disclosure statements under each of the headings and would seek to supervise the behaviour of the institutions concerned against those written statements in ways favoured by those groups.

In the end, this is no less than an attempt, by indirect and stealthy means, to impose new and poorly defined community service obligations and prescribed behaviours on business. By means of legislation and mandatory guidelines, the corporate sector is obliged to undertake actions (and report on them) that may adversely affect its profitability and that it would not necessarily undertake voluntarily. The Act will encourage significant distortion of investment decisions and management effort to placate hostile groups, which have little financial stake in the institutions or businesses affected.

These provisions dilute the influence of shareholders and the responsibility of corporate management to its shareholders. They also interfere with the market's ability to direct activity to the things consumers most want, not by learning from identified market failures but by imposing the preferences of organised minorities whose demands could provide an excuse for company boards and management for poor financial performance. In the extreme, it might be used as an excuse for business failure on the grounds that the corporation had focused, perhaps very successfully, on 'social responsibility' criteria and had thus failed to make a profit. Failure to control labour costs might be equated with high labour standards. Zealous environmental performance might translate into huge expenditure to avoid trivial environmental injury and so on.

The expansion of these 'bottom line' concepts is accompanied by the phenomenon of a growing list of interest groups which elect themselves as 'stakeholders'. A stakeholder is traditionally a person who has a stake, someone who has put up something of value to promote the enterprise in question and risks losing it. It equates those with ownership and contractual rights with those with mere interests. It is this trend towards giving everyone a say in everyone else's business that lies beneath much of the pressure for the FSRA provision. It is a perversion of the idea of democracy. It is a new form of corporatism.

An example of the improper use of science is the World Wide Fund for Nature (WWF)[11] campaign that lead to both the Commonwealth and Queensland Governments recommending urgent and significant changes to land management practices in catchments that drain onto the Great Barrier Reef. In June 2001, WWF published a *Great Barrier Reef Pollution Report Card*, which concluded that the Great Barrier Reef was being threatened by land-based pollution. While the report made many allegations of reef impact from agriculture, it did not substantiate any of the claims.

The lack of substantiation did not dissuade the Queensland Government, which responded to pressure from the WWF campaign by establishing a Reef Protection Taskforce. At its establishment, representatives on the Taskforce asked that the current level of scientific understanding on impacts of terrestrial run-off on the Reef be provided. A science statement was developed for the Taskforce to provide a 'consolidated view of our current understanding of the impacts of terrestrial run-off on the Great Barrier Reef World Heritage Area'. This document discussed threats to the Reef, but again provided no reference to actual damage to the Reef.

Several Taskforce members noted this fact, with the following comments being made by members: 'So the widespread impact [of terrestrial run-off] is not substantiated.' 'But the scientists have tried very hard to prove there is an impact.' 'Let's not get hung up on the science.' And this from the WWF member, 'Let's go forward on the basis of the precautionary principle.' At the insistence of several Taskforce members, the science adviser agreed to redraft the science statement. A revised science statement was issued with the comment to the Chairman of the Taskforce that 'We wish to clearly point out that whilst there is no evidence of widespread deterioration, there is documented evidence of localized deterioration on individual nearshore reefs'.

This was the first statement from reputable scientists clearly alleging an impact from land-based run-off on the Reef. Unfortunately for the proponents, the scientific papers on which this conclusion was drawn provided no evidence that agriculture or other land-based sources of run-off were having an adverse impact on the Reef.

The Reef Campaign came at the price of undermining scientific integrity. According to Professor Bob Carter of the Marine Geophysical Laboratory, James Cook University, 'one of the relatively new problems that faces us is that governments are increasingly basing their actions on advice provided by unnamed consultants, or on unrefereed reports from government agencies ... This is a recipe for disaster. Good science operates on a consensus basis, using material that has been subjected to rigorous peer review and published in journals of international standing.' It is a dereliction of duty for governments to devise standards for water quality and run-off regimes without direct studies of impact. The issues could have been resolved if governments had been prepared to scrutinize the evidence in the published scientific literature and not just buy off the NGOs.

An example where government simply handed the whole show to green groups was the Sydney Olympics. Environmental NGOs played a key role in the development and delivery of the environmental agenda of the Sydney Olympics. Greenpeace mounted a significant Olympics campaign over 7 years leading up to the Bid and the Games. Greenpeace International and its office in Sydney, Greenpeace Australia, actively participated in the 1993 bid to host the Games, joining with government and industry in drafting the 'Environmental Guidelines', Sydney's plans for an environmentally-friendly Games.

