

# LEGAL REQUIREMENTS FOR CSR REPORTING IN THE UNITED KINGDOM, DENMARK AND AUSTRALIA

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## I. INTRODUCTION

The conventional corporate reporting model requires the disclosure of financial measurements which generally provide only one part of the overall picture of a company's performance. However, using Corporate Social Responsibility (CSR) reports and narrative reports to provide context for financial disclosures give investors and stakeholders a window on the company's future sustainability.<sup>1</sup> The investment and financial sectors are increasingly requiring alternative forms of reporting to ascertain the longer-term corporate approach and the future directions of a company to facilitate assist in the determination and analysis of factors for facilitating corporate financing decisions.<sup>2</sup>

This article considers the current legal reporting requirements for CSR (excluding corporate governance) in the United Kingdom (UK), Denmark and Australia. The UK and Denmark were chosen for comparison with Australia as these countries have begun to legislate in the area of CSR reporting so may be considered leaders in the field. Consideration is given to the supplementary Labor members' views in the Parliamentary Joint Committee on Corporations and Financial Services (PJC) inquiry, *Corporate Responsibility: Managing Risk and Creating Value*. These views provide suggestions as to what may be the future trend for CSR reporting requirements in Australia. The Global Reporting Initiative (GRI) is also discussed as a potential model framework.

The modern corporation needs a solid grasp of the concepts of sustainability, CSR and 'triple bottom line reporting'. The most frequently quoted definition of sustainable development is the following: '[s]ustainable development seeks to meet the needs and aspirations of the present without compromising the ability to meet those of the future'.<sup>3</sup> The impact of the corporation upon society affects both the present and the future, and as such is related to the concept of sustainability. CSR may be considered a subset of sustainable development, and so it operates within definitive boundaries. CSR is a concept driven by stakeholders as it extends beyond the borders of the company with its ethical base being an understanding of the organisation's responsibility for its business activities.<sup>4</sup>

Triple bottom line or sustainability reporting goes beyond financial results by providing information on economic, social and environmental performance. Supply chains, corporate governance, risk management, employees, the environment and the community, as well as climate change mitigation, feature in the overall success of a company. The reporting of social and environmental outcomes alongside the financial aspects of a corporation's performance would give a more holistic view of the state of its affairs, as well as highlighting the potential risks associated with its operations.

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- 1 David Bent, *The OFR is Dead. Long Live the OFR* (2006) Association of Chartered Certified Accountants 4 <[http://www.accaglobal.com/pubs/general/activities/library/governance/ofr\\_views/tech-ofr-db0306.pdf](http://www.accaglobal.com/pubs/general/activities/library/governance/ofr_views/tech-ofr-db0306.pdf)> at 15 December 2009.
- 2 Anne Durie and Laura Horn, 'Sustainability Reporting: The Role of Financial Institutions' (2009) 37 *Australian Business Law Review* 342.
- 3 World Commission on Environment and Development, *Our Common Future* A/42/427 Ch 2.
- 4 Francois Maon, Adam Lindgreen and Valerie Swaen, 'Designing and Implementing Corporate Social Responsibility: An Integrative Framework Grounded in Theory and Practice' (2009) 87 Supplement No 1 *Journal of Business Ethics* 71.

Institutional investors are already a major audience for CSR reports.<sup>5</sup> Public praise or pressure by analysts and other financial observers will have a bearing on the corporation's access to capital. Thus any corporate enterprise that wishes to be taken seriously in the investment or financial market should begin to report on CSR activity.

There is no precise definition of CSR, but it encompasses the responsibility not to cause environmental harm — a seemingly legitimate goal when corporations are in the business of making a profit. CSR is also about the materiality of relationships and the impact of business operations and can range from the protection of human rights to safety in the workplace. Materiality is ascertained by considering the impact, interdependence and immediacy of the relationship between a corporation and its employees, business partners, customers and with members of the local community. The more dispersed the business, the greater the number of impacts that will need to be accounted for. Any requirement to carry out and report on these social aspects of corporate operations is arguably more of a contentious issue.

Also, reporting alone is of questionable value unless the corporation actually acts responsibly. A consistent statistical relationship was not found between pollution performance disclosure and actual pollution performance in environmental accounting research.<sup>6</sup> Further data suggests that the relationship between the reporting of social and environmental matters and actual performance is ambiguous.<sup>7</sup> So a high level of disclosure does not necessarily equate with the performance of CSR. Studies have not shown a direct link between corporate social performance and financial performance.<sup>8</sup> In spite of this, the trend towards mandatory corporate reporting of CSR factors is firmly on the global corporate agenda. An appropriate model of CSR reporting needs to be determined to ensure that what reporting occurs within a global framework facilitates effective measurement, assurance and comparability.

So far, a global mandatory reporting model has not been devised even though a number of countries have implemented a form of CSR reporting. Countries such as the UK and Denmark require reporting from specified companies; however, in the UK the requirements are less onerous than those originally proposed by the government. The direction for CSR reporting in Australia will arguably be set by the party now in power, so it is useful to examine that party's stance on the issue. In the Supplementary Report by Labor members in response to the Parliamentary Joint Committee on Corporations and Financial Services inquiry, *Corporate Responsibility: Managing Risk and Creating Value* (PJC Supplementary Report),<sup>9</sup> the general opinion called for an improvement in business sustainability reporting in all sectors and, in particular, that there should be a mandatory requirement to report non-financial risks, including

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5 Durie and Horn, above n 2.

6 Janet Mobus, 'Mandatory Environmental Disclosures in a Legitimacy Theory Context' (2005) 18 *Accounting, Auditing and Accountability Journal* 492, 494.

7 I Kristoffersen, P Gerrans and M Clark-Murphy, 'Corporate Social Performance and Financial Performance' (2008) 14 *Accounting, Accountability and Performance* 45, 50.

8 Ibid 53.

9 Parliamentary Joint Committee on Corporations and Financial Services, Parliament of Australia, *Corporate Responsibility: Managing Risk and Creating Value — Supplementary Report by Labor Members* (2006) <[http://www.aph.gov.au/SENATE/COMMITTEE/corporations\\_cte/completed\\_inquiries/2004-07/corporate\\_responsibility/report/d01.htm](http://www.aph.gov.au/SENATE/COMMITTEE/corporations_cte/completed_inquiries/2004-07/corporate_responsibility/report/d01.htm)> at 16 December 2009.

to report the corporate strategy for managing those risks.<sup>10</sup> The PJC Supplementary Report also suggested that a target for implementing the requirement for mandatory sustainability reports should be set.<sup>11</sup>

A number of international models are currently being utilised for the voluntary reporting of CSR factors by various Australian companies across industry sectors; however, a standardised model for reporting is yet to be determined. A strongly favoured model, the Global Reporting Initiative (GRI)<sup>12</sup> is, in its present form, a voluntary process. Currently, the addition of a number of other voluntary measures is required to give a complete picture of the company's overall sustainability performance, which universally results in less comparability.

