Corporate Social Responsibility (CSR): Tailoring Regulation and Government Policy to the Needs of Small and Medium-Sized Enterprises

Heath Evans
LLM (Adelaide), LLB / LP (Flinders), BCom (Flinders)
University of Adelaide Law School

PhD Thesis
Abstract

My thesis topic relates to Corporate Social Responsibility (CSR) in small-to-medium enterprises (SMEs). It proceeds on the basis of attempting to answer three research questions:

Research Question 1:

To what extent are SMEs a critical component of the CSR debate?

Research Question 2:

What are some of the unique characteristics of SMEs which prevent them from engaging in CSR and require a different regulatory approach?

Research Question 3:

What are the potential regulatory solutions to address the problem of promoting CSR within SMEs?

SMEs comprise the vast majority (99%) of businesses in Australia, and as such, contribute extensively to the economy, as well as the negative aspects of business such as pollution, workplace injuries, prosecutions, and so on. Given these contributions, it logically follows that SMEs should be considered in the context of promoting businesses to engage in CSR. It is also clear that SMEs differ quite considerably from the larger publically listed enterprises that are quite frequently envisaged when debating the need for CSR. Given SMEs’ importance to CSR, and their unique characteristics, it is clear that there is a need for solutions to the problem of promoting CSR that are tailored to their unique circumstances, rather than ‘one size fits all’ solutions that presupposes SMEs operate in the same fashion as large enterprises.

This thesis traverses corporate history, as well as the history of CSR, noting the academic debates and pointing to the fact that research on CSR within SMEs is a quite recent development. It considers theoretical perspectives of the corporation (for example, shareholder primacy versus stakeholder theory) and on regulatory techniques (for example, command and control regulation versus responsive regulation). The thesis extensively reviews the literature on SMEs, their approach and involvement in CSR, and how this differs from large enterprises. The thesis also reviews the legal system in place to promote and regulate CSR. The legal system in place is a combination of corporate law (directors’ duties and disclosure requirements), public procurement rules, and legislation in specific areas (for
instance environmental protection legislation). It is clear that much of this regulation is aimed towards larger enterprises, creating a need for reforms to address this imbalance. Three case studies are presented to assist in answering the research questions attached to this thesis. First, a case study is presented to quantify the proportion of environmental and workplace safety related convictions that SMEs account for. This in part answers Research Question 1. The second case study attempts to explain the reasons for the workplace safety related convictions (i.e. what were the deficiencies that led to the injury/death and therefore to the prosecution). This in part answers Research Question 2. The third case study reviews the involvement of Meat and Livestock Australia (MLA) in the live export trade with a particular focus on MLA’s efforts to regulate the industry and further CSR related objectives such as animal welfare. This case study will in part answer Research Question 3. The thesis will then conclude by proposing an array of reforms including: business ethics education, public procurement reform, trade associations and networks, market based regulation and general regulatory enforcement options as a means to promoting CSR within SMEs.
Declaration

I certify that this work contains no material which has been accepted for the award of any other degree or diploma in my name in any university or other tertiary institution and, to the best of my knowledge and belief, contains no material previously published or written by another person, except where due reference has been made in the text. In addition, I certify that no part of this work will, in the future, be used in a submission in my name for any other degree or diploma in any university or other tertiary institution without the prior approval of the University of Adelaide. I give consent to this copy of my thesis, when deposited in the University Library, being made available for loan and photocopying, subject to the provisions of the Copyright Act 1968 (Cth). I also give permission for the digital version of my thesis to be made available on the web, via the University’s digital research repository, the Library Search and also through web search engines, unless permission has been granted by the University to restrict access for a period of time.

Signature: Heath William Evans

10 October 2016
Acknowledgements

There are many people whose assistance was instrumental in the completion of this thesis. I am grateful for the dedication of my supervisors, Associate Professors Suzanne Le Mire and David Brown whose encouragement and advice throughout my candidature made an otherwise challenging experience much smoother and enjoyable. The ability to work with them has taught me a great deal about academia and they have always challenged me to strive to be better to the extent that I now feel confident in my own writing and analytical abilities. It is especially noteworthy that both examiners could only find a handful of corrections between them, a fact that would astonish a long line of frustrated English teachers. This is testament to my supervisors’ tireless efforts to make my thesis as polished as was humanly possible.

My parents, Brenton and Cherie, have provided tremendous support not just throughout my PhD, but throughout what is now a decade of tertiary study. Without their generous support I would not have been able to pursue this course of study. As teachers, they have placed a high importance on education and this has shaped me into the person I am today. Whilst a lucrative career in private practice and the promised yacht for retirement seems increasingly far away, I hope they gain satisfaction from my being the first person in my family to attain the title of doctor.

To my partner, Jillian Holloway, you have been unwavering in your support of me throughout our time together. I am greatly indebted to you for your love and support and picking me up through the more challenging and stressful moments of my PhD candidature. It was a great comfort to know that I always had you in my corner, whatever that entailed, and I am excited for what the next phase of our lives will bring.

I would also like to acknowledge many colleagues and staff at the University of Adelaide. The administrative staff have been a valuable source of assistance. The people that helped me are too numerous to mention here, but Cheryl Chapman, Sarah Vujicic, Liam Maloney, and Moira Groves deserve particular mention for the assistance they provided. From the academic staff, Professor Christopher Symes also deserves particular mention. I first met Chris as an undergraduate student in 2006. As a first impression, it would be easy to point to his jovial character. However, beyond this, he radically altered my perception of what lawyers could and should be. Immensely competent and authoritative, but laid back and witty. He is dedicated to his work, but also to his family. His support of me has extended to moving my admission to practice and he was the first person to encourage me to pursue an academic pathway. For this I am immensely grateful.

To all those who have helped me throughout my PhD candidature, I thank you.
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABC</td>
<td>Australian Broadcasting Corporation</td>
</tr>
<tr>
<td>ABGR</td>
<td>Australian Building Greenhouse Rating</td>
</tr>
<tr>
<td>ABS</td>
<td>Australia Bureau of Statistics</td>
</tr>
<tr>
<td>AFL</td>
<td>Australian Football League</td>
</tr>
<tr>
<td>ANZ Bank</td>
<td>Australian and New Zealand Banking Group</td>
</tr>
<tr>
<td>APCC</td>
<td>Australasian Procurement and Construction Council</td>
</tr>
<tr>
<td>ASIC</td>
<td>Australian Securities and Investments Commission</td>
</tr>
<tr>
<td>ASX</td>
<td>Australian Securities Exchange</td>
</tr>
<tr>
<td>BP</td>
<td>British Petroleum</td>
</tr>
<tr>
<td>CAMAC</td>
<td>The Corporations and Markets Advisory Committee</td>
</tr>
<tr>
<td>CSR</td>
<td>Corporate Social Responsibility</td>
</tr>
<tr>
<td>EPA</td>
<td>Environment Protection Authority</td>
</tr>
<tr>
<td>ESCAS</td>
<td>Exporter Supply Chain Assurance System</td>
</tr>
<tr>
<td>GFC</td>
<td>Global Financial Crisis</td>
</tr>
<tr>
<td>ICT</td>
<td>Information and communications technology</td>
</tr>
<tr>
<td>ISO</td>
<td>International Organization for Standardization</td>
</tr>
<tr>
<td>MLA</td>
<td>Meat &amp; Livestock Australia</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Government Organisation</td>
</tr>
<tr>
<td>NLIS</td>
<td>National Livestock Identification System</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
</tr>
<tr>
<td>OH&amp;S</td>
<td>Occupational Health and Safety</td>
</tr>
<tr>
<td>OIE</td>
<td>The World Organisation for Animal Health</td>
</tr>
<tr>
<td>PGPA Act</td>
<td>Public Governance, Performance and Accountability Act 2013 (Cth)</td>
</tr>
<tr>
<td>PJC</td>
<td>Parliamentary Joint Committee</td>
</tr>
<tr>
<td>PMT</td>
<td>Profit Maximisation Theory</td>
</tr>
<tr>
<td>RSCPA</td>
<td>Royal Society for the Prevention of Cruelty to Animals</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Description</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------</td>
</tr>
<tr>
<td>SEC</td>
<td>Securities Exchange Commission</td>
</tr>
<tr>
<td>SMEs</td>
<td>Small and Medium-Sized Enterprises or alternatively Small-to-Medium Enterprises</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>US</td>
<td>United States</td>
</tr>
</tbody>
</table>
List of Tables and Figures

Table 1: European Definition of SMEs
Table 2: Fatality Rate on the Basis of Size – Trench Cave-Ins
Table 3: Injury Rates – Australia
Table 4: Injury Rates - Automotive Repair and Maintenance Industry
Table 5: Contribution to Workplace Injuries on the Basis of Business Size
Table 6: Sensis Survey – Measures to Reduce Environmental Impact
Table 7: Comparison of the Formality of CSR Policies on the Basis of Firm Size
Table 8: Level of Participation in CSR by Size
Table 9: Barriers to CSR – SMEs
Table 10: Knowledge of Regulatory Requirements in Select Industries
Table 11A: Contribution to EPA convictions by Size
Table 11B: Contribution to EPA convictions by Size – Business Only
Table 11C: Contribution to OH&S Convictions by Size
Table 11D: Contribution to OH&S convictions by Size – Business Only
Table 12: Mortality Rate of Animals Transported by Sea
Table 13: Summary of Proposed Reforms – Public Procurement
Table 14: Summary of the Impact of Proposed Reforms

Figures:

Figure 1: Responsive Regulation – Enforcement Pyramid
Figure 2: Smart Regulation - Regulatory Pyramid
Figure 3: Organization Structure of MLA
List of Research Questions

Research Question 1:

To what extent are SMEs a critical component of the CSR debate?

Research Question 2:

What are some of the unique characteristics of SMEs which prevent them from engaging in CSR and require a different regulatory approach?

Research Question 3:

What are the potential regulatory solutions to address the problem of promoting CSR within SMEs?
Table of Contents

Abstract .......................................................................................................................... 2
Declaration ....................................................................................................................... 4

PART 1 – Introduction and Literature Review .................................................................. 14
Chapter 1: Introduction ................................................................................................... 14
  1.1 The Goals of this Thesis ........................................................................................... 15
     1.1.1 Significance of Contribution Made by this Thesis ........................................... 16
  1.2 Research Scope ........................................................................................................ 18
  1.3 Summary .................................................................................................................. 20

Chapter 2: A Definitional, Theoretical and Historical Foundation of Corporate Social
           Responsibility (CSR) ............................................................................................... 23
  2.1 Introduction .............................................................................................................. 23
  2.2 Questions of Definition ........................................................................................... 24
     2.2.1 Corporate Social Responsibility ................................................................. 24
     2.2.2 Small and Medium-Sized Enterprises (SMEs) .............................................. 31
  2.3 SMEs’ Positive Contribution to the Economy ......................................................... 32
  2.4 SMEs’ Negative Contributions to the Community .................................................. 33
  2.5 SMEs vs Large Corporations – They Are Not the Same and Should Not Be Treated as Such .. 40
     2.5.1 The Benefits of Engaging in CSR ................................................................. 41
     2.5.2 The Potential for SME Impact ..................................................................... 48
     2.5.3 Barriers ......................................................................................................... 58
     2.5.4 Drivers of CSR ............................................................................................. 68
  2.6 Conclusion ............................................................................................................... 77

Part 2 – CSR’s Foundations – History and Theory ............................................................ 80

Chapter 3: Theories of the Corporate Form .................................................................... 80
  3.1 Introduction .............................................................................................................. 80
  3.2 Tracing the History of the Corporation and Corporate Social Responsibility (CSR) ..... 82
     3.2.1 History of the Corporation ............................................................................ 82
     3.2.2 History of Corporate Social Responsibility (CSR) ...................................... 87
  3.3 Contemporary ‘Pro-Shareholder’ Theories ............................................................... 95
     3.3.1 Shareholder Primacy: .................................................................................... 95
     3.3.2 Contractarian /Nexus of Contracts ............................................................. 98
  3.4 Contemporary ‘Pro-Stakeholder’ Theories ............................................................... 101
     3.4.1 Stakeholder Theory ..................................................................................... 101
3.5 A Need for an SME Theory of CSR – Social Capital .................................................. 105
3.6 Profit Maximization Theory (PMT) ........................................................................... 113
  3.6.1 Why Profit Maximization Will Work for SMEs ......................................................... 113
3.7 Conclusion .......................................................................................................................... 116

Chapter 4: Regulatory Theory and Instruments ................................................................. 120
  4.1 Introduction ......................................................................................................................... 120
  4.2. Command and Control ................................................................................................. 121
  4.3 Responsive Regulation ................................................................................................. 124
  4.4 Self-Regulation ................................................................................................................. 127
  4.5. Market-based Regulation .............................................................................................. 130
  4.6 A Combination of Approaches – Smart Regulation ......................................................... 136
    4.6.1 Practical implementation of Smart Regulation: ......................................................... 138
    4.6.2 Relevance to CSR ...................................................................................................... 142
  4.7 Conclusion .......................................................................................................................... 143

Part 3 – A Practical Approach to CSR within SMEs ............................................................ 146

Chapter 5: The Current Australian Approach to Corporate Social Responsibility ............. 146
  5.1 Introduction ......................................................................................................................... 146
  5.2 Corporations Law ............................................................................................................... 147
    5.2.1 Directors’ Duties ......................................................................................................... 148
    5.2.2 Disclosure .................................................................................................................... 165
    5.2.3 Conclusions about the Disclosure Requirements ....................................................... 173
    5.2.4 Attempts at reform ...................................................................................................... 174
  5.3 Government Procurement Policies ................................................................................. 176
    5.3.1 Commonwealth Government Procurement ............................................................... 177
    5.3.1.1 Commonwealth Procurement Rules ...................................................................... 178
    5.3.2 Review ......................................................................................................................... 179
    5.3.3 SMEs .......................................................................................................................... 182
  5.4 Other Supporting Regulation ............................................................................................ 184
  5.5 It is SMEs Turn for Reform - In Victoria! ........................................................................ 186
  5.6 Conclusion .......................................................................................................................... 187

Chapter 6: Case Studies ........................................................................................................ 191
  6.1 Introduction: ....................................................................................................................... 191
  6.2 Case Study 1: To what Extent do SMEs Contribute to the CSR Debate .......................... 193
    6.2.1 Results and Discussion. .............................................................................................. 193
6.3: Case Study 2: To What Extent do the Commonly Asserted Deficiencies of SMEs Account for Convictions ................................................................. 196
  6.3.1 Methodology ........................................................................ 197
  6.3.2 Results .................................................................................. 198
6.4 Case Study 3: The Role of Trade Associations ................................................. 207
  6.4.1 Background ......................................................................... 207
  6.4.2 Methodology ........................................................................ 213
  6.4.3 Results .................................................................................. 213
  6.4.4 Discussion .......................................................................... 226
6.5 Analysis and Conclusion ............................................................................. 228

Chapter 7: Reform ......................................................................................... 232
  7.1 Public Procurement and Supply Chain Management .................................... 235
    7.1.1 Introduction ......................................................................... 235
    7.1.2 Supply Chain Management (by Private Enterprise): A Literature Review .... 239
    7.1.3 Benefits: ............................................................................. 246
    7.1.4 The Solution ....................................................................... 250
  7.2 Business School Education ....................................................................... 259
    7.2.1 Will Education Change the Way Business Leaders Think? ................. 263
    7.2.2 The Current Problem ........................................................... 268
    7.2.3 The Solution: ....................................................................... 272
    7.2.4 Conclusion ......................................................................... 278
  7.3 Trade Associations and other Forms of Networks ...................................... 279
    7.3.1 Benefits: ............................................................................. 280
    7.3.2 Barriers to Implementation .................................................. 287
    7.3.3 The Solution ....................................................................... 292
  7.4 Other Market-Based Solutions .................................................................. 300
    7.4.1 The Back to Work Act 2015 (Vic) ......................................... 301
    7.4.2 Conclusion ......................................................................... 303
  7.5 Regulatory Tools to Increase Compliance .................................................. 304
    7.5.1 Barriers to Compliance and SME Perceptions of These Barriers .......... 305
    7.5.2 Solutions to Non-Compliance and Promoting ‘Beyond Compliance’ .... 309
    7.5.3 Analysis / Discussion ......................................................... 314
  7.6 Conclusion – Putting the Framework Together ......................................... 315

Chapter 8: Concluding Remarks ..................................................................... 321
PART 1 – Introduction and Literature Review

Chapter 1: Introduction

Corporate Social Responsibility (CSR) is a concept that has been debated for most of the 20th century.\(^1\) A common thread in these debates is that they all involve large corporations as the ‘poster child’ for corporate greed, excess, and misconduct.\(^2\) Large corporations operate at a scale where failures can be catastrophic,\(^3\) and they have a significant public presence that ensures public scrutiny. The Gulf of Mexico spill, HIH, James Hardie, and Enron impacted the community in ways which were deeply felt. Nevertheless, if we are concerned about one company dumping a large amount of oil into the ocean, should we not also be concerned about thousands of small companies emitting toxic chemicals into our rivers and our air? In Australia, 99% of companies are small and medium-sized (SMEs).\(^4\) Thus, to ignore SMEs involves ignoring a substantial part of the CSR problem. It is argued throughout Chapter 5 that the Commonwealth Government has done exactly this. The legal framework is largely a ‘one size fits all approach’ with large enterprises being the obvious targets of regulation.

As will be discussed in Chapter 2.5.3, the three barriers to SME engagement in CSR include a lack of resources, lack of awareness, and the attitude of SME managers. These barriers will be addressed by the reforms presented in Chapter 7. Chapter 4 briefly touches upon the varying motivations for businesses complying with regulation. That chapter also discusses the many limitations of the various policy instruments. Given these varied motivations and the barriers faced by SMEs, the problem is extraordinarily complex and cannot be hoped to be solved by a single reform. Quite simply, the problems and motivations of SMEs are so

---

\(^1\) However, it should be noted that the idea of corporations acting more responsibly has not always been argued under the banner of CSR.

\(^2\) Given the constant news reporting of mesothelioma victims, James Hardie should be well known to the broader Australian community. Equally, Enron is so ingrained in American culture that it was depicted in the Simpsons. See *Enron - Simpsons Excerpt* (November 16, 2008) YouTube <https://www.youtube.com/watch?v=mTPPh_njF5Q>.

\(^3\) As an example of the effects of the Gulf of Mexico Oil Spill, Beth Mole, ‘Five years on, Deepwater Horizon Oil Spill's Impact Lingers’, *Science News* (online), April 3 2015 <https://www.sciencenews.org/article/five-years-deepwater-horizon-oil-spills-impact-lingers> details the possible environmental effects, and that five years on, it is still unclear what the long term effects will be. An analysis of the economic impacts can be found in: http://www.ibtimes.com/bp-oil-spill-has-lasting-economic-toll-five-years-after-deepwater-horizon-explosion-1883832. Most importantly, the initial explosion killed 11 workers and injured 17.

diverse that they will require an equally diverse framework in order to encourage SMEs to both comply with, and exceed existing regulation by engaging in CSR.

This thesis argues that an entire framework, carefully crafted, and involving a broad range of stakeholders will be required to effect genuine reform. Only a nuanced package of reforms will be able to address the heterogeneous nature of SMEs. It is important to note that CSR involves voluntary behaviour on the part of businesses. The problem will therefore need to be approached on multiple fronts. SMEs need to be educated, to be offered financial incentives, and to be compelled, if necessary, in order to address the full range of SMEs. Additionally, these options must be provided by multiple sources including governments, NGOs, trade associations and other businesses. CSR must not be the aspiration of larger businesses or the generous concessions of a minority. It must be good commercial practice and an expected part of business.

1.1 The Goals of this Thesis

The primary purpose of this thesis is to advance a greater understanding of SMEs and their role in CSR. Whilst there is a tremendous amount of research on SMEs and their importance to the economy, any analysis of their impacts on the environment, workplace safety, and other CSR concerns is limited, especially in Australia,\(^5\) and considerably less data exists compared with the research on larger enterprises.\(^6\) The three research questions outlined below demonstrate the research focus of this thesis. These are to develop a greater understanding of SMEs’ contributions (both positive and negative) to CSR; examine, how they differ from large enterprises, and consider potential reforms to promote CSR within SMEs.

---


1.1.1 Significance of Contribution Made by this Thesis

There are many aspects of the field which remain underdeveloped and questions that remain unanswered. It is well understood that SMEs comprise an overwhelming number of businesses ranging from 96-99% of businesses throughout the OECD.\(^7\) However, statistics relating to SME contributions to the environment, to workplace safety, and to other aspects of CSR are rare. The statistic that demonstrates SMEs contribute to 70% of pollution is a clear example of this. Ruth Hillary is often quoted as the source of this figure, yet she refers to it as ‘tak[ing] on mythical status’, ‘unsubstantiated’, and suggests it might be impossible to accurately calculate such a figure.\(^8\) At the same time, it is now cited without authority at all, as if it is self-evident. Similarly, there remains a dearth of literature on the theoretical justification for SMEs engaging in CSR. Most of the solutions presented in Chapter 7 also suffer from a lack of research in various ways. In the case of ethics education in business schools, there is an extensive body of literature, but virtually no mention of how it might apply to SMEs, and even applying it to CSR (as opposed to business ethics) is rare. In the case of public procurement, the paucity of materials available typically relies heavily on government reports and policies with very few journal articles or books available. Equally, there is a common assertion that trade associations should be involved in promoting CSR and legal compliance to SMEs.\(^9\) However, a discussion of how this might be achieved, the model to be adopted, or a detailed discussion about the potential benefits in engaging such associations is often lacking.

Authors have commented about a lack of CSR research in Australia.\(^10\) The lack of scholarly analysis was noted by the Family and Community Development Committee which noted the

---


need for greater research in the field. With this in mind, this thesis presents three empirical case studies, with each case study offering a unique contribution to the field. Case Study 1 produces original statistics on the negative contributions of SMEs to the environment and workplace safety, which is a critical aspect of the CSR debate. Importantly, it produces statistics on Australian companies’ contributions of which there is minimal scholarly analysis, especially literature of an empirical nature. Case Study 2 analyses the motivations and deficiencies of SMEs which lead to non-compliance. By analysing the reasons behind workplace safety related convictions, the most common deficiencies are identified, which offers critical information to guide the reforms proposed in Chapter 7. Whilst reasons are advanced for non-compliance in the literature, such as the notion of the ‘amoral calculator’, Case Study 2 furthers an understanding of non-compliance by empirically testing these motivations. For instance, how many convictions result from amoral calculation? Again, Case Study 2 produces original statistics. Case Study 3 contributes to an understanding of potential solutions by highlighting the potential of trade associations in promoting CSR to their members. Whilst trade associations have been proposed as a potential driver of CSR elsewhere, Case Study 3 contributes to existing knowledge by analysing in-depth a trade association (Meat and Livestock Australia (MLA)) and highlighting a viable model.

Chapter 7 proposes five reforms. This contribution can be seen in several ways. First, there is a contribution through the proposition of an individual reform. In some cases, the literature seems to offer little more than a cursory explanation that a reform could provide assistance to SMEs (e.g trade associations), without detailing the precise model or reform to be adopted (e.g how the trade association would be encouraged to promote CSR to members). Chapter 7 goes beyond such broad assertions noting, for instance, several models of trade association or other networks that could promote CSR within its membership. Therefore, Chapter 7 contributes to knowledge by proposing specific reforms that have practical applications. Additionally, the literature rarely considers more than one reform. Beyond this, research is often conducted within a limited geographical location (e.g. a rural region) or a single

14 Craig Parker, Janice Redmond, and Mike Simpson, ‘A Review of Interventions to Encourage SMEs to Make Environmental Improvements’ (2009) 27(2) Environment and Planning C: Government and Policy 279, 280. However, it should be noted that in this particular article the authors argued in favour of a pluralistic approach.
industry.\textsuperscript{15} The aim of this thesis is to engage as many SMEs as possible across all industries, Australia wide. Chapter 7 offers a carefully considered package of reforms. Critically, the system as a whole offers several noteworthy synergies. The reforms are specifically targeted not only at the weaknesses or barriers which SMEs experience, but also at addressing the weaknesses of the other reforms. As an example, self-regulation through a trade association could be perceived as weak due to its voluntary nature. However, in the context of CSR, voluntary self-regulation can be strengthened through market-based regulation or public procurement changes which add a stronger coercive element to the self-regulation, whilst still retaining the flexible and voluntary aspects of self-regulation. Thus, the synergies mitigate the weaknesses of the individual reforms. These will be explored further in Chapter 7.

1.2 Research Scope

As a whole, this thesis advances three primary themes implicit in the three research questions. First, due to SMEs substantial contributions, both to the economy and the broader community, they are vital to any consideration about CSR. If governments ignore SMEs, they are simply ignoring a substantial part of the problem. The other two themes address whether SMEs are being ignored. There are clearly Australian policies in place to address CSR with respect to larger organisations. However, this thesis advances a second key point that SMEs are quite different, with different motivations and barriers to CSR, compared with their larger counterparts. Thus, this thesis considers a third point of whether there are currently policies tailored to addressing SMEs, and accounting for their unique circumstances. The three research questions are outlined below:

Research Question 1:

\textit{To what extent are SMEs a critical component of the CSR debate?}

Research Question 2:

What are some of the unique characteristics of SMEs which prevent them from engaging in CSR and require a different regulatory approach?

Research Question 3:

What are the potential regulatory solutions to address the problem of promoting CSR within SMEs?

There is support for the proposition that the way businesses from developing countries approach CSR is quite different to their developed counterparts. For this reason, the research consulted is sourced primarily from other developed countries such as the United States, United Kingdom, Canada, New Zealand, and Western Europe. It is generally argued that amongst developed ‘Western’ countries, the issues relevant to CSR are much the same, thus justifying the use of literature that originated outside of Australia.

A significant point should be made with regards to how CSR in large corporations is approached. Whilst this thesis addresses CSR from an SME perspective, it is impossible to completely remove large enterprises from this discussion. Most of the research on theoretical perspectives and history of CSR is done from a large corporate perspective. Many of the reforms outlined in Chapter 7 rely upon large corporations in some way meaning reforms to SMEs cannot be presented in a vacuum. For example, in order to promote CSR in SMEs with business school education, students must first be accepting of the idea of CSR in large enterprises. If they cannot accept the need for CSR in large enterprises, they will not accept it in poorer resourced SMEs. The public procurement and supply chain pressure proposed in Chapter 7 also requires large enterprises to work with their SME partners. Given institutions tend to listen to their largest and most vocal constituents, it is also likely that any university or trade association reform is likely to involve larger corporations agitating for change in some form. In addition, the basic CSR infrastructure needs to be in place. By way of example, accountants, consultants, lawyers, and other professionals will need to have the relevant expertise to advise SMEs in CSR matters. This expertise is only obtained because

---

there is sufficient demand for these services, and generally large enterprises will be required to establish this demand. It is clear that for CSR to be promoted within SMEs there needs to be widespread acceptance of CSR at the large enterprise level, and a vibrant CSR research community and industry already in existence. Thus, while this thesis focuses predominantly on the CSR literature with respect to SMEs, there are sections where it is necessary to discuss large enterprises to set an appropriate foundation.

1.3 Summary

This thesis is comprised of eight chapters including this chapter (Introduction), and Chapter 8 (Conclusion).

Chapter 2 provides an initial survey of literature focused on preliminary matters related to CSR in SMEs. It addresses the definitions of CSR and SMEs. Thus, the widely accepted boundaries of CSR are discussed. In addition, Chapter 2 addresses the SME literature related to CSR. First, it analyses in detail the positive and negative contributions of SMEs to the economy, the environment, and other aspects related to CSR. Secondly, it addresses the fact that SMEs are different to large corporations and therefore require different treatment. The chapter addresses how SMEs are currently engaging in CSR, why they are motivated to engage in CSR, and the barriers they experience to engaging in more extensive CSR. Clearly this information is essential in proposing reform, which is addressed in Chapter 7. It will be demonstrated that SMEs differ from large corporations with respect to CSR, thus warranting a different approach. Additionally, it will be noted that SMEs, due to their numbers, are simply too important to ignore in any debate about CSR.

Chapter 3 discusses corporate and CSR theories in order to provide the theoretical justification for engaging in CSR. The chapter discusses corporate theories, such as shareholder primacy, nexus of contracts, and stakeholder theory. It notes that these theories are all aimed at large corporations, which necessitates an analysis of theories that justify CSR from an SME perspective. The literature suggests social capital can be applied to explain the need for CSR among SMEs. However, Chapter 3 will note that this theory is somewhat limited. Social capital focuses on the benefits of relationships, which is a narrow view of the benefits that flow from CSR. Additionally, the extent to which SMEs can form relationships
and develop social capital is less clear, compared to larger corporations. Therefore, a profit maximization theory similar to shareholder primacy is promoted as a more holistic explanation of SMEs engaging in CSR. In addition, both corporate and CSR history is addressed. This advances an understanding of the purpose of the corporation and provides critical background to the theoretical analysis. CSR has been practised across time and culture. Moreover, the corporate history highlights a time when corporations served public functions.

Chapter 4 discusses regulatory theory. In order to propose any reforms or policies to promote CSR within SMEs, there is a need to review the available options and their respective strengths and weaknesses. Command and control regulation, responsive regulation, smart regulation, market-based regulation, and self-regulation are addressed in this chapter.

Chapter 5 outlines the current regulatory framework in Australia. This chapter highlights many policies and initiatives to promote CSR, noting that they are mostly aimed at larger enterprises. It provides the foundation for the regulatory solutions proposed in Chapter 7. If, as Chapter 2 suggests, SMEs contribute extensively to some of the problems commonly attributed to business activities, such as environmental degradation, and SMEs do in fact experience different barriers and motivations to CSR, then it would logically follow that a government would address these differences. This chapter highlights that this is not the case, and the current Australian framework largely ignores SMEs with a ‘one size fits all’ approach to CSR. Therefore, this chapter establishes that there is a genuine need for reform.

Chapter 6 draws on three case studies. Case Study 1 produces estimates of SMEs’ contribution to environmental and workplace safety convictions, noting that SMEs account for 77% of occupational health and safety (OH&S) convictions, and 66% of environmental (EPA) convictions. This highlights SMEs importance to the CSR movement. Case Study 2 involves an analysis of workplace safety convictions involving SMEs, and the reason for the non-compliance. This case study therefore assists with the solutions in Chapter 7. The findings of the case study suggest that the majority of failings are a result of a lack of awareness of legal obligations and safety options, placing most SMEs in the ‘organisationally incompetent’ category. Case Study 3 addresses one of the potential options for promoting
CSR. It analyses Meat and Livestock Australia (MLA) and its role in promoting animal welfare as a trade association.

Chapter 7 proposes several options for reform. These reforms include the use of public procurement, business school education, trade associations, ‘other’ non-procurement market-based regulation, and tools to increase compliance with existing laws. Importantly, it is argued that not only will these five reforms have an individual impact, but the framework combined will create synergies that complement one another.

Chapter 8 will conclude the thesis by answering the three research questions. The work from the previous 7 chapters will be drawn upon to answer these research questions.

Having introduced the broad structure of this thesis, Chapter 2 will now provide critical background information, including a historical account of the corporate form and CSR movement, and an outline of the available literature on SMEs.
Chapter 2: A Definitonal, Theoretical and Historical Foundation of Corporate Social Responsibility (CSR)

2.1 Introduction

This chapter lays the foundations for this thesis. In order to present a meaningful discussion about the ‘CSR debate’, it is essential to understand the basic elements of the debate. In order to achieve this, the terminology related to CSR must be understood. Therefore, it is appropriate to focus on two key definitions about which there is some contestation.

This chapter also summarises the state of knowledge in relation to SMEs and CSR. The chapter highlights the fact that SMEs have profound effects, both positive and negative, on economies around the world. They contribute vast amounts of employment, production, but also pollution and harm to employees. Their overwhelming numbers suggest there is a need to engage them to improve their CSR performance. Due to their numbers, even slight improvements (such as installing energy efficient light bulbs), replicated millions of times, will ultimately contribute profound benefits to the wider community.

This chapter is split into several parts. First, the definitions of CSR and SMEs are explored. Clearly before any in depth analysis of CSR within SMEs can occur, there is a need to understand these terms with a high level of precision. Secondly, a detailed analysis of the literature with respect to CSR and SMEs is undertaken. This section explores the contributions of SMEs to the economy and to the ‘negative’ aspects of business (such as pollution), the motivations of SMEs to engage in CSR and the barriers experienced, the CSR activities typically engaged in by SMEs, and their benefits. This review of the literature will be essential in proposing reform in Chapter 7. Ultimately, there is a need to understand what SMEs are already doing in the CSR space, what they are good at, and why do other SMEs not engage in CSR. This will allow for more targeted reforms.
2.2 Questions of Definition

2.2.1 Corporate Social Responsibility

As noted above, there is no readily accepted definition of CSR. In 2008, Alexander Dahlsrud identified 37 separate definitions of CSR.\textsuperscript{18} Using a Google frequency count,\textsuperscript{19} he was able to determine that the most often cited definition of CSR is ‘[a] concept whereby companies integrate social and environmental concerns in their business operations and in their interactions with their stakeholders on a voluntary basis.’\textsuperscript{20} Given the number of definitions, clearly there are substantial differences of opinion on what CSR should include. There are practical difficulties in formulating a definition that all or most groups agree with for reasons which will be elaborated on below. Nevertheless, it should be noted that these disagreements are to be expected. Chapter 3 will discuss the various theories on the purpose(s) of the corporation. Clearly, an author’s opinion on the purpose of the corporation will inform their opinion on an acceptable definition of CSR.

Beyond these philosophical differences, there are some practical concerns that limit the ability to come to an agreement on the definition of CSR. There are a variety of terms that are sufficiently different to CSR, but nevertheless have a connection to CSR. They include:

- Environmental reporting
- Triple bottom line reporting
- Business or corporate ethics
- Corporate governance
- Strategic management.
- Community relations
- Philanthropy

Whilst it is argued below that these differences should not be overstated, a basic comparison with business ethics illustrates a substantial departure in meaning. While on face value they are similar terms, ethics is quite often equated with issues such as bribery, embezzlement,

\textsuperscript{19} Ibid 6.
\textsuperscript{20} Ibid.
corporate espionage, and nepotism. Essentially, engaging in ethical business practice involves avoiding illegal and morally questionable behaviour. By contrast, CSR requires positive action, such as installing equipment to reduce a business’s environmental impact, and not merely an absence of illegal or immoral behaviour. This small example demonstrates the need to understand the lexicon of CSR before attempting to traverse the relevant literature. These differences are explored in more detail in Chapter 7.2.5 when advocating the need for CSR education instead of business ethics education.

Dirk Matten and Jeremy Moon highlight the challenges associated with accurately defining CSR:

CSR is an umbrella term overlapping with some, and being synonymous with other, conceptions of business-society relations. We think the main problem when trying to pin down the concept of CSR is the lack of integration among its parts, possibly due to the different view of the role of the firm in society.

Samuel Idowu and Walter Filho embrace this ambiguity highlighting:

[T]he absence of a universal definition of the field is actually its “charm” – that is why it appeals to everyone across all sectors of an economy and across international borders. It means different things to different people.

Justine Nolan, however, points to the need for a precise definition suggesting that ‘if corporate social responsibility is to be given meaning, it urgently requires greater articulation

---

21 Whilst the definition does not necessarily direct one to these issues, in many instances, vignettes direct the research on business ethics research to these considerations, for instance asking ‘would you pad your expense account?’ See for example Justin Longenecker et al, ‘Ethical Attitudes in Small Businesses and Large Corporations: Theory and Empirical Findings from a Tracking Study Spanning Three Decades’ (2006) 44(2) Journal of Small Business Management 167, 177.
22 For instance, Keith Davis notes that CSR ‘begins where the law ends.’ See: Keith Davis, ‘The Case for and Against Business Assumption of Social Responsibilities’ (1973) 16(2) Academy of Management Journal 312, 313. It is also implicit in the definition of CSR adopted in this thesis which notes it is ‘[a] concept whereby companies integrate social and environmental concerns in their business operations and in their interactions with their stakeholders on a voluntary basis’. In order to integrate these concerns, some form of positive action will be required. See: Alexander Dahlsrud, ‘How Corporate Social Responsibility is Defined: An Analysis of 37 Definitions’ (2008) 15(1) Corporate Social Responsibility and Environmental Management 1, 6. These concepts will be discussed in more detail below.
of both the concept and its limits.'\textsuperscript{25} Similarly, Lisa Whitehouse has argued that a failure of CSR to reach its potential is due to an inability to identify a definitive definition of CSR.\textsuperscript{26}

Whilst there is significant disagreement within the academic community as to what CSR precisely means, there is certainly literature highlighting common ground, or at least separating controversial and non-controversial aspects of CSR. There is an element of voluntariness in government approaches to CSR, with the widely held belief that businesses should be encouraged, rather than legally obligated, to participate in CSR activities.\textsuperscript{27} This is in line with Keith Davis’s description of CSR as a ‘firm’s response to issues beyond the narrow, economic, technical and legal requirements of a firm, and therefore it begins where the law ends.’\textsuperscript{28} Whilst there is not a universal acceptance of the types of activities that fall within the scope of CSR, arguably human rights, environmental protection, occupational health and safety, industrial relations (such as paying a living wage and issues around child labour) anti-corruption, and trade practices all touch upon CSR. From an SME perspective, the literature discussed later in this chapter will illustrate that there is a strong focus on the environment, workplace safety, and philanthropy. This breadth of subject matter is the reason why an all-encompassing and widely accepted definition remains elusive.

Interestingly, the definition cited above by Dahlsrud is relatively simple, as it contains only three basic elements:

1. The integration of social and environmental ‘concerns’ into a company’s business operations.
2. A consideration and management of the interests of various stakeholders.
3. The actions taken by the company are voluntary and not imposed by legal regulation.

Whilst seemingly simple enough, this definition adds its own ambiguity. Which stakeholders should a company consider? Employees, customers, governments, non-government organisations (NGOs) or anyone in the community affected by the company’s actions could all be considered stakeholders. Another problem relates to what extent ‘concerns’ can be

\textsuperscript{28} Keith Davis, ‘The Case for and Against Business Assumption of Social Responsibilities’ (1973) 16(2) Academy of Management Journal 312, 313.
realistically addressed? Does mere lip service to a particular concern or issue constitute CSR? Presumably for CSR to be a meaningful concept there needs to be well defined boundaries to guide behaviour. To a degree, this is unrealistic. Companies and businesses vary wildly in terms of size and operations. For instance, a struggling company will have far fewer resources to invest in CSR, than a successful one. Equally, a company in the mining industry will have a far greater impact on the environment than a bank. Thus, the idea that a single narrow guiding principle that encapsulates CSR in a way that is inclusive of all these differences is impossible and I would argue, unnecessary.

Archie Carroll makes a noteworthy contribution in developing a broad definition of CSR that encompasses discretionary, ethical, legal, and economic responsibilities.[^29] In order to fulfil a company’s economic responsibilities, it must produce goods in high demand, sell them for a profit,[^30] achieve a high level of efficiency, and maintain a consistently profitable enterprise.[^31] The connection of CSR to profits is explained in more detail later in this chapter and also in Chapter 3.6 when advocating for a profit maximising theory of CSR for SMEs. The legal responsibilities in Carroll’s model require corporations to fulfil these economic responsibilities whilst in compliance with all applicable laws.[^32] Carroll describes corporations’ ethical responsibilities as being ‘ill defined’, not enacted in law, but nevertheless expected by the public.[^33] This might involve adhering to the spirit of the law rather than looking for opportunities for cynical compliance such as the various tax avoidance structures that many multinational enterprises employ or the acceptance of child labour where a corporation’s supply chain is located in countries where this is not regarded as illegal or immoral. Discretionary responsibilities are even more nebulous and are essentially:

left to individual judgment and choice. … These roles are purely voluntary, and the decision to assume them is guided only by a business's desire to engage in social roles not mandated, not required by law, and not even generally expected of businesses in an ethical sense.[^34]

Carroll uses examples such as philanthropy and initiatives to employ people from disadvantaged groups.[^35] Within this space, there is no specific expectation that a corporation

[^29]: Ibid.
[^30]: Ibid 500.
[^33]: Ibid.
[^34]: Ibid.
[^35]: Ibid.
should employ x% of minorities or donate x dollars. In this respect, any CSR activity is voluntary. Corporations are free to deal with issues that are most relevant to them (e.g. environment initiatives for high impact industries such as manufacturing and mining) or pursue issues of personal interest to management and staff (for instance donations to medical causes that have affected family members).