Greenpeace adopted a 'watch-dog' role, which included monitoring the performance of organisers, offering advice and criticism and reporting on the performance of Games organisers. SOCOG dealt with Greenpeace in a number of ways. 'SOCOG treated Greenpeace as an organisation with a legitimate interest in the Games and involved them as much as possible. This reflected their role in the Bid, their expertise in the environment, their ability to tap a global network of knowledge and their ability to become involved *whether we wanted them or not* [my emphasis].'[12]

The Greens helped to establish the standards in all key performance areas, energy conservation, water conservation, waste minimisation, pollution avoidance and the protection of the natural environment. A consortium of Greens lead by the Australian Conservation Foundation was paid $160,000 for their work by the NSW and Commonwealth governments to keep an eye on the organisers. Greenpeace, true to its view on independence, did not accept government funds. The Greens were on the stage with SOCOG at the launch of various environment initiatives, for example the CEO of Greenpeace launched the waste strategies initiative with the Minister for the Olympics.

Essentially, the strategy of SOCOG was to invite the Greens into the tent. It was part of the 'engagement strategy' now common in the corporate sector. It used the language of 'stakeholder' at its crudest. Stakeholder status was granted to the Greens because of the damage that the Greens could do to the Olympic image. It was also a 'beyond compliance' strategy, doing more than the law required. The Olympic Games showcased the best of the best, so everything associated with the Games has to be the best of the best. Greenpeace used the Games like any other business, to use the badge of the Olympics to push their product. In this case, however, they paid nothing and they delivered nothing, except the threat of bad publicity. The strategy of engagement delivered power over programs and the judgement of outcomes to those who threatened blackmail. There was a time when such behaviour was considered bad form. Greenpeace stole a moral march on the IOC and the governments, and the IOC, the fans and the taxpayers paid for it.

A proper acquittal of government funds would ensure that public servants and technically competent people were in the decision-making positions, albeit with advice from lobbies. The Sydney Olympics pushed well beyond the proprieties to indulge in an exercise of damage control and used funds for experiments in environmental management that had insufficient scientific scrutiny.

Conclusion

CSR comes in many guises; when corporations embrace it, they displace shareholder rights with 'stakeholder' wishes. When governments support it, they hand power to unelected groups at the expense of voters. The intent of our analysis is not to regulate civil society or to prevent debate about the role and function of corporations. But a power play where 'civil society regulators' bypass the shareholders, the creditors and the electorate, needs to be recognised and responded to.

The sensible response to CSR is to approach issues on their merits and deal in proof and facts. It is to deal with those who have legitimate rights in the matters at hand, and real resources at risk. This approach does not undervalue collective decision-making or public goods, or the need for government intervention to correct market failure. In fact, it is designed to incorporate the wishes of the owners of corporations and the electorate by holding up to scrutiny those intermediaries who seek to influence events and outcomes.

The key tool for the scrutiny of the intermediaries, in particular advocacy NGOs, is the protocol. Where a government or a corporation or a foundation judges that it is desirable that an NGO be granted standing or given access to its resources, certain information should be gathered, and made available respectively, to the public or to the shareholders or to the trustees. The protocol is the requirement to supply proof of standing and to make the information available to the owners, in return for the grant of standing.

The following information should be sought and disclosed. It is similar information to that which corporations disclose to their owners and the wider public as a matter of course.

Legal status: The Constitution or Articles of Association. These should be sufficiently detailed to prove the status of the organisation and to identify office holders, along with the structure of responsibilities and appropriate systems to ensure accountability.

Operating status: Proof that the organisation is *voluntary* in that the governing body is drawn from the organisation's constituency and members are not remunerated; is *non-profit* in that surplus funds cannot be distributed to members/shareholders; is *non-government* in that it is independent from any Government.

Membership: There must be a verifiable list of the membership, in all categories in which they are available. That is, a list which distinguishes members—people with voting rights—from supporters. The list should not be made public, although there should be evidence that new membership is encouraged.

Elections: Document the process whereby the governing body is drawn from the organisation's constituency; the process by which members are able to be involved in the policy-formation process and the procedures to ensure that any member or supporter has free access to, and ability to make copies of, all decisions of the governing body.

International affiliation: provide information on off-shore affiliates, associated parties; on the degree of non-resident input in terms of board membership and general membership, and extent of offshore funding.

Financial statement: The financial activities and financial position of the organisation should be prepared in accordance with generally accepted accounting principles and include: significant categories of contributions and other income; expenses reported in categories corresponding to the descriptions of major programmes and activities contained in the annual report; and all fund-raising and administrative costs.