This article argues that a viable CSR reporting framework needs to capture a broad view of the longer-term value potential of the corporation and facilitate corporate managers' focus on long-term goals and value, as well as providing a sound base for sustainability initiatives. To this end, the most useful reporting model would include forward-looking statements, strategic reporting on business prospects such as trends and factors affecting future performance, business drivers and risks, and also include an external verification component.<sup>13</sup> This article suggests that the most appropriate mandatory non-financial reporting model would be based on the GRI. The GRI model requires a broad-based account by the corporation of its sustainability performance<sup>14</sup> and comprehensively covers the major facets of sustainability reporting. In combination with sector-specific Performance Indicators (PI), reporting on these matters would allow an effective comparison across corporations. The most appropriate mechanism for mandating the reporting of performance would likely be on an 'if not, why not' basis within the *Corporations Act 2001* (Cth) (*Corporations Act*). In a recent keynote address outlining the Australian government's response to the global economic crisis, Senator Nick Sherry highlighted the Australian government's commitment to work with the GRI Government Advisory Group to assist with the development of the GRI and encourage its uptake by Australian companies.<sup>15</sup>

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10 Improve business sustainability reporting, which includes:

- the need for non-financial reporting;
- forward looking information; and
- a mandatory minimum of reporting on non-financial risk.

Recommendation 10: The Labor committee members recommend an amendment to the *Corporations Act 2001* (Cth) to require all public and private companies, operating in Australia and above a specified size threshold, to publicly disclose their top five sustainability risks and their strategies to manage such risks. This provision should be subject to an 'if not, why not' flexibility mechanism modelled on that contained in the ASX Corporate Governance Council's Principles of Good Corporate Governance. Ibid 191.

11 Sustainability reporting targets

Recommendation 11: The Labor committee members recommend that the Australian government make a clear policy statement setting out stepped targets with clear timelines for the uptake of detailed sustainability reporting in Australia. Ibid 193.

12 See Global Reporting Initiative Sustainability Reporting Guidelines <[http://www.globalreporting.org/NR/rdonlyres/ED9E9B36-AB54-4DE1-BFF2-5F735235CA44/0/G3\\_GuidelinesENU.pdf](http://www.globalreporting.org/NR/rdonlyres/ED9E9B36-AB54-4DE1-BFF2-5F735235CA44/0/G3_GuidelinesENU.pdf)> at 15 December 2009.

13 KPMG/UNEP, *Carrots and Sticks for Starters* (2006) 5 <[http://www.kpmg.com.au/Portals/0/Carrots\\_and\\_Sticksfinal.pdf](http://www.kpmg.com.au/Portals/0/Carrots_and_Sticksfinal.pdf)> at 15 December 2009 (KPMG/UNEP report).

14 Global Reporting Initiative, *Reporting Framework Overview* <<http://www.globalreporting.org/ReportingFramework/ReportingFrameworkOverview/>> at 15 December 2009.

15 Senator Nick Sherry, 'Corporate Responsibility — Alive and Well' (Speech delivered to the Property Council of Australia, Hobart, 20 April 2009) <<http://minsc1.treasurer.gov.au/DisplayDocs.aspx?doc=speeches/2009/010.htm&pageID=005&min=njs&Year=&DocType>> at 16 December 2009.

## II. UNITED KINGDOM

The *Companies Act 2006* (UK)<sup>16</sup> (*Companies Act*) introduced a mandatory requirement for a business review in the directors' report, which is in line with the provisions of the 2003 European Union (EU) *Accounts Modernisation Directive*<sup>17</sup> and applies to all companies other than those subject to the small companies' regime.<sup>18</sup> The business review recognises the necessity for companies to provide information for investors and other stakeholders, and a narrative explanation that expands on and complements increasingly complicated financial accounts.<sup>19</sup> Although a number of major reforms were contained in the new legislation, two key reforms, for present purposes, were: in relation to directors' duties; and the requirement for directors' reports, to include business reviews.

The new statutory duties replaced the general duties imposed by common law and equity; although the statute is not a complete statement of directors' duties in all circumstances. For instance, existing case law relating to the duties under common law and in equity may be used to interpret and determine the application of the statutory duties.<sup>20</sup> The statute included the duty to promote the company's success for the benefit of the company's shareholders as a whole, which replaces the duty to act in the best interests of the company.<sup>21</sup> Linked to this is the requirement that companies (other than small companies),<sup>22</sup> must include a business review in their annual directors' report, which will inform shareholders so that they are able to assess how the directors have performed their duty under s 172 of the *Companies Act*.<sup>23</sup> The business review must contain a fair review of the company's business during the financial year, and a description of the principal risks and uncertainties facing the company.<sup>24</sup>

The business review must be a balanced and comprehensive analysis of the development and performance of the company's business during the financial year, and its position at the end of that year, which is to be consistent with the size and complexity of the business.<sup>25</sup> Although this reporting requirement is less stringent than the previous statutory Operating and Financial Review (OFR),<sup>26</sup> it heralds a change in the corporate culture, particularly in terms of the contents of annual reports and what, as well as the amount of, management commentary that must be made public.<sup>27</sup>

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16 Received royal assent on 8 November 2006.

17 *EU Accounts Modernisation Directive (2003/51/EC)* of the European Parliament of 18 June 2003.

18 *Companies Act*, s 417. A company which satisfies two or more of the following conditions in a financial year qualifies as a small company:

- Turnover — not more than £5.6 million.
- Balance sheet total — not more than £2.8 million.
- Number of employees (average in the year) — not more than 50.

19 Bent, above n 1.

20 *Companies Act*, s 170(4).

21 *Companies Act*, s 172.

22 *Companies Act*, s 417(1).

23 *Companies Act*, s 417(2).

24 *Companies Act*, s 417(3).

25 *Companies Act*, s 417(4).

26 See below.

27 Brian Rutherford, *The Future of Narrative Reporting*, Association of Chartered Certified Accountants, 1,

< [http://www.accaglobal.com/pubs/general/activities/library/governance/ofr\\_views/tech-ofr-br0306.pdf](http://www.accaglobal.com/pubs/general/activities/library/governance/ofr_views/tech-ofr-br0306.pdf) > at 15 December 2009:

Disclosing new types of information — strategic, forward-looking, narrative, risk-based — requires a change of culture, especially around the corporate annual report, traditionally prepared within a well-defined, quantitative reporting framework, with discretionary narratives added on ad hoc. The relaxation in the rules means that companies can take things a little bit slower, and, perhaps, feel under slightly less pressure, but it would be foolish to walk away from the opportunity for a major improvement in investor communications.