For the purposes of this thesis, the definition highlighted by Dahlsrud above, namely ‘[a] concept whereby companies integrate social and environmental concerns in their business operations and in their interactions with their stakeholders on a voluntary basis’ is adopted, and it is assumed that those SMEs who fit into any of the stages of ‘CSR’ explained by Carroll will fit within this definition. The Dahlsrud definition incorporates the major aspects of CSR which have broad agreement, namely that it involves social and environmental activities, engagement with stakeholders, and is done so on a voluntary basis. Based upon citations, it has the broadest acceptance in the field, which, together with its conceptual clarity, is why it is adopted in this thesis. Furthermore, Carroll’s pyramidal approach is adopted because it best accounts for all of a business’s responsibilities under CSR. An SME cannot simply change a few light bulbs or donate some money as a trade-off for not complying with its legal obligations. Thus, CSR assumes businesses must comply with their economic, legal, and ethical or customary responsibilities, and then go beyond this into voluntary actions. This provides clarity to what is otherwise an ambiguous concept.

There is an emerging body of work that suggests the term CSR is inappropriate when referring to the activities of SMEs. SMEs find the term ‘grandiose’, ‘daunting’ and ‘confusing’. There is also evidence that SMEs equate the term with larger corporations and formality, such as social reporting, thus believing it is not relevant to them. ‘SMEs tend to define CSR informally’, and as this chapter will show, engage in CSR quite differently as well. Later in this chapter, the barriers that a SMEs face in implementing CSR initiatives will

---

35 Ibid.
37 Lorraine Sweeney, ‘Corporate Social Responsibility in Ireland: Barriers and Opportunities experienced by SMEs when undertaking CSR’ (2007) 7(4) Corporate Governance 516, 519.
be discussed, one of which is attitude. Given the possibility that framing CSR in this way may potentially alienate SMEs at the starting line, it is apparent that terminology is a serious problem when it comes to addressing SMEs. ‘Responsible business practice’\(^{40}\) and ‘responsible competitiveness’\(^{41}\) have been proposed as alternatives to alleviate these concerns. Whilst these concerns are legitimate, they are beyond the scope of this thesis and the term CSR is used throughout the thesis to remain consistent with the relevant literature.

It is important to note that companies will not approach CSR in a homogenous way. This may be a reflection of their motivations, for instance seeing CSR as a way to enhance profits and nothing more. Additionally, marginal enterprises may not have the luxury of going ‘beyond compliance’ with existing laws. As has been shown, there are many paths to pursuing CSR and many possibilities. With this in mind, environmental protection, workplace safety, non-discrimination, human rights, consumer protection, and combating corruption are all issues related to CSR. With such a breadth of issues, it is difficult for a large corporation to pursue all altruistic social and environmental issues and impossible for an SME. However, it does seem as though certain issues are taken seriously by most firms. For instance, in a survey on the importance of certain activities to the businesses operations, workplace safety was overwhelming regarded as important, whereas child and forced labour was not.\(^{42}\) By contrast, issues such as bribery and corruption, consumer protection, and human rights are often less relevant to SMEs. The literature overwhelmingly points to SMEs primarily engaging in environmental protection, workplace safety, and philanthropy which will be discussed later in this chapter. Thus, discussion is limited to these issues.

Beyond a basic consideration of the definition of CSR, it is important to understand the connection of CSR to profits or a business’s economic functions. Often the uninitiated conflate CSR with profit sacrificing motives. Clearly this is a problem as such a view portrays CSR as a cost rather than an opportunity. Many SMEs are marginal enterprises that can ill afford the luxury of profit-sacrificing CSR. Howard Bowen, one of the forefathers of CSR noted the importance of business and the working life, and argued against attacks on the


profit motive.\textsuperscript{43} He argued that the profit motive was a function of ‘following social valuations as expressed in the prices at which they can sell their products’, noting that high price (and therefore profits) was following ‘not only [self] interest but that of society as well’.\textsuperscript{44} Thus, he called for an exercise of the profit motive that ‘operates with moderation [and] that is tempered by consideration for social ends’.\textsuperscript{45} By contrast, Peter Drucker dismisses the profit motive as the purpose of business, suggesting it is a ‘limiting factor’ in that it is required to pay for the activities of business.\textsuperscript{46} In his view profits are ‘a condition of survival [,] it is the cost of the future, the cost of staying in business’.\textsuperscript{47} He acknowledges the foremost duty of the manager is to preserve the business and ‘to jeopardize it, no matter how noble the motive, is irresponsibility.’\textsuperscript{48}

A final definitional point should be made in relation to legal compliance and CSR. The literature points to CSR being a voluntary exercise and going beyond what the law requires. As will become evident throughout this thesis, there is a research focus in this thesis on compliance. While CSR should involve going beyond legal compliance, this does not mean compliance is unrelated to CSR. Legal compliance forms part of Carroll’s pyramidal definition of CSR\textsuperscript{49} mentioned earlier in this chapter, and is therefore a part of CSR. Clearly, failing to comply with all applicable laws could be an example of corporate irresponsibility and should therefore be addressed in the context of CSR. A prime example of this is British Petroleum (BP). BP was a member of the UN Global Compact. It published annual social reports and espoused its green credentials. It was then involved in the worst oil spill in human history and pleaded guilty to 11 criminal charges, with the highest criminal penalty in U.S history being imposed on the company.\textsuperscript{50} Whilst CSR should involve going beyond legal compliance, a starting point should be that business complies with its legal obligations. As will be discussed in this chapter, legal compliance is a serious issue for SMEs. It is therefore

\begin{flushleft}
\textsuperscript{43} Howard Bowen, \textit{Social Responsibilities of the Businessman} (University of Iowa Press, 2013-Reprint) 143.
\textsuperscript{44} Ibid 146.
\textsuperscript{45} Ibid 146.
\textsuperscript{47} Ibid.
\textsuperscript{50} Ben Rossington, ‘US Slaps Record £2.8 Billion Fine on BP over Gulf of Mexico Oil Spill’, \textit{The Mirror} (Online), 15 November 2012 <http://www.mirror.co.uk/money/city-news/bp-fined-28bn-over-gulf-1438680>.
\end{flushleft}
a worthy area of discussion and is as important as promoting voluntary beyond compliance initiatives.

2.2.2 Small and Medium-Sized Enterprises (SMEs)

As was the case with CSR, it is necessary to consider the definition of a SME. Mercifully, the debate surrounding what constitutes an SME is far simpler. There are two critical definitions to consider. The Australian Bureau of Statistics defines businesses as: 51

| Large | 200+ employees |
| Medium | 20-199 employees |
| Small | 0-19 employees |

The European Commission definition provides a more holistic approach to size defining companies as: 52

<table>
<thead>
<tr>
<th>Employees</th>
<th>Turnover</th>
<th>Assets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Micro</td>
<td>&lt;10</td>
<td>&lt;2 million Euros</td>
</tr>
<tr>
<td>Small</td>
<td>&lt;50</td>
<td>&lt;10 million Euros</td>
</tr>
<tr>
<td>Medium</td>
<td>&lt;250</td>
<td>&lt;50 million Euros</td>
</tr>
</tbody>
</table>

**Table 1: European Definition of SMEs**


For the purposes of this thesis, the European definition is adopted, as it provides a more logical basis for determining size. Employee numbers alone is not a good measure of size as certain operations will be more labour intensive than others. Employee numbers might reflect the workplace safety aspect of CSR, for instance, more employees would presumably mean a greater risk that someone is injured. However, another focus of this thesis is the

---

environmental impacts of business. Thus, a firm’s level of production is relevant as presumably greater production will mean greater impact. Turnover is a better indicator of production, and a firm’s assets gives insight into its productive capacity into the future. Thus, the European Commission’s definition is the best indicator of size, especially when considering CSR. There is a definitional issue that arises in Case Study 1 in Chapter 6.2.1. Section 45A of the Corporations Act 2001 (Cth) differentiates between corporations that are Small Proprietary Limited or Large Proprietary Limited Companies. This effects whether a proprietary limited company is required to lodge an annual report.53 Because Case Study 1 involves searching various company annual reports, the definition in Section 45A is referred to. This discussion of section 45A is not intended to provide a proxy SME definition.54

As will been noted in Chapter 2.3, approximately one third of SMEs are incorporated. Whilst, there are significant legal consequences to incorporation (discussed in Chapter 5.2), the effect on the environment, workplace safety, and other CSR concerns, remains the same. Whether a business is a corporation or another form of business structure has little effect on whether it is emitting chemicals into the atmosphere, or whether an employee is injured. Throughout this thesis, distinctions are made between corporate and non-corporate entities. For instance, Chapter 5.2.3 notes that corporate law clearly does not apply to unincorporated entities, which excludes two thirds of SMEs in practice. This should not be read as a suggestion that the corporate form somehow discounts a business from being an SME. For the purposes of definition, business structure has no impact on whether a business is an SME or not.

2.3 SMEs’ Positive Contribution to the Economy

SMEs’ collective contributions to the economy are significant. SMEs form an overwhelming majority of businesses in modern economies. Across the OECD, SMEs account for between 96-99% of businesses.55 In Australia, SMEs comprise 99.9% of businesses, with 60.7% having no employees, 27.2% (1-4 employees), 9.5% (5-19 employees), 2.5% (20-199

53 Corporations Act 2001 (Cth) s292(1)(2).
54 The definition was not adopted on the basis that the criteria is set too low compared with other jurisdictions. Given much of the literature on SMEs was written in other jurisdictions, there was a need to adopt a definition that closely mirrors otherwise the applicability of that research would have been questionable. It should also be noted that the employee test under s45A is 50 employees, which is only a quarter of the ABS definition, which raises issues of applicability of Australian research as well.
employees), 0.17% (200+ employees). These statistics clearly indicate the importance of the SME sector to the wider economy. Additionally, the business structure of these businesses is 35.6% (Companies/ Corporations), 26.4% (Sole proprietors), 14.3% (Partnerships), and 23.7% (Trusts).

Due to their number, SMEs have significant impacts on key economic indicators. In the United States, SMEs contribute 40% of ‘economic activity’ and 52% of ‘non-farm GDP’. Across APEC, SMEs account for 50% of value added production, 30% of direct exports and 10% of direct investment by value. In Australia SMEs contribute 57.7% of value added production, 46% of total GDP, and 55.6% of Industry Value added. Throughout APEC, SMEs contribute 60% of private sector jobs, and 30% of total employment. The latest available Australian figures suggest total employment figures of 44% (small) 24.3% (medium) and 31.6% (large). SMEs are increasingly important in the employment context, and in Australia and New Zealand, they contribute 60-70% of all new employment. In strong economic times, this figure has risen to as high as 75% in the United States. Whilst this is only a snapshot of SMEs economic contributions, it is ample proof that SMEs have a significant impact on the economy both in Australia and overseas. When this is viewed in light of SMEs’ contributions to some of the problems created by business, this raises a legitimate question as to whether SMEs should have a greater role in the CSR ‘debate’.

2.4 SMEs’ Negative Contributions to the Community

Given SMEs feature prominently in economic activity, it is reasonable to assume that they will also contribute to some of the problems associated with business such as resource

---

57 Ibid 19.
61 Henry Ergas and Jennifer Orr, SME Trends and Achievements, Report prepared by CRA International and privately commissioned by Telstra Pty Ltd, February 2007, 3
consumption, pollution, and accidents leading to prosecution. Information on SMEs’ contribution to pollution and environmental degradation is scarce. Nevertheless, existing literature suggests SMEs’ contribution is significant. Estimates have suggested as much as 70% of global pollution is generated by SMEs. In the United Kingdom it is estimated that 60% of CO₂ emissions are generated by SMEs, as well as 60% of commercial waste. In the European Union, SMEs’ contribution to pollution has been estimated at between 60-70%. Dutch studies have suggested SMEs contribute to other pollutants including 39% of CFCs, 44% of NOₓ, 17% of SO₂, 43% of waste and 53% of waste discharges. A study conducted across the European Union estimated that SMEs contribute to 64% of all environmental impacts. In the United States, SMEs emit 19% of toxic chemical emissions into the atmosphere and 15% of emissions released into water and land. Similarly, estimates of energy use in the manufacturing sector in Canada gauge SMEs’ contributions to be 53%.

A similar picture is evident in relation to SMEs’ contribution to environmental and industrial accidents. In the United Kingdom, an EPA study suggests SMEs are responsible for up to 80% of environmental incidents. There seems to be more information on workplace safety, presumably because injuries are more likely to be recorded, and injuries are more easily measured than pollution. The majority of early studies tend to reflect higher injury and

67 Ibid 54.
71 The study concedes that it would be impossible to perfectly calculate the actual contribution to pollution, thus the approach taken seems to be an estimate based on the total pollution, pollution per employee, and therefore based upon how many (as a %) people are employed by SMEs. See, Karen Miller, Alexander Neubauer, Adarsh Varma, ‘First assessment of the Environmental Compliance Assistance Programme for SMEs (ECAP)’ (2011) Final Report 153-154, 156.
fatality rates amongst SMEs, compared with larger businesses. A detailed example of this can be seen in the following table.

Table 2: Fatality Rate on the Basis of Size – Trench Cave-Ins

<table>
<thead>
<tr>
<th>Firm Size</th>
<th>1984-89 Fatalities</th>
<th>Fatality Rate</th>
<th>1990-95 Fatalities</th>
<th>Fatality Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-4</td>
<td>70</td>
<td>22.14</td>
<td>36</td>
<td>10.32</td>
</tr>
<tr>
<td>5-9</td>
<td>48</td>
<td>12.85</td>
<td>32</td>
<td>9.10</td>
</tr>
<tr>
<td>10-19</td>
<td>58</td>
<td>13.75</td>
<td>47</td>
<td>12.17</td>
</tr>
<tr>
<td>20-49</td>
<td>71</td>
<td>13.40</td>
<td>27</td>
<td>6.01</td>
</tr>
<tr>
<td>50-99</td>
<td>49</td>
<td>15.46</td>
<td>17</td>
<td>6.66</td>
</tr>
<tr>
<td>100+</td>
<td>39</td>
<td>6.73</td>
<td>12</td>
<td>2.19</td>
</tr>
</tbody>
</table>


Whilst there are small spikes across the various sizes of business, there is an undeniably downward trend in fatality rates and business size. Some studies have also encountered U shape trends, where injury rates are lowest in the smallest category of business, increase in the mid-size firms and progressively decrease past a certain size. Studies have argued this might be the result of under reporting in smaller businesses, a greater emphasis on safety as the owner will often also be working in the business, and the tendency for smaller firms to hire family and friends. Presumably the fact that the owner can better supervise a small amount of employees is also a reason for this. Nevertheless, the vast majority of research notes an overall downward trend in injury rates as business size increases. It has been claimed that there is a 50% greater chance of death or injury in an SME, although a source for this claim was not provided. There is also evidence to suggest that, on average, the injuries

experienced by employees of SMEs are more serious. On the subject of successful prosecutions in the American chemical industry, a somewhat dated study noted that SMEs contributed to 76 out of 170 (44.7%) prosecutions. It is important to note that the prosecutions are described as ‘deaths in which citations were issued’ and therefore represent only a subset of prosecutions, as it seems implausible that there would only be 170 prosecutions over five years in the entirety of the United States. Thus, while the information presented above is helpful in identifying risks associated with SMEs, the information is generally specific to industry (and to the type of injury or prosecution), and does not represent the economy as a whole. It should also be noted that such research in Australia is limited with the only previous study suggesting SMEs are in fact safer than larger enterprises, which contradicts virtually every other study on the subject, and is therefore subject to the criticism that there is a substantial underreporting of injuries by SMEs. More recent research conducted by Safe Work Australia has also contradicted this finding and is discussed in more detail below.

In terms of Australian specific research, a small scale survey (of 73 auto repairers) suggested that 5.5% of SMEs experience a workplace injury. It is difficult to find comparable data on large corporations, but Safe Work Australia statistics show the overall ‘serious injury’ rate for more than a decade.

---

86 Ibid.
### Table 3: Injury Rates – Australia

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Injuries per 1000 employees</td>
<td>16.3</td>
<td>15.8</td>
<td>15.8</td>
<td>15.5</td>
<td>15.2</td>
<td>14.3</td>
<td>13.6</td>
</tr>
<tr>
<td>%</td>
<td>1.63</td>
<td>1.58</td>
<td>1.58</td>
<td>1.55</td>
<td>1.52</td>
<td>1.43</td>
<td>1.36</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Injuries per 1000 employees</td>
<td>13.3</td>
<td>12.7</td>
<td>12.4</td>
<td>12.2</td>
<td>12.1</td>
<td>11.0</td>
<td>9.8</td>
</tr>
<tr>
<td>%</td>
<td>1.33</td>
<td>1.27</td>
<td>1.24</td>
<td>1.22</td>
<td>1.21</td>
<td>1.1</td>
<td>0.98</td>
</tr>
</tbody>
</table>


Furthermore, the statistics provide an industry breakdown of injury statistics in the automotive repair and maintenance industry. It is possible that the injury rates might be higher than average, due to these industries being more dangerous than others. With these limitations in mind, the following injury rates in these industries were observed:

### Table 4: Injury Rates - Automotive Repair and Maintenance Industry

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Injuries per 1000 employees</td>
<td>17.3</td>
<td>13.3</td>
<td>13.9</td>
<td>13.7</td>
<td>12.8</td>
<td>13.7</td>
<td>14.3</td>
</tr>
<tr>
<td>%</td>
<td>1.73</td>
<td>1.33</td>
<td>1.39</td>
<td>1.37</td>
<td>1.28</td>
<td>1.37</td>
<td>1.43</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Injuries per 1000</td>
<td>13.3</td>
<td>12.6</td>
<td>12.7</td>
<td>11.7</td>
<td>12.0</td>
<td>11.4</td>
<td>8.2</td>
</tr>
</tbody>
</table>
Again there are issues of comparability as the original study denotes all injuries, whereas the Safe Work Australia statistics denote a serious injury, defined as those involving ‘one or more weeks of time lost from work’.\(^8^9\) It is also clear that there is a trend downward. Therefore, the fact that the Safe Work Australia statistics are from a later time period could explain the lower incidence rates. Nevertheless, the rates are radically different, which even accounting for the issues of comparability does seem to suggest a higher rate of injury in SMEs than the overall population. Financial constraints, lack of expertise, and lack of awareness of the consequences of poor OH&S are advanced as reasons for SMEs’ disproportionate contribution to industrial accidents.\(^9^0\)

In attempting to deduce the total contribution (as a percentage) of SMEs to workplace injury, it was noted above that the empirical research is scarce. Safe Work Australia have produced statistics demonstrating that ‘serious’ workplace injury claims occur at a ratio of 11.8 employees per 1000 employees (amongst businesses with 1-19 employees), 21.8 employees per 1000 (amongst businesses with 20-199 employees) and 14.9 per 1000 (amongst businesses with 200+ employees).\(^9^1\) The same statistics show that in New Zealand, the figures are 13.2, 11.9, and 7.5.\(^9^2\) Using the same ABS employment figures from this study, SMEs overall percentage contribution to ‘serious’\(^9^3\) injury claims can be calculated.

\(^8^9\) Ibid.
\(^9^2\) Ibid.
\(^9^3\) Serious injury was defined ‘all fatalities, all permanent incapacity claims (as defined by the jurisdictions) and temporary claims for which one or more weeks of compensation has been recorded. Safe Work Australia, Comparison of Work Health and Safety and Workers’ Compensation Schemes in Australia and New Zealand: Comparative Performance Monitoring Report (15th ed) (2013) 1.
Table 5: Contribution to Workplace Injuries on the Basis of Business Size

<table>
<thead>
<tr>
<th>Business Size</th>
<th>Total Employment(^{94})</th>
<th>Injury Ratio(^{95})</th>
<th>Total Injuries</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small</td>
<td>4,649,000</td>
<td>11.8</td>
<td>54858</td>
<td>33.36%</td>
</tr>
<tr>
<td>Medium</td>
<td>2,758,000</td>
<td>21.8</td>
<td>60124</td>
<td>36.56%</td>
</tr>
<tr>
<td>Large</td>
<td>3,320,000</td>
<td>14.9</td>
<td>49468</td>
<td>30.10%</td>
</tr>
<tr>
<td>Total</td>
<td>10,727,000</td>
<td>164450</td>
<td>100.02%</td>
<td></td>
</tr>
</tbody>
</table>


These calculations suggest that SMEs comprise 69.9% of serious work injury claims. Again these figures should be placed in some context. Injury rates differ wildly across industries and it could be argued that SMEs operate in many high risk industries thus explaining the differential in injuries. This is difficult to gauge as SMEs seem to comprise a significant proportion of employment in high risk industries, such as ‘agriculture forestry and fishing’ (85.9% of total employment in the industry) and construction (63.1%), but also quite low in other high risk industries, for instance mining (14.9%) and manufacturing (31.1%).\(^{97}\) As a whole though, it seems that the majority of employees employed by SMEs operate in relative


low risk service industries (84.4%), compared with agriculture, forestry and fishing (9.1%),
manufacturing (6%), and mining (0.5%).

Whilst comparative data is difficult to obtain, the studies presented above do suggest a
substantial contribution by SMEs to workplace injuries. Case Study 1 in Chapter 6 will
further explore the negative contributions of SMEs to the environment and OH&S. It is
readily discernible from the literature that SMEs contribute extensively to the positive and
negative impacts of businesses on the wider community. This is supported by Case Study 1 in
Chapter 6.2, which demonstrates SMEs make substantial contributions to environmental and
workplace safety convictions. Once these contributions are appreciated, the need for actively
engaging SMEs and encouraging them to embrace CSR becomes clear. Targeting only larger
corporations, because they are more likely to undertake some form of CSR, essentially
involves ignoring the significant contributions SMEs currently make and could make in the
future.

2.5 SMEs vs Large Corporations – They Are Not the Same and Should Not Be
Treated as Such

This section compares SMEs and large corporations’ approaches to CSR. Broadly, the section
argues that SMEs benefit differently for their CSR efforts, engage in different types of CSR,
experience different barriers to engaging in CSR, and are also driven to engage in CSR in
different ways. Unsurprisingly, the small, resource poor, and informal nature of SMEs lead to
substantial differences in the way they approach CSR, which addresses Research Question 2,
and suggests a need to move away from one size fits all solutions to CSR that presuppose
large corporations as the norm. Studies have found high levels of support within SMEs for
the general premise of CSR. For instance, 84% of SME managers of a UK survey expressed
concerns for the environment, mentioning areas such as animal extinction and air and water
quality. However, numerous studies have found what is referred to the ‘value-action gap’,
whereby attitudes rarely translate into observable action. Thus, there is a need to look at

both the drivers and barriers (also discussed in this chapter), which impact upon whether the altruistic attitudes of some managers are acted upon.

2.5.1 The Benefits of Engaging in CSR

A key area of concern is the manner in which SMEs benefit from their CSR activities. Studies have highlighted the benefits to SMEs including:

- An enhanced image and reputation, thereby improving the businesses ability to access finance as well as attracting trading partners and customers;
- Increased sales and consumer loyalty;
- Improved employee morale, therefore improving productivity, reducing attrition and turnover;
- Better management and control of risks;¹⁰¹
- Reduced cost associated with energy use and waste disposal;¹⁰² and
- ‘Raising quality’.¹⁰³

Clearly, all but the latter relates in some way to profits, which raises the issue of the ‘business case’ for CSR. The business case at its core involves the idea that you can profit from engaging in CSR initiatives. This is achieved by ‘promoting a “win-win” scenario whereby companies benefit from their CSR activities through reputation, financial performance and employee motivation and retention gains.’¹⁰⁴ In the context of SMEs, the business case is not as clear.¹⁰⁵

2.5.1.1 Reputational Benefits

¹⁰⁵ Ibid.
Reputation provides an example of the differences between SMEs and large enterprises, most notably the extent to which they benefit from CSR. Studies have shown that environmental responsibility has a lesser impact on reputation for smaller firms compared with larger firms, as they have a lower profile.\textsuperscript{106} Similarly, another study conducted across the UK/Netherlands claims that markets fail to reward SMEs for their environmental efforts.\textsuperscript{107} This can be contrasted against a combined UN Global Compact/Accenture survey of large public company CEOs, which found ‘brand, trust, and reputation’ to be the greatest driver for CSR in large companies by a considerable margin.\textsuperscript{108}

There is a general assertion that larger corporations can extract profits from their CSR activities much more easily than SMEs for several reasons.\textsuperscript{109} First, large corporations have the luxury of time (as they have the resources to assign specific people to this role) regarding the development of relationships with NGOs, governments and UN agencies. Second, multinational corporations generally outsource at least some of their production, and therefore can dictate CSR-related criteria, sometimes imposing standards greater than the company imposes on itself,\textsuperscript{110} whilst also being unwilling to compromise on price.\textsuperscript{111} In these instances, the larger corporation is able to extract a reputational benefit with little investment or commitment to CSR. Third, multinational corporations are in the best position to profit from CSR as they have a higher profile and a more direct relationship with the public, compared with SMEs who find it more difficult to translate any CSR activities into reputational benefits. Temi Abimbola and Christine Vallaster dispute this characterization, suggesting that SMEs can reap reputational benefits. They argue that SMEs can build a

\textsuperscript{110} For instance, in one study, there was the perception that demands to meet CSR-related criteria was just a ‘box ticking’ exercise. The SME managers ultimately viewed this cynically as the companies involved seemed more interested in forcing CSR upon others rather than engaging in CSR themselves. See Heledd Jenkins, ‘Small Business Champions for Corporate Social Responsibility’ (2006) 67(3) Journal of Business Ethics (2006) 241, 249.
reputation through customer interactions (with a greater likelihood that high level management and owners are involved) which are more personalised in the SME context. Additionally, because of the smaller nature of SMEs, issues such as complaints can be dealt with quickly and in a more personalised fashion, effectively negating the need for market research.

Interestingly, a study of SMEs and their perceptions of the benefits of ‘improving environmental performance’ found that reputation was the greatest benefit (36 responses) compared with cost reductions (30 responses). Nevertheless, from a practical implementation point of view, it would seem reputation management is a low priority with the brand and marketing literature suggesting the issue is paid little attention by SMEs with familiar barriers such as a lack of staff and time preventing better engagement. This does in part refute the claims made earlier about SMEs being unable to benefit from an improved reputation, but still highlights reputation is less of a factor than for large enterprises. During the Victorian Inquiry on CSR within SMEs, it was suggested that reputation became more important when the business passed a certain size, which suggests that treating all SMEs as the same with respect to reputation is a mistake. This is supported by a study of manager motivations which noted a substantial difference in the number of managers motivated by the image of the businesses (58.6%) employing 0-19 employees compared with 89.2% of those employing 500+, yet the 20-99 (81.6%), and 100-499 (79.7%) are almost identical.

113 Ibid 343-44.
However, these figures should also be put in perspective given only 2.76% of businesses in Australia employ more than 19 employees.¹¹⁹

From a negative perspective, it is argued that the pressure of a bad reputation is also less of an issue, with pressure groups such as NGOs less likely to target a low profile SME as they will not provide the same level of exposure as a large multinational, both in terms of the issue, and the pressure group itself.¹²⁰ The literature as a whole suggests reputation is a complex issue for SMEs. Certainly there appear to be unique challenges associated with the lower profile of SMEs, but this does not suggest SMEs cannot benefit from an enhanced reputation through its CSR efforts.

2.5.1.2 SMEs’ Opinions of CSR and Its Impact on Profits

A UK study addressed the question as to whether environmental behaviour improved profits. The results indicate that roughly a third of managers interviewed disagreed with the proposition, as well as a further third that were unsure.¹²¹ Similarly, another Australian study confirms that the majority of SME managers regard environmental responsibility as a financial cost.¹²² It is suggested that companies with high levels of environmental impact are more likely to implement environmentally friendly action due to the greater opportunities to reduce costs.¹²³ This suggests that the business case may be more relevant to some SMEs, such as high energy using, high waste generating SMEs, as opposed to SMEs operating within ‘cleaner’ industries. This can also be contrasted against an international survey of large corporate CEOs, whereby 91% of those surveyed thought that sustainability (or environmental CSR) issues were critical to the future success of their company.¹²⁴ It should be noted that this study was commissioned by the United Nations Global Compact,¹²⁵ with

¹²⁵ The UN global Compact is a CSR and sustainability initiative which requires signatories to commit to ten broad principles covering human rights, Labour, environment, and anti-corruption. See United Nations, UN
the participants being drawn exclusively from members of the Global Compact, and the results should be expected to display a bias in favour of CSR. Nevertheless, the survey suggests that the business case is far more relevant and observable to larger corporations, compared with SMEs.

Whilst profits are no doubt a crucial aspect of CSR, and the benefits derived from CSR, there are clearly other factors involved. For instance, an Australian study which gauged the motivations of SMEs which were involved in CSR initiatives found that 78% did so because ‘it was the right thing to do’, as opposed to 50% who suggested ‘it makes me more money’. Subsequent studies have confirmed that SMEs do engage in CSR for altruistic purposes, albeit profitability is also a consideration. Another study from the United Kingdom found that only 12% of SMEs who had implemented measures to reduce their environmental impact were driven by cost reductions. These motivations of altruism are discussed further in a later section of this chapter which discusses the drivers of CSR.

Further studies have confirmed that SMEs are as yet unconvinced by the business case, and they desire sector specific information tailored to their individual circumstances. It is reasonable to infer that the literature on this point is insufficient at this stage. This is reflected in a Victorian Parliamentary Inquiry Recommendation that there is a need for greater research into the benefits of CSR as it relates to SMEs.

2.5.1.3 Practical Examples of CSR Yielding Profits

The literature cited directly above relates to the opinions of managers, rather than firm data. Practical examples of financial benefits are quite difficult to locate, even with respect to large corporations. Joshua Margolis and James Walsh noted that despite decades of research, the

research on the profitability of CSR is mixed and the accuracy of the research is questionable. Additionally, there is little research on precisely what businesses are doing in the CSR space and whether it produces profits for the business, or even benefits for the community. From an SME perspective, it is noted that a lack of publicly available financial information has necessitated a reliance on opinions and self-assessment. Even where SMEs are willing to participate in research, they are generally unwilling to reveal financial and other commercially sensitive information. Additionally, the lack of formality noted above makes it difficult for the SME managers themselves to properly argue any benefits. For instance, of a study of SME managers who had implemented some form of environmental management system, only 5% could give a dollar estimate of the cost changes in implementing the system. Even where companies are inclined to measure the financial benefits of CSR, there is the issue that many of the benefits are intangible and will take many years to materialise.

Ultimately, engaging in CSR can be profitable. It is estimated that even a 5% reduction in packaging could save Wal-Mart’s supply chain US$11 billion, with a direct saving to Wal-Mart of US$3.4 Billion. During the period 1990-2003, DuPont was able to reduce greenhouse emissions by 72% and save US$3 billion in the process. Equally, Herman Miller (a furniture manufacturer) estimates a 32% rate of return on its sustainability activities, with a reduction of 80% in landfill, 91% (Waste), emissions (87%), and water usage (67%). Clearly, some of these investments have yielded immediate benefits, but given the long term nature of these investments, the long term benefits can be enormous. 3M’s initial efforts with

---

132 Ibid.
137 Ibid 7-8.
138 Ibid 12.
139 Ibid 5.
its ‘Pollution Prevention Pays’ program yielded only $10 million in its first year, but has saved US$1 billion in thirty years.\textsuperscript{140}

Clearly these are all examples of large companies and the examples should be treated with caution. Not only will the projected benefits need to be scaled down for size, but the projects might be uneconomic for SMEs. Cost saving measures could be rendered uneconomic for instance because there is not enough waste to reduce in order to justify new processes or machinery.\textsuperscript{141} In one instance, an SME noted that they could not get a recycling company to collect the material until it reached a certain size, causing the issue of storage and safety concerns.\textsuperscript{142} Whilst the case studies do not provide precise dollar figures they do tend to suggest substantial gains can be made. For instance, a European Commission study found an SME employing 33 people was able to reduce its waste by 40% and energy use by 55% simply by adopting EMAS certification.\textsuperscript{143} In a book focusing on the use of ISO14001,\textsuperscript{144} several case studies were able to demonstrate tangible financial benefits for SMEs.\textsuperscript{145} For instance, Znovin Znojmo, a wine producer from the Czech Republic that employs 90 people, was able to reduce its water consumption by 50% and waste water emissions by 75%, leading to savings of US$50,000 per annum.\textsuperscript{146} The measures yielded a positive return within one year.\textsuperscript{147} Equally, an Austrian anodising\textsuperscript{148} company which employs 14 people was able to overhaul its rinsing process to yield annual savings of US$20,000 due to a 100% reduction in water consumption, US$2000 due to a 10% reduction in chemical consumption, and US$4000 due to a 10% reduction in gas consumption.

\textsuperscript{140} Ibid 12.
\textsuperscript{142} Andrew Friedman and Samantha Miles, ‘SMEs and the Environment: Two Case Studies’ (2001) 8(4) Eco-Management and Auditing 200, 203.
\textsuperscript{143} European Commission, Small, Clean and Competitive (European Commission, 2008) 15.
\textsuperscript{144} ISO14001 is an international standard for establishing an environmental management system. In essence, it provides guidance and legitimacy for businesses attempting to establish their own systems to minimise their environmental impact.
\textsuperscript{145} Johannes Fresner, ‘Setting up Effective Environmental Management Systems Based on the Concept of Cleaner Production: Cases from Small and Medium Sized Enterprises’ in Ruth Hillary, ISO14001: Case Studies and Practical Experiences (Greenleaf Publishing, 2000).
\textsuperscript{146} Ibid 128-129.
\textsuperscript{147} Ibid 129.
\textsuperscript{148} ‘Anodising is a galvanic process in which the surface of aluminium is converted to aluminium oxide which protects the basic material against corrosion and wear.’ See Johannes Fresner, ‘Setting up Effective Environmental Management Systems Based on the Concept of Cleaner Production: Cases from Small and Medium Sized Enterprises’ in Ruth Hillary, ISO14001: Case Studies and Practical Experiences (Greenleaf Publishing, 2000) 130.
There is an obvious concern with the paucity of SME case studies that can precisely quantify the financial benefits of CSR. One of the barriers to CSR discussed at length later in this chapter is a general lack of awareness, which extends to awareness of options for CSR and their potential benefits. It is argued that without solid evidence of benefits, there is the risk of SMEs perceiving any profit based claims as ‘green wash’. The first recommendation of the Victorian inquiry into CSR in SMEs proposed the need for research into the benefits of CSR for SMEs. Whilst this recommendation was supported in principle, it is disappointing that the government’s response, made reference to a number of pre-existing international publications which provide only very general advice on the benefits (rather than case studies that can quantify tangible benefits), and there does not appear to be any research conducted since that has addressed this issue.

2.5.2 The Potential for SME Impact

Before delving into the literature on SMEs’ CSR practices, there is a need to briefly consider how many SMEs are engaging in some form of CSR. The literature demonstrates that a significant number of SMEs are embracing CSR and attempting to integrate CSR initiatives into their business operations. For instance, a Sensis survey found that 40% of Australian SMEs have altered their operations as a result of ‘environmental concerns’. Whilst these contributions are heartening, this of itself is not enough to proclaim that SMEs are ‘fully’ embracing CSR, and embedding it into their core operations. As will be illustrated later in this chapter, SMEs perform quite poorly in regards to many aspects associated with CSR. It is evident that much more can be done in order to ensure that SMEs take a more holistic approach to CSR, addressing all relevant issues, rather than simply ‘cherry picking’ the ones that interest them (or are the cheapest to address). Nevertheless, a discussion of SMEs participation in CSR activities is presented to highlight that SMEs are quite capable of making meaningful contributions to CSR.

153 Sensis, Sensis® Business Index - Small and Medium Enterprises (June 2012) 21.
Firm size appears to heavily influence participation, which is confirmed by a study conducted in the European Union that found 47% of micro, 65% of small and 70% of medium-sized firms were participating in some form of CSR activity.\textsuperscript{154} Research on Australian firms points to similarly high levels of CSR behaviour.\textsuperscript{155} The divide between micro, small, and medium-sized firms is even more apparent when considering the use of more formal mechanisms such as environmental data collection, environmental purchasing policies, supply chain policies, and so on.\textsuperscript{156} Any attempts to encourage CSR within SMEs, assuming they are successful, will likely yield significant results. Given the overwhelming numbers of SMEs, any positive changes, even small ones replicated thousands of times, will have a significant impact on the environment, workplace safety, etc. There are already small movements towards CSR, with an emerging class of entrepreneurs who establish SMEs on the basis of attempting to effect social change through their business, whereby the profit motive is only a secondary consideration.\textsuperscript{157} The fact that there are SMEs actively engaging in CSR is a reflection that it is possible for smaller entities to make a difference and not compromise their economic viability. Thus, the question becomes not whether it is possible, but rather, what is the best way to encourage businesses to change their practices.

Having established the prevalence of CSR within the SME community, it is also important to consider the ‘types’ of CSR which SMEs engage in. This allows policy makers to devise the most useful solutions. The literature contends that SMEs have a local community focus.\textsuperscript{158} This has the tendency to affect the ‘types’ of CSR which SMEs engage in. For instance, an Australian study found that 89% of the SMEs surveyed made donations to ‘local’ and ‘community clubs’.\textsuperscript{159} As one manager suggested; ‘It’s all advertising because you’re


\textsuperscript{156} Sue Cassells and Kate Lewis, ‘SMEs and the Environmental Responsibility: Do Actions Reflect Attitudes?’ (2011) 18(3) \textit{Corporate Social Responsibility and Environmental Management} 186, 193.

\textsuperscript{157} Cheryl Rodgers, ‘Sustainable Entrepreneurship in SMEs: A Case Study Analysis’ (2010) 17(3) \textit{Corporate Social Responsibility and Environmental Management} 125.


\textsuperscript{159} Janet Sawyer and Nina Evans, ‘An Investigation into the Social and Environmental Responsibility Behaviours of Regional Small Business in Relation to Their Impact on the Local Community and Immediate Environment’ (2010) 16(2) \textit{Australasian Journal of Regional Studies} 253, 259; Similarly high rates of giving have been found elsewhere, for instance: Princeton Survey Research Associates ‘Small Business Giving Survey’
supporting the community, sometimes it’s more effective than a half page ad in the paper.”

This may be contrasted against large corporations that require larger customer bases to sustain them, and must therefore adopt a wider approach. Various studies confirm the link of local community to the extent and nature of the CSR activity engaged in. For instance, one study found that ‘village businesses’ were more interested in CSR activities that supported the local community, whereas SMEs operating within industrial hubs were more interested in profitable CSR initiatives such as cost saving measures. Equally, studies have found SMEs to be more community oriented when operating in a rural or non-metropolitan area.

2.5.2.1 Charity / Donations

It is evident from the literature that there is a preference within SMEs to ‘giving in-kind goods, services, skills or capacity rather than cash.’ When probed on this point, a SME manager expressed reservations about committing business partners to financial donations, where they have not been a part of that decision making process. The manager expressly stated: ‘I do not think it is fair to insist my partners give to the causes I like. Each of us does their own thing.’ However, another Australian study suggests 40% of SMEs give financial and/or in kind contributions to at least one charity. These charitable causes predominantly include health (17% of respondents donated on average $92), sporting (17%, $284), religious (16%, $605), environment (13%, $114) and cultural / artistic (7%, $147). These priorities are evident in an ABS survey on business giving, which found sporting donations and sponsorships comprised almost half of all donations, with community and welfare comprising...


160 Janet Sawyer and Nina Evans, ‘An Investigation into the Social and Environmental Responsibility Behaviours of Regional Small Business in Relation to Their Impact on the Local Community and Immediate Environment’.