Use of funds: Money should be used in a manner specified by the NGO when it asks donors (and when those funds are tax-assisted) for donations. Information should be provided which shows the percentage of total income from all sources applied to programmes and activities. The percentage of public contributions that has been applied to the programmes and activities described in solicitations.

Fund-raising: Solicitations and informational materials must be accurate, truthful, and not misleading. Solicitations shall include a clear description of the programmes and activities for which funds are requested.

Claims to expertise: other than membership interest. The qualifications, whether formal or by way of publications, of those who will speak or act on behalf of the organisation in its representations to the provider, research undertaken, and whether research has been assessed by independent peer review.

Shareholders, and the electorate working through the formal channels of democracy, are the allies of corporate CEOs in their struggles with civil society regulators. The protocol, the non support of NGOs, the disclosure of dealings to shareholders and the support of those who assemble the arguments against the new regulation are sensible ways to deal with the challenge. These are not easy matters for corporations, but the IPA is spending considerable energy on the issue and will continue to develop the arguments and engage the public debate. The alternative, giving in, seems too expensive.

Endnotes

1 See Murphy, D. and J. Bendell, 1997. 'The Politics of Corporate Environmentalism', paper presented at the *Business Responsibility for Environmental Protection in Developing Countries* conference, September 1997, Heredia, Costa Rica, Universidad Nacional and UNRISD.

2 Parker, C. 2002. *The Open Corporation: Effective Self-Regulation and Democracy*. Melbourne: Cambridge University Press, 227.

3 Parker, 2002, 7.

4 Barry, N. 1999. *Anglo-American Capitalism and the Ethics of Business*. Wellington: New Zealand Business Roundtable, 29.

5 ABC TV *New Dimensions: Future*. Interview with George Negus, 10 July 2002.

6 Hanson presentation in Birch, D. ed. 2000. *Proceedings of the Second National Conference on Corporate Citizenship*, Rio Tinto and Deakin University, Corporate Citizenship Research Unit. November, 16-17, 138.

7 Ali, P. and M. Gold. 2002. 'An Appraisal of Socially Responsible Investments and the Implications for Trustees and Other Investment Fiduciaries', *Centre for Corporate Law and Securities Regulations*, The University of Melbourne.

8 Ali and Gold. 2002, pages 30–31.

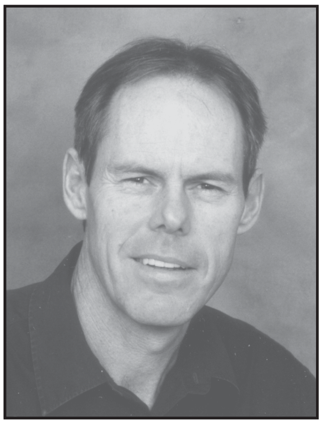
9 'The Good Reputation Index 2001', *Sydney Morning Herald,* October 22, 2001.

10 See Hoggett, J. and M. Nahan. 2002. *The Financial Services Reform Act: A Costly Exercise in Regulating Corporate Morals.* IPA Backgrounder.

11 See Marohasy, J. and G. Johns. 2002. 'WWF Says Jump: Governments Ask, How High?' http://www.ipa.org.au/pubs/ngounit/wwffs.html

12 Otteson, P. 2001. 'Greenpeace and the Sydney 2000 Games: What Are The Lessons?' Paper delivered at 4th IOC World Conference on Sport and Environment, Nagano, Japan 3-4 November. Also interview with Peter Otteson, 26 June 2002.

About the Author



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Dr Johns is the author of several IPA publications, the most recent of which was *Government and Civil Society: Which is Virtuous?*, a Senate Occasional Lecture delivered at Parliament House in Canberra on 23 August 2002. (Available as a PDF download from the IPA Website.) Before that, Gary wrote an IPA Backgrounder entitled *Protocols with NGOs: The Need to Know*, which was published in November 2001.

About the Lecture

This lecture is named after the founder and Chairman of the Clough Engineering group. Hal Clough has been a leading figure in the Western Australian business community for many years and during that time has been a strong supporter of economic freedom and the Institute. As John Hyde, a former Executive Director of the Institute of Public Affairs, once remarked of Hal Clough:

> he has always clearly understood that a liberal social order, including its market economy, is dependent on an ethos, an idea, without which it will not function or survive.

The Institute is proud to host the annual Perth-based lecture in Hal Clough's honour.

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