The initial business review required under the Act had the current financial year as its focus, with the element of foresight required being that of reporting risks and uncertainties. However, from 1 October 2007, further elements had to be included in the business reviews contained in the annual reports of listed companies. This enhanced business review means that annual reports have taken on an even greater communication role for investors and companies as one of the most important parts of the commentary on future developments.<sup>28</sup> The enhanced business review must contain information that is necessary for an understanding of the development, performance or position of the company's business. This information includes forward-looking statements such as the main trends and factors likely to affect the future development, performance and position of the company's business.<sup>29</sup> Information must also be given in relation to environmental matters (including the impact of the company's business on the environment), the company's employees, and social and community issues. Corporate policies and their effectiveness in relation to the above matters must also be included.<sup>30</sup> Also, unless contrary to the public interest, or seriously prejudicial to the person,<sup>31</sup> the business review also should contain information about persons with whom the company has contractual or other arrangements which are essential to the business of the company.<sup>32</sup> If information about any of these areas is omitted, the review must indicate which kinds of information have been excluded.<sup>33</sup>

If a company qualifies as medium-sized in a particular financial year,<sup>34</sup> the following information is to be provided, with the exception of non-financial information. The review must contain — to the extent that it is necessary to understand the development, performance or position of the company — an analysis using key performance indicators<sup>35</sup> and, where appropriate, analysis using other key performance indicators, including information relating to environmental matters and employee matters.<sup>36</sup> The review must include references to, along with explanations of, amounts included in the company's annual accounts where this is considered appropriate.<sup>37</sup> The section contains directions for directors of group companies<sup>38</sup> and also exempts directors from being required to disclose any information about impending developments or matters in the course of negotiation that would, in the opinion of the directors, be seriously prejudicial to the company's interests.<sup>39</sup> There are no statutory reporting standards for the business review, and the review by auditors is required only to ensure the consistency of the review with the accounts.<sup>40</sup>

Concerns in relation to the liability of directors for forward-looking statements were raised prior to the implementation of the statutory narrative reporting requirement. In response, a safe harbour<sup>41</sup> was introduced which applies to statements made in the directors' report<sup>42</sup> and the

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28 Richard Slynn, *The Future of Narrative Reporting — The Legal Perspective* Association of Chartered Certified Accountants <[http://www.accaglobal.com/pubs/general/activities/library/governance/ofr\\_views/tech-ofr-rs0306.pdf](http://www.accaglobal.com/pubs/general/activities/library/governance/ofr_views/tech-ofr-rs0306.pdf)> at 15 December 2009.

29 *Companies Act*, s 417(5)(a).

30 *Companies Act*, s 417(5)(b).

31 *Companies Act*, s 417(11).

32 *Companies Act*, s 417(5)(c).

33 *Companies Act*, s 417(5).

34 *Companies Act*, ss 465–7.

35 The section indicates that 'key performance indicators' means factors by reference to which the development, performance or position of the company's business can be measured effectively.

36 *Companies Act*, s 417(6).

37 *Companies Act*, s 417(8).

38 *Companies Act*, s 417(9).

39 *Companies Act*, s 417(10).

40 Institute of Chartered Accountants in England and Wales, *Enhanced Business Review* (2008) <<http://www.icaew.com/index.cfm?route=143857>> at 16 December 2009.

41 This is applicable to the reports referred to and required by pt 5 and is contained in the *Companies Act*, s 463.

42 Including the information provided as a result of compliance with the *Companies Act*, s 417.

directors' remuneration report,<sup>43</sup> or summary financial statements obtained from these. The safe harbour provision limits directors' liability to the company for making false and misleading statements in respect of loss suffered by the company as a result of any untrue or misleading statement in a report, or the omission from a report of anything that should have been included. Otherwise, a director will be liable only in certain circumstances, such as where a deliberately misleading or untrue statement was made, where such a statement was recklessly made, or where it was known that the omission was a dishonest concealment of a material fact.<sup>44</sup>

Prior to the introduction of the business review, the statutory OFR, which was established in 2005, was a mandatory requirement in the reports of listed corporations. Although it has been removed as a statutory requirement, many companies still create an OFR voluntarily.<sup>45</sup> Even though the majority of listed companies produced a voluntary OFR before it was required by statute, compliance had lacked the necessary consistency for a useful comparison between corporations. The Accounting Standards Board (ASB) considered that the OFR provided an opportunity for directors to set out a clear and balanced analysis of the strategic position and direction of their businesses.<sup>46</sup> A narrative explanation of a company's development, performance, position and prospects was considered by the ASB to be a vital element of best practice. Although no longer mandatory, transparent and open communication with shareholders could be achieved by using the ASB reporting framework as guidance for OFR reporting.

The move from a mandatory OFR to a business review is considered to be a step backwards by the Association of Chartered Certified Accountants (ACCA). The ACCA suggested that less information will be provided to shareholders, particularly on wider social and environmental issues which will have a bearing on the future of the company.<sup>47</sup> Narrative reporting is enhanced by providing information within a contextual environment thus giving readers a better understanding of events and performance.<sup>48</sup> The limited disclosure requirements of the business review in comparison to the OFR arguably do not achieve the aims of furthering forward-looking reporting and the greater disclosure of social and environmental information.

So, while it has been suggested that the business review is a more onerous requirement than the OFR, as it applies to more companies, it arguably omits two of the key elements that made the OFR so valuable. There is no longer the requirement of enabling shareholders to understand the company's strategy and why it is likely to be successful<sup>49</sup> nor is there formal

43 *Companies Act*, s 420.

44 *Companies Act*, notes, ch 46, 112.

45 The Accounting Standards Board has issued a reporting statement 'The Operating and Financial Review' which gives more specific best practice guidance than the legislative requirements for the business review, especially in relation to forward-looking statements: see The Accounting Standards Board, *ASB Issues Reporting Statement on the Operating and Financial Review (OFR)* (2006) <<http://www.frc.org.uk/asb/press/pub1029.html>> at 16 December 2009.

46 *Ibid.*

47 Association for Chartered Certified Accountants, *Consultation on Mandatory Narrative Business Reporting* (2006) <[http://www.accaglobal.com/general/activities/policy\\_papers/archive/business/cdr591](http://www.accaglobal.com/general/activities/policy_papers/archive/business/cdr591)> at 16 December 2009.

48 *Ibid.*

49 See Rob Lake, *Why We Value OFR Information*, Association of Chartered Certified Accountants <[http://www.accaglobal.com/pubs/general/activities/library/governance/ofr\\_views/tech-ofr-r10306.pdf](http://www.accaglobal.com/pubs/general/activities/library/governance/ofr_views/tech-ofr-r10306.pdf)> at 16 December 2009:

The OFR's overarching focus on the company's strategy, with each element of its content serving to illuminate how the strategy will be achieved, makes it more likely that the various components will be presented in an integrated way that facilitates real understanding in a way that the current silos of the Annual Report do not. Henderson is particularly keen to see clear articulation of the OFR with the Remuneration Report and corporate governance reporting. For example, if a company uses a particular KPI for employee issues or the environment, we would expect to see an explanation of how this is linked to remuneration not just for directors but for employees elsewhere in the company. Or if a specific risk is highlighted, corporate governance reporting on areas such as directors' skills and board evaluation should demonstrate how the board ensures appropriate attention is given to the issue.

guidance on how to report.<sup>50</sup> As there is currently no technical guidance available for companies seeking to implement the reporting requirements under the business review, the ACCA has requested that the ASB's Reporting Statement should still be used to provide best practice guidance for business reviews.<sup>51</sup> As an EU legal requirement, the business review is a minimum disclosure requirement for companies, but the ACCA argues that UK companies should be given the statutory option of producing a more comprehensive narrative report which could be produced using the ASB's Reporting Statement. The ACCA suggests that those companies which produce a report in accordance with the ASB's Reporting Statement should be considered to have complied with the basic business review requirements.