167 Ibid 246.
approximately 25% of donations and Health and education, and training comprising approximately 10% respectively. Interestingly, SMEs contributed almost as much (49%) as large enterprises, and a German study suggests SMEs donate considerably more money as a percentage of turnover. Other studies have confirmed a strong community focus to SME donations.

Time is also routinely donated within Australian SMEs, with roughly half of SMEs permitting staff members to volunteer during work hours, as well as half of managers volunteering their own time. Studies also suggest that forms of ‘social employment’ such as hiring recovered drug addicts, disabled workers, and those with criminal backgrounds are popular amongst SMEs.

2.5.2.2 Reduced Use of Resources / Limiting Environmental Impact

As will be noted in greater detail below, smaller firms employ far more informal CSR initiatives focusing on specific issues, such as reducing waste or resource consumption, rather than developing integrated policies. A Sensis survey outlines the measures that Australian SMEs put in place to reduce their environmental impact:

Table 6: Sensis Survey – Measures to Reduce Environmental Impact

<table>
<thead>
<tr>
<th>Measure to Reduce Environmental Impact</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recycling</td>
<td>36%</td>
</tr>
</tbody>
</table>


170 E.g. the study demonstrated that firms with 0-19 employees donate 0.23% of revenue, falling to 0.05% of firms with 500+ employees. See Frank Maab, ‘Corporate Citizenship and SMEs in Germany: a new Institutional Economics Perspective’ in Laura Spence, Andre Habisch and Rene Schmidpeter, Responsibility and Social Capital: The World of Small and Medium Sized Enterprises (Palgrave Macmillan Hampshire, 2004) 114.


175 Sensis, Sensis® Business Index - Small and Medium Enterprises (June 2012) 21.
<table>
<thead>
<tr>
<th>Environmental Measure</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reduce energy usage</td>
<td>31%</td>
</tr>
<tr>
<td>Energy efficient light globes</td>
<td>13%</td>
</tr>
<tr>
<td>Reducing water usage</td>
<td>12%</td>
</tr>
<tr>
<td>Reducing paper usage</td>
<td>8%</td>
</tr>
<tr>
<td>Turn lights off at night</td>
<td>7%</td>
</tr>
<tr>
<td>Trying to go carbon neutral</td>
<td>5%</td>
</tr>
<tr>
<td>Using solar power</td>
<td>5%</td>
</tr>
<tr>
<td>Changed vehicle</td>
<td>5%</td>
</tr>
<tr>
<td>Minimizing waste</td>
<td>4%</td>
</tr>
</tbody>
</table>

**Source:** Sensis, *Sensis® Business Index - Small and Medium Enterprises* (June 2012) 21.

It would seem that these kinds of environmental measures are common, with several studies noting the popularity of waste and energy use reductions, and those with higher environmental impacts typically were more likely to do so, due to their greater opportunities to reduce costs.

### 2.5.2.3 Initiatives are Informal

A common theme emerges whereby managers do not view their activities as being related to CSR, and only after some probing do they acknowledge that their activities fit within the ambit of CSR. For instance, their activities were viewed as ‘good business’ practice, rather than being ethical or responsible. This level of informality has been tested numerous times...

---


179 Janet Sawyer and Nina Evans, ‘An Investigation Into the Social and Environmental Responsibility Behaviours of Regional Small Business in Relation to Their Impact on the Local Community and Immediate Environment’ (2010) 16(2) *Australasian Journal of Regional Studies* 253, 264; similarly another study found...
at an empirical level. For instance, a Dutch study compared the CSR policies of small businesses and larger corporations which concluded that more than twice as many large corporations had formal policies and mechanisms to manage CSR than SMEs. The same study then analysed the specific policies adopted by small and large corporations. The table below outlines these specific policies with the figures clearly indicating the lower levels of formality employed by SMEs.

Table 7: Comparison of the Formality of CSR Policies on the Basis of Firm Size

<table>
<thead>
<tr>
<th>Policy</th>
<th>Large Corporations (%)</th>
<th>Small Business (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Codes of conduct</td>
<td>51</td>
<td>29</td>
</tr>
<tr>
<td>ISO 9001/14001</td>
<td>76</td>
<td>32</td>
</tr>
<tr>
<td>Publication of an annual social report</td>
<td>62</td>
<td>20</td>
</tr>
<tr>
<td>Social handbook</td>
<td>87</td>
<td>40</td>
</tr>
<tr>
<td>Ethics Committee</td>
<td>17</td>
<td>7</td>
</tr>
<tr>
<td>Confidential person</td>
<td>84</td>
<td>40</td>
</tr>
<tr>
<td>Ethical Training</td>
<td>14</td>
<td>7</td>
</tr>
</tbody>
</table>


The table clearly demonstrates large corporations implementing formal polices and systems to guide their CSR activities at approximately twice the rate of SMEs. Other studies have noted that there is a considerable difference between formal measures even when comparing medium-sized enterprises to small enterprises. This demonstrates SMEs’ informality in regards to approaching CSR. The contrast is even more observable when the companies are large public companies, with a survey noting that 85% of companies discuss sustainability at

---

that several owner managers did not consider themselves to be engaging in CSR, but nevertheless supported ‘local community activities’. No specific motivation was mentioned for this. See Joseph Thornton and John Byrd, ‘Social Responsibility and the Small Business’ (2013) 19(1) Academy of Entrepreneurship Journal 41, 49-50.


board level and 74% noting they measured their impacts on the environment. Whilst precise statistics were not given, it is generally asserted that it is uncommon for SMEs to measure impacts on the environment or any benefits or costs associated with their CSR activities. Other studies have reinforced the level of informality within SMEs, suggesting that only a quarter of SMEs have a formal Environmental Management System (EMS), with the remainder adopting ‘ad-hoc’ and ‘piecemeal’ measures. Another study noted that not a single SME surveyed had a formal CSR policy in place, but a third of SMEs had an informal policy akin to a CSR policy. In many instances, there is no strategic plan in place with specific actions being dependent upon the point of time and how financially secure the business is.

This level of informality within SMEs is consistent with similar Australian studies suggesting that less than half of SMEs have a formal Occupational Health and Safety Policy. This informality is common amongst the broader SME literature with studies noting SMEs were generally governed by ‘informal mechanisms’, that SMEs had no formal plan for donations, and more than half of the respondents did not even have a formal business plan. The lack of formality is not of itself a problem, as it is likely to be easier to communicate informally amongst a smaller staff. However, there is an issue of losing the

---

182 Accenture / UN Global Compact, *The UN Global Compact-Accenture CEO Study on Sustainability 2013: Architects of a Better World* (2013) 25. To an extent this is unsurprising as in many jurisdictions there will be at least some requirement to report on sustainability or CSR issues. It logically follows then that if it needs to be reported, it should be discussed at board level. The reporting obligations with respect to CSR in Australia are discussed in Chapter 6.


189 Judith Thompson, Howard Smith, and Jacqueline Hood, ‘Charitable Contributions by Small Businesses’ (1993) 31(3) *Journal of Small Business Management* 35, 47. Note however that there is a suggestion that even larger enterprises are quite ad-hoc in their approach to donations. See: Jonathan Batten and David Birch, *Defining Corporate Citizenship: Evidence from Australia* (2005) 11(3) *Asia Pacific Business Review* 293, 302.

expertise within the firm as a study has noted a major reason for discontinuing participation in CSR programs was that the person responsible for the program had left.\(^{191}\) There is of course an alternative view that these formal policies can get in the way of actually implementing CSR. For instance, large corporations have been demonstrated to spend substantially greater time and money on the planning stage of CSR initiatives including reporting, policy, and strategy, compared with actual CSR initiatives.\(^{192}\) Thus, the informality is not necessarily a problem for SMEs, but it is certainly a point of difference compared to the manner in which large organisations approach CSR.

Existing literature notes that larger corporations have greater capacity to adopt more formal CSR mechanisms due to having developed systems and greater economies of scale compared with SMEs.\(^{193}\) It is also argued that these formal policies are a necessity. In a study of how firms (predominantly large firms) benefit from CSR, it demonstrated that the pace of CSR uptake does not affect the financial benefit, but consistent strategies yield benefits, whilst inconsistent strategies sustain losses.\(^{194}\) The findings to come out of this study where that in order to maximise benefits the large firm had to approach CSR in a ‘planned and consistent manner’ focusing on internal issues first.\(^{195}\) It is argued that where large firms engage in intermittent or tokenistic CSR, the inactivity makes it more difficult for the firm to develop CSR capabilities and knowledge.\(^{196}\) Additionally, it argued that pursuing too many initiatives at once meant the firms’ resources were spread thin and the ability to develop CSR capabilities and knowledge was diminished.\(^{197}\) In analysing this study, another author argued the need to change the firm’s culture before meaningful benefits would be produced.\(^{198}\) Thus, it seems that a level of planning and formality is required in larger enterprises.


\(^{195}\) Ibid 1293.

\(^{196}\) Ibid 1296.

\(^{197}\) Ibid 1296-1297.

By contrast, it is suggested that SMEs do not need the formal processes which larger corporations often adopt. Due to the personal contact SMEs often have with their stakeholders, they do not require formal policies such as codes of conduct.\textsuperscript{199} Interestingly, it is argued in the literature that SMEs actually possess an advantage in implementing CSR.\textsuperscript{200} Whilst larger firms are adopting formal codes and policies and taking the time to implement these changes across massive operations,\textsuperscript{201} an SME owner-manager can be nimble and quickly implement any strategic change. In this respect, the diminutive size of SMEs is an advantage, allowing communication of CSR goals to staff and integration of CSR across the firms’ operations to be a far simpler process.\textsuperscript{202}

Accordingly, it is possible that while large firms are adept at formalising their CSR policies and espousing green credentials, SMEs are actually better at implementing CSR and making meaningful changes to their business.\textsuperscript{203} Thus, while informality is a noteworthy feature of SMEs’ approach to CSR, it is not necessarily a hindrance or barrier.

\textbf{2.5.2.4 Initiatives are Often Localised}

Following on from the study mentioned above in relation to donations to community clubs, it is clear that SMEs want to have a positive impact on their local community. This is drawn out in more detailed study which interviewed owner managers, with them noting that it was an expectation that they support the local community.\textsuperscript{204} In the same study, it was clear that these same managers felt no such compulsion to support large national non-profits.\textsuperscript{205} Furthermore, managers could link benefits to this local engagement such as through an increased customer base.\textsuperscript{206} This is perhaps an unsurprising and positive development, as it is argued that due to their presence in the local community, they have better awareness of local issues.\textsuperscript{207}

\begin{flushleft}
\textsuperscript{201} Ibid 697.
\textsuperscript{202} Ibid 698.
\textsuperscript{203} Ibid 697.
\textsuperscript{205} Ibid.
\textsuperscript{206} Ibid 53.
\textsuperscript{207} Abdul Moyeen and Jerry Courvisanos, ‘Corporate Social Responsibility in Regional Small and Medium Sized Enterprises in Australia’ (2012) 18(3) \textit{Australasian Journal of Regional Studies} 364, 364.
\end{flushleft}
focus has been identified numerous times within the literature. Obviously, larger firms have the capacity to invest money into the local communities with which they operate in. However, it is argued that SMEs find it easier to be recognised within the community as truly local. Whilst it is difficult to make empirical comparisons between large enterprises and SMEs on the areas of participation in CSR, a German study provides useful data on this point noted in the table below.

Table 8: Level of Participation in CSR by Size

<table>
<thead>
<tr>
<th></th>
<th>0-19 Employees</th>
<th>20-99 Employees</th>
<th>100-499 Employees</th>
<th>500+ Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social issues</td>
<td>86.2</td>
<td>79.5</td>
<td>84.8</td>
<td>93.0</td>
</tr>
<tr>
<td>Cultural events and education</td>
<td>55.2</td>
<td>69.2</td>
<td>77.3</td>
<td>88.4</td>
</tr>
<tr>
<td>Sports</td>
<td>58.6</td>
<td>56.4</td>
<td>77.3</td>
<td>64.0</td>
</tr>
<tr>
<td>Scientific</td>
<td>17.2</td>
<td>25.6</td>
<td>37.9</td>
<td>64.0</td>
</tr>
<tr>
<td>Environment</td>
<td>20.7</td>
<td>23.1</td>
<td>22.7</td>
<td>46.5</td>
</tr>
</tbody>
</table>


---


The findings outlined in the table above are interesting. They demonstrate that SMEs engage in CSR less often than their larger counterparts. However, this trend is far less prominent when addressing social issues and sports, arguably the two types of CSR most closely related to a business’s local community. They are also the two most popular forms of CSR participation for SMEs. This tends to support the argument that SMEs often focus their CSR efforts on their local community.

2.5.3 Barriers

In order to propose any regulatory solution for promoting CSR throughout SMEs, it is necessary to address the unique barriers they face in adopting CSR initiatives. A UK study surveyed managers on the prevalence of these barriers with the respondents noting which barriers applied to them. The results are detailed below: 211

<table>
<thead>
<tr>
<th>Barrier</th>
<th>Frequency (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Costs</td>
<td>63.1%</td>
</tr>
<tr>
<td>Lack of staff time</td>
<td>52.7%</td>
</tr>
<tr>
<td>Loss of firm competitiveness</td>
<td>48.6%</td>
</tr>
<tr>
<td>Lack of Information</td>
<td>38.6%</td>
</tr>
<tr>
<td>Lack of awareness of the impact of the business on the environment</td>
<td>25.1%</td>
</tr>
<tr>
<td>Lack of awareness of the impact of the business on the community 212</td>
<td>26%</td>
</tr>
<tr>
<td>Lack of relevance of environmental issues to my business</td>
<td>18.2%</td>
</tr>
</tbody>
</table>

211 Andrea Revell, David Stokes and Hsin Chen, ‘Small Businesses and the Environment: Turning Over a New Leaf’ (2010) 19(5) Business Strategy and the environment 273, 282. Please note the numbers are the combined rating e.g 4 and 5 on a 5 point Likert scale.

212 Note that the 2 ‘lack of awareness’ dot points were not described in the article in this way. They were stated as ‘Very low impact of my business on the environment’ and ‘Very low impact of my business on local community’. The author later concludes that SMEs display ‘very low levels of awareness regarding the ecological footprints of SMEs’, thus justifying the interpretation of the data in this way. See Andrea Revell, David Stokes and Hsin Chen, ‘Small Businesses and the Environment: Turning Over a New Leaf’ (2010) 19(5) Business Strategy and the environment 273, 284.
From this study, the major barriers preventing greater engagement in CSR amongst SMEs seem to be confined to three key areas. These barriers include a lack of resources, lack of awareness or understanding of CSR, and attitudinal barriers.

### 2.5.3.1 Barrier: Resources

A significant barrier for SMEs is resources. The typical SME experiences constraints of financial resources, a lack of trained personnel, and a short term perspective whereby liquidity is the primary consideration.\(^{213}\) It is clear that this precarious existence is at the forefront of Australian managers’ concerns, with a Sensis survey highlighting: lack of sales (22\%- 1\(^{st}\) ), economic climate (13\%, 2\(^{nd}\) ), cash flow/bad debts/profitability (12\% - 3\(^{rd}\) ), competition (6\%, equal 5\(^{th}\) ), cost overheads 3\% (equal 7\(^{th}\) ) as key points of concern.\(^{214}\)

Whilst the ‘closure rate’ appears quite large, these figures do not exclusively relate to insolvencies. The figures include retirements, sales of business, and business cessation without incurring losses.\(^{215}\) Ninety percent of the exits captured by the ABS are unrelated to formal insolvency and occur for other reasons such as the sale of the business.\(^{216}\) Between 76\% of start-up and 60\% of established businesses also closed without sustaining a loss.\(^{217}\) Whilst this provides valuable context, it is not exactly an endorsement of the success of SMEs. Even if a business is borderline profitable, the owner still has to survive on these profits to make the endeavour worth the risks involved. An argument could also be made that the reason for sale or cessation was somehow related to the business struggling, and the owner taking action before the business became insolvent.

---

214 Sensis, Sensis® Business Index - Small and Medium Enterprises (June 2012) 10.
The Australian Productivity Commission has suggested that only 40 percent of businesses that are listed for sale are successfully sold, meaning that the other 60 percent are closed involuntarily.\textsuperscript{218} The ABS do record the broad reasons for business closure, revealing only 23.6% are for retirement purposes, with 15.2% due to clear business failure, but a further 38.1% for ‘changing jobs / seeking other employment’ which could demonstrate closure of a business that was struggling.\textsuperscript{219} The statistics on business closure generally do not take into account businesses that never become operational. Given approximately 50% of firms close before becoming fully operational,\textsuperscript{220} this suggests an underestimate of business failures to counter the overestimates mentioned earlier. With these facts in mind, the exit rate for businesses employing 0 employees is 16.9%, 1-4 employees (9.5%), 5-19 (6.4%), 20-199 (4.6%), and 200+ (4.8%).\textsuperscript{221} The most recent figures still place small business exit rates at three times the rate of medium and large enterprises.\textsuperscript{222} Similarly, the survival rate of businesses in Australia between June 2007- June 2011 was 59.7% for those employing 10-19 employees, 75.8% for those employing 20-199, and 74.3% for those employing 200+.\textsuperscript{223} In total, SMEs account for 99.9% of business exits,\textsuperscript{224} which is unsurprising given SMEs account for a similar percentage of all active businesses, but nevertheless demonstrates their higher rates of failure when compared to larger enterprises. Clearly, this area is highly complicated making generalizations difficult. However, based upon the only statistics available, the failure rate for SMEs does appear quite high, with small businesses three times more likely to fail than medium and large businesses, which supports the argument that SMEs are far more marginal than their large counterparts.

\textsuperscript{221} Ibid 41.
\textsuperscript{223} Department of Industry Innovation, Science, Research and Tertiary Education, \textit{Australian Small Business: Key Statistics and Analysis} (2012) 42.
SMEs are also disproportionately affected by the whims of the business cycle. Therefore, during times of recession, SMEs ability to fund large investments is hampered. This problem is exacerbated by SMEs difficulties in obtaining loans, or external finance, in order to fund longer term investments. This is reflected in Australian figures, where the SME loan rejection rate is 12% in males and 15% in females, compared with 2% in the United States. Similarly, loan repayments have become increasingly expensive for Australian SMEs, whereby only 70% of post Global Financial Crisis cash rate decreases have been passed on to small business loans, compared with more than 100% of increases being passed on. This has culminated in the real lending rate for SMEs increasing from 4 to 7% at a time where all other interest rates are falling.

Compared with larger enterprises, SMEs clearly pay a premium for finance due to their short credit history, the information costs associated with lenders developing an adequate understanding of the heterogeneous SME market, and, where insufficient information is available, the greater risk attached to any loan. The collateral required for most business loans also typically disadvantages SME start-ups that are less likely to possess sufficient assets. To put these figures in context, 50% of start-ups are financed out of the owner’s savings, with only 25% needing to source external finance. It is less encouraging that 40% of micro and 45% of small businesses sought finance to solve liquidity problems, with 35% and 37% seeking finance to prevent business closure. Even though loan approval rates are quite high, there is clearly evidence of SMEs experiencing greater barriers in accessing finance, and the high number of SMEs accessing finance to stay afloat suggests that refusal could cause business failure. According to ABS statistics, the failure rate based on revenue is

226 Ibid 21.
approximately\textsuperscript{234} $0-50,000 (21\%),$50,000-$200,000 (13.5\%),$200k-$2,000,000 (7.8\%),$2,000,000+(4.5\%).\textsuperscript{235}

In addition (and connected) to financial resource constraints, there is also an obvious problem of a lack of human resources. Recent statistics suggest a third of business owners work 49 or more hours a week with another third only working part-time,\textsuperscript{236} suggesting additional commitments outside of the business.\textsuperscript{237} An Australian study identified a number of issues relevant to time constraints and implementing environmental improvements including:\textsuperscript{238}

- A lack of staff directly responsible for environmental issues;
- An inability or unwillingness to employ skilled consultants to design environmental solutions;
- An inability to manage additional programs within the business; and
- Greater management requirements – this will be a particularly significant barrier where the manager has already assumed a heavy workload.

Whilst this environmental study is only an example of these time constraints as a barrier to implementing CSR initiatives, it is plausible that they also affect CSR initiatives. For instance, in the area of philanthropy, managers have expressed a feeling of being ‘overwhelmed by the volume of requests’ which can be as many as 3-4 a day and requiring further research to evaluate the worthiness of the organisation.\textsuperscript{239} In the absence of more staff and with an already substantial workload, it is clear that having sufficient time to implement CSR initiatives is an issue for many SMEs.

\textsuperscript{234} Note they are close approximations based off of a graph. The figures were not written anywhere, just plotted on a graph, hence the need to visually guess the figures, albeit the numbers involved were quite small making the approximations quite accurate.
\textsuperscript{237} For instance, there is a substantial difference in Females (59.6\%) versus males (20.3\%) operating part time businesses, suggesting other commitments such as family.
2.5.3.2 Barrier: Lack of Awareness

The ‘lack of awareness’ barrier encompasses a lack of expertise and information. Fiona Tilley has previously observed ‘[SMEs] indicated a willingness to become more environmentally responsible, but they did not possess the knowledge, skills, or solutions necessary to allow them to fully integrate the environment into their business practices.’

It could also be argued that a lack of expertise is a resource constraint, as this is effectively a lack of appropriately trained or educated staff. John Walsh and Gerry White expressed the difficulty SMEs experience in obtaining the requisite expertise, noting that small businesses cannot afford these services.

This claim is supported by the suggestion that the vast majority of SME managers have no environmental management training whatsoever. This lack of awareness is highlighted in the literature, whereby a UK study found that 91% of SMEs did not believe their activities were harmful to the environment. Upon further questioning, 46% of SMEs acknowledged they did undertake activities that are harmful to the environment.

There is evidence that SMEs believe CSR to be the responsibility of large companies, and that they could not meaningfully make a difference. It also appears that the larger the company, the more likely management was to be aware of its environmental impacts. Beyond this, there is some evidence that SME owner-managers do not fully appreciate the potential benefits of engaging in CSR, or how it can profit their business. Additionally, many are not even aware of the initiatives available to help promote CSR. This uncertainty and lack of awareness of benefits has been noted elsewhere, with the authors suggesting this

244 Ibid.
presented an opportunity to promote CSR within these otherwise malleable SMEs.\textsuperscript{249} This was seen in another study, where almost none of the interviewees even understood the concept of CSR, but were more enthusiastic after discussing with the authors how it might be applicable to their business.\textsuperscript{250} This can be contrasted with the high awareness of the importance of CSR, with a survey of 1000 executives indicating 93\% believed sustainability would be ‘important or very important to the future success of their business.’\textsuperscript{251}

Arguably, SMEs’ understanding of their legal obligations could be used as a proxy to gauge their capacity for understanding and implementing CSR practices. If SMEs do not understand how to comply with regulations applicable to them, even though they are mandatory and significant guidance is provided from regulators through guides and inspections, then it would seem likely that this lack of awareness would extend to CSR which involves exceeding legal requirements. Christopher Wilson, Ian Williams and Simon Kemp provide a detailed and disturbing picture on SME compliance with environmental legislation in the United Kingdom:

> In general, SMEs had poor awareness of compliance issues; non-compliance; was only really recognized and acknowledged if identified by a regulator and only regarded as serious if prosecuted. Regulation of the environment is clearly only effective if complied with; understanding compliance levels can help measure the link between legislation and environmental protection.\textsuperscript{252} An unpublished Australian Sensis survey, commissioned by the Productivity Commission clearly demonstrates there is greater awareness of regulatory requirements as firm size increases.\textsuperscript{253} Whilst a much smaller survey size (248 as opposed to the 1800 surveyed in the

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{249} Michael Peters and Kerry Turner, ‘SME Environmental Attitudes and Participation in Local‐Scale Voluntary Initiatives: Some Practical Applications’ (2004) 47(3) \textit{Journal of Environmental Planning and Management} 449, 461.
  \item \textsuperscript{250} Keri Chiveralls et al, ‘Constructing Corporate Social Responsibility: Encouraging CSR through Legislation and Regulation’ (Paper Presented at COBRA RICS Conference, Manchester September 12-13 2012) 4-5. Note a low level of understanding of CSR was also noted in Emma Bevan and Ping Yung, ‘Implementation of Corporate Social Responsibility in Australian Construction SMEs’ (2015) \textit{Engineering, Construction and Architectural Management} 22(3) 295, 301.
  \item \textsuperscript{251} Accenture / UN Global Compact, \textit{The UN Global Compact-Accenture CEO Study on Sustainability 2013: Architects of a Better World} (2013) 21.
  \item \textsuperscript{252} Christopher Wilson, Ian Williams and Simon Kemp, ‘An Evaluation of the Impact and Effectiveness of Environmental Legislation in Small and Medium‐Sized Enterprises: Experiences from the UK’ (2012) 21(3) \textit{Business Strategy and the Environment} 141, 141.
\end{itemize}
\end{footnotesize}
Sensis study), Claire Mayhew’s earlier work suggests that the Sensis self-assessments may be overly generous. The following table summarises her work.\[^{254}\]

**Table 10: Knowledge of Regulatory Requirements in Select Industries**

<table>
<thead>
<tr>
<th></th>
<th>No Knowledge</th>
<th>Limited knowledge</th>
<th>General overview</th>
<th>Some specific knowledge</th>
<th>Very good</th>
<th>No response</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Garage (n=73)</strong></td>
<td>5.5%</td>
<td>43.8%</td>
<td>37%</td>
<td>10.9</td>
<td>2.7</td>
<td>0</td>
</tr>
<tr>
<td><strong>Café (n=70)</strong></td>
<td>71.4%</td>
<td>17.1%</td>
<td>7.1%</td>
<td>2.9</td>
<td>4.3</td>
<td>0</td>
</tr>
<tr>
<td><strong>Newsagent (n=70)</strong></td>
<td>77.1%</td>
<td>8.6%</td>
<td>10%</td>
<td>1.4</td>
<td>0</td>
<td>2.9</td>
</tr>
<tr>
<td><strong>Printing n=35</strong></td>
<td>54.3%</td>
<td>20%</td>
<td>17.1%</td>
<td>5.7</td>
<td>2.9</td>
<td>0</td>
</tr>
</tbody>
</table>


The table highlights the disparate levels of awareness between Australian industries with only 5.5% of garage auto-repairers citing ‘no knowledge’ of occupational health and safety laws compared with the other 3 industries. Research has yielded similar findings in different jurisdictions. For instance, a study noted that 63% of SME respondents could not identify a single piece of health and safety legislation which was applicable to them.\[^{255}\] Similarly, a survey conducted in the United Kingdom ascertaining manual handling practices found 38% of businesses (with 5-50 employees) had no knowledge of the OH&S legislation and 46% had not performed the required risk assessment.\[^{256}\]


35% of respondents in a UK survey felt it was impossible for SMEs to fully comply with their legal obligations.\textsuperscript{257}

Safe Work Australia conducted a literature review on this subject, which culminated in the organisation concluding:

Small businesses lack the knowledge and resources to understand how regulations apply to their business. They need support and assistance to enable them to understand what they need to do in order to comply.\textsuperscript{258}

These findings are unsurprising given a South Australian study notes that SMEs are less likely to have basic information on regulatory requirements, engage outside expertise, or have an internal representative dedicated to compliance.\textsuperscript{259} There is a significant hurdle to climb with regards to SME compliance and enforcement of standards. This evidence supports the findings of Case Study 2 in Chapter 6.3, which noted that most OH&S convictions are the result of organisational incompetence and a general lack of awareness of how to comply with legal obligations.

A lack of information is also linked to the barrier of awareness. Thus, even where there are clearly observable benefits from implementing a particular CSR initiative, many SMEs will fail to exploit the opportunity through ignorance.\textsuperscript{260} This lack of awareness is a problem as it allows for misconceptions about CSR. For instance, some literature suggests that those SMEs who do not implement CSR initiatives perceive the barriers to be greater, when compared to SMEs who actually implement similar initiatives.\textsuperscript{261} This is frustrating, as it seems that many of the barriers experienced by SMEs are a result of misunderstanding or overstatement, which


is explained in detail by Manuel Seidel et al.\textsuperscript{262} There seems to be a common perception that CSR is not profitable,\textsuperscript{263} despite the evidence to the contrary presented in this chapter. Clearly, this acts as a barrier to more SMEs engaging in CSR.

\textbf{2.5.3.3 Barrier: Attitude}

Another barrier warranting attention is attitude. Whilst resources and awareness are significant barriers, even where they do not exist, there are still SME managers who continue to be unmoved. The overlap of these barriers is again evident, whereby it is possible that a manager’s attitude is motivated by a lack of information or awareness. Nevertheless, under many circumstances, attitudinal barriers can be viewed independently from a lack of awareness. It should be stated from the outset that attitude does not appear to be as severe a barrier as a lack of resources and awareness. This is in part confirmed by Case Study 2 in Chapter 6.3 which found the predominant cause of workplace safety prosecutions were due to lack of awareness.

As previously mentioned in the chapter, many companies are engaging in some form of CSR activity,\textsuperscript{264} which suggests their mind is at least open to the concept of CSR. Outside of this group, however, sit another group who underestimate their impacts on the environment and community. Surveys have suggested many SMEs do not believe they have an impact on the environment. In one UK study, 43\% of SMEs managers surveyed did not believe their operations had a negative impact on the environment, including 40\% of those SMEs in the high impact waste disposal industries.\textsuperscript{265} However, other studies have produced more encouraging results. For instance, one UK study found that environmental issues were a high priority in many SMEs.\textsuperscript{266} Equally, a study conducted in New Zealand found that 84\% of

SMEs surveyed considered their operation’s impact on the environment. However, it should be noted that the survey was conducted exclusively in the manufacturing industry, a high impact industry, and should therefore be expected to yield higher levels of environmental awareness. This is evident from Australian Sensis data relating to Occupational Health and Safety, which suggested 41% of manufacturing and 48% of construction SMEs had sought information about safety issues, compared with an average of 31% across all SMEs. There is also the issue that despite the higher incidence rates of injury amongst SMEs mentioned in Chapter 2.4, due to the small size of SMEs and their high failure rate, there may have never been a serious workplace injury at many SMEs. Therefore, SME managers may wrongly infer from this that their work practices are safe.

Given the wide ranging nature of the barriers SMEs experience which prevent them from adopting CSR, it seems that there will be a need to consider a suite of reforms. Whilst there does appear to be some similarity in the barriers faced by both SMEs and large enterprises, these barriers seem to be more pronounced for SMEs, and certainly differ from larger enterprises, which notes barriers such as failure by management to support the measures, lack of support from shareholders, and a general difficulty in implementing CSR across a large complex organisation. Possible reforms will be addressed in Chapter 7. Ultimately, these reforms must be targeted at alleviating cost concerns, changing the attitudes of SME managers, and providing sufficient information related to the benefits of CSR.

2.5.4 Drivers of CSR

In considering how to more actively promote CSR to SMEs, it is essential to analyse what motivates or ‘drives’ managers to implement some form of CSR. Drivers are related to the benefits of CSR. They are factors which induce change, for instance pressure from a supplier, customer, employee, etc. The literature suggests the motivations for engaging in CSR

---

270 For instance, financial resources are still the highest barrier mentioned by 51% of respondents. See: Accenture / UN Global Compact, The UN Global Compact-Accenture CEO Study on Sustainability 2013: Architects of a Better World (2013) 35.
271 Ibid.
This is supported by Australian literature in the area of philanthropy which contends:

Our data suggests that SMEs should be viewed as a distinctive category of business since many of the motives identified in the wider corporate giving literature were not evidenced by our data … Most notable in respect of motives was the strong desire on the part of SMEs to contribute to local causes and to be seen to be active in their local community. There was a genuine enthusiasm for the notion of corporate social responsibility which was viewed as a duty. It is important to stress that this was not begrudged, but rather an activity that was willingly accepted.

The key drivers for SMEs are legislation and enforcement, pressure groups (most notably customers through supply chain pressure), profits, and attitude.

### 2.5.4.1 Driver: Regulation

Regulation is a significant driver of change. Various arguments suggest regulation is preferred over voluntary mechanisms in the context of SMEs. One such argument suggests that SMEs will not move beyond compliance behaviour, due to ‘market-based decision making’. This argument attests that due to SMEs precarious financial situation, they will not pursue CSR initiatives that are perceived to be ‘added extras’, where these initiatives will affect the bottom line of the business.

Other drivers include pressure from existing customers, suppliers, and shareholders, pressure to attract public sector contracts, encouragement by trade associations, government regulation, environmental taxes and the ability to attract and retain staff. It is argued by many SME owner managers that mandatory regulation imposes a ‘level playing field’, without which many SME owner managers would be unwilling to make the changes

---


275 Ibid.


voluntarily due to a loss of competitiveness.\textsuperscript{278} In another study, when asked what the government could do to promote CSR, the most commonly cited response was to promote a level playing field.\textsuperscript{279} In addition to the legislation itself, the enforcement activities that accompany the legislation also help to improve SME operations. SMEs frequently wait to be told how to comply by regulators and inspectors,\textsuperscript{280} and hold the belief that non-compliance will result in their business being shut down.\textsuperscript{281} From a larger business perspective, there are greater levels of proactive behaviour with larger businesses outnumbering SMEs in voluntary initiatives\textsuperscript{282} and more readily using regulators’ guidance notes and other publications.\textsuperscript{283} It has also been suggested that the deterrence effect of enforcement tends to be lower for larger enterprises as they already exceed their obligations in order to protect their social license.\textsuperscript{284} This follows logically as larger enterprises have greater resources and are likely to have personnel devoted to compliance issues.

Given regulation is being noted as a driver of CSR, it is important to consider the argument that the current legal system actually restrains CSR. This will be discussed in greater detail in Chapter 5.2.1 with respect to directors’ duties. From a legal perspective, Helen Andersen argues many of the agency issues do not apply to small businesses and that the best interests of the company (if the small business is a company) will also be the best interests of management.\textsuperscript{285} Even Milton Friedman acknowledged the ability of an ‘individual proprietor’ to engage in CSR in his famous article in the New York Times, noting that ‘he is spending his own money, not someone else's. If he wishes to spend his money on such purposes, that is

\begin{footnotesize}
\begin{enumerate}
\item See for instance: Terry Davies and Jan Mazurek, Industry Incentives for Environmental Improvement: Evaluation of U.S Federal Initiatives (1996) Combined Executive Summary for Three Reports Submitted to the IDEA 21 Work Group of the Global Environmental Management Initiative, 16, which noted the 60/40 split in favour of larger businesses in the US environmental 33/ 50 program (check details e.g. US/environmental).
\end{enumerate}
\end{footnotesize}
his right, and I cannot see that there is any objection to his doing so.' These altruistic motivations can of course be contrasted against the position of large corporations where the motivation for CSR must involve a profit element. Thus, it should be restated that regulation is an important driver of responsible behaviour, and should not be regarded as a barrier in the SME context.

In addition to more formal forms of regulation, supply chain pressure is an integral driver. An SME is far more likely to succumb to supply chain pressure than large corporations. This is due to the fact that they cannot afford to lose customers, given their marginal existence. There is also the potential that a larger corporation is a customer that accounts for the majority of the SMEs sales. Under these circumstances, the pressure experienced by SMEs clearly serves as an important driver for change. An important contrast emerges on this point within large corporations. Large corporations are more visible, and therefore subject to more scrutiny from the public, which creates ‘institutional pressures’. This is evident in a survey of executives which list their most important stakeholders. The study unsurprisingly found that consumers were the most important group (mentioned by 64% of respondents), with local communities lagging well behind at 28%, and other pressure groups generally not applicable to SMEs have an impact as well with investors (23%), media (19%) and NGOs 15%. SMEs are not subject to this type of pressure through the risk of reputational damage, as they are far less visible to the public, and do not have a ‘brand’ or ‘image’ to protect.

Whilst it could be argued that SMEs face greater pressure through their supply chain, it is on an ad-hoc basis. Supply chain pressure is only evident if the supply chain actually demands it, and therefore will not apply to every SME. Institutional pressures that corporations experience, whilst perhaps less severe, will be felt universally across large corporations as they have public profiles. It should be noted that supply chain management, whilst ad-hoc, is an increasing trend in Australia. Iain Smale, the Managing Director of Pangolin Associates, a

sustainability and carbon management consultancy firm suggest the motivations for moving towards more environmentally friendly practices is ’50-50’. Some SMEs are engaging in CSR ‘because they want to be ethical and save the planet … but more recently there is a significant number of SMEs getting caught up in supply chain pressure.’ He suggested SMEs were being asked ‘significant questions around their environmental credentials in tender documents.’ This is confirmed by Julian Perry, Chief Operating Officer of FB Rice (a law firm). He suggested many multinational and government clients were demanding information about ‘environmental performance’. This extends to service providers, such as lawyers, who are perhaps not even in an industry that greatly impacts OH&S and the environment, but are nevertheless being asked to demonstrate their commitment.

A concrete example of supply chain pressure is Ford Motor Company (Australia), which requires all of its suppliers to be ISO 14001 certified and has provided assistance to its supply chain to achieve certification. ANZ Bank has also recently announced a policy of offering free financial advice for customers with less than $50,000 in super, and are paying their female employees an additional $500 a year in super to help address the gender wage (and super) gap. In terms of where supply chain management might be headed, IKEA is an early adopter and industry leader in the field. IKEA first adopted a code of conduct to be implemented across its supply chain in 2000. Whilst originally an imposition on suppliers, IKEA has moved towards forming partnerships with its suppliers, and helping them become more efficient and CSR oriented. It has developed a ‘staircase model’, with 4 levels relating to the working conditions and sources of its wood products. IKEA will not purchase from a supplier that does not meet level 1, which forbids child, forced, or bonded workers, and timber from natural forests, whilst requiring “forest tracing system” documents. Level 4 primarily involves adopting a third party verification system such as

---

292 Ibid.
293 Ibid.
296 Unauthored, ‘Fending the Gender Wage Gap’ Australian Financial Review (Melbourne), Monday 3rd August 2015, 37.
298 Ibid 78.
299 Ibid 79-80.
300 Ibid.
ISO 14001. Before the first delivery is accepted, IKEA conducts an onsite inspection of the supplier using its own auditors to verify compliance with IKEA’s code.

Whilst very few other corporations are devoting this degree of effort to their supply chain, and there are claims that the demands being made are disingenuous, given the purchasers unwillingness to verify or track the suppliers claims, there are nevertheless large numbers (57%) of firms now imposing some form of CSR obligation on its supply chain. This suggests that supply chain management of larger corporations is increasingly going to be a driver of SME CSR behaviour. Supply chain pressure is addressed in more detail in Chapter 5.3, where public procurement is considered as part of the system of regulating CSR. In Chapter 7.1, public procurement changes that increase supply chain pressure are discussed as a noteworthy reform that could improve SMEs’ engagement in CSR.

2.5.4.2 Driver: Profits (The Business Case)

Profits are a substantial motivator in engaging in CSR. The notion that CSR can yield financial benefits is often referred to as the business case for CSR within the field. The inquiry into CSR in SMEs in Victoria received many examples to this effect. Because local community forums in rural areas were held, respondents held a view that they were ‘capacity’ building in their local community, and that this would benefit their business through high quality employees. Even where this profit motive is not directly admitted, it is present in the way SMEs define their responsibilities. For instance, when asked to define and rate their responsibilities, SME managers frequently rate their responsibilities to customers, and employees as their most important responsibilities.

301 Ibid
302 Ibid, 80.
304 Victoria, Inquiry on the Involvement of Small and Medium Size Business in Corporate Social Responsibility, Family and Community Development Committee, Parliamentary Paper 125 (2008) 57; This idea of capacity building has been mentioned elsewhere (although note it was only raised by one respondent in a small-scale study) see: Joseph Thornton and John Byrd, ‘Social Responsibility and the Small Business’ (2013) 19(1) Academy of Entrepreneurship Journal 41, 51.
Much of the research addressed in this section evidences a profit motive. The supply chain pressure discussed above reflects the need to maintain a customer base and therefore an SMEs’ profits. The benefits of CSR advanced for SMEs were often related to profits such as an enhanced reputation, increased sales, etc. Unsurprisingly, the types of CSR typically engaged in also tended to reflect a profit motive. They frequently related to cost saving measures, such as energy efficiency and waste reduction, or donating to local sporting clubs, thus building their reputation. A literature review of why SMEs engage in environmental issues revealed four archetypes of firms, including ‘environment-driven’, ‘Advantage-driven’, ‘Compliance-driven’, and ‘Profit-driven’. Similarly, CSR amongst SMEs has been studied from a marketing perspective, noting the different approaches of ‘traditional’, ‘CSR perspective’, and ‘socio’ marketing, as well as for altruistic reasons. Implicit in 3 of these 4 archetypes in both studies is a profit motive and the desire to engage in environmentally friendly behaviour (or CSR generally) only where it is profitable to do so. Whether the profit motive is the strongest driver of CSR is difficult to ascertain, but even where other drivers are identified, the profit motive is noted, almost without exception. In a survey which asked respondents to rate the importance of the different aspects of CSR, SMEs ranked their business responsibilities as twice as important as community, and three times as important as environmental responsibilities. In one study, many of the respondents did not even consider their behaviours to be responsible or ethical, but simply good business.

All of this suggests that the profit motive or ‘business case’ for CSR within SMEs is a strong driver. A German study directly compares the motivations of management across business size noting a stronger profit motive amongst smaller businesses with 69.0% of managers of businesses employing 0-19 employees noting ‘increasing sales’ as a key motivator compared

---

with 40.6% (100-499) and 53.7% (500+).\textsuperscript{313} Interestingly, in the same study ‘ethical reasons’ as a motivator increased with size with 64.3% noting the motivator from firms employing 0-19 employees, increasing to 71.4% (100-499), and 89.0% (500+).\textsuperscript{314} Thus, while SMEs feel less restricted in a legal sense by the profit motive as noted in Chapter 2.5.4.3, it seems that the practical realities of an SME, such as their marginal existence, intrudes making it more difficult to practice CSR altruistically.

2.5.4.3 Driver: Attitude

While a negative attitude can act as a barrier to CSR, so to can a positive attitude drive CSR within SMEs. It is widely accepted that SMEs are predominantly ‘owner managed’, allowing for the personal values of management to have greater influence on the business.\textsuperscript{315} Specifically, the importance of the owner manager is noted within much of the SME CSR literature.\textsuperscript{316} In a study conducted by Heledd Jenkins, every single SME surveyed that was engaging in some form of CSR, the owner-manager was in charge of the businesses CSR policies, and believed that is was their personal values that drove others in the firm to endorse the culture of CSR.\textsuperscript{317} Jenkins noted that whilst CSR activities in larger enterprises are generally pushed at the middle management level (even if directed by higher level management), in SMEs it is often the owner-manager who drives these business decisions.\textsuperscript{318} Whilst large corporate boards are held to account by their shareholders, and may find it difficult to implement CSR through multiple levels of management, an SME owner generally does not experience these impediments. In a study of CSR motivations, the ‘employers

\begin{footnotes}
\item[314] Ibid.
\item[318] Ibid 26–28.
\end{footnotes}
personal interests’ as a driver seem to decrease with firm size with 67.9% managers of firms with 0-19 employees noting this driver, 20-99 (51.4%), 500 (40.0%) 319.

An interesting observation made by Hermann Simon is the substantially lower ‘energy’ wasted on ‘fighting internal resistance’, calculating it in the 20-30% range of SMEs and 50-80% for larger businesses. 320 Additionally, he notes the superior position SMEs are in regarding performance. He notes that performance in SMEs with a good culture are guided by a ‘team’s value system’ rather than formal performance schemes, and the fact that underperformers cannot hide due to the firm’s size. 321 This points to the ability for an owner-manager to be able to adopt a CSR policy or mindset, and have this quickly filter through the business with minimal resistance. Other studies confirm the importance of the SME owners’ involvement in CSR. 322 One article noted SME owners ‘follow their passions.’ The personal motivation for starting the business is likely to dictate their attitudes towards CSR with some more interested in making money, whilst others are interested in having a positive impact on their community. 323 Marc Jones has argued that many people start small businesses for non-profit making reasons, and these people can ‘imprint their personal values on their firms, values …’ 324 Brian Burton and Michael Goldsby have speculated that many SME owner-managers feel less constrained by pursuing exclusively economic objectives than their larger counterparts, due to the closely held (or even unincorporated) nature of SMEs. 325

As a final point, it is clear that altruism is a substantial part of an attitude that drives the implementation of CSR. For instance, in a survey about small business philanthropy, a ‘genuine concern for [the] cause’ was cited as the most important motivation, even above

commercial reasons.\textsuperscript{326} Even where there are commercial benefits to engaging in CSR, altruistic reasons such as ‘it is the right thing to do’, and to ‘provide a better future for people’ are often advanced, suggesting that altruism is important, even where there might be a commercial benefit.\textsuperscript{327} Studies have found that an owner-manager’s personal beliefs have more of an impact on the manner by which an SME is run compared to the legal system.\textsuperscript{328} This is a positive finding, as it suggests that SMEs do not look to the law for moral guidance, and in certain circumstances would exceed legal expectations. This same study posed a number of ethical questions, which yielded high levels of agreement for ethical statements, and low levels of agreement for unethical statements.\textsuperscript{329}

It is important to take two things away from this section. First, there are a multitude of reasons why SMEs might engage in CSR. Second, the profit motive is unsurprisingly a strong driver. These motivations are considered when proposing reforms in Chapter 7. Obviously, profit making will have to be a central theme of the proposed reforms, but what this section does is demonstrate that not all firms are motivated by self-interest, as altruism was also a common theme in the literature, so other options will have to be considered to address the full SME population.

\textbf{2.6 Conclusion}

This chapter supports the theoretical conceptions of the corporation and CSR outlined in Chapter 3. Clearly to understand the CSR debate, a basic understanding of what CSR actually entails, as well as some of the limitations and criticisms of the definition is required. The tiered definition and motivations for CSR support the contentions in Chapter 3 that irrespective of one’s opinion on the purpose of the corporate form, there is room for CSR. Thus, the debate on CSR has largely transcended a ‘for and against’ debate, and moved into a

\textsuperscript{326} Adrian Sargeant and Helga Stephenson, ‘Corporate Giving: Targeting the Likely Donor’ (1997) 2(1) \textit{Journal of Nonprofit and Voluntary Sector Marketing} 64, 68.


phase of arguing how far a business can push the boundaries. Additionally, this thesis is primarily concerned with CSR within SMEs, which necessitated a definition of an SME.

The empirical evidence outlined in this chapter is critical in the context of this thesis. First, it establishes that SMEs are a critical aspect of any consideration of CSR, thus addressing Research Question 1. SMEs’ contributions, both positive and negative, are a critical aspect of any ‘debate’ about CSR, and should therefore feature prominently in any discussion about how to improve CSR.

Secondly, the literature highlights the differences between large companies and SMEs. The manner by which they engage in CSR, the barriers experienced, and drivers that motivate them differ, suggesting SMEs need to be treated differently in any regulatory system that promotes CSR. Therefore, this in part addresses Research Question 2.

Thirdly, this chapter begins to uncover the type of reforms that will encourage CSR. This addresses Research Question 3. The problem is inherently complex. There is no universally agreed definition of CSR. Additionally, SMEs are heterogeneous with respect to why they engage in CSR, and why they do not. Additionally, it will be noted in the following chapter that there are many disagreements on the purpose of the corporation (which could be used as a proxy for businesses in general, thus including SMEs). Reform that targets over one million businesses which vary considerably will be exceedingly difficult. They are simply too diverse to encapsulate in a single rule (or even multiple rules). Fortunately, the empirical evidence outlined in this chapter demonstrates that there are SME managers who engage in some form of CSR, with others willing to contribute. Thus, the reforms proposed in Chapter 7 will be informed by the insights outlined in this chapter. The reforms must mitigate SMEs’ general lack of awareness, lack of resources, and, at times, attitudes that might dissuade them from engaging in CSR. Additionally, it seems that profits are a strong motivator for SMEs to engage in CSR. Thus, these are critical areas that must be addressed by the reforms proposed in Chapter 7.

The following chapter will now discuss the various theories of the corporate form, noting how they might relate to the promotion of CSR within SMEs. A brief outline of the history of the corporation and of the CSR movement is also included to add a practical element to those debates. This will advance an understanding of the purpose of corporations, how this might

---

330 Although note that the profit motive is a strong motivator for both SMEs and large enterprises, thus there is some common ground in the area of drivers of CSR.
apply to SMEs and their engagement in CSR, and thus further critiques the differences between large enterprises and SMEs, as well as establishing a theoretical foundation for the reforms presented in Chapter 7.
Chapter 3: Theories of the Corporate Form

3.1 Introduction

The previous chapter discussed SMEs’ possible contributions to CSR. The chapter discussed the substantial contributions SMEs make to society, both positive and negative. It also outlined the differences between SMEs and larger enterprises and how this might affect their engagement in CSR. Having mounted an argument for the promotion of CSR amongst SMEs on the basis of their contributions to society, it is necessary to provide a theoretical justification for doing so. Due to the relevant infancy of the CSR movement amongst SMEs, there are few theories which specifically address CSR from a SMEs’ perspective. Thus, there is a need to review the theories of larger corporations, and then to consider what relevance they have to SMEs engaging in CSR.

Before embarking upon the task of reviewing these theoretical conceptions of the corporation, a discussion of the history of the corporation and the CSR movement is required. This assists any theoretical discussion about the purpose of the corporation, noting that the purpose of the corporation has evolved over time to meet the needs of society and has not always served private functions exclusively. Thus, this chapter will look at the history of the corporation, predominantly from the late 18th Century to present day, as well as the history of the CSR ‘debate’ itself. As will be noted, the corporation started out as a special concession, granted in order to promote public interests. If the primary purpose of corporations was to further a social purpose, which then slowly morphed into the primary profit making and investment vehicle it is today, then it is possible it could revert back to serving public functions in some form, should the needs of society warrant the change. Given the challenges facing contemporary society, such as climate change, and the effects of the Global Financial Crisis (GFC), it is arguable the needs of society have changed dramatically enough to warrant a rethink of how corporations and businesses operate. The history of the

331 It is of course unlikely that such a drastic change would occur, whereby corporations could only be incorporated on the basis of furthering a social purpose. However, less drastic changes could be implemented that imposed greater social responsibilities than are currently the case.
corporation demonstrates opposing viewpoints on the proper role of corporations. It highlights that whilst arguments over the proper role of large corporations have raged for close to a century, the SME debate is a mere decade or two old. Ultimately, this chapter will establish a historical basis to refute the often cited argument that practising CSR is not the purpose of companies or businesses in general.

Drawing on this historical foundation, this chapter will then traverse corporate law theories pertinent to CSR, namely; shareholder primacy, nexus of contracts, stakeholder theory, and social capital theory. It focuses on three key issues. First, what does the theory entail? Secondly, how does the theory stand in the academic and wider community? What are its strengths and weaknesses? Third, how does the theory relate to CSR in the context of SMEs? In embarking on this chapter, the various purposes and justifications for corporations’ (and indeed businesses generally) existence will be explored. This is essential in the overall development of CSR solutions and policies. It would be an example of misguided regulatory policy to instruct an SME to go out and engage in CSR, if it is not morally obligated to do so (or in direct contravention of their purpose). This chapter argues that despite the diverse conceptions of the corporation and the firm, they all advocate, or at least permit CSR to be practised in certain circumstances. Thus, the question becomes not whether CSR is acceptable or desirable, but rather which group should win out when there is a conflict between shareholders and other stakeholders.

As a final point, it has been noted that many theories discussed below are in fact theories that relate to the responsibilities of corporations and not non-corporate SMEs. As noted in Chapter 2.3, only a third of businesses are corporations, which means these theories ultimately ignore two thirds of businesses which are unincorporated.332 While this thesis advances a need to promote CSR in SMEs, it will be argued that these theories about large corporations have some explanatory value for SMEs. In particular, they provide relevant theory about why they should engage in CSR. As noted in Chapter 2.5.4.1, the promotion of CSR within SMEs cannot be entirely separated from large corporations as they will ultimately influence SMEs through their supply chains.333 Whilst it is frequently asserted throughout this thesis that SMEs are different from large corporations and should therefore be treated differently, some of the arguments for promoting CSR within SMEs will be derived

from similar arguments advanced toward large enterprises. Additionally, it is impossible to understand how different SMEs are from larger corporations without a proper analysis of large corporations as well. Thus, these corporate theories are discussed to consider what they might have to offer SMEs. There is a consistent theme throughout all of these theories whereby businesses are run to make a profit and provide an explanation of how the corporate form achieves this aim. This pursuit of profit is of course consistent with any theory of business, and in this respect, has explanatory value for SMEs. However, this chapter will ultimately conclude that no existing theory fully accounts for CSR within SMEs, but nevertheless they inform the profit maximising theory which is proposed in this chapter (i.e. virtually all the theories advance CSR as a profitable exercise), and therefore warrant discussion.

3.2 Tracing the History of the Corporation and Corporate Social Responsibility (CSR)

3.2.1 History of the Corporation

In order to understand the role of CSR in contemporary business, there is a need to understand the purposes corporations have historically served, and how they have evolved over time. This historical analysis adds a practical layer to the debates about the relevance of CSR and allows for a more informed opinion about what the purpose of corporations, and business in general, ought to be. This approach is evident in James Worthy’s suggestion about the importance of studying business and management history: ‘What is needed is not preoccupation with the past but a better understanding of how the present evolved out of the past and how the future is in process of evolving out of the present …’

3.2.1.1 Modern History

Whilst the corporate form can be traced back to the Roman Empire, contemporary corporations evolved from corporations formed in the 16th century incorporated primarily to

---

promote trade amongst the British colonies. An example of this is the well-known East India Trading Company, formed in 1599. Far removed from the relative freedom of the 21st century corporation, a corporation was granted a ‘charter’ only where it was in the interest of the State to do so. Throughout the 17th Century, greater numbers of corporations emerged, some illegally, with shares distributed through an underground black market. By 1720, The British Government became so concerned at the power of corporations, as well as increasing levels of illegal activity, that it nationalised many of the charters and required owners to participate in management, effectively banning the speculative trading of shares. This was set against the backdrop of perhaps the first major ‘corporate scandal’ in human history, the ‘South Sea Bubble’. A company, established in 1711, engaged in dubious financing practices, assisted by the bribing of public officials, and manipulated public information. Originally intended as a company trading in slaves, the South Seas Company business model operated similar to a Ponzi scheme where the company allowed government annuities to be exchanged for South Seas Shares, paid dividends from additional share offerings, and offered interest free loans to purchasers of shares. Thus, South Seas’ value was highly speculative and not based on any measure of the company’s profitability. In less than a year, the share price of South Seas had risen from 137 to 1000 percent, but was inherently unstable such as a half day where the price dropped from 890 to 640 percent.

The initial success of the company sparked speculation in similar enterprises, which resulted in high price fluctuations and demands from the South Seas board that this speculation be

340 Ibid.
343 Ronald Formoy, The Historical Foundations of Modern Company Law (Sweet and Maxwell, 1923) 26.
345 Ibid.
346 Ronald Formoy, The Historical Foundations of Modern Company Law (Sweet and Maxwell, 1923) 27.
controlled amidst concerns about their position. These complaints led to passing of The Bubble Act which ironically was the catalyst for the South Seas Bubble.

Under British law the grant of a corporate charter was ‘a special, limited concession of the sovereign established to achieve a specific political objective.’ The Bubble Act was later assumed by the colonies in 1741. The ensuing suspicion of corporations provoked a change in policy throughout the remainder of the 18th Century, which led to charters being granted only for public purposes such as building canals, waterworks, railways, etc. Much of the United States followed this pattern of using corporations to fund and build public works throughout the 18th century. For instance, in Massachusetts, the majority of charters granted in the late 18th century were to incorporate local governments, religious associations, educational institutions, and other non-for-profit organisations. Thus, the United States quickly followed the English example requiring corporations to serve a public function.

It was only in 1825 that these restrictions were abolished, with the Joint Stock Companies Act 1844 (UK) later providing for a simple registration process of incorporation for any purpose the owners pleased. Despite this emerging flexibility, every state in the United States (until 1837) limited corporate purposes and also imposed restrictions on the life of a corporation with a maximum of 50 years in existence. Additionally, many states prohibited trade across state borders. Whilst the advantages of the corporate form were becoming more apparent,

---

348 Ibid.
354 Ibid 55.
356 Ralph Nader, Mark Green and Joel Seligmen, Taming the Giant Corporation (Norton & Company, 5th ed, 1976), 37.
questions about big business’s effect on social power remained, thereby justifying these restrictions.\textsuperscript{357}

Even with the increasing acceptance of corporations, the acrimony that had followed corporations did not end. Several United States Presidents questioned the power entrusted to corporations during this period. In 1864, Abraham Lincoln lamented that ‘corporations have been enthroned’, suggesting ‘an era of corruption in high places will follow … until wealth is aggregated in a few hands … and the republic is destroyed.’\textsuperscript{358} Three of Lincoln’s immediate successors, Theodore Roosevelt, William Taft, and Woodrow Wilson all proposed the need for federal chartering of corporations.\textsuperscript{359} There is a long line of United States presidents who publicly expressed reservations about the impact of corporations including; Thomas Jefferson, Andrew Jackson, Rutherford Hayes, Grover Cleveland, Franklin Roosevelt, and Dwight Eisenhower.\textsuperscript{360} A major source of unrest was the monopoly rights granted to only a few, with the corporation being described as an ‘outmoded instrument of feudal privilege’.\textsuperscript{361} Thus, much of the debate surrounded the granting of corporate privileges to all Americans, rather than abolishing the corporate form altogether.\textsuperscript{362} The first anti-trust laws were introduced in 1890 with the \textit{Sherman Anti-Trust Act} and consolidated in 1914 with the \textit{Federal Trade Commission Act}, aimed at limiting the power of corporations.\textsuperscript{363} This was an expansion of earlier attempts to restrict the size of corporations that prohibited corporations to accumulate capital in excess of $1 million.\textsuperscript{364}

What we now regard as the corporate form really only emerged in the United States in 1896. At this time, New Jersey passed a series of laws removing restrictions on size, purpose,
ability to raise capital and the ability to trade across borders. As part of its pro-corporate stance, New Jersey also allowed ‘stock watering’, which effectively permitted directors the unfettered right to decide the value of their company as well as the right to purchase other companies by offering stock. At this time directors were also granted the ability to designate classes to various shareholders, as well as issue non-voting stock, inevitably leading to management teams with voting control over the corporation. This would prove problematic and investors ultimately suffered due to dishonest management. This pro-corporate stance ultimately led to a shift in preferred states of incorporation, forcing other states such as West Virginia, Maine, Delaware, Maryland and Kentucky to follow suit, in order to retain corporate tax revenue. The stakes were so high that one commentator suggested that ‘for a state to be conscientious would be synonymous with cutting its own throat.’

By 1912, New Jersey had essentially created a federal scheme, with almost every other state’s corporate law closely mirroring its own. Delaware would prove to be the next protagonist in questionable corporate law reform when it permitted the issue of ‘blank stocks’ in 1927. This allowed the issue of shares whereby management had the sole power of determining their voting rights. Management could issue these shares, at a discount, either to favoured investors, or themselves, effectively claiming company assets for themselves. The corporate law of Delaware became so open to abuse that Judge Landis stated publicly that ‘the State of Delaware would face indictment … If I could summon a sovereign state into court’. The financial devastation of the Wall Street crash and ensuing depression, led to widespread change, including winding back many of the pro-management laws. Interestingly though, much of the favourable legal system in Delaware remains today, significantly skewing its’ importance in the U.S corporate legal system. As at 2011, Delaware was ranked 49th among 50 states based on land mass and 45th based on population size, yet it

---

365 Ibid 45.
366 Ibid 45-46.
367 Ibid.
368 Ibid.
369 Ibid.
370 Ibid 48.
371 Ibid 52-53.
372 Ibid.
373 Ibid 54.
accounts for more than 50% of public companies and 63% of Fortune 500 companies.\textsuperscript{375} In Britain, the suspicion and ostracism of business extended well into the 20th century with tertiary education geared towards more noble pursuits. The sciences were often deliberately unaligned with commercial applications and business schools actively avoided linkages with industry.\textsuperscript{376} The result then was ‘industry had to make do with the runts of the litter – people who had failed to make it into university or the professions.’\textsuperscript{377}

3.2.1.2 Conclusion

Clearly this is only a brief sample of the corporate history of the United States and the United Kingdom. However, it highlights some critical points in relation to CSR. Corporations were once viewed as a public institution with public functions. Whilst there is little prospect of returning to an age of charters and limited purposes, the CSR movement is once again agitating for the corporation’s role in society to be more than simply maximising its profits. The easing of restrictions on corporations arose out of self-serving state governments (in the case of the United States), not out of some form of superiority of deregulation. The events in Delaware in the 1920s are a reflection that sometimes governments overstep, and that sometimes a better balance between permissive and restrictive regulation is required. These events, coupled with those in New Jersey also set the backdrop for the shareholder primacy doctrine. As will be discussed later in this chapter, the outrageous abuses perpetrated against shareholders forms the basis of Adolf Berle’s objection to companies favouring any groups other than shareholders. In addition, this part of the chapter has shown that corporate deregulation has significant benefits and allows corporations to thrive. It is necessary to have this in mind when looking at any type of reform (even if it is not corporate law reform) and be aware that there is a need to strike a sensible balance that does not stifle business.

3.2.2 History of Corporate Social Responsibility (CSR)

3.2.2.1 In Other Cultures:

\textsuperscript{376} John Micklethwait, and Adrian Wooldridge, The Company: A Short History of a Revolutionary Idea (Modern Library, 2003) 84-85
\textsuperscript{377} Ibid 85-86.
The language of many cultures indicates notions of ethical business. For instance the word company stems from the Latin phrase *com panis*, which translates to ‘the sharing of bread’.  

Similarly, the Swedish word for ‘business’ is ‘narings liv’, which translates into ‘nourishment for life’ and the Chinese equivalent translates into ‘life meaning’. In Ancient Babylon, a more extreme level of responsibility was practiced, whereby the Code of Hammurabi provided that where a man constructed a house which later collapsed, resulting in the death of the occupant, the builder would be put to death.  

Perhaps the best example of CSR to be found in other cultures is in post Meji Restoration Japan. Throughout the Edo era (1603-1868), merchants occupied the lowest castes in society, ranking above only the social outcasts, with Samurai being required to forfeit their elevated position should they wish to engage in trade. Merchants only received elevated status due to Baigan Ishida, who introduced the concepts of *shonido* (‘the way of merchant’) and an ethical system of *shingaku* (‘heart learning’). During this time the notion of profiting from business enterprise was gradually accepted and was promoted as being compatible with the religious practices of Shinto and Buddhism. Ultimately, this set the foundations of Japanese business culture which places greater emphasis on customer service rather than profits, and the idea of ‘lifetime employment.’  

These examples suggest a broader commitment to CSR across time and cultures. This again points to the fact that a corporation’s purpose is not immutable. Aspects of CSR have been employed successfully elsewhere, which further weakens the proposition that CSR is not within the purpose of corporations or businesses in general.

### 3.2.2.2 Origins: Late 18th Century – 1920s

---

379 Ibid.  
382 Ibid.  
The genesis of CSR can be seen as early as the 18th century through the ethical practices of a few wealthy entrepreneurs. In 1775, Richard Arkwright built low cost houses near his factories that were provided to his employees for nominal rent. Sir Robert Peel (Senior), a prominent businessman, was able to address child labour issues such as limiting the hours worked per day of children and imposing age restrictions on certain employment. In 1848, Titus Salt, affectionately known as the ‘Yorkshire Wool Baron’ relocated his wool mill to minimise environmental pollution and established a ‘model community’ for his workers over two decades. Similarly in 1906, Joseph Rowntree built a village exclusively for his employees and subsequently established a pension fund, profit sharing arrangements, and staff holidays well before these were common practice. In the early 20th century, Proctor and Gamble introduced benefits such as disability and retirement schemes, the eight hour workday, and permanent employment. Ford Motor Company also introduced several measures such as investment plans for its workers. The early stages of CSR were thus focused around providing opportunities and fair working conditions for employees.

### 3.2.2.3 CSR in Practice: 1920s – Present Day

Whilst there are many other aspects to businesses engagement in CSR throughout the past century, perhaps the practice of sustainability or CSR reporting is the best illustration of CSR’s increasing formality and legitimacy as standard business practice. Whilst not couched in CSR terms, there is evidence of reporting on employee relations in the early 20th century. As noted earlier, this was a time where practices in the workplace were changing rapidly and boards were keen to promote this commitment to their workers. During this time, employees were the primary stakeholder and audience for annual reports beyond investors interested in the company’s financial position. For instance, during the great depression, corporations were dealing with the need to wind back their operations in a sensitive way in order to

---

389 Ibid.
392 Ibid.
maintain a positive relationship with their workers.\textsuperscript{393} Westinghouse provides a good example of this dialogue between management and workers where management publicly espoused support for its workforce in its reports, maintained previous benefit schemes, and rotated employees to ensure that dismissals were minimised and most employees received at least part-time work.\textsuperscript{394}

During the 1960s and 70s, companies began to recognise the importance of stakeholders outside the firm and adjusted their reporting accordingly. By 1973, more than half of the Fortune 500 engaged in at least a minimal form of social reporting.\textsuperscript{395} Corporate social responsibility became a familiar phrase in annual reports which were beginning to include pictures and colour to appeal to a broader audience whose interest extended beyond the raw financial data.\textsuperscript{396} During this time issues such as the environment, affirmative action, and trade practices began to appear in annual reports.\textsuperscript{397} Rob Gray, Reza Kouhy, and Simon Lavers wrote an article that clearly maps the stagnation of corporate social reporting in the 1980s and its eventual recovery in the early 1990s, noting the number of companies reporting and the depth of information provided during this time.\textsuperscript{398} Since the early 1990s there has been a persistent upward trend in the number of firms reporting, the overall quality in these reports and an increasing level of formality. In 1993 only a handful of companies representing 1-2\% of the ASX 500, engaged in any form of corporate social reporting.\textsuperscript{399} This has extended to 30\% by 2007\textsuperscript{400}. 57\% by 2011 and 82\% in 2013.\textsuperscript{401} Internationally, the voluntary auditing of these reports has doubled between 2002-2013.\textsuperscript{402} Whilst there is still much to be done, the rapid upswing in reporting demonstrates an acknowledgement by boards that there is demand for CSR amongst shareholders and the broader community and businesses can profit from engaging in CSR.

\textsuperscript{393} Ibid 93-94.
\textsuperscript{394} Ibid.
\textsuperscript{397} Ibid 96-97.
\textsuperscript{398} Rob Gray, Reza Kouhy and Simon Lavers, ‘Corporate Social and Environmental Reporting: A Review of the Literature and a Longitudinal Study of UK Disclosure’ (1995) 8(2) \textit{Accounting, Auditing & Accountability Journal} 47, 57.
\textsuperscript{399} KPMG, \textit{The KPMG Survey of Corporate Social Responsibility Reporting} (2013), 22.
\textsuperscript{400} KPMG, \textit{Sustainability Reporting in Australia} (2007) 6.
\textsuperscript{401} KPMG, \textit{The KPMG Survey of Corporate Social Responsibility Reporting} (2013), 22.
\textsuperscript{402} Ibid 33.
3.2.2.4 The Early Academic Debate:

Prior to 1932, there was no conceptual basis for CSR; it was merely the collection of good deeds from a few altruistic men and women. Whilst not specifically framed in terms of ‘CSR’, Adolf Berle and Merrick Dodd engaged in what is now regarded as the seminal debate about whether corporations should engage in CSR. Professor Berle was a fierce opponent of owing obligations beyond those owed to shareholders. Professor Berle’s position was set against a backdrop of him practising law in the 1920s, which as mentioned previously in this chapter, was an era of abuses perpetrated by management at the expense of shareholders. The start of the twentieth century saw a move away from closely held, owner-manager companies to large public companies, run by professional managers. With the erosion of controls on directors, agency problems began to emerge. For instance companies were permitted to ‘water down’ shares by issuing them for less than market value, as well as altering the voting capacity of shareholders by issuing blank stock. It is important to place this time in the context of broader corporate law debates. The idea of corporate criminality was effectively a late 19th century development. Chambers of Commerce and businesses resisted early attempts to criminalise what was previously regarded as morally questionable activities out of fear it might impact their own constituency. Additionally, white collar criminals were treated extraordinarily leniently with imprisonment generally imposed upon only those born to the lower classes.

Four decades later, Milton Friedman would restate Professor Berle’s position, in what is now regarded as the modern genesis of shareholder primacy theory:

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

404 Ibid.
405 Ibid 84, 85.
407 Ibid 226.
408 Ibid 223.
Merrick Dodd sat on the opposing side of this debate, arguing that the public saw corporations as serving both social and profit making functions. Professor Dodd proposed that directors of corporations ‘serve as trustees for the corporate enterprise rather than for individual shareholders’, and may ‘legitimately use corporate resources to address the interests of other constituents and behave in a socially responsible manner.’ Professor Dodd saw a growing public demand for corporations to serve public ends arguing that ‘public opinion ultimately makes law.’ He foresaw the rise of the corporation, arguing that by 1950 the top 200 US companies would control so much of the nation’s wealth, that they would hold significant influence and should therefore assume commensurate responsibilities to the public. This perceived power of corporations and businessmen was at the heart of early literature advocating for CSR. The Great Depression and then World War 2 saw a halt in CSR literature, which picked up again in the early 1950s. Peter Drucker was a significant contributor during this time. He argued that profit was not the purpose of business, but rather a ‘limiting factor’. Instead of profits, he posited that the purpose of business was to ‘create a customer’. On this point Drucker suggests:

It is the customer who determines what a business is. It is the customer alone whose willingness to pay for a good or for a service converts economic resources, into wealth, things into goods. What the customers buys and considers value is never just a product. It is always a utility, that is what a product or service does for him.

An example of this idea might be that someone who owns a Porsche derives utility or satisfaction beyond the simple utility as a means of transportation. It denotes prestige, wealth, and success, and therefore confers greater utility than a 15 year old Ford Falcon, even though the primary purpose of the vehicles is the same. This idea can be extended to a CSR context whereby goods and services produced by more ethical businesses confer greater value to the consumer than unethical ones. Consumers may derive greater satisfaction from their

---

410 Merrick Dodd, ‘For Whom are Corporate Managers Trustees?’ (1932) 45(7) Harvard Law Review 1145, 1148.  
411 Ibid 1160-61.  
412 Ibid 1148.  
416 Ibid 15.  
417 Ibid.
consumption choices knowing that their eggs are free range, x % of profits are donated to a charity, or that they are rewarding a business with a good reputation. Drucker argued that the appropriate viewpoint to take was that of the customer who is concerned about whether their values and desires are being met.\textsuperscript{418} Enlightened shareholder value is implicit in Drucker’s argument that ‘the enterprise exists on sufferance and exists only as long as the society and the economy believe that it does a necessary, useful, and productive job,’ and also noting that society can ‘put any business out of existence overnight.’\textsuperscript{419} Furthermore, he argued this presented an opportunity for a business to help solve social problems out of self-interest.\textsuperscript{420} He advances an argument akin to the social contract noting that society has scarcely allowed the power that corporations now possess, and by allowing this power, this obligates the manager to ‘subordinate his actions to an ethical standard of conduct, and that he restrain his self-interest …’\textsuperscript{421} Much like a social contract, misuse of this power could lead to it being revoked.

3.2.2.5 CSR, SMEs and Academia

The academic debate surrounding whether the promotion of CSR should be extended to SMEs has lagged behind the debate about large corporations. Whilst the 1970s saw some literature on the ethics of small business, it was focused on specific areas, such as employee behaviour,\textsuperscript{422} and said little more than SMEs should be included in a discussion of ethics and CSR.\textsuperscript{423} A handful of articles were published in the early 1980s, but the general dearth of research being conducted at this time is acknowledged by many people in the field.\textsuperscript{424} It is telling that a literature review at the time uncovered 700 articles on business ethics with only

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{418} Ibid 18.
\item \textsuperscript{419} Ibid 28.
\item \textsuperscript{421} Drucker, Peter, \textit{The Practice of Management} (Harper and Row Publishers, 1954) 383.
\item \textsuperscript{422} Fiona Tilley, ‘Small Firm Environmental Ethics: How Deep do they go?’ (2000) 9(1) \textit{Business Ethics: A European Review} 31, 32.
\item \textsuperscript{423} William Fischer and Leonard Groeneveld, ‘Social Responsibility and Small Business’ (1976) 14(1) \textit{Journal of Small Business Management} 18.
\end{itemize}
\end{footnotesize}
6 related to small businesses.\textsuperscript{425} At this time the research on CSR in SMEs was exclusively conducted in the United States with other countries lagging behind and maintaining the narrow large enterprise focus.\textsuperscript{426} There is no question that research in this area has increased dramatically, but given the relatively short history of research, there are difficulties with country comparisons given the disparate output across jurisdictions.\textsuperscript{427} It is argued that even today, the research in Australia is lacking, which makes it a fertile area for research.\textsuperscript{428} Furthermore, much of the early research seems to have simply tested assumptions about large enterprises in the context of SMEs.\textsuperscript{429} Many of the claims made also lacked any empirical support.\textsuperscript{430}

A number of reasons have been advanced for the comparably small interest shown in SMEs in the CSR literature. They include the prominence of larger enterprises in the media and the public attention of their successes and failures,\textsuperscript{431} the lack of publicity of SMEs,\textsuperscript{432} more information being publicly available for larger enterprises (such as financial reports), and the perception that SMEs lack the resources to meaningfully engage in CSR.\textsuperscript{433} Laura Spence’s article in 1999 appears to have been instrumental in laying out the criticisms of both the paucity and overall quality of research into SME CSR, as well as setting a research agenda to

better understand this area of inquiry.\textsuperscript{434} The field saw more mainstream attention in the early 2000s, which is perhaps the first time it could be regarded as a standalone field rather than a small part of the broader CSR literature.

### 3.3 Contemporary ‘Pro-Shareholder’ Theories

#### 3.3.1 Shareholder Primacy:

Shareholder primacy is not so much a descriptive theory that explains what the corporation is, but rather one that explains the obligations of management to its shareholders. In a practical legal sense, management owes a duty to act in the best interests of the corporation,\textsuperscript{435} which in most circumstances will coincide with shareholders. The core aspects of the theory are that management owes a moral (and legal) duty to maximise the value of shareholders’ interests in the corporation. When making any decision on the operations of the corporation, management should consider the question of whether the decision will improve or harm the wealth of shareholders. Therefore, management should only ever act in a way that promotes shareholder wealth, and never act in ways that harm this wealth.

During the 1970s, Milton Friedman, amidst a wave of emerging CSR literature, launched a series of attacks on CSR proponents and in doing so cemented the basic tenets of shareholder primacy. He argued that CSR was ‘pure and unadulterated socialism.’\textsuperscript{436} Friedman argued that as an artificial entity a business could not owe obligations to others.\textsuperscript{437} In regards to management, Friedman argued they were employees of the owners of the business (i.e. the shareholders) and as such they are required to administer the business in accordance with shareholders wishes, which will ordinarily be to maximise their investment.\textsuperscript{438} The only restriction that Friedman placed on this was that management needed to conform to the ‘basic rules of the society, both those embodied in law and those embodied in ethical custom.’\textsuperscript{439}

A variety of justifications are advanced for the shareholder primacy approach. Milton Friedman was of the view that CSR could be used as a means for executives to


\textsuperscript{435} Corporations Act 2001 (Cth) s181.


\textsuperscript{437} Ibid.

\textsuperscript{438} Ibid.

\textsuperscript{439} Ibid.
misappropriate corporate funds, in order to enhance their own reputation. A number of proponents point to the lack of accountability of alternatives such as stakeholder theory. For instance Mark Roe points out that it is quite difficult to measure the success of managers in maximising the welfare of a variety of groups. This situation promotes discretion, lacks accountability, and therefore enables managers to engage in self-interested conduct. Additionally, the wider community will also benefit from increases to wealth that arises through a more efficient use of finite resources. Even where certain harm occurs, interested parties will be compensated through trade-offs such as higher wages for employees, higher interest repayments for creditors, etc. Another argument suggests that without the shareholder primacy doctrine, shareholders would be the most vulnerable group, as other groups, such as creditors and employees, have various protections through contract.

Opponents of the shareholder primacy view of the corporation advance numerous criticisms of the theory. Perhaps the most serious claim is that shareholder primacy promotes ‘short-termism’. For instance, there are numerous options available to directors looking to meet their short term performance targets including cutting staff, maintenance, delay replacing outdated equipment, or cutting corners on compliance issues. These options will inevitably cost shareholders in the long term. This short-termism undermines the assertion that shareholder primacy maximises wealth. Opponents argue against the conceptual clarity that shareholder primacy claims, suggesting that it is equally difficult to discern whether profits or shareholder wealth has been maximised. The claim that shareholders are the most vulnerable group is also disputed, with opponents pointing out that employees develop non-transferable skills whilst in employment, as well as unsecured creditors being afforded almost no protection in the event of insolvency.

442 Ibid.
444 Ibid 65.
446 Ibid 75-77.
447 Ibid 94-95.
448 Ibid 77-78.
449 Ibid 93.
It can be seen that shareholder primacy is not terribly supportive of the notion of CSR. However it is important to note it does not entirely preclude it either. With the emerging body of literature on the benefits of CSR such as cost and risk reduction, competitive advantage, and reputational gains, there is a strong argument to be made that practicing CSR can improve shareholder wealth. As early as the 1950s, Professor Leavitt proposed that ‘Corporate welfare makes good sense if it makes good economic sense – and not infrequently it does. But if something does not make economic sense, sentiment or idealism ought not to be let it in the door.’ Even Milton Friedman conceded the pursuit of social interests could be justifiable if they were pursued with long term profits in mind. Therefore the shareholder primacy position dictates that management should only pursue CSR or stakeholder interests if it is profitable to do so. In the event that there is a conflict between these two sets of interests, management must prefer the interests of shareholders, even if this prejudices stakeholder’s interests.

Even when considering this concession to CSR advocates, the theory is still somewhat concerning when taken in its purest form. A number of stakeholder advocates have posed a series of decisions (some hypothetical and some real) finding that in all cases shareholder primacy would vindicate the manager’s decisions. For instance, should a corporation continue to supply its product to support a country ruled by a genocidal dictator? The decision should not be a question of balancing the value of the lost sales that have been withheld, against the costs of a diminished reputation for failing to withhold supply. There are several real world examples similar to this hypothetical including in 2005 when Yahoo surrendered the names of users believed to be dissidents by Chinese authorities. In one instance, a journalist who used yahoo email was sentenced to 10 years imprisonment for publishing instructions his employer had received from the Chinese Government. In this instance no laws were broken and the action taken was aimed at maintaining Yahoo’s business in China. Therefore, the question of whether a shareholder primacy approach would

---

455 Reich, Robert, 'The Case Against Corporate Social Responsibility' (Goldman Working Paper Series No GSPP08-003, University of California, August 1, 2008) 43.
support such a move would depend upon whether the company had breached the broad ethical requirements implicit under shareholder primacy.\textsuperscript{456}

From the perspective of SMEs and CSR, shareholder primacy appears to have less to offer. As has been noted two thirds of businesses are unincorporated so the focus on shareholder concerns is less relevant. Additionally, shareholder primacy advocates rely on agency concerns to justify the theory. Given the size, and the fact that the owner(s) frequently manage the business, these agency concerns are mitigated. Despite these substantial conceptual differences, a profit maximisation theory akin to shareholder primacy will be advanced. In this respect, the notion that CSR would be permissible or encouraged under shareholder primacy when there is the potential for financial gain is instructive.