A survey undertaken by the Financial Reporting Council (FRC) of the ASB reviewed the narrative reporting of UK-listed companies in 2006<sup>52</sup> and also assessed compliance with the current business review requirements. The forward-looking nature of their disclosures has created the greatest complexity for directors with regard to complying with the business review requirements. In accordance with the measurements used in the survey, the results in this area showed that no companies achieved a finding of best practice reporting, and only scored an average of 'fair'.<sup>53</sup> However this result should be considered in light of the fact that the safe harbour provision contained in the *Companies Act*<sup>54</sup> had not come into force at the time the survey was conducted. The protection provided for directors by the provision from liability may encourage greater detail in this area.

To assist with an understanding of the development, performance or position of the company's business, a description of the principal risks and uncertainties faced by the company is also to be included in the business review.<sup>55</sup> A Black Sun report<sup>56</sup> indicates that this area has witnessed the greatest improvement in reporting practices. A further survey by Deloitte indicated that most companies met the legal requirements but focused only on financial risks, without considering strategic, commercial and operational risks.<sup>57</sup> Vast improvement is needed in company reporting practice to achieve a best practice result.

The annual report should disclose strategic, commercial, operational and financial risks where these may have a significant effect on the strategies and value of an entity.<sup>58</sup> This area of narrative reporting has proven to be problematic for directors as the tendency has been to list all or perhaps most of the risks faced by the company, rather than to identify and describe the principal risks creating uncertainty for the company. It is these principal risks that must be identified, along with an explanation of potential mitigation, or how the risks affect the corporation's strategy.<sup>59</sup> This information was found to have been included in the annual reports in different places, which suggests that further guidance is needed for appropriate corporate comparisons to be made.<sup>60</sup>

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50 Ibid.

51 Lake, above n 49.

52 Financial Reporting Council, *A Review of Narrative Reporting by UK Listed Companies in 2006* (2007) <<http://www.frc.org.uk/images/uploaded/documents/A%20review%20of%20narrative%20reporting%20by%20UK%20listed%20companies%20in%2020061.pdf>> at 16 December 2009 (Financial Reporting Council Review).

53 Ibid.

54 This is applicable to the business review and is contained in *Companies Act*, s 463.

55 *Companies Act*, s 417(3)(b).

56 Black Sun plc, *The First 23 — Reporting Under the Business Review* (2006) <<http://www.blacksunplc.com/corporate/index.jsp>> at 16 December 2009.

57 Deloitte, *Write to Reason: Surveying OFRs and Narrative Reporting in Annual Reports* (2006) <[http://www.deloitte.com/dtt/cda/doc/content/UK\\_Audit\\_Writetoreason\\_06.pdf](http://www.deloitte.com/dtt/cda/doc/content/UK_Audit_Writetoreason_06.pdf)> at 16 December 2009.

58 Financial Reporting Council Review, above n 52, 16.

59 Ibid 17.

60 Ibid 27.

### III. DENMARK

Large businesses in Denmark are now required to supplement their management's review with a report on CSR. Even though incorporating CSR strategies into the business remains voluntary, Denmark has introduced a mandatory requirement for reporting from their largest companies falling into reporting classes C and D of information on CSR.<sup>61</sup> Reporting class D companies are state-owned public limited companies and enterprises with securities that are traded on a regulated market in the EU or European Economic Area (EEA) member state and admitted in accordance with the Danish *Financial Statements Act 2001* (Denmark) (*Financial Statements Act*).

While reporting class C companies include large, medium-sized and private limited companies, CSR disclosure is required only by those falling into the category of 'large businesses'.<sup>62</sup> Subsidiaries are exempt from disclosure in their management's review if they have submitted information and this information has been reported in accordance with the legislative requirements at group level.<sup>63</sup> Non-financial information is to be provided by the companies in their annual reports which traditionally disclose purely financial information for shareholders and investment analysts. The legislative amendment to the *Financial Statements Act* came into force on 1 January 2009,<sup>64</sup> will take effect from 2010, and states that reporting on CSR includes specifying business strategies and corporate activities for combating corruption as well as the inclusion of considerations for human rights, societal, environmental and climate conditions<sup>65</sup> if the company has adopted such measures.

Under the new law, companies choosing to incorporate CSR strategies into their business continue to do so on a voluntary basis; however, reporting will be a necessary addition. If a company does not have a CSR policy they must state this explicitly in their annual report.<sup>66</sup> If there is a policy, the company must specify its CSR policies, how those policies are implemented in practice, the results obtained by the company, as well as the future results expected from the strategies adopted.<sup>67</sup> Members of the UN Global Compact (GC) or the UN Principles for Responsible Investment (UNPRI) may fulfil their obligation in the annual report by merely referring to the publicly available information which has been communicated through the correct processes to the GC or UNPRI.<sup>68</sup> The additional non-financial information may also be referred to as being available on the corporate website or as an addendum to the annual report.<sup>69</sup> Even if the information is not located in the management review, it will be considered to be submitted in connection with the management review and so is subject to an auditor's verification that the CSR information is compatible with the financial information in the annual report.<sup>70</sup>

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61 The Danish Parliament adopted a Bill on 16 December 2008 which proposed the amendment of the Danish *Financial Statements Act* to incorporate the requirements for large businesses. The bill proposed an additional requirement to report on CSR activities in either the company's annual report or in other publicly available company documents by the insertion of ss 99a and 149a.

62 Large businesses in reporting class C are businesses that exceed two of the three size limits laid down in the *Financial Statements Act* for medium-sized businesses; ie, those businesses with a balance sheet total of DKK 143 million, net revenues of DKK 286 million and an average number of fulltime employees of 250.

63 *Financial Statements Act 2001*, ss 99(a)(5), (6).

64 Paul Hohnen, *Non-financial Reporting: Denmark Ups the Ante* (2009) Ethical Corporation <[http://www.hohnen.net/articles/20090113\\_ethical\\_corp.html](http://www.hohnen.net/articles/20090113_ethical_corp.html)> at 16 December 2009.

65 See Government of Denmark, *Action Plan for Corporate Social Responsibility* (May 2008) <[http://www.eogs.dk/graphics/Samfundsansvar.dk/Dokumenter/Action\\_plan\\_CSR.pdf](http://www.eogs.dk/graphics/Samfundsansvar.dk/Dokumenter/Action_plan_CSR.pdf)> at 16 December 2009.

66 *Financial Statements Act 2001*, s 99(a)(1).

67 *Financial Statements Act 2001*, s 99(a)(2).

68 *Financial Statements Act 2001*, s 99(a)(7).

69 *Financial Statements Act 2001*, s 99(a)(3).

70 *Financial Statements Act 2001*, ss 99(a)(3), (4).



The GC social responsibility principles<sup>71</sup> are largely covered by legislative requirements within Denmark and so corporate operations within the country must meet these standards. For instance, international conventions to which Denmark subscribes include the UN Universal Declaration on Human Rights, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development and the United Nations Anti-Corruption Convention which cover the principles on human and workers' rights as well as anti-corruption. Likewise, health and safety legislation in Denmark — for example, the Danish *Environmental Protection Act 1974* (Denmark) — fundamentally applies the precautionary approach. Therefore, the greatest amount of CSR reporting will occur in relation to business activities that take place outside Denmark in countries where businesses operate without the environmental and societal restrictions imposed by Danish law. The aim of the legislative inclusion to require CSR reporting is to encourage responsible business practices while retaining the voluntary nature of CSR strategies within a corporation.

#### IV. CURRENT REPORTING POSITION IN AUSTRALIA

While there is no specific CSR reporting requirement under Australian law, directors and officers of Australian companies are becoming aware of the call to report on factors other than just the financial bottom line. The finance and securities industry currently requires the reporting of a certain amount of non-financial information.<sup>72</sup> Institutional investors commonly use CSR reports to decide factors such as the quality of a company's management. The reports are already considered to be indicators of corporate longevity and profitability.<sup>73</sup> It is arguable that Australian directors should take into account the long term sustainability of the company

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71 The ten principles of the United Nations Global Compact are:

Human Rights

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: make sure that they are not complicit in human rights abuses.

Labour Standards

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: the elimination of all forms of forced and compulsory labour;

Principle 5: the effective abolition of child labour; and

Principle 6: the elimination of discrimination in respect of employment and occupation.

Environment

Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8: undertake initiatives to promote greater environmental responsibility; and

Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

<http://www.unglobalcompact.org/AbouttheGC/TheTENPrinciples/index.html> at 16 December 2009

72 *Corporations Act*, s 1013DA requires ASIC guidelines to be followed if a claim is made in a Product Disclosure Statement that ethical, social or environmental considerations, or labour standards, are to be taken into account by the investor (that is, the fiduciary) when selecting, retaining or realising the investment.

73 B Cooper, 'Corporate Social Responsibility the Holy Grail?' [2003] *Chartered Secretary* 13, 14.

when exercising their powers, especially in relation to their environmental responsibilities and impacts.<sup>74</sup>

With regard to the environmental impacts of a corporation's operations, the annual directors' report must contain general information about operations and activities with specific details about any particular and significant environmental regulation under a law of the Commonwealth or of a State or Territory to which the entity's operations are subject and details of the entity's performance in relation to these.<sup>75</sup> It has also been suggested that s 299A of the *Corporations Act* requires companies' annual reports to state the likely impact of climate change on their business.<sup>76</sup> The recent *National Greenhouse and Energy Reporting Act 2007* (Cth) also imposes reporting obligations on companies specifically for greenhouse-related matters.<sup>77</sup>

Arguably, on the other hand, there is generally no need for Australian companies to report on CSR even though it has been suggested that more specific environmental reporting should be a legislative requirement.<sup>78</sup> Voluntary reporting using the GRI sustainability guidelines<sup>79</sup> does occur, but voluntary disclosure for Australian companies is presently considered to be generally of a lesser standard than would be ideal.<sup>80</sup>

#### A. PJC Report — Labor Members' View

As a supplement to the PJC inquiry, *Corporate Responsibility: Managing Risk and Creating Value 2006*,<sup>81</sup> several differing views held by Labor members were presented.<sup>82</sup> The PJC Supplementary Report has taken on greater significance with the Labor Party's subsequent election to office. A number of these views were closely related to the reporting of CSR activity. For instance, one of the recommendations considered the sole purpose test for investment trustees and fund managers.<sup>83</sup> The suggestion was that the sole purpose test be clarified to ensure that it allows the consideration of environment, social and governance (ESG) risks in the

74 Riccardo Troiano, 'Climate Change: Corporate Liability, Disclosure Requirements and Shareholders' Remedies' (2008) 26 *Company & Securities Law Journal* 418, 427.

75 *Corporations Act*, s 299(1)(f).

76 John Taberner, 'Alchemy in the Platinum Age: The Changing Climate of Corporate Liability' in Wayne Gumley and Trevor Daya-Winterbottom, *Climate Change Law: Comparative, Contractual and Regulatory Considerations* (2008) 247, 251.

77 *Ibid.*

78 Juliette Overland, 'Corporate Social Responsibility in Context: The Case for Compulsory Sustainability Disclosure for Listed Public Companies in Australia?' (2007) 4 *Macquarie Journal of International and Comparative Environmental Law* 1, 19.

79 See Global Reporting Initiative, *Sustainability Reporting Guidelines* (2006) <<http://www.globalreporting.org/Home>> at 16 December 2009.

80 Overland, above n 78; Karen Bubna-Litic, 'Climate Change and Corporate Social Responsibility: The Intersection of Corporate and Environmental Law' (2007) 24 *Environmental and Planning Law Journal* 253, 273.

81 Parliamentary Joint Committee on Corporations and Financial Services Report, Parliament of Australia, *Corporate Responsibility: Managing Risk and Creating Value* <[http://www.aph.gov.au/senate/committee/corporations\\_ctte/corporate\\_responsibility/report/index.htm](http://www.aph.gov.au/senate/committee/corporations_ctte/corporate_responsibility/report/index.htm)> at 16 December 2009 (PJC Report).

82 Parliamentary Joint Committee on Corporations and Financial Services Supplementary Report by Labor Members, Parliament of Australia, *Corporate Responsibility: Managing Risk and Creating Value* (2006)

<[http://www.aph.gov.au/Senate/committee/corporations\\_ctte/completed\\_inquiries/2004-07/corporate\\_responsibility/report/d01.htm](http://www.aph.gov.au/Senate/committee/corporations_ctte/completed_inquiries/2004-07/corporate_responsibility/report/d01.htm)> at 16 December 2009 (PJC Supplementary Report).

83 *Ibid.*

Recommendation 5: The Labor committee members recommend that the Australian Prudential and Regulation Authority issue detailed guidelines on the sole purpose test to clarify the ability of superannuation trustees and fund managers to evaluate non-financial risk and return in all investment decisions.

context of investment decisions. The suggestion was that the consideration of non-financial risk is inherent in the exercise of the fiduciary duty.<sup>84</sup>

Another of the recommendations suggested greater engagement by institutional investors and fund managers in the governance of investee companies. In order to adequately determine non-financial risks in investment decisions, it was considered essential for the investment sector to seek informative and comparative non-financial reports more actively from these companies. The PJC Supplementary Report expressed concern that, currently, insufficient value is given by traditional market analysts and fund managers to the existence of, as well as the use of, non-financial data.<sup>85</sup>

One of the views expressed in the Labor members' report indicated the preference of the current government to implement mandatory statutory reporting similar to the UK business review.<sup>86</sup> There was a further call for a sustainability reporting target by agreement between government and business,<sup>87</sup> with the aim of increasing the rate of detailed corporate sustainability reporting within a realistic timeframe.<sup>88</sup> The transitional period would enable corporations to integrate responsibility for environmental and social factors into their corporate operations prior to the mandatory public reporting of these factors. As noted in the PJC Supplementary Report, the rate of engagement and disclosure in this area needs to be higher if Australia is to take advantage of future financial opportunities that will increasingly flow from improved social and environmental performance.<sup>89</sup>

One of the further recommendations by the Labor Committee members was that the OFR found s 299A of the *Corporations Act* had the potential to promote non-financial disclosures, and that these should be monitored closely to ensure the disclosures assist the assessment and

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84 Ibid [1.51], [1.52].