3.3.2 Contractarian /Nexus of Contracts

The nexus of contracts theory proposes the corporation is ‘an aggregate of various inputs acting together with the common goal of producing goods or services.’\textsuperscript{457} Various groups provide inputs into the firm, with employees contributing labour, creditors providing finance, shareholders providing capital, and other groups such as suppliers and customers contributing as well.\textsuperscript{458} The corporation thus has no independent status of its own,\textsuperscript{459} but rather it is the centre or ‘nexus’ of an intricate web of contractual relationships.\textsuperscript{460} Due to this contractual view, proponents advance a minimalist view of government regulation, namely, governments should avoid the over regulation of corporations as this is an impingement on their freedom to contract.\textsuperscript{461} The decision making process of management (through its constitution) is seen as a set of default rules, which can be voluntarily adopted or amended through its various constituencies.\textsuperscript{462} In other words, how a corporation functions is seen as a standard form

\textsuperscript{456} In this example, the issue of ethics is clouded further by the introduction of a separate jurisdiction with a substantially different view of issues such as democracy, freedom of speech, and dissent.
\textsuperscript{458} Ibid.
The possibility of shareholders actively negotiating the terms of this ‘contract’ is quite remote, in all but the smallest closely held companies. However, creditors can ask for higher interest rates on more risky loans, employees require casual premiums on non-permanent employment, and shareholders will demand greater returns on companies perceived to be less shareholder friendly. Thus, contractarians argue a notional contract exists, even in the absence of meaningful negotiation.

In determining the content of the specific contract, transaction costs associated with bargaining are critical. If transaction costs were zero, this would permit the drafting of a contract that encapsulates all possible scenarios, and placates all parties. As was mentioned earlier, when larger corporations are involved, this is completely unrealistic. The costs associated with formally negotiating with every individual party to the contract would be prohibitively expensive. This necessitates the imposition of default contractual terms, which effectively ask ‘if the parties could costly bargain over the question, which rule would they adopt?’ This process is of vital importance to the CSR debate, as one of the crucial default terms is shareholder wealth maximisation. Thus, in the hypothetical bargaining scenario, it is assumed that most shareholders are ‘rational wealth maximisers’, therefore it comprises part of the standard form contract. Some authors challenge a purist wealth maximization default term on the basis that not everyone would in fact bargain for it. Ian Lee argues that whilst the survival of the firm is paramount, there is no evidence to suggest a pure wealth maximisation term is necessary for survival, or that shareholders would exclude all ethical aspects of business in pursuit of wealth maximisation. Melvin Eisenberg argues against the shareholder primacy doctrine being inserted into the standard form contract, instead advocating a communitarian interpretation. He argues that contract law specifies no dominant

---

463 For instance, it is argued that it is unlikely to individually bargain with each employee when the corporation is a large multinational. See: Jeffrey Bone, Legal Perspectives on Corporate Responsibility: Contractarian or Communitarian Thought? (2011) 24(2) Canadian Journal of Law and Jurisprudence 277, 290.
464 Although it is argued in the context of shareholder primacy, Andrew Keay notes the efficiency benefits (also argued in the context of nexus of contracts) should ultimately benefit other stakeholders through higher bond rates, wages, etc. See: Andrew Keay, The Corporate Objective (Edward Elgar Publishing, 2011) 64.
party (buyer or seller) and as such it is more appropriate to view each constituency as being on equal footing.\(^{468}\)

As with all corporate theories, the ‘nexus of contracts’ theory is subject to criticism. The most obvious is that it fails in its basic assessment of what a corporation is. It is described as a series of contracts, which in all but the smallest of corporations involves the assumption of default terms. It is argued that default rules are not contractual; they exist in the absence of contract.\(^{469}\) Even where there is an element of negotiation involved, it is naïve to think there is equal bargaining power (for instance an employee negotiating with a large corporation).\(^{470}\)

Furthermore, where the default terms are relied upon, any contract will be hopelessly incomplete.\(^{471}\) Unforeseen circumstances and other ambiguities make the contractarian position indefensible.\(^{472}\) The contract also places burdens on third parties outside of the contract. Whilst these groups could become a party to the contract, a variety of barriers such as lack of information, duress, and transaction costs render this solution impractical in many circumstances.\(^{473}\) Deregulation of the kind that contractarians advocate also requires perfectly efficient markets, which is again unrealistic, making the theory impractical when considering the realities of the corporate landscape.\(^{474}\) Subsequently, deregulation with imperfect markets opens these markets up to abuse. A further criticism relates to its conceptual ambiguity. Given the various parties involved, there is an inherent need to balance competing interests which is a remarkably difficult task.\(^{475}\) An additional point arises in that the theory does not accurately specify what is and is not part of the corporation.\(^{476}\)

Irrespective of the various interpretations of the ‘nexus of contracts’ theory, the approach at least permits the idea of CSR. Whilst most of its advocates support a shareholder primacy default rule, it can be contracted around. Thus, the purpose of the corporation becomes

---


\(^{469}\) Ibid.


\(^{472}\) Ibid.

\(^{473}\) Ibid.


whatever the various parties contract for it to be. Again this will generally not entail individual negotiations, but rather decisions by management to act more ethically, and decisions whereby shareholders and other constituencies price their involvement in the corporation accordingly (or alternatively withdraw support altogether).

The usefulness of the nexus of contracts model in explaining how SMEs function is a curious one. On one hand it should be expected that there is a greater capacity to negotiate on a one to one basis as the management structure is likely to be far smaller with the owner-manager likely having control of hiring and most purchasing decisions. It is therefore more likely that suppliers, employees or other stakeholders have a more meaningful capacity to negotiate terms rather than simply being handed a boilerplate contract from human resources or some other middle manager. However, this closer connection between capital and management also means that the two most powerful stakeholders are effectively the same stakeholder. If you take away the capacity of investors to withdraw support, then there is little to influence the management of the company at least when considering a radical shift in policy e.g. adopting more environmentally friendly operations. Whilst salaries and price points might be negotiable at the margins, it is unlikely that more substantial changes are negotiable, unless coming from a large customer representing a majority of the SMEs sales and therefore holding significant influence, which again would detract away from the idea of negotiating an outcome. On this basis, the nexus of contracts model does not really explain how an SME operates, nor why it should engage in any form of CSR. In all likelihood, the only major influence on behaviour is going to come from a powerful customer and complying with their demands or losing their business. If this is all the nexus of contracts has to offer with regards to SMEs, this could be adequately explained via a basic economic or shareholder primacy argument.

3.4 Contemporary ‘Pro-Stakeholder’ Theories

3.4.1 Stakeholder Theory

Stakeholder theory can trace its genesis back to the work of Edward Freeman in Strategic Management: A Stakeholder Approach. The main premise behind stakeholder theory is that the purpose of the corporation or firm is to create wealth, and then distribute that wealth
amongst a wide variety of stakeholders. Implicit in this premise, is the wealth generating effects of various stakeholders co-operating to improve the overall wealth of all groups. Thus, if the interests of each group are not met, they may withdraw their co-operation, thereby diminishing the firm’s ability to produce wealth. It is argued that stakeholders should be able to influence company decisions and therefore have a role in company decision making. This power must be ‘real and not simply illusory or token decision making power’, although the power does not need to be equal amongst the various stakeholders.

Precisely who constitutes a stakeholder is not clear, with numerous interpretations circulated through the academic community. However Freeman’s definition, namely ‘any group or individual who can affect or is affected by the achievement of the organisation’s objectives’, should be given significant weight, as stakeholder theory is his progeny. The ‘affected by’ limb of Freeman’s definition greatly expands upon the potential stakeholder groups and is therefore open to criticism. Freeman justifies this inclusion on the basis of his observation that weak groups have gained significant power over several decades of neglect. The definition is thus defensive and suggests that if businesses only consider those groups that can directly influence the business, and ignore those groups whom the business affects, then soon many of these groups will gain sufficient power to also influence the business. Expanding on this guiding principle, Freeman established 12 core stakeholders in his original model including government, political groups, owners, financial community, activist groups, customers, customer advocate groups, unions, employees, trade associations, competitors, and suppliers. An obvious concern arises in the breadth of potential stakeholders. It does not seem practical for a board of directors to consider such a broad range of interests. From a legal perspective, Chapter 5.2.1.1 explains the uncertainty where there is a duty to consider the interests of creditors.

---

482 Ibid 46.
483 Ibid 55.
Stakeholder theory has numerous criticisms levelled against it. Most notably, it is decried for its ambiguity.\textsuperscript{485} The table from Fassin listed above lends support to this criticism. A number of other criticisms are derived from this level of ambiguity. For instance, Elaine Sternberg criticises the ‘accountability’ element of stakeholder theory, suggesting that a corporation cannot be accountable to all groups or people in the same way that say parties to a contract will be accountable to honour that contract.\textsuperscript{486} A number of authors have also argued that managers cannot be held accountable under a stakeholder model because it necessarily implies so many trade-offs.\textsuperscript{487} As Michael Jensen describes the situation ‘multiple objectives is no objective’.\textsuperscript{488} With difficulties in holding managers accountable, an argument is raised that stakeholder theory will encourage opportunistic behaviour by managers to the detriment of the corporation’s shareholders. A variant of this argument suggests that if you introduce both social and economic obligations, then this will essentially disperse management’s attention across too many subjects, stretching both their time and skill sets, thereby ensuring that they fail in both obligations.\textsuperscript{489} Further technical issues are also identified, such as how these obligations would be enforced by stakeholders. In the context of corporate law, the proper plaintiff is the company, with only shareholders being able to pursue statutory derivative actions in lieu of management intervention.\textsuperscript{490}

A final criticism lies in the perceived inefficiency of stakeholder theory. This argument suggests that if a stakeholder model were to be adopted, it would inevitably lead to lower levels of wealth (as this involves allowing stakeholders who are not interested in wealth maximization participate in decision making), thereby reducing the wealth of all stakeholders.\textsuperscript{491} The bulk of these criticisms are vehemently refuted by Freeman, along with Robert Phillips and Andrew Wicks, who have pointed to the numerous instances of wealth

\textsuperscript{489} Keith, Davis, ‘The Case for and Against Business Assumption of Social Responsibilities’ (1973) 16(2) Academy of Management Journal 312, 319.
destruction and opportunistic behaviour under the shareholder primacy model.\textsuperscript{492} They also suggest the opponents of stakeholder theory misunderstand its key precepts, for instance they deny that the theory treats all stakeholders equally, citing the most defensible interpretation that requires an individual’s power to be weighed against their level of contribution.\textsuperscript{493}

Stakeholder theory has substantial relevance to CSR. It acknowledges that non-shareholder stakeholders have a stake in a corporation’s success. Thus, it provides a moral argument as to why the community should benefit from, and not be made worse off by, corporate activity. Given the importance of each of these contributions, should stakeholders withdraw support, this would threaten a corporation’s survival. Thus, stakeholder theory also provides a pragmatic argument for CSR.

From the perspective of SMEs, the theory does have some value. The idea that a business should manage the groups that it affects and can affect them works equally well between large enterprises and SMEs. However, the sheer size and number of SMEs probably means that there are far fewer stakeholders that they will develop the kind of meaningful relationship required for a stakeholder to be able to influence the business. Unions, activists, NGOs, and many other groups have limited resources and are therefore likely to target the businesses that can make the most difference which is likely to be large companies. Even a supplier/buyer relationship is likely to be less meaningful as a company like Coles is likely to devote less attention to small suppliers compared with say Coca Cola. Nevertheless, the literature on supply chain pressure discussed in Chapter 2.5.4.1 suggests that stakeholders, such as customers, could have an enormous impact on SMEs. Whilst improved relations with employees, customers, and suppliers is a positive first step, CSR is a much broader concept than supply chain management and employee engagement. The benefits of CSR outlined in Chapter 2.5.1 extend beyond supply chain pressure.\textsuperscript{494} Thus, while applying stakeholder theory to SMEs appears to be a sound idea, in practice it adopts a very narrow view of CSR and does not offer a complete picture of why SMEs do and should engage in CSR. This suggests a need to look beyond stakeholder theory for a more comprehensive theory of why SMEs engage in CSR.

\textsuperscript{492} Robert Phillips, Edward Freeman, and Andrew Wicks, ‘What Stakeholder Theory is Not’ (2003) 13(4) Business Ethics Quarterly 479, 484.
\textsuperscript{493} Ibid.
\textsuperscript{494} For Instance, cost reductions were a substantial theme in the literature.
3.5 A Need for an SME Theory of CSR – Social Capital

The theories discussed above are aimed squarely at larger corporations, rather than predominantly non-corporate SMEs. As such, it is hard to justify applying their reasoning to an SME and argue why they should perform some CSR functions, or why it is in their interests to do so. All of the other approaches applied to corporations do not appear to provide a full explanation or account for why SMEs should or should not engage in CSR. The explanatory value of shareholder primacy is lessened if there are no shareholders, which excludes more than two thirds of SMEs. Whilst these businesses still have ownership in some form, the agency concerns implicit in shareholder primacy are simply not relevant to many SMEs, as the owners frequently manage the business as well. An SME may well be a nexus of contracts, but this does not explain why it should engage in CSR. Scholars concede that for the most part there is no negotiating the terms of the contract, but instead rely upon the ‘pricing’ of behaviour either through interest rates, share price, or salary premiums where there is additional risk. Again, these risks cannot be ‘priced’ via the share price if the SME is unincorporated, and it seems unlikely that lenders would undertake the necessary research to ‘price’ SMEs non-financial activities on a smaller loan. Stakeholder theory is less applicable to SMEs as the number of potential stakeholders are reduced for them. Groups such as NGOs and unions will be less inclined to engage smaller business due to resource constraints and the low public profile of SMEs. The relevant stakeholders for an SME would appear to be its suppliers, customers, and employees. Given the benefits of CSR extend well beyond keeping an SME’s customer base and employees happy, stakeholder theory presents a narrow view of CSR within SMEs.

Quite simply, SMEs exhibit few of the characteristics that are often advanced as reasons for larger enterprises engaging in CSR, making most of these theories of little relevance to SMEs. Thus, there is a need to apply a theory that relates to their specific circumstances. Presently the most popular theory advanced for justifying CSR in SMEs appears to be social capital theory. Social capital has been advanced as a justification for SMEs to engage in CSR.

3.5.1 Social Capital: Concepts

The term social capital can trace its origins back as early as the 19th century.496 A more contemporary understanding of social capital came from Lydia Hanifan in the early 20th century.497 The business literature draws from a body of work originating from Robert Putnam, Nan Lin, James Coleman and Pierre Bourdieu starting in the early 1980s. Within this work, the Organisation for Economic Cooperation and Development (OECD) has noted that at least four different strains of social capital exist including; anthropological, sociological, economic and political.498 In defining social capital, Bourdieu characterises social capital as:

the aggregate of the actual or potential resources which are linked to possession of a durable network of more or less institutionalized relationships of mutual acquaintance and recognition - or in other words, to membership in a group - which provides each of its members with the backing of the collectively-owned capital, a 'credential' which entitles them to credit, in the various senses of the word.499

The (OECD) defines social capital in broad terms as ‘networks together with shared norms, values and understandings which facilitate cooperation within or among groups.’500 This definition has been adopted by the Australian Bureau of Statistics (ABS).501 The World Bank has previously defined social capital as being ‘not simply the sum of institutions which underpin society, it is also the glue that holds them together. It includes the shared values and rules for social conduct expressed in personal relationships, trust and a common sense of civic responsibility.’502 Thus, social capital treats personal relationships as a tangible resource. Importantly, trust is seen as both an essential ingredient in the formation of relationships (and therefore social capital), as well as an output of successful relations within these groups.503

---

The concept of social capital can be split up into various ‘types’ of capital. One element is the relationships themselves (family, business, sporting, friendships, etc.), whilst the other is the behavioural norms attached to the relationships e.g. trust, reciprocity, goodwill, etc.\textsuperscript{504}

Putnam then splits the relationships into bonding and bridging social capital. Putnam argues bonding social capital involves relationships between parties that are alike, whilst bridging social capital creates connections amongst those that are different.\textsuperscript{505} Bonding social capital is therefore more inward looking, focusing on attributes, such as race, age, religion and gender, whereas bridging social capital focuses more on the value in social networks, and therefore promotes diversity.\textsuperscript{506} Bonding social capital exists primarily between family members and close friends, whereas bridging social capital exists between more distant friends, colleagues and acquaintances.\textsuperscript{507} Linking social capital is the third type of social capital, which creates links between ‘different social strata in a hierarchy where power, social status and wealth are accessed by different groups.’\textsuperscript{508}

Relationships arise out of groups that have common traits or ‘kernels of commonality.’\textsuperscript{509} These kernels may be either inherited or earned. The most obvious example of an inherited kernel is birth into a particular ethnic group.\textsuperscript{510} Earned kernels may arise where a person graduates from a particular educational institution, joins a sporting body or generally has ‘shared experiences’.\textsuperscript{511} The exclusivity of these kernels of commonality determines their value. For instance, citizenship is a less important connection when living at home compared with meeting the same person whilst travelling.\textsuperscript{512}


\textsuperscript{510} Ibid 33-34.

\textsuperscript{511} Ibid 34.

\textsuperscript{512} Ibid 36.
Implicit in these relationships is the idea that the value of the whole is more than the sum of its parts. For instance, a commonly identified benefit of belonging to industry associations is the ability to influence regulation.\textsuperscript{513} The same study also found that advances in training, management, work practices, productivity and the use of technology were frequently mentioned as a benefit to belonging to business networks.\textsuperscript{514} The common theme here is the communication of information. The groups that are formed as a result of these relationships act as a repository of information, allowing the actors to access a greater pool of information at relatively low cost.\textsuperscript{515} Clearly then, social capital assists in explaining why trade associations are an important avenue for SME CSR reform (discussed in Chapter 7) and why it is important for SMEs to participate in networks. This communication of information within industry / trade associations is also explored in Case Study 3 in Chapter 6.4.

According to the literature, social capital provides significant advantages. From a societal point of view, Putnam has argued that people with higher levels of trust demonstrate higher levels of civic participation such as donations to charity, volunteering and participation in community organisations and political debate.\textsuperscript{516} In this respect, social capital might not only be of interest to CSR scholars on the basis of businesses harnessing profitable relationships, but also in suggesting that people living within harmonious societies tend to demonstrate greater care for one another. This is of course beyond the scope of this thesis. In a summation of the literature, Suman Sen was able to identify social capital having positive affects to Crime Rates, Health, Longevity, Education, Income equality, child welfare and abuse rates, corruption and effective government, and the economy (through greater trust and therefore lower transaction costs):\textsuperscript{517} Studies have also found a connection between high social capital and lower instances of tax evasion.\textsuperscript{518}

\textsuperscript{514} Ibid 638.
\textsuperscript{516} Robert Putnam, Bowling Alone: The Collapse and Revival of American Community (Simon and Schuster, 2000) 137.
With regards to the benefits to the economy, they are quite dramatic. Trust (a component of social capital) is required to facilitate even fairly basic commercial transactions. Coleman provides a quite extreme example of this with the functioning of diamond markets. Dealers routinely hand over gems of considerable value (sometimes in the hundreds of thousands of dollars) to merchants for inspection, without any formal safeguards in place.519 These markets are remarkably insular, with New York featuring a predominantly Jewish community. Due to the close-knit community, if a dealer were to act dishonestly, they would suffer significant social sanctions.520 Thus, the significant ties present within the market create a high level of trust amongst all parties. This high level of trust negates the need for formal controls (for instance contracts, rules, and hierarchies),521 thereby reducing costs associated with enforcing them.522

Perhaps the most important benefit of social capital is the access to information. By having access to broad networks of people, this improves the collective information base available to an individual.523 This reduces the ‘search costs’ associated with finding the information or finding someone that possesses it.524 Another significant benefit of social capital is the ability to develop a reputation.525 This is especially important to an SME as the vast majority of industries and products are homogenous, which requires something like reputation to differentiate them.526 A side effect of having a good reputation is the ability to manage risk. Sometimes problems are unavoidable. When these problems occur, the negative consequences can be mitigated by a positive pre-existing relationship.527 There are plenty of examples that would arise regularly in any SME, such as a product fault, missing delivery dates, or price rises, which could have negative impacts on a business.

520 Ibid.
523 Ibid.
526 Ibid.
3.5.2 Critique

Social capital is criticised by those who question the various strains, as well as the core theory itself. Possibly the most vehement of these criticisms relates to the definition. As with the other theories, the term social capital is ambiguous, which makes the task of measuring the value of social capital quite difficult. Even within the literature itself, there is a degree of confusion related to social capital’s precise meaning. Additionally, the bulk of the literature ignores the potentially negative effects of social capital such as the exclusion from networks and various other relationships. In closed networks, there can be a tendency to become insular and unwilling to change, which can lead to an exclusion of people outside the network, thereby preventing the sharing of information. This inward looking behaviour can also have the effect of prioritising the networks needs above all else, possibly causing harm to wider society. Essentially, negative social capital can cause harm in the same fashion that positive capital generates benefits such as increasing transaction costs through distrust. Alejandro Portes notes that this can effectively exclude others from entering markets. Portes also notes additional problems, including the acceptance of mediocrity, a downward trend of norms within a group, and attempts to improve being met by ostracism. This could easily be applied to a business context, such as an industry dominated by self-regulation where insiders are intolerant of outsiders telling them how to run their business.

Ben Fine has devoted an entire book to the weaknesses inherent within social capital. In a summary of his criticisms, Ben Fine argues social capital is ‘is totally chaotic in definition,

method and theory’, ‘is indiscriminately deployed … and can be more or less anything’, ‘misunderstands both social and capital’, and fails to address valid criticism.537 Beyond Fine’s criticisms, there is a serious practical question as to social capital’s cost effectiveness. Because social capital can be time consuming to develop and maintain, it is not necessarily a cost effective investment.538

The Bernie Madoff case is an example of how social capital can even help to facilitate criminal behaviour. Unfortunately, Madoff was a talented manipulator that abused his social capital.539 He was quite calculating in his approach to potential investors. He was able to approach investors in social settings such as synagogues and country clubs, thereby engendering notions of trust as he was ‘one of us.’540 He was also able to exploit the social capital of others by developing ‘agents’ to attract more victims. For instance, Madoff developed a relationship with Michael Engler, a broker who was also a war veteran, and was able to convince a large number of war veterans to invest with Madoff.541

Drawing on social capital theory, SMEs should engage in CSR because it is in their interests to do so. In the long run it makes for a profitable investment, due to the positive reputation they earn and the relationships they forge. The forging of these bonds can yield benefits such as a larger more loyal customer base, more understanding between parties when problems arise, greater access to industry information (thus saving time and costs), and greater ability to lobby the government by presenting a united front. Arguably, social capital could also extend into branding. Identifying features such as the Heart Foundation Tick, RSCPA approval, or an endorsement by Weight Watchers can make a product more attractive. Because, these groups are trusted, the mere association of the product with these groups conveys a positive and therefore valuable message about the product. Equally, belonging to a trade association, or subscribing to a particular code can convey a positive message about an SME (especially in industries with a mixed reputation e.g. builders, mechanics, etc.) that it is committed to the industry and that the association endorses it.

537 Ibid 126.
540 Ibid 223.
541 Ibid 221.
The interest in social capital and applying it to ethics or CSR within SMEs seems to stem from the obvious connections between the two concepts, such as ‘reciprocity, stakeholder relationships, community engagement, trust, development and social cohesion …’. Importantly, it accurately describes a SMEs’ tendency to operate largely within a local area, forge strong relationships, and harness these relationships to further the business. Whilst social capital does support SME engagement in CSR, it does so in a very narrow manner. For instance, many SMEs lack the public profile to properly benefit from an enhanced reputation, at best generating a localised reputation. Furthermore, many of the benefits of CSR have minimal connection to relationships with others. For instance, a fertile area of CSR for SMEs is energy/ water consumption. There might be a reputational impact to engaging in such activities, but in all likelihood the majority of benefits are derived from the cost savings of these activities. Furthermore, the benefits of social capital to an SME look a lot like shareholder primacy or profit maximization. There is no basis as to why a business should form relationships and bonds with others beyond the fact these bonds will potentially yield financial benefits at a future time. At least from a business perspective, social capital appears to offer no greater explanation for CSR than shareholder primacy and does so in a more narrow fashion by focusing only on relationships as a potential means of profit. Thus, while social capital is a noteworthy first step in explaining CSR within SMEs, it is at best an incomplete description of the factors that both motivate and justify SMEs’ engagement in CSR.

3.5.3 Conclusion

It is clear that social capital can be developed and exploited in ways that are socially undesirable. Insular social networks can lead to exclusion, and people can exploit their social capital in a way that causes harm to others, as in the Madoff example. It is important to

544 For instance, it is claimed that many SMEs donate to local organisations such as sporting clubs as another form of advertising which is likely to only generate reputational gains in the local community. See: Janet Sawyer and Nina Evans, ‘An Investigation Into the Social and Environmental Responsibility Behaviours of Regional Small Business in Relation to Their Impact on the Local Community and Immediate Environment’ (2010) 16(2) Australasian Journal of Regional Studies 253, 260.
545 Sensis, Sensis® Business Index - Small and Medium Enterprises (June 2012) 21 notes that recycling, energy and water efficiency are popular environmental measures.
understand these aspects of social capital, but they do not detract from the theory’s utility. Whilst other theories postulate what ought to be, such as shareholder primacy advocating the singular purpose of a corporation is to maximise profits, social capital simply states what happens in practice. It simply notes that relationships are a resource which can be exploited, and this could have positive or negative impacts on the community. In this respect, social capital can co-exist with any of the other theories presented in this chapter.

3.6 Profit Maximization Theory (PMT)

3.6.1 Why Profit Maximization Will Work for SMEs

The simple fact is that SMEs differ substantially from their larger counterparts. When these differences are taken into account, the arguments traditionally levelled against shareholder primacy simply do not hold for SMEs. A strong criticism of shareholder primacy is that it encourages short term thinking. This argument is simply not relevant to an SME. Australian statistics demonstrate that 20% of SMEs do not survive the first 2 years, and that 99% of all insolvencies are SMEs. The majority of SMEs are marginal enterprises that turn a profit, yield modest returns to the owners, and nothing more. They have no option but to focus on short term priorities just to remain in business and to continue to provide a sufficient return to warrant the risks and time investment involved. Thus, SMEs focus on the short term, not because of some theoretical conception of the firm, but out of a practical need to survive. Furthermore, there is arguably more damage done to society by asking SMEs to take a longer term view and to engage in CSR. Ironically, demanding such a long term view is likely to yield short term benefits and long term costs. In peak economic times, an SME might be able to indulge in profit destroying CSR, which benefits the community. However, an eventual downturn might lead to a greater number of insolvent SMEs due to their lower cash reserves. This in turn would cause an increase in unemployment and unpaid debts.

The definition of CSR and its responsibilities advanced by Archie Carroll places a business’s economic responsibilities at the base of the pyramid indicating it is the first and most

---

546 Ergas, Henry, and Jennifer Orr, SME Trends and Achievements (2007) Report prepared by CRA International and Privately Commissioned by Telstra Pty Ltd. 1. Note that some of these figures are challenged and further detail on this point is included in Chapter 2. Nevertheless the comment stands that based upon available data, SMEs are more likely to fail and cease operations.
important priority.\textsuperscript{547} This does not infer profit maximization, but it does suggest earning sufficient profits to remain viable and protect against downturns. When a large enterprise is involved, shareholder primacy/stakeholder theories are essentially arguing over whether shareholders should receive the entirety of the firm’s distributed profits,\textsuperscript{548} or just the majority of them. It is a false comparison to extend this reasoning to a marginal SME that is simply trying to build reserves to shield against an economic downturn, while also providing an income for the owner(s) to live off.

Shareholder primacy and CSR are often thought to be antithetical due to agency problems. Shareholder primacy is advanced as a solution to agency problems because shareholder maximization can be easily measured, therefore guarding against shirking or self-interest.\textsuperscript{549} Similarly, shareholder primacy advocates argue that to permit a board to consider other stakeholders invites self-interest because it is more difficult to measure the achievement of this goal.\textsuperscript{550} Most actions will benefit at least one stakeholder group, which can allow self-interested directors to hide their motivations. For the most part, this argument again cannot be sustained when considering SMEs. As noted in Chapter 2, SMEs are by definition quite small, are often owner-managed,\textsuperscript{551} predominantly unincorporated,\textsuperscript{552} and based upon this, it is reasonable to conclude agency concerns are diminished for SMEs. This size of operations implies there is no need for extensive management teams thus greatly reducing the prospects for shirking. Quite simply, the majority of SMEs are either run by its owners or are sufficiently small that a non-managing shareholder/investor should be able to monitor the businesses operations closely and have greater power to direct dissentient management where necessary. Thus, these agency concerns are mitigated, leaving managers with greater flexibility to pursue whatever ends they desire whether profit maximising, limiting, or otherwise.


\textsuperscript{548} Clearly, most of a firm’s profits will be retained for future projects and the profits mentioned are the percentage that a board is willing to distribute to shareholders or other stakeholders.


An obvious issue with conflicting aims under shareholder primacy and CSR is the corporate law aspect. Whatever the jurisdiction, there will be restrictions placed upon directors to act in the best interests of the company which will limit their ability to engage in CSR. Whilst this statement is true, it has been greatly exaggerated. This point will be expanded upon in Chapter 5.2.1. This is also reflected in a survey of directors conducted at the University of Melbourne where the majority of directors surveyed believed the law permits focusing on interests outside of shareholders.

Having attempted to dismantle the arguments against shareholder primacy, at least as they apply to SMEs, there is a need to consider if it will promote CSR within SMEs. There is empirical support for this proposition which was discussed in detail in Chapter 2.5.4.2. In its entirety, this literature suggests that there is a lot of ‘low hanging fruit’ still left on the tree. It demonstrates a broad willingness to engage in CSR, especially when it is likely to yield a financial benefit. With the right policy levers, SMEs could contribute much to the community through its CSR activities whilst still earning greater profits.

Clearly an SME would not have the size of operations that would permit such a large saving, but nevertheless it demonstrates that substantial savings can be made with only a few small modifications. In another article that comprised four case studies of SMEs, all four noted some form of financial benefit with one of the firms recording a 76% increase in turnover the same year they first implemented SA 8000, a social responsibility certification system. Similarly, SMEs have suggested that donating to local supporting clubs and organisations can be more effective than traditional advertising. Therefore, not only does CSR serve a social function, but it has the potential to serve an economic function as well. The ‘business case’ for CSR does not rely upon a shareholder primacy or profit maximization theory. It could be


promoted under other theories. The important point to note however is that there is no serious need to change the way we view businesses, at least SME businesses, because there is so much ‘low hanging fruit’ left to be picked. Whilst this is the case, there is no need for a radical departure from the commonly asserted and accepted role of business, which is ultimately to earn profits. To represent CSR as purely an altruistic or moral imperative is both unnecessary and risks alienating SMEs that might have otherwise being engaged in CSR for self-interested reasons. The section on responsive regulation in Chapter 4.3 suggests that accusations and demonization is likely to engender mistrust rather than positivity towards CSR. Equally, there is no need to advance a stakeholder centric view of the firm with respect to SMEs and advancing such a view of the firm might dampen the message that CSR is good business practice.

The PMT is not intended to advance a radically new theory of the firm, in essence, it is a simple replication of shareholder primacy that accounts for SMEs whether incorporated or not. Shareholder primacy is traditionally thought to hinder or restrict the practice of CSR within large enterprises. The empirical literature suggests that the same cannot be said for SMEs. In fact a shareholder primacy, or profit maximization model could actually promote CSR within SMEs. Most SMEs are marginal unincorporated enterprises. In the case of larger corporations, sacrificing profits is a matter of reducing investment income for shareholders. For SME owners, it will often be their full time job and only source of income. Given SMEs financially marginal existence, to sacrifice profits is not just trimming dividends, it will probably cause some level of financial hardship for the owner. Furthermore, profits act as a buffer for leaner times. Given most SMEs are unincorporated and without the protection of limited liability, sacrificing profits during the good times is an even greater risk. Thus, according to the PMT, SMEs should fulfil their economic, legal, and ethical obligations out of obligation and self-interest, and should only be expected to voluntarily assume discretionary social and environmental obligations where it is profitable to do so.

3.7 Conclusion

This chapter has set the foundations for proposing reforms to encourage SMEs to further engage in CSR activities. Whilst several theories presented above did not ultimately apply to SMEs, they are valuable in justifying CSR from a large firm perspective. Whilst this thesis is
focused primarily on implementing CSR at the SME level, it is difficult to envisage any reform without large enterprises first engaging quite heavily in CSR as well. Why should a SME devote itself to these noble pursuits if larger enterprises are not interested in anything past the bottom line? Furthermore, there needs to be a vibrant CSR industry, including accountants and specific consultants with technical expertise on how to implement and measure CSR, which is likely to be sustained by large companies. There is also an active role for large enterprises in promoting CSR in SMEs. The reforms outlined in Chapter 7 will require some level of cooperation with large enterprises. As a final point, it is instructive to present theories that apply to large enterprises and consider their relevance to SMEs and to also highlight the differences between SMEs and larger enterprises with respect to CSR. Thus, this begins to address Research Question 2.

Clearly, this chapter has highlighted that the practical differences between SMEs and large corporations suggests a different approach to tackling CSR within SMEs is required. What is telling is that the only aspects of these theories which seem to apply to SMEs involve some form of self-interest. Nexus of contracts emphasizes the teamwork aspect of a corporation and suggests that the purpose of a company is the one bargained for amongst the parties. Implicit in this idea is the fact parties can withdraw support if the behaviour of the firm does not match the bargain struck. Equally, social capital emphasizes the financial benefits that can be gained through developing a strong network of relationships. Implicit in Edward Freeman’s work in Stakeholder theory, is the idea that you must manage the relationships between those that can impact the business, and those that are impacted by the business otherwise they will withdraw support. None of the theories fully explain how an SME actually operates, or why it should engage in CSR, but as far as CSR is concerned, they can all be reduced to one common theme: SMEs should engage in CSR because it is profitable.

The final part of this chapter thus concludes that the fundamental reason a SME should engage in CSR is to enhance its profits. Whilst this is essentially the same reasoning as shareholder primacy, a theory which is CSR limiting, when applied to SMEs, it affectively becomes CSR promoting. Most of the pitfalls of shareholder primacy simply do not apply to SMEs because they are fundamentally different to large corporations as discussed in this chapter and in the extensive literature review in Chapter 2. More importantly, it is likely that
if CSR is promoted as profitable, and the current barriers to CSR are addressed, then SMEs could contribute much to the CSR debate.

The history section adds practical substance to these theoretical debates. It highlighted the many iterations of the CSR debate and corporate law structure. Corporate law regulation, like all law reform, is reactive, and will change when there is an apparent need. Concerns over the influence of certain corporations such as the South Seas Company led to heavy regulation. This continued until the industrial revolution when there was a need for a business form that could pool resources and minimise risk. These corporations ultimately served public functions by building public infrastructure, a trend that eventually abated in the early 19th century. As corporations increasingly moved towards private concerns, the notion of corporate chartering was replaced with a simple registration process. The emergence of greater corporate power caused many notable commentators to propose responsibilities in order to ensure the newly acquired influence was used responsibly.

As a general theme, the corporate history highlights the absurdity of the position that ‘CSR is not the purpose of corporations.’ The purpose of the corporation has changed over time, with corporate law evolving to meet the changing needs and expectations of society. The notion of CSR and corporations performing limited public roles might seem somewhat radical but is no more radical than some of the reforms that were fiercely resisted, and have proven to greatly benefit both the business community and society at large.\(^{557}\) History tells us that relying on the voluntary behaviour of business is a slow arduous journey. The voluntary reporting of CSR took decades to become widespread.\(^{558}\) Equally, ‘hard’ law reforms may be resisted or have unintended consequences. Given the diverse nature of SMEs, it also seems unlikely that such laws could respond to the complex needs of SMEs.

It is important to place the SME debate in the context of the broader CSR debate discussed above. Academics have only acknowledged the importance of CSR in SMEs in the past 15-20 years. Concerns about the aggregation of corporate power dates back to the mid-19th century and debates about the purpose of the corporation predate these concerns. Thus, by comparison, the SME debate is in its infancy. The likelihood of widespread acceptance or

---

\(^{557}\) For instance, limited liability was fiercely resisted by business groups in the mid 19th century, but is one of the main benefits of incorporation today. See Ron Harris, *Industrializing English Law Entrepreneurship and Business Organisation, 1720–1844* (Cambridge University Press, 2000) 79-80.

agreement on the applicability of CSR to SMEs is low given the lack of agreement within the much older debates about large corporations. Nevertheless, the history discussed in this chapter, in conjunction with the empirical evidence discussed in Chapter 2.5.2, informs us that there are those who will practise CSR in spite of these debates. CSR was practised before corporations became large with dispersed shareholdings and it was practised across many cultures. To a degree, the large corporations of the 19th century are similar to the SMEs of today. With no separation between investment and management, SMEs, like the corporations mentioned above, are free to pursue whatever ends management deem worthy. Therefore, the purpose of government should be to maximise these opportunities. Governments should be encouraging CSR through non-invasive means, rather than through compulsory laws.

These regulatory strategies will be discussed in the following chapter which discusses regulatory theory. Whilst mandatory command and control regulation is discussed, it is clear that this alone will not be sufficient to engage the full breadth of SMEs. Accordingly, a variety of approaches including responsive regulation, self-regulation, market based-regulation, and smart regulation are discussed.
Chapter 4: Regulatory Theory and Instruments

4.1 Introduction

Chapter 3.2 tracked the history of CSR and the corporation and challenged the idea that CSR is beyond the scope or somehow outside the purpose of corporations and business endeavours generally. This idea was expanded in Chapter 3.3 - 3.6 with reference to corporate theory. It was argued in Chapter 3 that all of the corporate theories support at least a minimal form of CSR. Accordingly, the profit maximization theory best explains why SMEs should and do engage in CSR. Chapter 2.5 highlighted the problems associated with SMEs practicing CSR, noting that they differ from larger corporations. This chapter then begins the process assessing the various regulatory models available to encourage CSR in SMEs. Regulation is essential, but bad regulation can have undesirable effects as well. It is therefore necessary to evaluate the options that any reformist government has at its disposal. Ultimately it will be necessary to create a well-constructed and consistent system of regulation.

This chapter reviews key regulatory theories. They have been selected on the basis that they are relevant to the problem of CSR within SMEs. As this thesis has argued, businesses are not homogenous, their managers have different motivations and perceptions of regulation, and each approach has inherent strengths and weaknesses. Therefore, a pluralist approach that applies a number of approaches in a way that complements each approach’s strengths, minimises their weaknesses, and adequately motivates the entire business community to comply appears to hold the most promise. Thus, a pluralist or ‘smart’ regulatory approach can account for the heterogeneous nature of SMEs. The benefits of a pluralist scheme will be discussed in more detail in the concluding paragraphs in the section of this chapter which discusses smart regulation (Chapter 4.6.3) and in the conclusion to Chapter 7 (Chapter 7.6). Thus, this chapter assists in answering Research Question 3 by suggesting which reforms might be the most effective. This chapter addresses the regulatory theories of command and control regulation, responsive regulation, self-regulation, market-based regulation, and smart regulation, as well as assessing what each of these theories can offer to the regulation of CSR within SMEs.
4.2. Command and Control

At the most basic level, command and control regulation involves the prescription of a rule (command) which the regulated must comply with, otherwise a penalty will result (control). The underlying assumption of command and control regulation is that many businesses will ignore regulation unless there is a significant disincentive to do so. Thus, command and control aims to enforce a minimum standard of behaviour by punishing those businesses that fail to meet these standards. SME attitudes towards regulation (including command and control regulation) will be discussed in Chapter 7.5.1.3, but briefly it can be noted here that there is support for command and control regulation as it eliminates the ‘cowboys’ and ensures a ‘level playing field’. Thus, command and control regulation can assist the promotion of CSR by establishing minimum standards of behaviour and ensuring SMEs do not gain advantage through adopting lower standards. Therefore, this requires a system where there is a credible threat of detection and a significant penalty will result in the event of a breach. With such a system in place, businesses will form the view that it is more costly to attempt to avoid the law, rather than complying with it.