85 PJC Labor Supplementary Report, above n 82.

Recommendation 13: The Labor committee members recommend that the National Sustainability Council engage with the investment sector to identify areas of research, education and reporting needs that would assist institutional investors and trustees to better identify and assess non-financial risks and investment opportunities.

86 Ibid.

Recommendation 10: The Labor committee members recommend an amendment to the *Corporations Act* to require all public and private companies, operating in Australia and above a specified size threshold, to publicly disclose their top five sustainability risks and their strategies to manage such risks. This provision should be subject to an 'if not, why not' flexibility mechanism modelled on that contained in the Australian Stock Exchange Corporate Governance Council's Principles of Good Corporate Governance.

87 Ibid.

Recommendation 11: The Labor committee members recommend that the Australian government make a clear policy statement setting out stepped targets with clear timelines for the uptake of detailed sustainability reporting in Australia.

88 PJC Supplementary Report, above n 82, [1.101].

Labor members believe a realistic timeframe, but one that should be negotiated and agreed with business representatives is:

- \* 90 per cent of ASX 100 companies by 2010;
- \* 90 per cent of ASX 200 companies by 2012;
- \* 90 per cent of ASX 300 companies by 2014; and
- \* 90 per cent of ASX 500 companies by 2016.

89 PJC Supplementary Report, above n 82, [1.99].

valuation of material non-financial performance and risk-management strategies.<sup>90</sup> In light of these views, the current government may well take action to ensure that non-financial corporate reporting takes on greater significance and is more widely adopted than has been the case up to this point. The first step may be to legislate for a form of mandatory reporting similar to the business review in the UK. However, in all likelihood, the changes to the law will have to be more far-reaching to ensure proper reporting of CSR factors.

### *B. Suggested Model Framework*

In a survey conducted by KPMG and SustainAbility<sup>91</sup> of 2300 respondents who read sustainability reports an overwhelming majority indicated that one of the primary facets of reporting they wished to see was the linkage between the overall business strategy adopted by the reporting corporations and its sustainability strategy. Of the available reporting standards, nearly two-thirds of readers indicated their preference for the GRI Sustainability Reporting Guidelines as the leading global benchmark standard for sustainability reporting,<sup>92</sup> especially in terms of comparability across industry sectors.<sup>93</sup> This is so, even though it is acknowledged that the GRI may not cover all the essential aspects for a comprehensive sustainability report; for example, in the cement industry.<sup>94</sup> But reporting needs to find a common denominator for each corporation, irrespective of the industry sector within which it operates. It is the commonality of reporting that establishes the professionalism of the report by providing the basis for effective comparison between corporations, which is one of the fundamental uses for the reports.

The other essential aspects that readers seek are: a thorough engagement process with stakeholders, targets and results with an explanation, a balance between good and bad news and external verification of the reported information.<sup>95</sup> The survey indicates that publishing a sustainability report will improve the corporation's longer-term reputation and probably also its brand value, as over 90 per cent of respondents indicated that the report effectively changed their view of the corporation.<sup>96</sup> Those reading the reports need to be able to see a clear commitment by the corporation to achieving the vision of sustainability expressed in its report. This is linked to the reporting of major sustainability impacts and, where these occur, throughout all of the corporation's operations. Readers also need to see the connection between the setting

90 Ibid.

Recommendation 12: The Labor committee members recommend that on an annual basis, the Australian Securities and Investment Commission:

- \* Review the extent to which companies are making non-financial disclosures in their report on Operations and Financial Review
- \* Make recommendations to the Australian government regarding the adequacy of the disclosures to meet the evolving needs of shareholders, and the wider capital market to assess and value material non-financial performance, risk profile and risk management strategies
- \* Present a copy of the review and recommendations to parliament.

91 The survey considered the responses of 2300 readers of sustainability reports following the release of the Global Reporting Initiative 3 in 2006; KPMG/SustainAbility, *Count Me In: The Readers' Take on Sustainability Reporting* (2008) <<http://www.globalreporting.org/NR/rdonlyres/3F57ACC8-60D0-48F0-AF28-527F85A2A4B4/0/CountMeIn.pdf>> at 16 December 2009 (KPMG/SustainAbility survey).

92 Bubna-Litic, above n 80, 256.

93 KPMG/SustainAbility, above n 91, 19.

94 R Isadsson and U Steimle, 'What Does GRI-Reporting Tell Us about Corporate Sustainability?' (2009) 21 *Total Quality Management Journal* 168.

95 Ibid 22.

96 Ibid 10. It is important to note that a significant majority of the respondents indicated that their view of the corporation had been influenced in a positive manner, however those reporting must also be aware that 20% stated that the report had a negative effect on their view of the corporation, thus showing the importance of the report and the necessity for ongoing stakeholder communication in the process of its compilation.

of the corporate sustainability strategy and the activities of the corporation, specifically at each locality where the corporation's impact may be felt. Too frequently, it appears that there is a disconnect between the reality of local impacts and the translation of these when reported on a global scale in company reports.<sup>97</sup>

An overly prescriptive reporting model would inhibit companies from fully indicating their long term non-financial considerations related to corporate value. The full range of information given to investors, including the social and environmental impacts of corporate endeavours and the risks inherent in these, should be able to be measured as this will assist the determination of factors affecting corporate performance. must be translatable into measures that will facilitate the determinants affecting corporate performance. Better communication and increased transparency will benefit investment decisions:

contextual narrative reporting helps to cut through the complexity and partial opacity of today's financial reporting. The 'win' for companies is to tell the company's story through management's eyes and using management's key performance indicators. A related win is to give a larger place to long-term value creation and reduce the focus on short-term financial gains.<sup>98</sup>

The GRI—Sustainability Reporting Guidelines<sup>99</sup> (GRI Guidelines) is a highly acknowledged tool for non-financial reporting.<sup>100</sup> The reporting principles and guidance in the GRI Guidelines can be used to define the contents of reports, to ensure adherence to a level of quality and to set the boundary for reports.<sup>101</sup> With regard to what is reported, the three types of standard disclosures are 'strategy and profile', 'management approach' and 'performance indicators', which require the provision of corporate information that is relevant and material to most organisations. The disclosures are enhanced by sector supplements which supplement the GRI Guidelines and include sector-specific PIs. Other areas of disclosure, as well as technical guidance for reporting are included.<sup>102</sup> Updated GRI Guidelines released in 2006, GRI 3, included a new indicator, EC2, which requires inclusion in the report of the '[f]inancial implications and other risks and opportunities for the organization's activities due to climate change.' This requirement corresponds to enhanced reporting standards that are an essential part of the move to global emissions trading as carbon permit schemes are gradually introduced across the global financial markets.<sup>103</sup>

### *C. The Advantages of GRI Reporting*

The arguments for CSR reporting are strongly in line with the expectations of the audience of the reports, as social and financial performance are inextricably linked. For many, the business case for the preparation of non-financial reports is no longer in question. Benefits to the company may

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97 Ibid 20.

98 PriceWaterhouseCoopers, *Corporate Reporting — A Time for Reflection: A Survey of the Fortune Global 500 Companies' Narrative Reporting* (2007) 5 <<http://www.pwc.com/extweb/pwcpublications.nsf/docid/b1dccb1777fd78c9852572ad007ec9e0>> at 16 December 2009.

99 The current version of the Global Reporting Initiative — Sustainability Reporting Guidelines is Version 3.0, implemented in 2006, <[http://www.globalreporting.org/NR/rdonlyres/ED9E9B36-AB54-4DE1-BFF2-5F735235CA44/0/G3\\_GuidelinesENU.pdf](http://www.globalreporting.org/NR/rdonlyres/ED9E9B36-AB54-4DE1-BFF2-5F735235CA44/0/G3_GuidelinesENU.pdf)> at 16 December 2009 (GRI Guidelines).

100 KPMG/SustainAbility survey, above n 91, 2:

In terms of the relevance of available reporting standards readers showed a very clear preference for the GRI Sustainability Reporting Guidelines — recognized by nearly two-thirds of readers as the leading global standard in this field.

101 GRI Guidelines, above n 99, 4, 6.

102 Ibid 4, 19.

103 In Australia, a new greenhouse emissions reporting system began on 1 July 2008. Businesses responsible for the emission of large quantities of greenhouse gases are required to monitor and measure those emissions, and have been reporting on these since October 2009.

include improved competitiveness<sup>104</sup> and enhanced stakeholder relationships. Investor relations would be improved as a result of better communication flows. Institutional investors are more likely to invest in companies with a good record on sustainability issues as non-financial factors are increasingly understood to be essential indicators of long term corporate performance.<sup>105</sup> Risk management for the company itself improves as the managers have a better understanding of non-financial risks.<sup>106</sup>

Debate exists, however, with regard to whether reporting on sustainability should be voluntary or mandatory. This is based on finding the most effective balance between regulation in specific areas of high risk or impact, while also allowing individuals and industry associations to make decisions about the level of reporting in other areas. It is not an either/or scenario.<sup>107</sup>

When considering the promotion of sustainability performance reporting, the available options include: specifying minimum reporting requirements and making this compulsory through a 'comply or explain' mechanism; voluntary rules or guidelines relating to performance, which delegates the responsibility for decision-making to stock markets or industry bodies; or introducing incentives for corporations to report on sustainability issues.<sup>108</sup>

With regard to the argument that suggests that a variety of voluntary standards enables companies to report in the most suitable way for their business,<sup>109</sup> the existence of the GRI's industry specific performance indicators may be considered to have largely nullified this argument. One of the other main arguments in favour of the choice of voluntary reporting guidelines is that while sustainability reporting is still in the early stages of implementation, voluntary guidelines will ensure the maintenance of flexibility thus encouraging innovation rather than inhibiting the moral ownership of the reporting of sustainability performance.<sup>110</sup> The harsh counter-view is that only binding legal measures with appropriate sanctions will establish the incentive for responsible corporate behaviour capable of overriding the profit incentive.<sup>111</sup>

Another argument against mandatory reporting and assurance suggests that independent verification should occur only after sustainability reporting mechanisms have been developed further to ensure the reports have the same value and credibility as financial reports. Individual development of sustainability reporting guidelines and specific information regarding the interpretation of sustainability information will arguably be necessary to elevate it to the same level as financial reporting. It has been suggested that only when this has been achieved will the reports be ready for independent verification, since accountants and auditors need to be familiar with the criteria used to compile them.<sup>112</sup>

However, it is arguable that the current uptake of voluntary reporting measures is too slow and even those companies that do report do so on an *ad hoc* basis rather than in a sound and systematic way. There are many advantages of GRI reporting, a primary benefit being credibility. However, this would be greater if there was some form of mandatory requirement. Reports that

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104 Marc Vilanova, Josep M Lozano and Daniel Arenas, 'Exploring the Nature of the Relationship Between CSR and Competitiveness' (2009) 87 *Journal of Business Ethics* 57-69.

105 Durie and Horn, above n 2.

106 KPMG/UNEP report, above n 13, 7.

107 Ibid 5.

108 Ibid 5, 8.

109 Ibid 10.

110 Ibid 4.

111 Ibid 12:

Accountability requires high and consistent levels of transparency about business activities and products which cannot be achieved by voluntarism only. Stakeholders need meaningful disaggregated information about the impacts of companies and products on human rights, society and the environment. This implies mandatory social and environmental reporting, disclosure of payments and lobbying to public authorities, and provision of comprehensive point of sale information about products and services. Reports must be based on common reporting standards for all companies and there must be public access to information on company and product CSR performance.

112 Ibid 10.

utilise recognised practices, tools and guidelines will enhance the credibility of information provided. Claims of ‘greenwash’ and other marketing ploys identified as a problem arising from voluntary reporting practices will be lessened when reports are prepared against recognised guidelines and all companies are required to report on all aspects of their business operations.<sup>113</sup>

For instance, the GRI readers’ survey<sup>114</sup> indicated that credibility was ensured with a balanced tone and the involvement of stakeholders, but also with well-regarded external reporting standards, such as G3 GRI Guidelines, as well as assurance.<sup>115</sup> Reporting on CSR issues has the side-effect of changing the corporate culture. Openness and transparency of sustainability issues will be the outcome of mandatory reporting requirements resulting in a necessary change in areas that previously have not been addressed by some companies. Corporations required to prepare reports on the issues of CSR, the environment and social factors, will have the necessary impetus to implement new practices addressing concerns in these areas.<sup>116</sup> The GRI readers’ survey indicated that a sustainability report had a positive impact on the reputation of a reporter, however, the reader also needed to be confident that the reporter was committed to sustainable behaviour.<sup>117</sup>

The GRI reporting model ensures more coverage. Other ad hoc forms of voluntary reports are frequently incomplete as issues are deliberately or inadvertently left unaddressed. GRI reports require reporting on human rights issues as well as environmental factors that otherwise may remain undisclosed.<sup>118</sup> The GRI readers’ survey considered that all reports should use a ‘structured, systematic and professional issue selection process,’ and in the long term, the reporting process should demonstrate how the business strategy has developed over time to take into account sustainability issues and strategy.<sup>119</sup> Direct comparability between corporations and across corporate sectors has been one of the objectives of those expounding the use of the GRI as a reporting method.

Whilst the arguments that voluntary reporting encourages corporate engagement and experimentation with different reporting approaches are valid, the lack of standardisation in entirely voluntary reports is of concern:

It is often argued that the voluntary nature, progressive character and number of standards envisioned in initiatives such as the GRI and other national and international initiatives, are unlikely to result in the standardization of sustainability reporting practices.<sup>120</sup>

In the mining sector, for instance, there is not a compulsory and consistent requirement to report key elements such as waste rock, cyanide, water quality and quantity, which hinders comparability.<sup>121</sup> An example is the proportion of recycled water required to be reported as an ‘additional’ indicator, not a core indicator, under the GRI protocols.<sup>122</sup>

However, regarding the benefits of reporting against established guidelines, the GRI readers’ survey indicated that reporting standards provide a ‘level playing field’ by providing baseline criteria for companies to report against and by doing so enable readers to compare the sustainability performance of a company over time or against other companies in the same sector. This common denominator has resulted in more complete and comparable reports over

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113 Ibid 12.