There are a variety of criticisms of command and control including a reliance on complex rules that are expensive to comply with and enforce, the overly legalistic rules lead to creative compliance, general inflexibility of the system, and an overdependence on enforcement activities. There is a consistent and uncompromising theme of handing down proper sanctions for non-compliance. The problem with such an approach is that it does not address the full gamut of motivations that cause non-compliance.

The empirical evidence on motivations for regulatory compliance is mixed with some evidence of punishment having a ‘deterrent affect’ on other members of an industry. For instance, in a study of 233 firms (of which 70% had fewer than 100 employees, making them SMEs) in the United States, businesses were asked about their recollection of cases

---

brought by the Environmental Protection Agency.\textsuperscript{563} It should be noted from the outset that deterrence appears to be more important to the SMEs compared with the larger businesses that participated in the study because larger businesses were already going beyond compliance for other reasons such as to protect their social license.\textsuperscript{564} 89\% of respondents remembered at least one instance of a fine being imposed on a company, although their recollection of frequency and severity of punishment drastically underestimated the reality (e.g. they believed far fewer businesses had lighter penalties imposed).\textsuperscript{565} Of those surveyed, 63\% admitted to making changes to their operations after hearing about an action being taken against another business.\textsuperscript{566} The study also confirmed a ‘reassurance function’ connected with the businesses hearing about a punishment, thereby reinforcing that they are ‘not foolish’ for complying and that those ‘who “cheat” are getting caught and punished.’\textsuperscript{567} The study noted that compliance was a part of survival with 60\% believing they would be closed down if they did not comply, and 35\% mentioning at least one example of a business that closed down due to compliance related issues (e.g. they could not keep up with the regulations, or did not survive the punishment imposed for non-compliance).\textsuperscript{568} The study also partly dispelled the deterrence theme, noting that almost half of the respondents suggested they would have complied without threats.\textsuperscript{569} Whilst not directly relevant to deterrence, a study found that occupational health and safety inspections triggered improvements in areas unrelated to the inspection (e.g. exertion injuries), therefore suggesting an inspection can have flow on benefits merely be raising general issues of employee safety.\textsuperscript{570} Another study has also suggested that firms who have been inspected typically conduct more ‘safety activities’ than those that have never been inspected.\textsuperscript{571}

\begin{thebibliography}{99}
\bibitem{566} Ibid 279.
\bibitem{567} Ibid 273.
\bibitem{569} Ibid 296. See also Peter May, ‘Compliance Motivations: Perspectives of Farmers, Home Builders and Marine Facilities’ (2005) 27(2) Law and Policy 317, 330 which yielded drastically different views on deterrence across industries with results ranging from one third to two thirds of respondents who suggested deterrence was a major motivation for compliance.
\bibitem{571} Raymond Sinclair and Thomas Cunningham, ‘Safety Activities in Small Businesses’ (2014) 64 Safety Science 32, 35.
\end{thebibliography}
In perhaps the most telling rebuke of command and control, a study from Robyn Fairman and Charlotte Yapp found that the majority of small businesses could not judge their own compliance, quite simply because they did not understand the regulatory requirements.\textsuperscript{572} The study found that only two out of the eighty one firms surveyed engaged in deliberate non-compliance, with the others viewing compliance as what was negotiated with the regulator.\textsuperscript{573}

Thus, despite the mandatory nature of command and control regulation, there are clear limitations, at least in the area of OH&S. Firms were found to be ‘organisationally incompetent’ and ‘non-compliance was due to failures of systems, management and practices’.\textsuperscript{574} Most tellingly, higher levels of compliance were found in areas where the regulator took an educative rather than a punitive approach.\textsuperscript{575} Therefore, whilst there is some support for the deterrence effect presupposed in command and control regulation, various studies tend to suggest that deterrence is only one of several key factors that motivates businesses to comply with the law. This tends to suggest that the punitive aspects of command and control regulation have some place in a modern regulatory system but there is a need for additional options.

Given the voluntary nature and broad definition of CSR, prescriptive command and control regulation will not be overly helpful. It will be difficult, unnecessary, and burdensome on businesses (particularly SMEs) to create a set of rules that state ‘you must reduce your energy usage by X\%, you must employ Y system for workplace safety, you must donate Z\% of profits to your local community (or alternatively the time of your workers), you must employ at least 1 employee with a past criminal history, etc.’. Ultimately command and control, as far as it applies to CSR, should set a minimal baseline with which all businesses (including SMEs) must comply with. Thus, command and control regulation would only be involved at the lower end of Archie Carroll’s definition of CSR, namely complying with legal responsibilities. Upon this foundation, other forms of regulation could promote SMEs ethical and discretionary responsibilities.

\textsuperscript{573} Ibid 507.
\textsuperscript{574} Ibid 512-13.
\textsuperscript{575} Ibid 512.
4.3 Responsive Regulation

Responsive regulation arose as a rejection of an exclusive focus on command and control regulation. Whereas command and control regulation involves the consistent punishment of offenders in order to establish a deterrent effect, responsive regulation posits that a punitive approach is not always the best means of encouraging compliance. Responsive regulation suggests that individuals are different, with different motivations, and therefore regulators must have a wide array of enforcement options and styles to accommodate these differences.

Robert Kagan and John Scholz advance three archetypes of businesses that commonly fail to comply with their legal obligations. First there are ‘amoral calculators’ who take a cost benefit approach to compliance. If the perceived risks of punishment and the severity of that punishment are low, whilst the costs of compliance with the law are high, the business is not likely to comply. The second archetype views businesses as ‘political citizens’ who comply with the law out of self-interest and perceptions of the reasonableness of the law. Therefore, non-compliance arises due to a belief that certain laws are unreasonable or capricious. The third archetype views businesses as ‘organisationally incompetent’ whereby non-con-compliance results from a lack of understanding of legal requirements and poor oversight of employees.

These three different perceptions of business warrant quite different stances from the inspector, ranging from an uncompromising agent who exacts non-discretionary justice, to ‘politicians’ who attempt to convince businesses of the efficacy of a law, to a basic educator. Kagan and Scholz argue that inspectors should be willing to switch readily between these three regulatory stances dependant on the facts of each case. Contrary to the assumptions of command and control regulation that assumes all businesses to be amoral calculators, Kagan and Scholz list many examples that dispel this notion. For instance, they cite small businesses that pursued expensive litigation to defend themselves, rather than enact comparatively cheaper modifications to their operations. Case Study 2 in Chapter 6.3, investigates the motivations behind occupational health and safety convictions, noting that

577 Ibid.
578 Ibid.
579 Ibid 68.
580 Ibid 86.
there is no evidence of amoral calculation in the data set and in fact substantial evidence to the contrary.

Because there will be individual actors who only respond to punishment, and those who can be persuaded with less rigorous regulator engagement, responsive regulation establishes when punishment and persuasion should be adopted.\textsuperscript{581} A prominent feature of responsive regulation is the ‘enforcement pyramid’ as shown below.\textsuperscript{582}

\textbf{Figure 1: Responsive Regulation – Enforcement Pyramid}

\begin{center}
\includegraphics[width=0.7\textwidth]{enforcement_pyramid.png}
\end{center}

\textbf{Source:} Ian Ayres and John Braithwaite, \textit{Responsive Regulation: Transcending the Deregulation Debate} (1992, Oxford University Press) 35

The critical premise behind the enforcement pyramid is that the bulk of regulator’s efforts should be aimed at the base of the pyramid at the persuasion stage and more punitive measures should only be employed once persuasion has failed.\textsuperscript{583}

There are several reasons for starting with a conciliatory attitude towards offenders. First there is the issue of expense. Persuasion is a much cheaper approach than punishment and

\textsuperscript{582} Ian Ayres and John Braithwaite, \textit{Responsive Regulation: Transcending the Deregulation Debate} (Oxford University Press, 1992) 35.
\textsuperscript{583} Ibid 35-36.
therefore, if persuasion works, there is no need to take punitive measures.\textsuperscript{584} This in turn frees up regulators’ resources and expands its regulatory reach.\textsuperscript{585}

If regulators adopt a consistently punitive approach, it also risks destroying its relationships with industry, as well as any opportunities for co-operation. Peter Grabosky has noted ‘where disapproval is articulated in such a manner as to denigrate the professionalism of the recipient, this may lead to the development of a defiant, calculating identity and corresponding regulatory response.’\textsuperscript{586}

Whilst the conciliatory approach at the base of the enforcement pyramid is a critical element of responsive regulation, there will be instances where persuasion does not work. This is why responsive regulation insists upon a full complement of sanctions which range in severity. Whilst the optimal strategy for a regulator is to slowly escalate up the pyramid, responsive regulation acknowledges that in rare cases (such as imminent ‘catastrophic risks’), it may be more appropriate to go straight to the apex of the pyramid.\textsuperscript{587} Additionally, responsive regulation is commonly used where regulators have an ongoing relationship with business, therefore it can be inappropriate in circumstances where there is minimal contact.\textsuperscript{588} In such situations, there may be a need to swiftly move up the pyramid to the more extreme end of sanctions. Importantly, responsive regulation can work well with the type of regulation to be employed. For instance, a government can communicate to industry its desire for self-regulation to occupy a particular regulatory space.\textsuperscript{589} However, it must also communicate its willingness to move up the regulatory pyramid towards command and control regulation if necessary.\textsuperscript{590}

Responsive regulation is an interesting concept in the context of CSR within SMEs. Responsive regulation evolved out of a growing consensus that not all businesses are amoral

\textsuperscript{584} Ibid 26.
\textsuperscript{585} Ibid 26.
\textsuperscript{589} Ian Ayres and John Braithwaite, \textit{Responsive Regulation: Transcending the Deregulation Debate} (Oxford University Press 1992) 38.
\textsuperscript{590} Ibid.
calculators. Many businesses are motivated by a sense of civic duty and even altruism. Thus a theory that highlights the benefits of persuasion and the downsides to punishment can contribute positively to a CSR regulatory framework. Given a significant barrier to CSR is a lack of knowledge and understanding of how to improve, it is wrong to assume that because a SME is not engaging in CSR it is not interested in doing so. The idea of being responsive to the actions of SMEs and responding with both persuasion and punishment is a valid one. By adopting an initially persuasive approach, this can assist by not alienating SMEs who are engaging or want to engage in CSR. ‘Punishments’ could then be used as a means to encourage the recalcitrant to improve their performance. These punishments would likely take the form of threats of more prescriptive legislation. Importantly, if the need for CSR was raised in an accusatory tone, it is likely to be met with needless resistance, when CSR could be presented as being both morally and economically sound. Again, these varieties of motivations suggest that there will be no panacea for promoting CSR in SMEs. Accordingly, a variety of reforms will be required, which is the approach taken in Chapter 7.

4.4 Self-Regulation

Whilst it can differ significantly in its implementation, self-regulation involves industry assuming the role of regulating itself, in place of a government regulator. However, many forms of self-regulation will involve some element of government or third party involvement rather than a ‘pure’ self-regulatory model. A common example of self-regulation can be found in the traditional regulation of professions through professional associations (such as law, accounting and medicine).

There are a variety of justifications commonly asserted for self-regulation. First, there must be some basis for imposing regulation in the first place. Secondly, traditional governmental regulation is either insufficient or too costly. For some problems, it will simply not be cost effective to monitor and enforce a command and control system, thus necessitating more efficient options. Self-regulation can offer increased regulatory coverage, both in

---

frequency and in overall depth and quality due to the vast resources and expertise of some industry bodies.\textsuperscript{595}

Self-regulation is also of particular benefit where the problem is of a highly technical nature or regulators have little expertise in the industry.\textsuperscript{596} Self-regulation can call on the expertise of an entire profession or industry to address a regulatory problem.\textsuperscript{597} Julia Black argues ‘that government cannot know as much about industry as industry does about itself’, which suggests there is a need to involve industry in the regulatory process.\textsuperscript{598} This is a strategy that has been used for centuries. For instance, medieval trade guilds regulated the properties of certain goods.\textsuperscript{599} The same arguments of ‘industry expertise’ were also advanced to allow for self-regulation within professional bodies such as law and medical ethics bodies.\textsuperscript{600} Because of this intimate understanding of their own business, self-regulation can also produce more efficient outcomes.\textsuperscript{601} Additionally, where rules are written by industry, they are likely to be viewed as more legitimate, providing greater peer pressure,\textsuperscript{602} and thus offering a greater prospect of compliance.\textsuperscript{603}

There are obvious disadvantages to self-regulation as well. Even though industry is perhaps more capable of regulating itself (as it has the funds and expertise to do so), it does not necessarily have the willingness to do so.\textsuperscript{604} Neil Gunningham and Joseph Rees argue that ‘industry associations are there not to moralize their members, but to serve their private

\textsuperscript{595} Ian Ayres and John Braithwaite, \textit{Responsive Regulation: Transcending the Deregulation Debate} (Oxford University Press, 1992) 104-5.
\textsuperscript{600} Tanina Rostain, ‘Self-Regulatory Authority, Markets, and the Ideology of Professionalism’ in Robert Baldwin, Martin Cave, and Martin Lodge, \textit{The Oxford Handbook of Regulation} (Oxford University Press, 2010) 170
\textsuperscript{604} Ian Ayres and John Braithwaite, \textit{Responsive Regulation: Transcending the Deregulation Debate} (Oxford University Press, 1992) 106.
ends. Regulatory efforts that are not in the interests of industry are therefore unlikely. Accordingly, self-regulatory systems are limited in effectiveness. Another important problem associated with self-regulation (particularly in the context of this thesis) is that it can be detrimental to small business. Where larger more dominant players have too much power over an industry’s regulatory activities, the regulation may favour larger enterprises over the smaller businesses, which may prefer direct government regulation. In attempting to attract new members, trade associations can become undemocratic. Both the medieval trade guilds and early (even middle) 20th century professional associations were known to be exclusionary. Barristers were chosen by Inns of Court on the basis of wealth and prestige, rather than merit, and determinations of fitness for practice displayed racial overtones. Similarly, guilds were known to exclude minorities. Whilst many overt exclusionary practices have long since disappeared, this highlights the risks involved in such an insular environment. As was noted in the discussion on social capital in Chapter 3.5.2, there is a risk that an inward looking focus can make people resistant to change.

The literature discussed in Chapter 2.5.4.2 notes that SMEs have a poor awareness of regulatory requirements. Chapter 7.5.1.1 also notes that regulators struggle to maintain contact with SMEs and inspect them on a frequent basis owing to their overwhelming numbers. Clearly then, for self-regulation to work effectively, the relevant association will have to be well resourced to actively engage SMEs and provide the level of assistance that SMEs require. Additionally, voluntary self-regulation also suffers from the ‘free rider’ problem whereby individual firms engage in tokenistic compliance (or do not subscribe to the industry standard), thereby gaining a direct advantage over those firms who fully comply.

---

606 Ibid 370.
611 Ibid 499-500.
Thus the effectiveness of self-regulation is ultimately dependent on participation rates. There needs to be a critical mass of participants, otherwise the industry will not improve, and eventually those already participating will drop off as they are at a competitive disadvantage. Given the voluntary nature of CSR, self-regulation must play a role in promoting CSR in SMEs. As noted earlier, an inherently prescriptive government sanctioned command and control system will be completely inappropriate. By allowing firms to decide their level of commitment and the areas of CSR they engage in, it makes CSR a palatable or even desirable concept. If CSR were to be imposed on companies, there is the risk of business failure and that CSR effectively becomes a ‘dirty word’ in the SME community. By encouraging voluntary self-regulation, this enables an SME to decide for itself how many good deeds it can afford and they can tailor their initiatives to areas of interest of the manager(s) and the company’s employees. This then creates a culture of wanting to engage in CSR, rather than being burdened with it. On a practical note, a key justification for self-regulation is where government sanctioned regulation is too expensive. Given the overwhelming number of SMEs and the diverse nature of CSR, it would be prohibitively expensive to monitor compliance. Trade associations could act as surrogate regulators. Trade associations could encourage CSR by requiring members to meet certain criteria (it might require signing up to a code or alternatively involve expulsion where a certain event occurs, e.g. an EPA conviction, workplace death, etc). This would retain the benefits of the self-regulatory model, whilst adding some level of enforcement that would further encourage CSR.

4.5. Market-based Regulation

Market-based regulation involves a broad range of instruments that ‘focus on outcomes rather than inputs, and seek to give firms and individuals incentives to adopt cost-effective solutions’. This can involve instruments, such as creating property rights that did not otherwise exist, as well as fiscal measures such as taxes and subsides. It could also involve the creation or restricted access to markets such as rules that govern public procurement. When considering the relevance of market-based regulation it is important to understand the idea of externalities and the ‘tragedy of the commons’. Garett Hardin first coined this phrase,

616 Ibid.
noting the problems associated with communal or public property.\textsuperscript{617} In situations where property is a public good (most notably the environment, air, rivers, etc.), the benefits of an enterprise are internalised, while the costs (most notably environmental degradation) are externalised and spread across the public.\textsuperscript{618} Moreover, many public goods are ‘rivalrous’ meaning one party using the good diminishes another party’s ability to enjoy the same good.\textsuperscript{619} Such a system openly encourages self-interest and as Hardin claims, ‘[f]reedom in a commons brings ruin to all.’\textsuperscript{620} A substantial problem with such a scenario is that there is no incentive for efficient use of these communal goods when these costs can be externalised.\textsuperscript{621}

Market-based regulation can be used to make businesses internalise these otherwise public costs and provide incentives for more efficient operations. Rather than rigid command and control rules that specify exact methods of compliance, market-based regulation focuses on outputs rather than inputs, which affords businesses ample flexibility to determine the most cost effective solution. For instance, improvements can be achieved through efficient processes instead of focusing solely on ‘end of pipe’ solutions, such as installing more efficient equipment.\textsuperscript{622} These kinds of nuanced solutions are almost impossible to regulate through command and control rule making. The popularity of market-based regulation has risen due to the perceived limitations of command and control in dealing with contemporary environmental issues. Command and control regulation already addresses the ‘low hanging fruit’, specifically, the heinous environmental abuses, leaving mostly inefficient and expensive means of reducing environmental harm.\textsuperscript{623}

Consider a simple pollution trading scheme.\textsuperscript{624} All businesses are awarded a certain level of emissions and these emissions are treated as a property right. Because businesses cannot exceed these targets, they are forced to explore options to reduce their emissions. There is no rigid command and control rule that requires them to install machinery or employ processes; it is up to the business to find the most efficient method of reducing their emissions. This

\textsuperscript{617} Garrett Hardin, ‘The Tragedy of the Commons’ (1968) 162(3859) Science 1243.
\textsuperscript{618} Ibid 1244.
\textsuperscript{620} Garrett Hardin, ‘The Tragedy of the Commons’ (1968) 162(3859) Science 1243, 1244.
\textsuperscript{621} Anthony Meyes and Catherine Liston, Economics of Environmental Regulation: Instruments and Cases in Michael Crew and David Parker, International Handbook of Economic Regulation (Edward Elgar, 2006) 255.
\textsuperscript{622} Richard Stewart, ‘Models for Environmental Regulation: Central Planning Versus Market-Based Approaches’ (1992) 19(3) Environmental Affairs 547, 553-555.
search will create innovation and a demand for environmentally friendly technologies, which could lead to greater economies of scale. Furthermore, businesses are permitted to sell excess rights to other firms. This can therefore promote ‘beyond compliance’ behaviour where efficient to do so. Thus, additional efficiency is gained where the most efficient businesses reduce their emissions in place of businesses that cannot do so in a cost effective manner. By making abatement less costly, it is not only of benefit to business, but governments can also set more ambitious targets for abatement as well.

Beyond efficiency arguments, market-based regulation can create markets and incentivise desirable behaviour. Deposit refund schemes are an example of this where hazardous products such as batteries and solid waste attract a small fee upon being presented to a recycling facility. The effectiveness of South Australia’s scheme for bottles and cans is firmly demonstrated with a recycling rate of almost 80%, and bottles and cans comprising only 2.2% of total litter, compared with 4.1% in the Northern Territory, 4.7% in Queensland, 7% in Victoria, 7.5% in NSW, and 13.2% in Western Australia. The EPA notes the effects the South Australian scheme has had on product stewardship and the recyclability of products as well as the extensive recycling depot infrastructure in place. Ultimately, this scheme has established larger markets for recycling and assists in providing economies of scale to providers of recycling services.

Unsurprisingly, market-based regulation (at least in the form of incentives) is a popular form of regulatory tool among businesses. An obvious advantage of market-based regulation is the aligning of interests between the regulator and business. By definition, market-based

628 Broadly the scheme allows bottles and cans to be returned to recycling facilities for 10c per bottle or can. Further details of the scheme can be found at Environmental Protection Authority (SA), EPA (SA) <Container Deposits http://www.epa.sa.gov.au/environmental_info/container_deposit >.
630 The only other Australian State or Territory with a deposit scheme.
632 Ibid.
regulation involves providing a financial incentive for complying with a particular objective of the regulator. This will act as a powerful incentive to comply with the regulator’s interests. In most cases, market-based regulation will be efficient as well. Market-based regulation is primarily concerned with outcomes rather than prescriptive rules, which grants managers the flexibility to choose the most cost effective solution for their business. There is also an added aura of legitimacy as business chooses its own solutions and there are no sanctions as such, with compliance encouraged by incentive rather than punishment.

Whilst this legitimacy may be of benefit, market-based regulation’s lack of coercive power is also a drawback. There is nothing forcing businesses to comply. They can ignore subsidies, choose to pay taxes in lieu of changing their operations, choose to write off a portion of its customer base, etc. Additionally, where you incentivise change, rather than using more punitive means of coercion, there will be a greater tendency to pick the ‘low hanging fruit’, whereby businesses will only change to the extent that it is profitable for them to do so. However, as noted in Chapter 3.6.1, this is less of an issue for SMEs as there is still plenty of ‘low hanging fruit’ to be picked. Finally, market-based regulation may provide perverse incentives to engage in the very kind of activity that the regulation is trying to limit, for instance to increase waste so as to be able to claim a larger rebate. John Braithwaite has detailed bizarre behaviour within the nursing home industry, such as hiring pot plants and cutting out photos from magazines, in order to make the homes appear more liveable to attract greater incentive payments.

At face value, the benefits of market-based regulation seem clear enough. However, the empirical accuracy of these claims is challenged. Whilst there are numerous empirical studies that espouse the efficiency of market-based schemes, they are almost entirely hypothetical projections. Daniel Cole and Peter Grossman suggest that there is little support for the efficiency claims made about market-based regulation amongst the truly empirical studies. Furthermore, they challenge some of the assumptions made in many of the simulations. For

638 Ibid 889-92.
instance, if unrealistic assumptions, such as perfect information, precise knowledge of the costs and benefits of actions, differing costs of abatement amongst businesses, and the same monitoring costs between command and control and market-based regulation are incorrect, then claims about market-based regulation’s efficiency might be misplaced.639

In fairness, similar claims can be made about the costs of command and control regulation where firms are far from homogenous, use different equipment, are of a different size, and therefore can experience different costs of abatement.640 It is generally admitted that command and control regulation can be highly efficient when the subject of regulation is fairly standard, but such circumstances are uncommon.641 Additionally, there are instances where a market-based scheme creates can create inefficiencies due to two policies competing against one another. For instance, container deposit schemes have been shown to increase the cost of curb side collection due to a loss of economies of scale.642

A further point should be made with regards to potential crowding out. It is a mistake to simply assume that where money or self-interest is added to a problem, those with altruistic motivations will remain. Richard Titmuss suggested as much in an example of providing financial incentives for blood donations in the United States.643 He proposed that by offering incentives, this reduced notions of civic duty.644 Kenneth Arrow, based upon Titmuss’s work, explains that whilst altruism is ‘self-enforcing’ (if motivated by altruism this necessarily implies that the person would not lie or attempt to harm the community in any way), those motivated by self-interest and financial incentives ‘ha[ve] every incentive to conceal the truth’.645 This idea of ‘crowding out’ is important in the context of efficiency claims because there is little benefit in rewarding behaviour that would have resulted without the

639 Ibid 897-898, 903.
642 George Criner, Steven Jacobs, and Stephanie Peavey, An Economic and Waste Management Analysis of Maine’s Bottle Deposit Legislation (1991) Maine Agricultural Experiment Station Miscellaneous Report 358, 50. It should be noted that in the subsequent paragraphs the authors acknowledge the benefits of deposit schemes in smaller areas. They acknowledge that 70% of the State would benefit from some form of deposit scheme. Given Maine’s comparable population size to South Australia, this might be an explanation for the perceived success of the South Australian scheme.
incentives. An essential element of such policy is that it actually motivates change and does not breed entitlement to a reward for behaviour that others would have done altruistically. These are complex issues. It is difficult to quantify the crowding out effect, but what these studies do is suggest policy makers shouldn’t simply assume market-based regulation will be beneficial or that there is no diminution of altruism when appealing to self-interest.

One of the mooted efficiencies of market-based regulation is the ability of certain parties to trade their abatement (either in a formal emissions trading scheme or simply informally acknowledging that some businesses are better placed than others to improve). This cannot be done where the pollution in question is localised (emissions into a river, air, etc.). Water and air quality cannot be transferred, so if the abatement is unevenly distributed across firms there is the risk that many communities will still experience poor (potentially worse) water and air quality. Thus, the issue of public safety must be considered. Similar equity arguments are made with respect to tax related incentives as they confer greater benefits to those with higher incomes, and do not benefit those who made losses.

There are certainly some problems with market-based regulation and, despite the claims of efficiency and superiority over command and control regulation, market-based regulation must be carefully thought out to realise benefits and limit problems. In the context of CSR regulation, the manner in which the message is delivered is crucial. Whilst it is important to convey the idea that CSR can be profitable, it is also important to not allow a culture of entitlement to develop. As has been noted above, one of the primary aims of market-based regulation is to force businesses to internalise the costs of their operations that would otherwise be imposed on the community. Regulation should not be seen as a reward for doing what businesses should be obligated to do anyway. Having said this, in certain circumstances, a small incentive might be the key ingredient that ‘tips the scales’ and prompts actions which produces benefits that far outweigh the financial impost on governments. In the context of

647 Ibid.
649 Ibid.
cash strapped SMEs, subsidising equipment purchases might be a sound investment. The costs and benefits of such subsidies are known upfront, and there is little opportunity for fraud, therefore removing any need for costly monitoring.

Like all other forms of regulation, market-based regulation should not be thought of as a panacea. There are instances where the outcomes will be inferior to other forms of regulation, even traditional command and control. It is however another option that in the right circumstances could yield substantial benefits. Given the financial pressures faced by SMEs as demonstrated in Chapter 2.5.4.1, market-based regulation could be especially useful. Although not discussed at length in this chapter, supply chain pressure and public procurement could be an instrumental market-based measure in promoting more responsible behaviour amongst businesses.

4.6 A Combination of Approaches – Smart Regulation

Similar to responsive regulation, smart regulation is premised upon the idea that non-compliance with regulation can be attributed to a variety of factors, which in turn necessitates a variety of regulatory tools. Additionally, individual tools or approaches are not sufficiently flexible to address all regulatory problems. Importantly, given the heterogeneous nature of SMEs, it is almost impossible to regulate them all with a single instrument. Furthermore, compliance cannot be guaranteed due to the autonomy of business, and the fact that businesses may simply choose not to comply (or cannot comply). Smart regulation seeks greater use of self and co-regulation as well as more traditional government based regulation. It therefore seeks the involvement of government, business, and third parties (such as NGOs) in the belief that a wider range of regulatory actors and regulatory tools will produce better compliance outcomes. Smart regulation also acknowledges the potential of

---

655 Ibid.
non-traditional regulatory sources such as supply chain pressure, financial markets, and society in general.\textsuperscript{656}

The primary benefits of smart regulation are resource based. Benjamin Sovacool notes: ‘[h]aving multiple regulators means that different officials with distinct perspectives review a problem’.\textsuperscript{657} Julia Black points to the fact that no one party has the requisite knowledge or expertise to solve complex regulatory problems, thus necessitating a broader range of instruments to be employed, and third parties to be involved in the process.\textsuperscript{658} Thus, by including industry and other parties in the regulatory process, there is the opportunity for appropriate insight and the exchange of information that can lead to solutions that otherwise would not have been found.\textsuperscript{659}

Obviously, there is also a financial aspect to smart regulation where ‘many resources are thrown towards a particular problem’.\textsuperscript{660} This is especially important where budgets of public authorities are constrained. Under such constraints, governments may lack the resources to properly regulate a particular problem,\textsuperscript{661} at which point it must look for alternative solutions.\textsuperscript{662} Under the right policy settings, the introduction of multiple ‘regulators’ can also increase accountability.\textsuperscript{663} While ‘no perfect governance arrangement exists’, smart regulation and enlistment of other institutions as ‘back up’ regulators can ‘offset’ these imperfections.\textsuperscript{664}

Whilst introducing more institutions into a regulatory scheme can yield benefits through more expertise and resources, it does introduce greater complexity. For instance, there may be no

\textsuperscript{656} Neil Gunningham, ‘Enforcement and Compliance Strategies’ in Baldwin, Robert, Martin Cave and Martin Lodge, \textit{The Oxford Handbook of Regulation} (Oxford University Press, 2010) 131.
\textsuperscript{658} Julia Black, ‘Decenising Regulation: Understanding the Role of Regulation and Self-Regulation in a \textquoteleft Post-Regulatory\textquoteright World’ (2001) 54(1) \textit{Current Legal Problems} 103, 106-7.
\textsuperscript{659} Peter Grabosky, ‘Using Non-Governmental Resources to Foster Regulatory Compliance’ (1995) 8(4) \textit{Governance} 527, 532.
\textsuperscript{661} Peter Grabosky, ‘Using Non-Governmental Resources to Foster Regulatory Compliance’ (1995) 8(4) \textit{Governance} 527, 527.
central point of contact or authority. There is also a risk of regulatory ‘duplication’, which could mitigate the benefit of any additional resources. Again because authority and regulatory functions are dispersed amongst several parties, there are also issues of accountability. Much like self-regulation, there is a risk that by granting regulatory power to a third party (or allowing them to influence regulation) that they will create rules that benefit industry or even preference individual firms. Any perceived benefits of smart regulation also rest on the competence and eagerness of third parties that are given regulatory functions. There is no guarantee that any third party will be more effective in regulating industry, leading to the possibility that smart regulation could produce adverse outcomes.

### 4.6.1 Practical implementation of Smart Regulation:

The optimal role for government is to avoid crowding out the regulatory space and to create a system that permits third parties (such as NGOs, trade associations, and supply chains) to assume a role in regulation. Thus, government acts ‘principally as a catalyst or facilitator’ that creates links between the regulated and third parties, whilst identifying gaps in regulation itself. Governments should aim to promote ‘win-win’ outcomes by ‘nudging firms at the margin towards cleaner production, heightening their awareness of environmental issues, and encouraging the reordering of corporate priorities in order to reap the benefits of improved … performance.’ These propositions are overwhelmingly supported by the literature discussed in Chapter 2.5.3 – 2.5.4 on the barriers and motivations experienced by SMEs with respect to CSR.

---

671 Ibid.
Neil Gunningham and Darren Sinclair considered how the various approaches work in tandem with one another, determining that some combinations were ‘inherently complementary’ and others that were ‘inherently counterproductive’. An obvious example of complementary approaches is combining information with ‘any other approach’. By facilitating two way communications between regulator and business, the regulator can assess where the greatest risks are, and greater transparency improves community support for any voluntary approach. Information alone will not promote compliance, requiring another strategy to provide the enforcement element of regulation. Another complementary approach is self-regulation and command and control. This combination imposes minimum standards to avoid free riding, but also leaves sufficient flexibility for ‘beyond compliance’ behaviour.

Examples of counterproductive combinations include command and control and market-based regulation, at least to the extent that it targets the same problem. The example given by Gunningham and Sinclair relates to general waste/pollution abatement. The benefit of market-based regulation is that it gives firms the flexibility to adopt the best solution for itself, a benefit that is severely restricted if command and control regulation imposes prescriptive rules. Neil Gunningham and Darren Sinclair illustrate this with an Australian example (this time using an overly prescriptive self-regulatory model) of a program to reduce CFC emissions, which was plagued by low (almost zero) participation rates. It should be noted that policies have inherent costs to monitor or enforce them. In this chapter, the possibility of two schemes (e.g. councils collecting recyclable containers via curb side collection and container deposit schemes) competed to make both policies less efficient. Again, this is clearly counterproductive. To avoid this, Gunningham and Sinclair advocate a

674 Ibid 55-56.
676 Ibid 57-58.
677 Ibid 61-62.
678 Ibid.
679 Ibid 64.
‘sequenced approach’ that involves introducing certain approaches only after the initial approach has failed.\textsuperscript{681}

It is important to note, smart regulation does not involve what has been referred to as ‘smorgasbordism’ or the ‘kitchen sink approach’.\textsuperscript{682} Simply throwing more regulatory instruments at a problem is unlikely to be of assistance. Complying with regulation is a financial burden on businesses, thus imposing poorly thought out layers of regulation is unlikely to be effective.\textsuperscript{683} Additionally, regulation has budgetary implications on regulators and more regulation is likely to involve a greater strain on their resources.\textsuperscript{684} Thirdly, as noted above, some combinations of regulation can be counterproductive.\textsuperscript{685} In a literature review of the key principles behind any smart regulation policy design, Peter Gossum, Bas Arts, and Kris Verheyen distil the literature to eight core principles.\textsuperscript{686} First, there is a need to avoid any counterproductive policy mixes. Second, governments should employ a broad range of the most efficient regulatory options. Third, they should also involve a broad range of third parties, being mindful of only including the most appropriate institutions. Fourth, only use new instruments after the demonstrated failure of existing forms of regulation. Fifth, ‘motivational and information instruments’ are highly effective.\textsuperscript{687} Sixth, where possible and effective, the least ‘interventionist’ forms of regulation should be used. Seventh, the notion of policy sequencing\textsuperscript{688} should be employed under most circumstances, except where the risks are too severe to take a cautious approach. Finally, creating a business case for action is essential.\textsuperscript{689}

Smart regulation borrows the regulatory pyramid from responsive regulation, and expands upon it by introducing multiple regulators, thus giving the pyramid a three dimensional shape. Thus, governments not only have the option of moving up the pyramid to more


\textsuperscript{683} Ibid.

\textsuperscript{684} Ibid 390.

\textsuperscript{685} Ibid.


\textsuperscript{687} Ibid.

\textsuperscript{688} Ibid.

\textsuperscript{689} This is where policies are slowly introduced one after the other after a policy has failed, instead of simply implementing all of them at once.

coercive forms of regulation, but can also introduce other regulators (who can also move up their side of the pyramid). This pyramid is demonstrated in the following diagram:

**Figure 2: Smart Regulation - Regulatory Pyramid**

![Diagram of regulatory pyramid](image)

**Figure 2 Regulatory pyramid—expanded model**

4.6.2 Relevance to CSR

Given the smart regulation approach taken in the reforms outlined in Chapter 7, it is necessary to justify a smart regulatory approach with respect to CSR. It is important to note that command and control regulation is not excluded from the regulatory mix (or relegated to a last resort) under a smart regulation system. Despite the non-interventionist approach advocated above, the policy mix is aimed at going ‘beyond compliance’ which implies a need to maintain a ‘statutory baseline’. In this respect, smart regulation fits comfortably within the definition of CSR, in that there are mandatory legal responsibilities at the base of Archie Carroll’s definitional pyramid, and discretionary responsibilities at its apex. This was discussed in Chapter 2.2.1.

In Chapter 5.4, it is noted that the environmental and workplace safety legislation establishes this minimum baseline. It is also noted in Chapters 2.5.3.2 and 7.5.1.1 that SMEs have low levels of compliance, and regulators do not have the resources to frequently inspect these businesses. Thus, third parties such as trade associations can be utilized to assist in educating and promoting compliance within its membership. Therefore, smart regulation can assist SMEs to fulfil their legal responsibilities. In addition, a variety of tools will be employed in order to encourage SMEs to fulfil their discretionary responsibilities. This will be done through a variety of education/information and market-based policies (both general market based initiatives, such as tax incentives, as well as supply chain pressure and public procurement). Essentially, the motivations for SMEs engaging in CSR and the barriers to further engagement are so diverse that no one regulatory solution will directly relate to all SMEs. It is also clear that smart regulation can not only strengthen pre-existing laws and thus help to reinforce a business’s legal responsibilities, but it is also crucial in promoting CSR.

This is critical in the context of this thesis. Smart regulation can achieve changes that are simply not possible under other systems.

As noted earlier in this section, smart regulation involves ‘nudging at the margins’. Thus the purpose of this thesis and Chapter 7 is to construct a smart regulatory framework that employs enough regulatory instruments, and empowers enough third parties to nudge SMEs in the right direction towards CSR.

4.7 Conclusion

This chapter highlights a number of potential approaches to better regulating CSR within SMEs. It examines the respective strengths and weaknesses of each regulatory approach. The insight gained in this chapter will ultimately inform the reforms proposed in Chapter 7. It argues that ‘purist’ approaches are unworkable and the solution lies in a combination of approaches. The combination could include aspects of all of the options mentioned above. The starting point is that government must assess what conduct should be mandatory and what is optional. Clearly significant legislation already exists in areas that CSR would touch upon such as OH&S, environmental protection, employment conditions, etc. Mandatory requirements would (and do) involve prescriptive command and control style rules that deter non-compliance through punishments. Regulators should in turn be responsive and attempt persuasion where offenders want to comply and punishment where they do not.

Aside from the minimum standards imposed by command and control regulation, the model should be a voluntary self-regulation model. This model will impose the least cost to both SMEs and the government. The practical reality is that government does not have the resources to regulate every single business, on every aspect of CSR. It is also counterintuitive to impose regulatory costs on SMEs, as this reduces the amount of funds available to actually engage in CSR. This ultimately necessitates self-regulation, both by the individual firm and hopefully with the support of various industry associations. Industry associations are trusted sources of information and have frequent contact with their members making them an ideal surrogate for regulation. It also legitimises the idea of ‘regulating’ CSR. Ordinarily this would involve these associations promoting the benefits of CSR, and providing assistance in implementing initiatives, thereby taking a purely educational role. However associations may

---

694 Ibid 417.
voluntarily take this a step further imposing a modified self-regulatory approach on its members. In this instance, they would have some form of oversight role that would ensure compliance and sanctions could involve expulsion where firms are in non-compliance. This will avoid any negative perceptions of CSR or that it is being imposed somehow upon business. The key here is that firms should ‘want’ to engage in CSR, rather than feel as though they are being forced to do so. Better education on the benefits of CSR could create a scenario where more SMEs ‘want’ to engage in CSR. Market-based regulation could add a further impetus for SMEs wanting to engage in CSR by providing an incentive to do so.

This alone will not be enough to promote CSR, as responsive and smart regulation informs us that businesses have different motivations for compliance and therefore we need a number of different methods of encouraging compliance. Amoral calculators will require more than ‘tugs at their heartstrings’. Educational activities espousing the benefits of CSR will assist, as will market-based regulation. Financial incentives for CSR oriented behaviour and punishments for poor behaviour will encourage amoral calculators to comply. Responsive regulation and the willingness to educate and offer incentives, rather than merciless punishment, is more likely to engage the organisationally incompetent who simply need to be told what they are required to do for compliance, and also the politically defiant, who will act based upon the reasonableness of the government or regulator’s approach. The use of multiple approaches to regulation necessarily implies the use of smart regulation. As noted above, government should be responsive and shift to more punitive measures if the business community is completely unreceptive to CSR. This would be limited, as many aspects of CSR could not be regulated in this way, for instance on the issue of philanthropy or employment for disadvantaged groups. However, it could legitimately expand pre-existing regulation by, for example, lowering the acceptable threshold for emissions; requiring businesses to use energy/water efficient technology, and so on. It is clear that governments and regulators alike have many options on how to approach regulation and law reform. Given the breath of motivations of SMEs and businesses generally, it is clear that there will be no one solution to the very complex problem of CSR. A series of reforms will be required. The proposed reforms in this thesis will be discussed in Chapter 7.

---

695 For instance, a government could not realistically impose a rule that mandated each firm must employ at least one recovered drug addict, disabled person, etc.
The next chapter will evaluate the current system in place to regulate CSR. As will be noted in that chapter, the regulatory framework mostly ignores SMEs. This suggests a need for reform, with the reforms proposed in this thesis outlined in Chapter 7.
Part 3 – A Practical Approach to CSR within SMEs

Chapter 5: The Current Australian Approach to Corporate Social Responsibility

5.1 Introduction

In Chapter 4, regulatory theory was discussed, which enabled the strengths and weaknesses of a variety of the major approaches to be analysed. Thus, Chapter 4 provided a foundation for structuring the reforms that will be presented in Chapter 7. Importantly, Chapter 2.5 noted that SMEs are not homogenous, and managers have different abilities and motivations. Therefore, there is a need to introduce a policy mix that will accommodate these differences, rather than introducing a ‘one size fits all’ approach. Sadly, as will be discussed in this chapter, Australia has made this mistake by mostly targeting larger corporations with their regulatory efforts. This chapter will analyse the current mechanisms in place to regulate CSR, and will expose the fact that SMEs largely fall through the cracks. This will demonstrate an overwhelming need to introduce reforms to include SMEs, and promote CSR within these businesses. Thus, this chapter will help to address Research Question 3.

This chapter will commence by considering the Corporations Act 2001 (Cth) and what it contributes to the regulation of CSR. This analysis will then be expanded to broader corporate law regulation such as the ASX Listing Rules and the ASX Corporate Governance Principles and Recommendations (2013). The chapter will then look beyond the corporate law, and discuss how the government influences behaviour through its procurement practices and other areas of law such as environmental and occupational health and safety laws.

This thesis advances the need to promote CSR within SMEs, but larger corporations are clearly relevant to this endeavour. Therefore, it is necessary to consider how effective the current framework is in regulating any entity, whether large or small, corporate or otherwise. ‘Trickle Down Theory’ is relevant on this point. Merely by putting a regulatory issue into the public domain, there is the prospect of businesses changing their processes, even when those laws or policies are not directly applicable to them. Whether it is reviewing practices after
hearing about regulatory action taken against a competitor, mirroring the practices of a competitor to maintain market share, or being influenced by friends, business contacts and networks. Regulatory action can have a broader influence than the specific target of the regulation. In many areas, such as disclosure, larger firms tend to set the benchmark and many aspiring firms follow suit. There is a further benefit in that laws first introduced to larger entities allows a government to test their policies, thus promoting an easier transition for SMEs. Additionally, supply chain pressure from large corporations can influence the activities of SMEs in their supply chains. As noted earlier, promoting CSR within SMEs ultimately relies upon CSR being routinely practiced amongst larger corporations. Many of the reforms in Chapter 7 rely upon the influence of larger corporations. Thus the legal system cannot be viewed exclusively in the context of SMEs.

This chapter will proceed by first providing an analysis of corporate law. It explores directors’ duties, which in practice provides broad scope for directors to consider non-shareholder interests, despite the duties acting as a restraint on directors’ power. Secondly, this chapter analyses the various disclosure provisions, which require companies to disclose information relevant to CSR in its annual reports. This chapter also addresses CSR regulation which extends beyond corporate law. Thus, the following section outlines the Commonwealth Procurement Rules, which act as a form of regulation, as the government is a large customer and can likely influence businesses through its tendering requirements. Finally, the ‘supporting’ legislation, such as environmental and workplace safety legislation, is briefly noted as it provides a minimum baseline of standards in areas of interest to CSR advocates.

5.2 Corporations Law

It is important to note from the outset that corporate law both promotes and restrains CSR. As was noted in Chapter 3, there is significant tension surrounding the role of corporations. Should companies be governed exclusively for shareholders or should other stakeholder’s

---


700 Andrew Clarke, ‘Small and Medium Sized Enterprises (SMEs) and Corporate Governance: Politics, Resources and Trickle Down Effects’ (2006) 58(6) Keeping Good Companies 335.
interests be considered as well? The law answers this question by restricting boards to pursuing CSR only where it yields a benefit to the company, for instance by enhancing the company’s reputation, or reducing its costs. This appears to be restrictive, but in practice, many decisions or actions that benefit stakeholders will also benefit the company and therefore will be immune from challenge. Putting these matters to one side, the main method by which the Corporations Act 2001 (Cth) actively encourages CSR is through the disclosure rules.

As will be noted throughout this section, many SMEs are not incorporated, and even fewer are large (or public) companies that trigger most of the CSR-related regulation. Again it must be stressed that large corporations are relevant to SMEs engaging in CSR. For that reason, it is necessary to discuss the corporate law requirements as they ultimately dictate what assistance larger corporations are permitted to provide to SMEs. This in turn must be considered for the reforms proposed in Chapter 7. A law reform proposal would ultimately be futile if it relied upon large corporations committing breaches of the Corporations Act. Additionally, it is clear that corporate reporting is rapidly becoming a tool by which governments attempt to encourage more responsible behaviour, and corporations attempt to explain this behaviour to their relevant stakeholders. Clearly SMEs in a large corporation’s supply chain are relevant to this behaviour. The literature analysed in Chapter 2.5.4.1 highlights the fact that SMEs are increasingly experiencing some form of supply chain pressure. While reporting on supply chain issues is regarded as poor at this stage, there are calls for substantial improvement in this area of corporate reporting, which suggests supply chain pressure is going to become increasingly relevant. Thus, on face value, the corporate law offers little to directly influence SMEs’ behaviour. Nevertheless, it can have an impact by providing an incentive to larger enterprises to work with SMEs in improving their operations.

5.2.1 Directors’ Duties

Directors, officers, and in specific circumstances, employees, owe duties to the company employing them on the basis of their fiduciary relationship with the company, and also imposed by statute. Whilst there are a variety of statutory, fiduciary, and equitable duties, in

---

702 The only duties commonly considered ‘directors’ duties’ applicable to employees are the duty to not misuse their position or company information. See Corporations Act 2001 (Cth) ss182, 183.
the context of CSR, the most pertinent duty is the duty to act in good faith, in the best interests of the company, and for a proper purpose. Section 181 outlines the content of the statutory duty which requires:703

1) A director or other officer of a corporation must exercise their powers and discharge their duties:

(a) in good faith in the best interests of the corporation; and

(b) for a proper purpose.

The first limb requires that the directors honestly believe the decision made is in the best interests of the company. Arguably, the second limb that CSR is an improper purpose could also be argued. Elizabeth Klein and Jean Du Plessis argue there are substantial similarities between the two limbs with respect to gratuitous payments (essentially a narrow form of CSR). They argue that considering the best interests of the company is not only an independent duty itself, but also acts as a test for whether directors have used their powers for proper purposes.704 In order to establish an improper purpose, there is a need to consider the purpose for which the power is granted, which, in the case of a gratuitous payment or CSR, will often be the general powers of management.705 These general powers are likely to be interpreted as permitting actions that benefit the company, making the ultimate question ‘did the directors use their powers to benefit the company?’706 Therefore, irrespective of which limb is used, the legality of any CSR initiative will ultimately be decided by whether the actions of management are in the interests of the company.

As directors owe these duties to the company it is important to consider what the ‘company’ is for the purposes of this duty. Lord Evershed suggested that the often quoted phrase “company as a whole” does not … mean the company as a commercial entity, distinct from the corporators: it means the corporators as a general body.”707 Thus the phrase company as a whole can be interpreted as shareholders as a whole. Furthermore, ‘the company’ should include considerations of it as a ‘commercial entity’.708 Thus, it is necessary ‘to have regard to the interests of present and future members of the company, on the footing that [the

---

703 Corporations Act 2001 (Cth) s181.
705 Ibid.
706 Ibid.
707 Greenhalgh v Arderne Cinemas Ltd [1951] Ch 286, 291 (Per Evershed M.R).
company] would be continued as a going concern.\textsuperscript{709} Whilst the company must be run for the primary benefit of shareholders and these interests will ordinarily be aligned, there is the potential for conflict. For instance, investors can have quite different appetites for risk and can also differ quite substantially in their holding patterns, preferring to hold shares for a period ranging from days to decades. Thus the requirement to act in the best interests of shareholders as a whole addresses the issue where there is conflict, for instance, where shareholders wishing to ‘cash out’ advocate short term thinking that will yield short term benefits but may damage the company in the longer term (e.g. savage redundancies). There is little controversy or conceptual difficulty in this position as the shareholders provide the capital for the company to function, and, where the company is solvent, are the residual claimants in the enterprise. This effectively enshrines the shareholder primacy doctrine mentioned in Chapter 3.3.1. However, as will be noted below, the situation is complicated when attempting to add other constituencies such as creditors, employees, or other stakeholders.

\textbf{5.2.1.1 Duty to Creditors?}

There is no greater example of this conceptual difficulty than the courts’ consideration of whether a duty is owed to consider the interests of creditors. The issue was first addressed in \textit{Walker v Wimborne} (1976) 137 CLR 1 at 7, where Mason J offered the following observations:

\begin{quote}
In this respect it should be emphasized that the directors of a company in discharging their duty to the company must take account of the interest of its shareholders and its creditors. Any failure by the directors to take into account the interests of creditors will have adverse consequences for the company as well as for them.
\end{quote}

Nearly forty years have passed since this pronouncement and yet the legal position is far from settled. Given this section is effectively outlining the evolution of the duty; it proceeds in chronological order to highlight the difficulties courts faced in defining such a duty. Thus, the next case to consider the issue was \textit{Nicholson v Permakraft NZ) Ltd (in liq)} [1985] 1 NZLR 242. The case involved a corporate restructuring whereby shareholders injected further capital into a holding company which in turn purchased its subsidiaries assets at above

\textsuperscript{709} Ibid.
commercial rates, thus producing a profit. This profit was distributed to creditors by way of a dividend, importantly, at a time that the company was solvent. However, the company’s fortunes changed rapidly leading to the winding up of the company two years later. The liquidator advanced a duty to creditors’ argument, which ultimately failed on the basis of Permakraft’s solvency at the time of the restructuring and dividend payment. Because of this, Somers and Richardson JJ largely ignored the question of when a duty might be owed, suggesting consideration of these issues was more appropriate when they were determinative of a case’s outcome. Cooke J however surmised that a duty would be triggered ‘if the company is insolvent, or near insolvent, or of doubtful solvency, or if a contemplated payment or other course of action would jeopardise its solvency’. Cooke J accepted that such a duty was justified on the basis of limited liability been afforded as a privilege and the fact that creditors’ may fairly be seen as beneficially interested in the company when the company is of questionable solvency.

Similar facts arose in a subsequent Australian case in that the company was clearly insolvent, which prompted the court to adopt the more cautious approach of Richardson and Somers JJ, confirming the principles in Permakraft only to the extent that a duty arises when the company is insolvent, noting that at this point ‘creditors' money … is at risk’. It was proposed that the duty involved ‘not prejudicing the interests of creditors’ In one of the most expansive decisions on this issue, another case held that a director owed a duty not only to the company, but to the creditors as well. Importantly, the case held that the duty is owed to creditors both present and future. Whilst this was an English case, it was cited with approval in Australia.

Subsequent cases suggested quite an expansive approach suggesting a duty is owed even in cases where the company is solvent, and the duty is owed to creditors independent of the

---

710 Although note Richardson J remarked upon their being a clear duty when the company was insolvent, but reserved judgment where the company sits ‘near insolvency or doubtful solvency’ at 254.
715 Ibid 404 (Street CJ).
716 Winkworth v Edward Baron Development Co. Ltd. [1987] 1 All ER 114, 118 (Per Lord Templeman).
717 Ibid.
719 Ring v Sutton 1980) 5 ACLR 546, 547.
company and enforceable by creditors.\textsuperscript{720} Whilst the precise timing of when a duty arises is still unclear, the notion of an \textit{independently} enforceable duty to creditors has been subsequently questioned in the Federal Court\textsuperscript{721} and overruled in the High Court.\textsuperscript{722} Both cases noted that the duty is effectively one of ‘imperfect obligation’, not owed to independent creditors, and only enforceable by a liquidator.\textsuperscript{723} This point was subsequently explained in \textit{Geneva Finance Ltd v Resource Industry Ltd & Anor} (2002) 20 ACLC 1427 at 1438 per Heenan J:

\begin{quote}
A director of a company, especially if the company is approaching insolvency, is obliged to consider the interests of creditors as part of the discharge of his duty to the company itself, but that he does not have any direct duty to the creditors and certainly not one enforceable by the creditors themselves …
\end{quote}

The last major contribution to this area of law was the \textit{Bell Group} litigation. The series of judgments are especially noteworthy given the litigation was finalised more than two decades after the event and involved a staggering 1.5 billion dollar claim.\textsuperscript{724} From a legal perspective, the trial judgment was unremarkable. \textit{Spies v R},\textsuperscript{725} \textit{Re New World Alliance Pty Ltd; Sycotex Pty Ltd v Baseler},\textsuperscript{726} and \textit{Walker v Wimborne}\textsuperscript{727} were all cited with approval. Owen J noted the duty was owed to the company and any consideration of creditors in an insolvency context would be premised upon this being in the best interests of the company.\textsuperscript{728} Furthermore, Owen J made the following observations on the balance to be maintained:

\begin{quote}
[I]t would be going too far to state, as a general and all-embracing principle, that when a company is in straitened financial circumstances, the directors must act in the interests of creditors, or they must treat the creditors’ interests as paramount, to the exclusion of other interests. To do so would come perilously close to substituting for the duty to act in the interests of the company, a duty to act in the interests of creditors.
\end{quote}

I have previously mentioned that circumstances will wax and wane. It may be, therefore, that in particular circumstances the only reasonable conclusion to draw, once the interests of creditors have

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{720} \textit{Grove v Flavel} (1986) 43 SASR 410.
\item \textsuperscript{721} \textit{Re New World Alliance Pty Ltd; Sycotex Pty Ltd v Baseler (no 2)} (1994) 51 FCR 425, 444-5.
\item \textsuperscript{722} \textit{Spies v The Queen} (2000) 201 CLR 603, 636.
\item \textsuperscript{723} \textit{Re New World Alliance Pty Ltd; Sycotex Pty Ltd v Baseler} (no 2) (1994) 51 FCR 425, 445; \textit{Spies v The Queen} (2000) 201 CLR 603, 636.
\item \textsuperscript{724} Anil Hargovan and Jason Harris, ‘For Whom the Bell Tolls: Directors’ Duties to Creditors after Bell’ (2013) 35(2) \textit{Sydney Law Review} 433, 440.
\item \textsuperscript{725} \textit{Bell Group v Westpac Banking} (No 9) (2008) 70 ACSR 1, 237 (Owen J).
\item \textsuperscript{726} Ibid 238 (Owen J).
\item \textsuperscript{727} Ibid 246 (Owen J).
\item \textsuperscript{728} Ibid 242 (Owen J).
\end{itemize}
\end{footnotesize}
been taken into account, is that a contemplated transaction will be so prejudicial to creditors that it could not be in the interests of the company as a whole. But that will be because of the particular circumstances and not because a general principle has mandated that the treatment of the creditors’ interests is paramount.\footnote{Ibid 246 (Owen J).}

The trial judgment appeared to essentially confirm earlier authorities. However, the case was subsequently appealed. The appeal judgment involved 3 separate judgments of which a breach of a duty to creditors was found 2:1 (with Carr AJA Dissenting). Notably, the majority judgments proffered an expanded view of the duty owed compared to Owen J. Specifically, Lee AJA suggested that a breach would occur where the company was insolvent and the interests of creditors were prejudiced.\footnote{Westpac v Bell Group (No 3) (2012) 270 FLR 1, 363-364 [2042], [2046] (Per Drummond AJA).} Drummond AJA confirmed this aspect of the judgment noting:

\[T\]he duty will not ordinarily be satisfied by directors who consider the impact that entry into a particular transaction by the company will have on its creditors but proceed with the transaction even though it causes significant prejudice to those creditors. By doing that, the directors will usually, in my opinion, be in breach of their fiduciary duty to the company … \footnote{Westpac v Bell Group (No 3) (2012) 270 FLR 1, 189 [1093] (Per Lee AJA).}

Academic analysis of this judgment suggests a higher level of responsibility placed upon directors to actively protect the interests of creditors which go beyond the previous duty to consider creditors, therefore balancing both creditor and shareholder interests.\footnote{Anil Hargovan and Jason Harris, ‘For Whom the Bell Tolls: Directors’ Duties to Creditors after Bell’ (2013) 35(2) Sydney Law Review 433, 446-447.} The issue is clouded further by the fact leave was sought to appeal to the High Court, which was granted,\footnote{Westpac v Bell Group [2013] HCATrans 049} but the case later settled before the case was heard.

Having reviewed the most important cases from the past forty years on this issue, it is clear that courts have struggled to formulate rules that would work in practice. Furthermore, judges have had difficulty in interpreting prior authorities evidenced by the broadening, narrowing, and then broadening again of the duty to creditors, whatever this duty may entail. Scholars have experienced similar difficulty.\footnote{For instance, there was disagreement on the binding nature of Spies v The Queen. See James McConvill, ‘Directors’ Duties to Creditors in Australia after Spies v The Queen’ (2002) 20(1) Company and Securities Law Journal 4, 11; Anil Hargovan, ‘Directors’ Duties to Creditors in Australia after Spies v The Queen – is the...} Hayne J, writing extra judicially, even argued that the
duty was not needed and the various cases could be dealt with under already established legal principles and is a ‘solution in search of a problem’. 735 Conversely, Professor Andrew Keay has argued the duty is fundamentally fair. 736 Whilst noting the lack of precision as to when a duty will exist, Professor Keay argues this ambiguity arises in attempting to strike a balance between allowing directors sufficient scope to properly manage a company, whilst still protecting creditors from having their interests entirely disregarded. 737 Furthermore, he has advanced an entity maximisation principle that would form the content of such a duty, thus requiring the directors to make ‘decisions that will maximise the general wealth of the company and enhance its sustainability’ and ensuring ‘net present value to the company as a whole is enhanced … [by] taking into account the sum of the various financial claims that are made on the company and not just its equity.’ 738 Thus, while opinions proliferate, it does seem as though the issue will be resolved if the right case ever reaches the High Court.

5.2.1.2 CSR

It is clear from the preceding paragraphs that courts and scholars alike have had difficulty in formulating a principle that would require directors to consider interests outside of the company and shareholders as a whole. Disagreements are rife, and some forty years after the first pronouncement suggesting such a duty, it is unclear when such a duty will be triggered, or precisely what is required of directors. This uncertainty adds practical substance to the theoretical debates surrounding the purpose of the company discussed in Chapter 3. For instance, in the context of stakeholder theory, how can additional stakeholders’ interests be balanced when merely adding creditors’ interests causes widespread confusion? How could a positive duty to other constituencies be formed under any theory when such confusion exists? From an Australian perspective, the duties of directors with respect to CSR are restrictive and quite clear. CSR may be pursued to the extent that it yields financial benefits and is therefore in the best interests of the company.

The most often cited cases involving an exposition of the law surrounding CSR are *Dodge v. Ford Motor Company*, 170 N.W. 668 (Mich. 1919) ("Ford") and *Parke v Daily News* [1962] 1 Ch D 927 ("Daily"). *Ford* involved a minority shareholder objecting to Mr Ford’s refusal to pay special dividends and seeking an injunction restraining Ford from investing heavily in a new smelter and factory. The cases also touched upon the scope of the duty to act in the best interests of the corporation. The company, at this point, was an astonishing success. It had assets of $132,000,000, cash on hand of $54,000,000 and liabilities of only $20,000,000. The demand for its cars far exceeded Ford’s productive capacity and therefore the position of the company was extremely sound. Ford was on public record as stating:

> My ambition, is to employ still more men to spread the benefits of this industrial system to the greatest possible number, to help them build up their lives and their homes. To do this, we are putting the greatest share of our profits back into the business.

Todd Henderson has argued that Ford was more calculating than most people realised, and suggested these sorts of statements were made for public relation purposes. Henderson suggests that these statements were ultimately a contributing factor in the result of the case. Nevertheless, as part of this policy, Mr Ford intended to reduce the cost of the company’s cars and effectively double its productive capacity by building a smelter and large factory. The court’s analysis of this decision was that the immediate effect would be to make the company less profitable and diminish the value of its shares. Putting Mr Ford’s rhetoric to one side, his proposed undertaking could arguably (and in fact later did) yield long term benefits. In fact, the case acknowledges that ‘judges are not business experts’ and ‘plans must often be made for a long future’, which is why the injunction restraining the expansion was overturned, suggesting an unwillingness to interfere with what was ultimately a business judgment. Nevertheless, the court ordered the company to pay greater dividends. In coming to this decision, Ostrander CJ made the now universally cited statement:

---

739 Mr Ford held 58% of shares effectively giving him control of the board.
742 Ibid 22-23.
743 Ibid 23.
745 Ibid 684.
746 Ibid 685.
A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed to that end. The discretion of directors is to be exercised in the choice of means to attend that end, and does not extend to a change in the end itself, to the reduction of profits, or to the non-distribution of profits among stockholders in order to devote them to other purposes.\textsuperscript{747}

Ostrander CJ ordered the special dividend to be paid on the basis that the company was financially sound. It could not produce enough cars to meet demand, it had massive cash surpluses and the funds required to build the smelter were not required in the short term.\textsuperscript{748} Given the ordinary dividend was so small relative to the company’s profits, the court upheld the trial judge’s order to grant a larger dividend.\textsuperscript{749} This decision effectively enshrined the shareholder primacy doctrine. Whilst the case represents good law, it is perhaps not the greatest measure of where the line is drawn on altruistic behaviour. The decisions made by Ford were perfectly defensible on shareholder primacy grounds, and had he not made such ridiculous public statements, it is unlikely the court would have intervened. Accordingly, the case is a succinct and articulate exposition of the law, but not necessarily a sound guide on how the law will be applied.

The leading English authority, applicable to Australia, which considered the purpose of the company and to what extent CSR can be pursued is the \textit{Daily} case. The case involved Daily News selling substantial parts of its business and dismissing 2700 out of its 2800 employees. The board proposed to apply the proceeds of this sale to make gratuitous payments to its employees including pensions, payment in lieu of notice, and redundancy payments. It is important to note that the company was not contractually bound to make any of the payments,\textsuperscript{750} and the board held a majority of shares.\textsuperscript{751} In reviewing the earlier cases on gratuitous payments, Plowman J outlined his understanding of the law:

\begin{quote}
[F]irst, that a company’s funds cannot be applied in making ex gratia payments as such; secondly, that the court will inquire into the motives actuating any gratuitous payment, and the objectives which it is intended to achieve; thirdly; that the court will uphold the validity of gratuitous payments if, but only
\end{quote}

\textsuperscript{747} Ibid 684.
\textsuperscript{748} Ibid 675-6.
\textsuperscript{749} Ibid.
\textsuperscript{750} \textit{Parke v Daily News} [1962] 1 Ch d 927, 928.
\textsuperscript{751} Ibid 944.
if, after such inquiry, it appears that the tests enumerated by Eve J are satisfied; fourthly, that the onus of upholding the validity of such payments lies on those who assert it. 752

In response to the evidence of an accountant who claimed that companies owe a duty to their employees, Plowman J strongly refuted the claim as an accurate statement of law. 753 The court held that a proposal to make such gratuitous payments was not capable of ratification by a majority of shareholders 754 and thus struck down the proposed payments. Clearly Daily was influenced by earlier cases, which makes it necessary to consider them. Most notably, Plowman J mentioned Eve J (referring to the decision in Re Lee, Behrens & Co). 755 This case presided over by Eve J involved the provision of a pension for life for the widow of a former managing director. The company became insolvent, was subsequently wound up, and upon rejection of the widow’s claim by the liquidator, 756 she commenced proceedings to have the pension enforced. The pension had also never been formally approved by shareholders. In rejecting the widow’s claim, Eve J explained that:

[The company’s] money can only be spent for purposes reasonably incidental to the carrying on of the company’s business, and the validity of such grant is to be tested, as is shown in all the authorities, by the answers to three pertinent questions: (emphasis added)
1) Is the Transaction reasonably incidental to the carrying on of the company’s business?
2) Is it a bona fide transaction?
3) Is it done for the benefit and to promote the prosperity of the company? 757

Eve J then immediately cites several cases as being the authorities for his stated propositions, namely: Hampson v Prices Patent Candle Co, 758 Hutton v West Cork, 759 and Henderson v Bank of Australasia. 760 Therefore, these are cases directly relevant to the current state of the law. The Hampson case involved a dissentient creditor seeking an injunction restraining the company from paying a gratuity to its servants, which the company claimed would encourage ‘increased exertions’. 761 Jessel M.R refused the injunction, suggesting the best means of carrying on the factory was a business judgment incapable of court intervention, so long as

752 Ibid 954.
753 Ibid 962-3
754 Ibid 963.
755 [1932] 2 Ch 46.
756 The claim was rejected on the basis of it being ultra vires.
758 (1876) 24 WR 754.
759 (1883) 23 Ch ED 654.
760 (1889) 40 Ch D 170.
761 Hampson v Prices Patent Candle Co (1876) 24 WR 754, 754.
the transaction is bona fide. Hutton involved an aggrieved debenture holder seeking an injunction to restrain the company from making gratuitous payments to senior management, following a voluntary winding up. Cotton L.J noted that given the company no longer existed as a profit-making enterprise, the payments could not be viewed as an inducement for better performance in the future, was a gratuity, and conferred no benefit on the company whatsoever. He noted that had the same payment being framed in the context of securing management’s services during the winding up, then the payment would have been permissible. Importantly, Bowen L.J noted that he would be inclined to permit small gratuitous payments, but there had to be limits to a company’s generosity and that limit is ‘what is necessary in the reasonable management of the affairs of the company.’ Continuing his memorable judgment, Bowen L.J noted that bona fides alone could not be the sole determining factor otherwise ‘you might have a lunatic conducting the affairs of the company, and paying away its money with both hands.’ Accordingly, the injunction was granted. The Henderson case is a curious one, especially in light of Behrens, as it upheld the provision of a 5 year pension to the widow of the chief officer who died in a railway accident, whilst still in its service. In this case, North J suggested that in order to consider the ordinary operation of a business, there was a need to consider how other companies in the same industry were conducting their business. North J noted the need for directors to make decisions for the benefit of their shareholders, but nevertheless upheld the payment on the basis that other banks gave evidence that they had similar schemes in place, and the payment was approved at an AGM. This is in stark contrast to the situation in Behrens where the pension was never approved via a general meeting, and no evidence was presented regarding the directors motives for the payments.

It is clear then, that although the law restricts the application of a company’s funds to pursuits that will ultimately benefit the company and its shareholders, this will be interpreted broadly,

---

762 Ibid.
763 Hutton v West Cork Railway Co (1883) 23 Ch D 654, 665- 666.
764 Ibid 668.
765 Ibid 673.
766 Ibid 671.
767 Henderson v Bank of Australasia (1889) 40 Ch D 170, 174-5.
768 Ibid 175.
769 Ibid 174 - Evidence was introduced to this effect by the Chairman of the Bank of NSW and the Manager of the London and Westminster Bank.
770 Ibid 181.
771 Re Lee, Behrens & Co [1932] 2 Ch 46, 52.
and courts will intervene only in egregious cases. In *BCE v 1976 Debentureholders*, the Canadian Supreme Court held that in considering the best interests of the corporation, directors could have regard to the interests of ‘shareholders, employees, creditors, consumers, governments, and the environment to inform their decisions.’ The Court noted that there are no specific rules dictating which interest should prevail over the other, the question to be asked is, having regard to all the interests, what is in the best interests of the corporation? The most recent Australian case applicable to this point suggested that the law does not require a director to be ‘mean or cheeseparing. ‘A company may decide to be generous with those with whom it deals.’ However, this generosity is only permissible to the extent that it benefits the company. Accordingly, Courts have upheld multiple decisions that confer a benefit to the company. For instance, establishing a fund to make donations to universities to advance the scientific field was upheld on the basis of the desperate need for men with science backgrounds in the early 20th century United Kingdom chemical manufacturing industry. Despite claims from the plaintiff that the decision would confer no benefit to the company in addition to what the community (including competitors) would receive, the court accepted evidence from the company’s directors that its greatest constraint was access to suitable qualified graduates and the decision was necessary for its ongoing progress.

Much like other areas of corporate law, there is reluctance on the part of judges to second guess directors. Thus, it appears as far as benefits accruing to the company are concerned, the bar is set quite low. For instance, in a case from the United States, a minority shareholder of the Chicago Cubs alleged negligence and a lack of good faith where the majority shareholder (and dominant director) refused to install lights at the Cubs’ home stadium for the purpose of preserving the local neighbourhood. Despite there being evidence that every other Major League Baseball hosted night games, and of better attendance at these games, and the fact that more than half of the league games were being played at night, the court refused to intervene on the basis that the deterioration of the local neighbourhood might also

---

774 Ibid.
775 *Woolworths v Kelly* (1991) 4 ACSR 431, 446 (Mahoney JA).
776 Ibid.
777 *Evans v Brunner, Mond and Co Ltd* [1921] 1 Ch 359, 368-9 (Eve J).
779 Note that this was argued on directors’ duties grounds and not the doctrine of ultra vires.
781 Ibid 776-777.
impact attendance and the land value of the stadium. These claims seem spurious and were raised by Sullivan J, not the parties, making the case all the more interesting and demonstrating the court’s unease in intervening where it is plausible that the action is in the best interests of the company. This respect for business judgments was also in evidence in other cases where some form of CSR was involved.

Almost all of the relevant cases on CSR involved claims under the ultra vires doctrine. The doctrine of Ultra Vires has since been abolished, and companies are no longer required to have an objects clause in their constitution, which enlivens the directors’ duty argument that CSR is outside the scope of directors’ duties, most notably, the duty to act in good faith in the best interests of the company and for a proper purpose. Nevertheless, these cases are still relevant to a consideration of CSR on the basis of directors’ duties. In Evans v Brunner, Mond and Co Ltd, despite being a case on Ultra Vires, the arguments raised were effectively the same as if the case was argued on directors’ duties grounds. The defendant argued that the provisions in the constitution being relied upon were actually powers of the board rather than objects, and the plaintiff argued that the benefit to the company was ‘out of proportion to the cost’.

Eve J ultimately found in favour of the defendant, and, although noting that a defence could not be formed to an allegation of ultra vires on the mere basis of benefit to the company, suggested that because there was a direct benefit to the company in its capacity as a chemical manufacturer (its object), the decision was intra vires. Eve J suggested that to be intra vires an action must be ‘one which can fairly be regarded as incidental or conducive to the main or paramount purpose for which the company was formed’. Thus, while proving that an action is beneficial is not enough to establish intra vires, if the benefits relate directly to the furtherance of the business (which will be interpreted broadly), then this will be sufficient.

---

785 Corporations Act 2001 (Cth) s125(2).
786 [1921] 1 Ch 359.
787 Ibid 365.
789 Ibid 364.
There are of course limits to this principle. For instance, a decision to donate money to form an imperial institute was held ultra vires. Kay J suggested that the ultra vires principle had been stretched to its limit in other cases and noted that they could not be seen as authority for the principle that simply establishing a benefit to the company was sufficient to insulate the directors from a finding of ultra vires. Thus, a distinction can be made between the two cases, in that Evans related to a donation that quite directly benefitted the company through providing education in the sciences and therefore provided greater access to qualified graduates which the company was in desperate need of, whereas Tomkinson involved a donation to an institute wholly unrelated to its business in the hope that it would yield greater numbers of tourists and patronage for the railway. Had this action been upheld, the doctrine would have been rendered irrelevant as almost any action could yield some indirect benefit.

Thus, while it can be seen that the question of whether a directors’ actions are ultra vires or in breach of a directors duties to act in the best interest of the company are different, they are nevertheless very similar, prompting questions of whether the decision benefits the company (although on the question of ultra vires these benefits must be more direct). Whilst many of these authorities are dated, Parke v Daily News (itself a case argued on ultra vires grounds) is the most recent authoritative statement on CSR. As noted earlier, In Daily many of the earlier authorities are cited with approval and applied, most notably Re Lee, Behrens & Co (again an ultra vires case), with Plowman J citing the three prong test noted above which includes:

1) Is the Transaction reasonably incidental to the carrying on of the company’s business?
2) Is it a bona fide transaction?
3) Is it done for the benefit and to promote the prosperity of the company?

Eve J acknowledged the need for the directors to consider whether each individual donation would benefit the company, but this did not affect the question of whether establishing the

791 It was never fully explained in the case what the institute was intended to do. The justification was that, as a local exhibition, it would benefit the company on the basis of additional traffic to the railway by those wanting to visit the exhibition. It had been argued that similar attractions had yielded such benefits to other railways.
792 Tomkinson v South-Eastern Railway Company (1887) 35 Ch D 675.
793 Ibid 679-80.
794 The timing is also quite relevant to this case. The arguments in this case tended to suggest a drastic shortage of qualified graduates which the court accepted greatly hindered the entire industry’s progress. It is likely that in the early 20th century very few people were attending university (especially in the sciences).
795 [1962] 1 Ch D 927.
796 [1932] 2 Ch 46.
797 Re Lee, Behrens & Co [1932] 2 Ch 46, 51.
fund itself was *ultra vires*.

Equally, the payment of a pension to an association secretary was upheld (despite being a non for profit) on the basis that it would assist in attracting a high quality replacement and therefore would ‘secure the best assistance.’ Similarly, a decision to pay out on insurance contracts that did not cover particular damage, was upheld on the basis of industry practice to pay out such claims effectively suggesting that shareholders should be aware that when they enter an industry they must adhere to standard industry practice.

Of the tests mentioned above in *Re Lee Behrens & Co Ltd*, Elizabeth Klein and Jean Du Plessis argued that they all amount to consideration of whether the directors acted in the best interests of the company. Thus, even though the majority of case law has approached CSR from the perspective of *ultra vires*, the results of each case are likely to be the same if argued on directors’ duties grounds. Thus, it can be seen that the considerations surrounding *ultra vires*, at least when considering actions relating to CSR, are very similar to the duty to act in the best interests of the company, and, accordingly, the early cases argued on *ultra vires* grounds are relevant to CSR on directors duties ground today.

The common law regarding CSR in Australia has remained fairly dormant over several decades. Given CSR activities such as corporate philanthropy and sustainability reporting have become increasingly prevalent, it is curious that so few cases that test the boundaries of the law have been pursued. This might be a reflection that shareholders are more supportive of CSR than previously thought, or that they are more aware of the incidental benefits of CSR. This changing attitude is best exemplified in the massive Australian philanthropic effort that followed the 2004 Boxing Day tsunami throughout Asia. The level of support suggested more than a token passing interest, or a public relations exercise, with some of the corporate donations well beyond an amount that would have yielded reputational benefits. The Australian Shareholders Association (ASA) was extremely critical of these donations. Far from bringing a wave of litigation from disgruntled shareholders, the ASA was strongly...

---

798 [Evans v Brunner, Mond and Co Ltd](1921) 1 Ch 359, 368 (Eve J).
799 [Cyclists Touring Club v Hopkinson](1910) 1 Ch 179, 181 (Swinfen Eady J).
800 [Taunton v The Royal Insurance Company](1864) 33 LJ Rep 406, 410 (Wood V.C).
rebuked for its heartlessness and was forced to put out a media realise to ‘clarify’ its position.804

A less well known example involved the collapse of Ansett Australia. Throughout the six month administration, more than a dozen employees committed suicide.805 After all avenues of rescue had been exhausted, the administrators decided to break the news to Ansett’s employees by announcing that the company would close down following one final week of business. It was believed that this would mitigate the trauma and the risk of further suicides as ‘[f]arewells are easier after a wake’.806 The result then was to allow a company that was hopelessly insolvent to trade (at a cost of $6 million) where there was no commercial justification to do so, and directly gave preference to the wellbeing of employees, instead of considering the interests of creditors who were footing the bill.807 In the end, any potential for legal action was circumvented by a fortuitous week where Ansett broke even, due to the Melbourne Grand Prix.808 Nevertheless, it raises the question of why administrators would expose themselves to massive liability when the law supposedly requires them to act in the interests of the company (which would require a consideration of creditors’ interests as discussed above). Assuming that final week had resulted in a substantial loss, who would realistically take action? Much like the criticism of the ASA, any company attempting to recover their losses from the administrators would have been criticised in the media. Given the tragic nature of the situation, having a sound legal basis for an action against the administrators would not have been enough to insulate a creditor from the likely damage to its reputation.

The Pike River Mining collapse in New Zealand further illustrates how administrators can be under significant pressure to achieve good outcomes for stakeholders even at the expense of creditors. The families of the men killed in the accident were highly critical of the lack of effort to recover their bodies, at one point claiming they were deliberately delaying recovery

806 Ibid.
807 Ibid.
808 Ibid.
efforts so as to pass the responsibility on to a would be purchaser. When the receivers did sell Pike’s assets, the sale was conditional upon the new owner, Solid Energy, ‘take[ing] all reasonable steps to recover the remains’ subject to it being ‘achievable] safely, is technically feasible and is financially credible’. In this particular case, there was clearly overwhelming public pressure to consider the interests of non-shareholder/creditor interests.

Directors’ duties apply equally to all corporations whether large or small and should therefore not differ in application. However, this fact belies the reality that the laws apply quite differently to SMEs. The most obvious point to make is that directors’ duties apply only to corporations. Given only 32.7% of businesses are corporations, this means more than two thirds of businesses are unaffected by directors’ duties. Furthermore, whilst SMEs comprise 99% of businesses, micro businesses comprise 60% and small businesses comprise 28%. Given such a large percentage of businesses are quite small, it is reasonable to assume that many companies have few shareholders. Furthermore, given the higher risk and lower levels of profitability associated with SMEs, it is reasonable to conclude that those shareholders would also be directors, as they would have greater incentive to monitor their investment, and would have insufficient funds to pay director level salaries. It then also naturally follows that if every shareholder is represented on the board, they are unlikely to pursue actions against themselves. Thus, the law surrounding directors’ duties becomes less relevant, except in a near insolvency situation. Even in closely held companies where not all shareholders are directors, it is much easier to circumvent shareholder revolt by contacting a handful of shareholders (instead of thousands) or calling a shareholders meeting as quickly as the requirements of notice will allow at low cost.

811 There are slight differences, for instance, the size of the company might affect the duties required under s180 with respect to the ‘corporations circumstances’.
814 Precise data on shareholders participation in management is scarce. However, it is generally accepted that SMEs are owner-managed. See: Laura Spence and Robert Rutherford, ‘Small Business and Empirical Perspectives in Business Ethics: Editorial’ (2003) 47(1) Journal of Business Ethics 1, 1-2. Also note that ABS statistics suggest 61% of businesses have zero employees which, by definition, makes them owner managed. See Australian Bureau of Statistics, Counts of Australian Businesses, including Entries and Exits, Jun 2011 to Jun 2015 (2016).
The net result then, is that directors’ duties are far less influential on SMEs as they are to larger companies. Thus, even though this chapter puts forward the argument that ignoring SMEs in the context of CSR regulation is a problem, in this particular instance, it works positively as SMEs are less constrained by directors’ duties. As noted in the introduction to this section, there is an indirect influence of these laws. Given the potential for larger enterprises to influence SMEs in their supply chain, there is a need to consider how directors’ duties might affect large enterprises which in turn influence SMEs. It is clear that the law permits CSR where it is profitable for the company in question. Thus, the need to make assisting SMEs profitable will be considered in the context of public procurement in Chapter 7.1.

5.2.2 Disclosure

The primary means of encouraging some form of CSR-related activity within Australia is through the corporate disclosure rules. Depending upon the company structure, the disclosure rules are outlined in the Corporations Act 2001 (Cth), ASX Listing Rules, and the ASX Corporate Governance Principles and Recommendations (2013). Some corporations also engage in voluntary sustainability reports, which act as a form of self-regulation. This ‘soft’ disclosure approach is taken to expose corporate failings and let the market decide through an ethical lens, rather than having onerous prescriptive regulation.815 This section will note that almost all SMEs will be exempt from the corporate disclosure requirements.