114 KPMG/SustainAbility survey, above n 91.

115 Ibid 34, 35.

116 KPMG/UNEP report, above n 13, 13.

117 Ibid 34.

118 Ibid 13.

119 KPMG/SustainAbility survey, above n 91, 35.

120 KPMG/UNEP report, above n 13, 13.

121 Gavin M Mudd, *The Sustainability of Mining in Australia: Key Production Trends and Their Environmental Implications for the Future* (2009) Department of Civil Engineering, Monash University and Mineral Policy Institute 124 <<http://civil.eng.monash.edu.au/about/staff/muddpersonal/SustMining-Aust-aReport-Master.pdf>> at 16 December 2009.

122 Ibid.

the last 10 years, with the previous years' reports tending towards a public relations exercise.<sup>123</sup> The GRI Guidelines were recognised by nearly two-thirds of readers as the leading global standard,<sup>124</sup> although readers also recognised the limitations to comparability, unless some form of mandatory reporting was required.<sup>125</sup>

The disclosure of negative performance is considered to be a vital component in CSR reports that reflect the reality of the corporate performance. Too frequently, voluntary reports contain only positive information that tends to suit the interests of the company, rather than blanket disclosure of events relating to the corporation's activities that may influence sustainability or which may have environmental or social impacts.<sup>126</sup>

The GRI readers' survey indicated that one of the major reader concerns was that failures are frequently not included in non-GRI voluntary reports.<sup>127</sup> Conversely, reporting in alignment with a set of mandatory guidelines would enable readers to determine a company's performance across all areas. Legal certainty may be achieved for companies when using the GRI Guidelines although it may merely be viewed as an extra compliance burden by some. However, it is interesting to note that, along with individuals and non-government organisations, business itself has frequently requested mandatory reporting, as it would level the field and clarify expectations for the reporting of corporate sustainability information. There is an element of litigation and regulatory risk<sup>128</sup> for those companies which report, but where the information is considered to be misleading.<sup>129</sup> Standardisation of CSR reporting is a necessity and can be achieved to a large extent by slight modifications to the current GRI methods.

The ability to specify expected behaviour is one of the advantages of regulation and would be one of the benefits of mandatory reporting. The resulting standardisation would assist investors to compare alternatives for investment. Reporting in a standardised format saves investors, communities, consumers and employees time and money.<sup>130</sup> To meet readers' needs the creation of an integrated and aligned financial and sustainability report would best satisfy their objectives of receiving an entire overview of a company's position.<sup>131</sup> The integration of sustainability issues with the financial aspects of the company's performance would clarify and make the sustainability information more accessible and meaningful. Where corporate disclosure occurs on the basis of legal requirements, information is equally disseminated to all investors and stakeholders.<sup>132</sup>

#### *D. Evaluating CSR Reporting*

Too often, it appears that voluntary environmental disclosures can be used as a communication mechanism for satisfying external pressures to report and conform to social norms. These may be used as a substitute for increased environmentally and socially responsible behaviour.<sup>133</sup> The measurement and external verification of CSR reporting remains problematic as the information

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123 KPMG/SustainAbility survey, above n 91, 21.

124 Ibid 22.

125 Ibid.

126 KPMG/UNEP report, above n 13, 13.

127 KPMG/SustainAbility survey, above n 91, 34.

128 Australian Competition and Consumer Commission, 'Goodyear Tyres Apologises, Offers Compensation for Unsubstantiated Environmental Claims' (Press Release, 26 June 2008). Goodyear Tyres withdrew media releases, promotional information and information on its website in response to an enforceable undertaking given to the Australian Competition and Consumer Commission (ACCC) in relation to misleading claims about the environmental benefits of one of its tyres, in breach of ss 52 and 53(c) of the *Trade Practices Act 1974* (Cth).

129 KPMG/UNEP report, above n 13, 13.

130 Ibid 15.

131 KPMG/SustainAbility survey, above n 91, 17.

132 KPMG/UNEP report, above n 13, 15.

133 Mobus, above n 6, 495.



tends not to be clearly defined. But in the United States, mandatory accounting standards in relation to environmental performance<sup>134</sup> do seem to encourage corporate cooperation with regulatory standards, as this type of disclosure prevents management from presenting only positive views of environmental performance.<sup>135</sup>

Regular and formal review by an audit process would also result in the recognition of progress and activities, and increase visibility and transparency.<sup>136</sup> The use of external auditors or the publishing of performance results compared with target standards would provide a rigorous benchmarking for matching performance with expectations.<sup>137</sup> CSR may be considered by some to be too subjective to be treated in this way, although that is no reason for excluding the assurance process. The difficulty may also lie in the question of what aspect is to be externally verified. If it is the report, the verification is carried out by traditional accountancy firms, or if it is the sustainability performance of the company, the verification is conducted by specialist CSR consultancies.<sup>138</sup>

Standards have been developed to assist with the verification process. The AA1000 2003 Standard calls for multi-stakeholder engagement in the verification process and was developed by AccountAbility.<sup>139</sup> Also, the International Auditing and Assurance Standards Board (IAASB) has developed the ISAE 3000 for assurance engagements other than audits or reviews of historical financial information.<sup>140</sup>

## V. CONCLUSION

A balanced regulatory regime for mandatory CSR reporting would be underpinned by stakeholder engagement and the provision of incentives, and would require a set of global performance indicators that were subject to independent verification.<sup>141</sup> International cooperation is obviously the step that will prevent corporations, especially multinationals, from being subjected to a diverse array of national guidelines throughout different legislative regimes. The UK has taken a step back from its original stance, which required CSR narrative reports for major corporations as a less stringent form of voluntary reporting. Denmark's introduction of legislation is a movement towards greater transparency for CSR, even though the legislative requirement is not considered to go as far as to require mandatory CSR reporting. Australia is lagging behind these nations in encouraging the uptake of CSR reporting. However, the current government has indicated its determination to facilitate the uptake of CSR reporting by Australian companies and is committed in this respect to encourage the development of the GRI and improve its relevance for industry. The GRI currently provides a minimum voluntary global reference framework. The support of each government to provide a level playing field by legislative reform is the next step towards some form of a globally-enforceable regime. The suggested beginning point would be the requirement for CSR reporting on an 'if not, why not' basis within the relevant corporations legislation to ensure fairness and flexibility and to provide an incentive for compliance.

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134 Material information on environmental matters may be disclosed in one or a number of places in a company's Form 10-K filing with the SEC.

135 Mobus, above n 6, 508.

136 Maon, Lindgreen and Swaen, above n 4, 83.

137 Ibid.

138 Halina S Brown, Martin de Jong and D L Levy, 'Building Institutions Based on Information Disclosure: Lessons from GRI's Sustainability Reporting' (2009) 17 *Journal of Cleaner Production* 571.

139 AccountAbility (Institute for Social and Ethical Accountability), *AA 1000 Series Assurance Standard* <<http://www.accountability21.net/aa1000series>> at 16 December 2009.

140 AccountAbility (Institute for Social and Ethical Accountability), *International Standard on Assurance Engagements 3000* <[http://www.accountability21.net/uploadedFiles/Issues/ISAE\\_3000.pdf](http://www.accountability21.net/uploadedFiles/Issues/ISAE_3000.pdf)> at 16 December 2009.

141 KPMG/UNEP report, above n 13, 5.