Whilst this section is fairly critical with respect to the beneficial effects of the corporate disclosure system, the mere act of measurement can be of benefit. Evidence is presented suggesting companies are quick to communicate positive information but remain silent on the negative aspects of their performance. This is a cynical view of corporate disclosure. However, disclosure requirements force boards to review and analyse their companies’ operations. Thus, whilst companies might be slow to communicate bad news, the mere fact that they uncovered this information in their investigations provides them with the opportunity to fix the problem. There is some evidence in the literature of wildly inaccurate

---

estimates with respect to CSR initiatives.816 Once properly measured, the economic opportunities of CSR activities exceeded expectations.817 Equally, it is interesting that in a survey considering the financial benefits of CSR, those who introduced some sort of measurement metric or tool agreed with the potential financial benefits of CSR more often (as a percentage) than those who did not measure performance.818 Thus, the simple act of measurement implicit in any corporate reporting potentially enlightens management to opportunities to not only improve the environment and the community, but also their bottom line.

5.2.2.1 Disclosure Requirements in Sections 295 and 297

Section 295 of the Corporations Act 2001 (Cth) provides the content requirements for a company’s annual report. The section requires the annual report to include the company’s financial statements, notes to those statements, and various directors’ declarations as to the veracity of the information provided. In addition, there is a requirement that these financial statements give a ‘true and fair view’ of the ‘financial position’ of the company, which is outlined in section 297.819 Previous commentary has suggested that this would require environmental disclosures and particularly the sustainability of the company’s business.820 Helen Anderson and Wayne Gumley suggested that certain industries, such as manufacturing and power generation, are particularly vulnerable to environmental risks.821 A company’s report would need to reflect this, otherwise directors would be exposed to the possibility of litigation from aggrieved shareholders.822 It is argued however that the law on these matters is generally unclear as litigation is rarely commenced to test the scope of these provisions.823

817 Ibid.
819 Corporations Act 2001 (Cth) s295(3).
822 Ibid.
5.2.2.2 Disclosure Requirements in Section 299(1)(f)

Under Section 299(1)(f):

if the entity's operations are subject to any particular and significant environmental regulation under a law of the Commonwealth or of a State or Territory [the company must] give details of the entity's performance in relation to environmental regulation.

The Provision has been described as ‘vague and uncertain’, but also ‘a step in the right direction’. In the relevant regulatory guide, the section focusing on s299 (1)(f) is one page in length and conveys little guidance into what must be disclosed. Despite these claims there appears to be some evidence that the introduction of the section has improved environmental reporting within Australian companies. However, Jullieta Overland has suggested that the information is of very low detail, effectively stating that the company is either, not governed by any environmental regulation, or that the board is not aware of any material non-compliance. It should be noted that the provision was heavily resisted by business groups. Thus, without precise articulation of what is required, and the apparent lack of interest in shareholders pursuing a statutory derivative action against directors (or alternatively ASIC), it would seem the provision is destined to produce only superficial changes to corporate reporting.

5.2.2.3 Disclosure Requirements in Section 299A

Section 299A was introduced by the CLERP (Audit Reform and Corporate Disclosure) Bill 2003 in response to a growing perception worldwide that an operating and financial review

was an ‘integral part of good corporate governance and high quality financial reporting.’  
Section 299A, which applies only to publicly listed entities, requires a directors’ report to contain information

that members of the listed entity would reasonably require to make an informed assessment of:

(a) the operations of the entity reported on; and

(b) the financial position of the entity reported on; and

(c) the business strategies, and prospects for future financial years, of the entity reported on.

This section is deliberately framed in broad terms to:

- enable directors to make their own assessment of the information needs of members of the company and tailor their disclosures accordingly; and

- provide flexibility in form and content of the disclosures as the information needs of shareholders, and the wider capital market, evolve over time.  

The explanatory memorandum mentions the expectation that directors will seek guidance on best practice such as the G100 guide. ASIC Regulatory Guide 247 also makes reference to the guide as an appropriate place for guidance. The guide itself states the G100’s opinion that the guide constitutes the minimum standard of ‘best practice’. Most notably, the guide suggests that the report should contain financial and non-financial key performance indicators and social and environmental measures. The guide also notes that the information disclosed should be even handed, containing both positive and negative data, and should not mislead the public. Disappointingly, Regulatory Guide 247 is presented in quite broad terms and makes essentially no reference to the requirement to present non-financial information. At best, this might be inferred from a requirement to provide a balanced report that properly references negative information and does not just present the company in the most positive
light. For example, there is a requirement to outline ‘material business risks’ when discussing prospects for future financial years, and arguably this would require disclosure of environmental risks in many high impact industries such as mining. However, there does not seem to be any definitive guidance on the requirement to provide any non-financial information.

5.2.2.4 Disclosure Requirements in Section 674

Publicly listed entities are required to make continuous on-market disclosures of information not generally available, that a ‘reasonable person would expect, if it were generally available, to have a material effect on the price or value of securities of the entity.’ Clearly this should require CSR-related disclosure, as in many circumstances, this will have an effect on the company’s share price. However, the provision is broad, and Juliette Overland notes that an environmental disclosure had only been made once under this provision.

5.2.2.5 Disclosure Requirements in Sections 1013D, 1013DA

Although separate to the company’s reporting obligations, section 1013D (1)(L) does involve reporting obligations that have an effect on CSR. The section outlines the content requirements of product disclosure statements. Subsection 1(L) requires the disclosure of the

---

839 Ibid.
840 Corporations Act 2001 (Cth) s674(2)(c)(i), (ii).
842 Charles Choi, ‘Mud Eruption In Indonesia: Was Disaster Blamed On Drilling Activity Actually Caused By Quake?’ Huffington Post (Online), 22 July 2013 <http://www.huffingtonpost.com/2013/07/22/mud-eruption-indonesia-disaster-drilling-quake_n_3634361.html>. In non-scientific terms, the drilling activity of a mining company is claimed to have caused large amounts of mud to rise from beneath the ground engulfing several towns and rendering them uninhabitable.
extent to ‘which labour standards, environmental, social or ethical considerations are taken into account’ when selecting investments where the product has an investment component. **Investment component** is defined to include ‘superannuation products, managed investment products and investment life insurance products’. Regulations proscribe the need to disclose whether or not the product issuer takes labour standards, environmental or ethical concerns into consideration when choosing investments. If the issuer does take these standards into account, they must disclose which standards they use, and the extent to which they take those standards into account. Section 1013DA provides that ASIC may develop guidelines in relation to this disclosure which are now contained in *ASIC Regulatory Guide 65*. On the point of the extent to which they take any standards into account, the guide suggests:

> For example, a PDS may say that the fund manager will lobby companies in which investments are made to further certain labour, environmental, social or ethical goals, or that the fund will only invest in companies that follow certain labour practices or have no association with certain environmental, social or ethical activities.

The guidelines outline general principles such as the requirement that the disclosure must provide the information ‘a person would reasonably require for the purpose of making a decision … whether to acquire the financial product’ Additionally, the guide suggests that with greater advertising of these considerations being taken into account, there is a greater level of detail required. ‘The broad objectives of [product disclosure statement] disclosure are to help consumers compare and make informed choices about financial products.’

The imposition of disclosure on financial institutions can be justified on the basis of their involvement in providing finance for activities that create environment, labour, and ethical concerns. They could thus be regarded as ‘unseen polluters’. It is also argued that the

---

844 Corporations Act 2001 (Cth) 1013D(2A).
846 Corporations Regulations 2001 (Cth) Reg 7.9.14C(c).
848 Ibid 14.
849 Ibid 14.
852 Ibid.
measures legitimise ethical investing. While the objectives of ss1013D, 1013DA are admirable, questions remain about the sections’ effectiveness. For instance, a study noted that the since s1013D came into force, the detail of disclosure has declined. Several respondents suggested that the increased legal scrutiny on the statements made were the reason for the decline. While this could be indicative of more careful disclosure, other studies have also noted low levels of compliance with the requirements in s1013D suggesting that the objectives of the provisions are yet to be satisfied.

5.2.2.6 Disclosure Requirements in ASX Corporate Governance Principles and Recommendations

The ASX Corporate Governance Principles and Recommendations set out guidelines that ‘are likely to achieve good governance outcomes and meet the reasonable expectations of most investors in most situations.’ The third iteration of the rules was recently approved, and the ASX Corporate Governance Council acknowledges the diverse needs of the companies listed on the ASX, therefore the rules act only as a guide. Between the 2nd and 3rd editions, specific amendments have been made that directly affect the manner in which issues related to CSR are reported on. These will be discussed below. The Council acknowledges that ultimate responsibility for a company’s governance lies with the board. Therefore, the main mandatory requirement for listed entities under the recommendations is to either comply or explain. A listed company is entitled to ignore the recommendations, however it is required to disclose the extent to which it has not complied and the reason for its non-compliance. Whilst the recommendations themselves are unrelated to disclosure, the primary means of enforcement is through disclosure, and any entity not providing a sufficient reason for non-compliance would likely attract investor scrutiny. The council advises against a’ pedantic or legalist approach’ and suggests that it explains what policies the company has in place and

857 Ibid.
858 Ibid.
859 Ibid.
where stakeholders can obtain further information on these policies. Given the listing rules are enforceable under the *Corporations Act* and the listing rules require a statement disclosing the extent to which companies have complied with the ASX recommendations, the requirement to ‘comply or explain’ is fully enforceable under the *Corporations Act*.

In regards to the CSR-related aspects of the recommendations, Recommendations 3, 7, and 8 are relevant. Recommendation 3 is aimed at promoting responsible and ethical decision making. The notes attached to principle 3 defines ethical decision-making as ‘going well beyond mere compliance with legal obligations and involves acting with honesty, integrity and in a manner that is consistent with the reasonable expectations of investors and the broader community …’ It also gives examples, namely; human rights of employees, employing from disadvantaged groups, avoiding organisations in its supply chain that are engaged in ‘socially harmful activities’ and supporting philanthropic causes.

Recommendation 3.1 suggests:

A listed entity should:

(a) have a code of conduct for its directors, senior executives and employees; and

(b) disclose that code or a summary of it.

In explaining the recommendation, the Council suggests that this policy should be promoted organisation wide and should be supported by adequate training and remedial action if the policy is not followed. Recommendation 7 is aimed at managing risk. Clearly this is a broad term, but recommendation 7.4 is directly related to CSR as it suggests:

A listed entity should disclose whether it has any material exposure to economic, environmental and social sustainability risks and, if it does, how it manages or intends to manage those risks.

This marks a change from the 2010 iteration of the recommendations, which only required consideration of the ‘reasonable expectations of its stakeholders’ and did not expressly

---

861 *Corporations Act 2001* (Cth) s793B, 793C.
862 ASX listing Rule 4.10.3.
864 Ibid.
865 Ibid 19.
require reporting. The explanation of the recommendation directs attention to the impact a listed entity can have on ‘security holders, employees, customers, suppliers, creditors, consumers, governments and the local communities in which it operates.’ Also of interest is the renewed focus on ‘risk committees.’ Under the 2010 recommendations, risk committees were broadly discussed for a quarter of a page, in the commentary to recommendation 7.2, and did not comprise a standalone principle. Of that commentary, there was little explanation other than to espouse the benefits of such a committee. A requirement to establish a ‘risk committee’ is now outlined in recommendation 7.1 which states:

The board of a listed entity should:
(a) have a committee or committees to oversee risk, each of which:
(1) has at least three members, a majority of whom are independent directors; and
(2) is chaired by an independent director,

The commentary on this recommendation provides advice on the role and size of the committee and the need for a charter, and therefore provides significantly more advice than the 2010 equivalent. Principle 7.1 does not specifically mention sustainability or CSR-related risks. However, these risks are clearly worthy of consideration and are mentioned (principle 7.4) in the same set of recommendations which address risk. It is therefore reasonable to conclude that a risk committee would take risks related to CSR into account and develop policies to address them. A further principle related to CSR is Principle 8 which addresses director remuneration. Again, the principle has much broader implications than CSR. However, there is a focus on balancing short term against long term goals and an entities remuneration structure should reflect this. Thus, while not specifically addressing CSR, it encourages a remuneration structure that would support CSR endeavours, which traditionally have a longer term financial benefit.

5.2.3 Conclusions about the Disclosure Requirements

866 ASX Corporate Governance Council, Corporate Governance Principles and Recommendations 2nd ed (2010) principle 7.1. It should also be noted that this was explained in the commentary section of principle 7.1 (2010 version), rather than forming one of the principles, unlike the new principle 7.4 (2014 version).
867 Ibid Principle 7.1.
Whilst the corporate disclosure rules do appear to promote CSR, it is clear that most of the requirements, if not all, have little direct relevance to SMEs. Approximately two thirds of SMEs are unincorporated, making every single requirement not applicable to them. Beyond this, annual reports do not have to be prepared by small proprietary limited companies, which according to ABS figures, would exclude 97% of businesses on the employee threshold to be considered a large proprietary limited company. Beyond these exclusions Section 299A applies only to public companies, and the ASX Corporate Governance Principles and Recommendations apply only to listed companies effectively excluding SMEs. From this perspective, it would seem the corporate disclosure system does little to directly encourage SMEs to engage in CSR activities. However, again there is an issue of the potential for larger corporations to influence SMEs. With a greater expectation of disclosing meaningful information to the market and other stakeholders, there is increasingly an expectation that this extends to a corporation’s supply chain. If the corporation is intending to report on its supply chain, this suggests a need to be in regular communication with its suppliers and to take action to ensure the corporation has something positive to report. Thus, the disclosure system could have an increasing influence on SMEs. Thus, it will be necessary to consider this connection in proposing the reforms in Chapter 7. As noted earlier, the reforms in relation to public procurement are the clearest example of this.

5.2.4 Attempts at reform

Two Australian inquiries relating to CSR were undertaken in 2006. Neither inquiry considered SMEs at all, and, at least in respect of directors’ duties and corporate reporting, advocated a ‘business as usual’ approach.

On the subject of directors’ duties, the Parliamentary Joint Committee (PJC) Report dismissed the proposal of a UK-styled duty to promote the success of the company on the

---

871 *Corporations Act 2001* (Cth) ss45A, 292(2).
872 Australian Bureau of Statistics, *Counts of Australian Businesses, Including Entries and Exits June 2010-June 2014* (2015) Catalogue 8165, 21. Note that Under s45A, corporations only need to meet 2 of the 3 tests to be considered large, meaning a failure to meet the employee test does not of itself establish the company as a Small Pty Ltd company. However, the figures presented demonstrate that 97% of businesses have fewer than 20 employers (the next group in the ABS statistics is 20-199 employees), thus it is unlikely that many businesses would meet the other 2 tests while failing the employee test by more than half.
basis of uncertainty. The PJC suggested that under the UK position, directors were unsure as to who they owed a duty, and gave no guidance on how to balance their interests. The PJC also pointed to the possibility of engendering a ‘tick the box’ compliance culture. On the subject of a U.S style permissive approach, the PJC did not see a need for change and did not believe the current law unreasonably constrained directors to take into account broader interests. The Corporations and Markets Advisory Committee (CAMAC) came to a near identical conclusion citing the flexibility already present in the common law and the ambiguity associated with US/ UK style reform. It also pointed to the potential for lower shareholder protection and suggested that if laws did in fact need tightening with respect to achieving environmental and social outcomes, then this should be done outside of the Corporations Act 2001 (Cth) (say for instance with specific environmental legislation).

On the subject of reporting, the PJC supported the status quo, citing a possibility of ‘tick the box’ compliance should mandatory prescriptive rules be imposed. It did however leave open the possibility of further action should companies fail to take appropriate action. CAMAC came to the same conclusion, albeit for different reasons. It considered Section 299A was sufficient to compel disclosure of non-financial matters for listed public companies. Furthermore, CAMAC suggested that it was too early to judge the need for reform, given the disclosure system was still in its infancy internationally. CAMAC warned against a ‘piecemeal’ approach to corporate reporting, and suggested that if there was a need for reporting it should be addressed outside of the Corporations Act 2001 (Cth), with specific legislation such as the Energy Efficiencies Opportunity Act 2006 (Cth). Thus effectively, on the two key methods of promoting CSR (directors’ duties and corporate reporting) the two inquiries took the view that it was not a corporate law problem. Justine

---

875 Ibid.
876 Ibid [4.48], [4.49].
877 Ibid [4.55].
879 Ibid 113.
881 Ibid [6.44].
883 Ibid.
884 Note, this Act was repealed by the Energy Efficiency Opportunities (Repeal) Act 2014 (Cth).
Nolan commented that the inquiries had ‘passed up’ an opportunity for reform. Notably, in the context of this thesis, both inquiries entirely ignored the relevance of SMEs to CSR debate. To date, the only significant inquiry in Australia on promoting CSR within SMEs was conducted in Victoria in 2008. This will be discussed more detail in Chapter 5.5.

5.3 Government Procurement Policies

Government procurement involves the calculated use of a government’s buying power in order to influence change. Obviously, it does not obligate businesses to act. However, the government is a large purchaser making it a powerful form of market-based regulation. Importantly, it is a form of regulation that is effective, irrespective of whether an SME is incorporated or not. Government procurement is increasingly moving away from being a simple administrative and clerical function, towards being a tool for meeting a government’s broader policy goals. Governments are substantial purchasers of goods and services and thus can have considerable influence. For instance, Commonwealth Government spending has increased from $29.4 Billion in 2005-6 to $39.3 billion in 2012-13. The Victorian State Government spends $10 Billion a year, the NSW Government spends $12.7 billion, and estimates suggest that NSW Councils spend $7 Billion per year. In all, public procurement is estimated to represent 12% of GDP in Australia.

It is therefore essential for governments to have a sound ethical procurement policy. If the government expects businesses to sacrifice profits (at least initially) in order to promote some social end, then the government must itself lead the way. Doing so demonstrates a ‘business case’ for the product, with the government essentially demonstrating its quality.

---

887 Louise Knight et al, Public Procurement: International Cases and Commentary (Routledge, 2007) 146.
achieve economies of scale making them more competitive in the marketplace. Importantly, governments can achieve greater value for money by generating social value in addition to traditional economic value of the transaction. For instance, if a government were to adopt a policy of employing people from disadvantaged groups, there is a net saving to the government’s budget by not having to make welfare payments to them. Furthermore, by investing in environmentally friendly options (low waste, low energy, etc.), the government can make savings by reducing landfill and repatriation costs.

Governments attempting to further social aims through their procurement practices is not a new concept. Providing work for the unemployed through public works was prevalent throughout the 19th and early 20th centuries and affirmative action policies have ensured that traditionally underrepresented groups (such as women in the 1960s) are provided opportunities for employment. It should also be noted that procurement or supply chain pressure from larger corporations could also have a positive impact, and although they are not discussed at length in this chapter, their contributions are worthy of consideration for reform.

5.3.1 Commonwealth Government Procurement

There is a quite an expansive procurement system which assists in facilitating CSR at the federal level. The system is made up of a variety of legislation, policies and codes including:

- The National Waste Policy
- Commonwealth Procurement Rules (2014)
- Public Governance, Performance and Accountability Rules (2014)
- Energy Efficiency in Government Operations (EEGO) Policy
- Australian Government ICT Sustainability Plan 2010-2015
- Public Governance, Performance and Accountability Act 2013 (Cth)
- Fleet Vehicle Selection Policy
- Data Center Strategy 2010-25

---

5.3.1.1 Commonwealth Procurement Rules

The procurement system has undergone a variety of changes following a senate inquiry (discussed below) into public procurement. Whilst the Financial Management and Accountability Act 1997 (Cth), accompanying regulations, and Commonwealth Authorities and Companies Act 1997 (Cth) and Commonwealth Procurement Rules (2012) have been repealed, there does not appear to be substantial changes in the actual requirements, with most of the changes appearing to clarify rather than modify the rules. These limited changes are confirmed by a transitional document provided by the Department of Finance and an explanatory statement by the then Finance Minister, Matthias Cormann. Whilst the Fair Work Principles have been abolished, all other procurement related policies appear to remain in force.

As a starting point, the Public Governance, Performance and Accountability Act 2013 (Cth) “PGPA Act” imposes a duty on an ‘accountable authority’, defined as the secretary of the public department, to govern a public entity in a way that ‘promotes the proper use and management of public resources’. The PGPA Act defines proper as ‘efficient, effective, economical and ethical’. Under the Commonwealth Procurement Rules, value for money is an essential criterion. As part of ascertaining whether the procurement does represent value for money, the procurement officer must have regard to government policies. In determining value for money, the price is not the only relevant factor in the procurement process, the environmental sustainability and whole-of-life costs of the procurement should also be considered. These public authorities are prohibited from ‘seek[ing] to benefit from supplier practices that may be dishonest, unethical or unsafe’ and specifically mentions that

898 Public Governance, Performance and Accountability Act 2013 (Cth) ss8, 12(2).
899 Public Governance, Performance and Accountability Act 2013 (Cth) s15.
900 Public Governance, Performance and Accountability Act 2013 (Cth) 8.
902 Ibid rule 4.2(e).
procurement officers may not enter into contracts with tenders who have had a negative finding against them in relation to employee entitlements and this remains unpaid.\textsuperscript{904}

5.3.2 Review

A wide ranging review of Federal Government procurement was undertaken and reported its findings in 2014.\textsuperscript{905} The inquiry related specifically to the ratio of local vs imported goods in government procurement. However, one of its terms of reference was ‘the economic, social and environmental benefits of utilizing Australian goods and services.’\textsuperscript{906} A key theme to emerge consistently throughout the submissions and public hearings was the perceived double standards applied to Australian and foreign goods. In the *Fair Work Principles* for instance, there was no requirement that foreign companies comply with Australian laws, they must only comply with their own domestic laws.\textsuperscript{907} The *Procurement Rules* do not appear to formally address this question, but in practice it seems as though a similar situation exists. The Australian Services Union specifically lobbied for overseas subcontractors to comply with the same requirements that local businesses do, citing the NSW rules, which imposes this requirement.\textsuperscript{908} In the public hearings associated with this inquiry, many examples were given of different standards applying to foreign vs local suppliers.\textsuperscript{909}

Evidence was also presented that procurement officers often take a ‘tick the box’ approach to requirements. This was also noted in an earlier review of ICT procurement.\textsuperscript{910} As mentioned previously, under the ICT Sustainability Plan 2010-2015, general use paper must currently contain 100% recycled paper as of 2015. A number of Federal Government departments

\textsuperscript{908}Australian Services Union, Submission 19 to Finance and Public Administration References Committee, *Commonwealth Procurement Procedures* (July 2014) 4.
\textsuperscript{909}Evidence to Finance and Public Administration References Committee, Parliament of Australia, Canberra, Friday 21 March 2014, 5 (Ms Wilkinson).
source paper from Indonesia that is certified as recycled. However, the standards between countries are quite different and the Indonesian paper does not meet ISO14021 standards, even though this is a requirement under the plan. These claims were supported by a procurement officer who suggested in evidence that their procurement panel on the topic of environmental certification merely applies the standards on a pre-approved list from the Department of Environment, without making any further enquiries.

This is difficult to justify given the Australian Procurement and Construction Council provides guidelines and pro-forma questions on what to ask suppliers in order to verify the claims made. It seems perfectly reasonable to expect that this material should be available to all public procurement officers, given the APCC already liaises with all the relevant state and Federal Government departments. In fact, this document is linked on South Australia’s procurement website and included as part of its procurement guide. Nevertheless, previous government reviews reveal further problems in procurement. For instance, officers often interpret value for money as referring to the lowest cost. Research conducted at an international level confirms this finding that government procurement is consistently measured against compliance with the rules, rather than the outcomes of the decision. This is clearly unhelpful if the government is attempting to promote more responsible business practices through its buying power. Imposing broad ethical requirements that are not properly verified and enforced and then applying a narrow view of value for money does not seem like a sound strategy for engendering CSR.

These deficiencies in procurement are all the more relevant given the fact that low quality, non-compliant, and expensive to maintain goods frequently find their way onto Australian markets. A recent survey conducted by the Australian Industry Group found that 92% of

---

911 Evidence to Finance and Public Administration References Committee, Parliament of Australia, Canberra, Friday 21 March 2014, 42-43 (Craig Dunn).
912 Evidence to Finance and Public Administration References Committee, Parliament of Australia, Canberra, Friday 21 March 2014, 42-43 (Craig Dunn).
913 Evidence to Finance and Public Administration References Committee, Parliament of Australia, Canberra, Friday 21 March 2014, 60. (John Sheridan).
914 Australian Procurement and Construction Council, Assessing a Supplier’s Sustainability Credentials (Undated).
respondents had encountered products that did not comply with Australian standards.\textsuperscript{918} In an astonishing study, the Engineered Wood Products of Australasia Association found that 70\% of wood products failed to meet safety standards.\textsuperscript{919} This is obviously detrimental to greener procurement as sustainable or at least compliant products typically carry a premium over non-compliant imports. The report cited inadequate surveillance, testing and auditing as reasons for the high level of non-compliant products.\textsuperscript{920} The problems encountered by Australian procurers are evident worldwide and are obviously not simple to remedy. The OECD has previously commented on the lack of comparable ‘greenness’ of competing products and purchasers often simply rely on labels.\textsuperscript{921} In addition, valuing this greenness of the lifecycle of the product is extremely difficult.\textsuperscript{922} The OECD also identified the decentralized nature of procurement as posing challenges. From the procuring party’s perspective, this diffuses power through a greater number of people, who may not have sufficient expertise to make the complex calculations required.\textsuperscript{923} An auditor who testified at the 2014 inquiry made the comment that procurers often do not record the reasons that a particular product represents best value, making it difficult to scrutinize their decision making.\textsuperscript{924} This is in direct contravention of both the 2012 and the revised procurement rules which require them to provide sufficient records detailing how value for money was achieved in each procurement.\textsuperscript{925} The government inquiry also heard the other side of this issue, from the Australian Information Industry Association, which alluded to the problems associated with having to prepare tenders for sixty separate procurement panels.\textsuperscript{926} The $100,000 – $150,000 cost to prepare certain tenders effectively excludes SMEs.\textsuperscript{927}

\textsuperscript{919} Ibid 9.
\textsuperscript{920} Ibid 6.
\textsuperscript{924} Evidence to Finance and Public Administration References Committee, Parliament of Australia, Canberra, Friday 21 March 2014, 15 (Stuart Turnbull).
\textsuperscript{926} Evidence to Finance and Public Administration References Committee, Parliament of Australia, Canberra, Friday 21 March 2014, 15 (Stuart Turnbull).
\textsuperscript{927} Evidence to Finance and Public Administration References Committee, Parliament of Australia, Canberra, Friday 21 March 2014, 23-24 (Suzanne Campbell).
5.3.3 SMEs

Given this thesis considers how CSR by SMEs is regulated it is necessary to consider to what extent governments actually procure from SMEs. Whilst there is some evidence that SMEs are being squeezed out of large tendering processes, there are attempts to accommodate them formally in the various rules and guidelines. Under the *Commonwealth Procurement Rules*, there is a specific requirement to permit fair competition which directs officers to consider the benefits of doing business with SMEs, and the barriers they face in the context of assessing value for money.\(^928\) Furthermore, the rules state a policy of acquiring at least 10 percent by value of its procurement needs from SMEs.\(^929\) The submission by the Australian Department of Finance to the current inquiry paints quite a positive position for SME involvement. It cites figures that in 2012-13, SMEs comprised 89.1% of government contracts by number, and 31.7% by value.\(^930\)

On the topic of whether procurement practices actually influence CSR, the limited literature is quite interesting. It presents a clouded picture of the benefits of ethical government procurement and supply chain pressure. A particularly enlightening study noted that 82% of respondents would be motivated by government incorporating social requirements in tenders; however 25% said they probably would not apply and 12% believed the requirements would in fact be counterproductive.\(^931\) Three-quarters of those surveyed suggested that any requirements imposed would set a lower standard than might otherwise be obtained voluntarily, citing the risk of a ‘ceiling effect’.\(^932\) Another study revealed similar findings in imposing CSR requirements in procurement. The CSR requirements were seen to deter SMEs (3 out of 16) from working with other businesses that employed less onerous standards.\(^933\) However, respondents also believe there is little veracity in compulsory CSR requirements

---


\(^929\) Ibid 5.5.

\(^930\) Department of Finance. Submission no 12 to Finance and Public Administration References Committee, *Commonwealth Procurement Procedures*, December 2013, 4-5.


\(^932\) Ibid 437.

whereby a tokenistic ‘tick the box’ culture is sometimes employed.\textsuperscript{934} There was also a pronounced resentment for the increased costs in the administration process when it was perceived that businesses were already complying with most of the CSR requirements voluntarily.\textsuperscript{935} This study also supports the idea that mandatory standards would reduce overall standards by suggesting that the resulting penalties for non-performance would mean lower standards to make the imposition more palatable.\textsuperscript{936} Almost half of those who would accept the criteria also suggested that they would also be ‘irked by the bureaucracy’.\textsuperscript{937}

A survey quoted in the 2008 Gershon Review is perhaps more concerning. It noted that 40% of respondents avoided government tenders altogether, and even those who do participate on occasion frequently avoid individual tenders.\textsuperscript{938} The survey noted that 79% of respondents had annual revenues under $15million which would likely put them into the SME category.\textsuperscript{939} The main reasons advanced for their aversion to government tenders was cost, complexity, punitive terms, and vaguely defined requirements.\textsuperscript{940} Once again the problem was raised that businesses thought government departments were too specification and process focused, instead of concentrating on outcomes, which ultimately leads to more expensive projects.\textsuperscript{941}

Government procurement in Australia clearly has undergone significant structural change over the past 25 years, which has led to significant problems in applying CSR or ethical criteria to procurement. The most notable feature of this section is that there appears to be an attempt to incorporate environmental and other criteria pertinent to CSR, and to encourage SMEs involvement in the process. Unfortunately, from the evidence available, it seems as though the procurement rules are frequently ignored. It is clear then that simply changing the procurement rules to better incorporate environmental and social criteria will not of itself solve the problem where these rules are not applied. Whilst there are significant issues with

\textsuperscript{934} Ibid 268. The frequency of these observations were obviously quite low. It is important to note however that the highest frequency count was 3 out of 16 as the authors were quite specific in their classification of response. Overall 7 responses were quite negative, 7 were positive and 2 were neutral suggestions.


\textsuperscript{936} Ibid 272-273.


\textsuperscript{938} Department of Finance and Deregulation, Review of the Australian Government’s Use of Information and Communication Technology (2008) (Gershon Review) 38.

\textsuperscript{939} Ibid.

\textsuperscript{940} Ibid.

\textsuperscript{941} Ibid.
public procurement, most notably the education and training of staff, there have been positive steps towards improvement. This will take time, but there is little utility in proposing mass reform when the outcomes of recent reforms are still not yet known.

5.4 Other Supporting Regulation

Aside from the most direct forms of regulating CSR, there are number of Acts and other forms of regulation that touch broadly upon CSR. There are far too many examples to list them all, or describe in detail, but it is nevertheless crucial to be aware that there is already a substantial web of legislation. This section is provided to illustrate that there is a further layer of regulation beyond the Corporations Act. The most pertinent regulation to note is the various pieces of environmental and occupational health and safety legislation across the country. In NSW, the NSW EPA administers 12 separate Acts. Equally, WorkCover NSW’s responsibilities are spread across several pieces of legislation. Similar regimes are in place in every other state around the country. As a whole, this legislative scheme establishes a minimum standard of behaviour which businesses must adhere to.

Aside from these quite expansive regulatory systems, there are many individual pieces of legislation that regulate specific activities relevant to the social responsibilities of business. For Instance the Illegal Logging Prohibition Act 2012 (Cth) imposes a penalty of up to 5 years jail for importing illegally logged timber. Equally, the Hazardous Waste (Regulation of Exports and Imports) Act 1989 (Cth) is ‘intended to ensure that exported or imported hazardous waste is disposed of safely so that human beings and the environment, both within and outside Australia, are protected from the harmful effects of the waste.’

---

942 Please note that a considerable amount of detail was removed from this section. Some evidence of the movement towards greater and more tailored procurement education can be seen in recent years. See Australian Procurement and Construction Council, Building Government Procurement Capabilities (2008) 23; State Procurement Board (SA), Procurement Training & Development, State Procurement Board (SA) <http://www.spb.sa.gov.au/content/procurement-training-development>.


944 See for Instance, Work Health and Safety Act 2011 (NSW); Work Health and Safety Regulations 2011 (NSW); Explosives Act 2003 (NSW); Rural Workers Accommodation Act 1969 (NSW).

945 Illegal Logging Prohibition Act 2012 (Cth) s8.

946 Hazardous Waste (Regulation of Exports and Imports) Act 1989 (Cth) s3.
Commonwealth Government regulates the use of agricultural and veterinary chemicals, \(^{947}\) disposal of marine waste, \(^{948}\) ozone depleting substances, \(^{949}\) discrimination in the workplace, \(^{950}\) and the management of the lifecycle of consumer products. \(^{951}\) This is clearly not an exhaustive list, but nevertheless emphasises the expanse of legislation which relates in some way to CSR. It is critical to highlight this point as it highlights the importance of a broad CSR reform approach as opposed to amending the vast amounts of legislation piece by piece.

Where an all expansive concept such as CSR is being pursued, it seems unreasonably burdensome to completely overhaul a vast amount of legislation. This approach is also likely to be an abject failure with SMEs, which, as noted in Chapter 2.5.3.2, struggle to understand the current regulatory environment and are therefore unlikely to absorb and implement mass reform of this nature. As will be addressed in Chapter 7, a full suite of changes will be required including education, market-based regulation, trade associations, regulatory reform, and public procurement. These reforms are aimed at assisting SMEs to improve rather than imposing increasingly onerous legal requirements. CSR is ultimately about challenging business to strive to be better citizens, and any regulatory effort should principally be aimed at pushing them in the right direction and providing assistance. The role of environmental, OH&S, and other legislation should be to prescribe minimum standards, with ‘beyond-compliance’ measures promoted through other means (as discussed in chapter 8).

Most of this legislation applies to SMEs. There is no ‘SME defence’ for having poor OH&S standards that leads to injury or death, for illegally dumping waste, or for discriminating against minorities in employment. Thus, in practical terms this suite of legislation does regulate the social and environmental responsibilities of SMEs. Questions linger however as to how effectively the various regulators enforce regulation amongst SMEs. Certainly, Case Study 1 in Chapter 6.2 indicates they are not ignored and in fact comprise the majority of EPA and OH&S convictions. This is unsurprising as they comprise 99% of business in Australia. The question that remains is how many SMEs slip through the net because they are small and do not attract as much attention as larger corporations.

---

\(^{947}\) Agricultural and Veterinary Chemicals (Administration Act) 1992 (Cth).

\(^{948}\) Environment Protection (Sea Dumping) Act 1981 (Cth).

\(^{949}\) Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 (Cth).

\(^{950}\) Workplace Gender Equality Act 2012 (Cth); Racial Discrimination Act 1975 (Cth) s15; Disability Discrimination Act 1992 (Cth) s15; Age Discrimination Act 2004 (Cth); Sex Discrimination Act 1984 (Cth)

\(^{951}\) Product Stewardship Act 2011 (Cth).
5.5 It is SMEs Turn for Reform - In Victoria!

In 2008, the Family and Community Development Committee in Victoria initiated a parliamentary inquiry into CSR within SMEs. Its terms of reference included to investigate current Australian SME initiatives, review international initiatives, investigate the role that SMEs could play in CSR, and address the barriers and drivers SMEs face in implementing CSR. From this report, nine recommendations were made, including:

- Engaging in research on the benefits of CSR within SMEs;
- Encouraging trade associations to promote CSR within its membership;
- Recognising ethical behaviour through awards;
- Exploring the use of the term CSR itself when referring to the activities of SMEs;
- Work with various groups ‘to support the establishment of community based CSR clusters;
- Develop a voluntary CSR code of practice designed for SMEs;
- Set an example by promoting CSR through government procurement;
- Taking a centralised approach to inter-agency efforts to promote CSR; and
- Utilise and promote federal CSR initiatives.

The interesting aspect of these recommendations is that none (perhaps with the exception of promoting a voluntary code of conduct) involve law reform. They all involve some form of education or encouragement without formally requiring change. It therefore appears to be the Victorian position that specific command and control regulation is not appropriate, and that a wide array of self-regulatory and quasi regulatory (such as procurement) tools are the preferred option. This approach is sensible. As was discussed in Chapter 2.5, SMEs are heterogeneous and CSR is a broad concept, encompassing many aspects of a business’s operations. Under these circumstances, there is a need to have a high degree of flexibility as many CSR activities will be inappropriate for SMEs due to their size or industry. Thus, the role of governments should be to strongly encourage CSR engagement, but what form that engagement takes should be left to the SMEs, who are best placed to determine the most appropriate action. Such flexibility is generally not possible in mandatory command and

---

953 Ibid xi – xiii.
control regulation. Thus, the place of such command and control regulation is to set mandatory minimum standards, with other forms of regulation strongly encouraging behaviour that exceeds these standards.

Whilst it is obviously a positive sign that Victoria has initiated this research, it is still disappointing that there has been minimal national leadership on this issue. The result then, is that the Commonwealth initiatives are mostly ad-hoc and unconnected to a broader SME CSR policy. The Federal Government could argue, unlike the CAMAC and PJC inquires, that the regulation of SMEs is a state matter, given two thirds of SMEs are not incorporated entities. This of course ignores the fact that CSR cuts across many issues, some of national importance, and SMEs contribute so heavily to the economy. It would be beneficial to have a nationally agreed approach, or at least guidance and research provided from the Federal Government, on the subject of CSR, rather than a patchwork of state approaches. This is again a situation where SMEs are not totally ignored by governments, but they are still not afforded the attention they deserve, and certainly do not receive the level of attention as their larger counterparts.

5.6 Conclusion

This chapter has outlined the overall approach to CSR in Australia revealing a combination of voluntary and mandatory approaches. It was important to consider, to what extent does the law actually restrain CSR? The answer to this question is two-fold. In substance, the law on directors’ duties in Australia is quite restrictive, adopting an enlightened shareholder primacy position, which permits spending on CSR activities only where there is a direct benefit to the company. In practice, however the position affords a great deal of flexibility. CSR activities are commonplace in contemporary society and yet only a dozen or so cases have been brought on grounds related to CSR. The simple fact is that as long as a company is still a going concern, and has a reputation to uphold, most CSR expenditures will involve a sufficient benefit to the company that insulates the board from litigation. Only in egregious cases are the directors under threat. It is significant that almost all of the cases where the CSR action has been struck down involve either self-interest or an insolvent company. The reticence of courts to intervene in business judgments suggests that only in these extreme situations will a board’s decision be subject to judicial scrutiny, and virtually any good faith decision will be beyond the scope of courts.
On the topic of how Australia actively promotes CSR, there is a broad approach of using market forces to encourage good behaviour. There is not a mandatory requirement to act more responsibly, save for the broader workplace and safety, minimum wage, environmental laws, etc. The primary method of encouraging better practices is through company disclosures of its social and environment performance and through government procurement. The assumption is that if a company must disclose its practices, then those practices better meet public expectations. Even in the case of the ‘if not why not’ ASX recommendations, a simple response such as ‘we do not adopt this recommendation because it is not relevant to us’ is likely to be met by cynicism, suggesting there is a need to comprehensively disclose company policies and practices. Furthermore, as large consumers in their own right, the various governments attempt to influence the market by demanding certain products and ethical behaviour. This is a clear example of encouraging CSR via the carrot, rather than the stick. As was noted above, there are weaknesses in the government’s approach to procurement. However, the government is being quite proactive, as evidenced by the current inquiry into public procurement.

The current legal framework is fairly sound. It certainly could be improved, but there is a genuine attempt to play an active role in CSR and ethical business practise. There is however one fatal flaw; it almost entirely ignores the SME sector, which as noted in Chapter 2.4, is integral to CSR. The baseline is essentially the same for both SMEs and larger businesses. There is not a SME defence to the illegal dumping of waste, workplace deaths, underpayment of wages, discrimination, etc. However, there is very little to encourage them to go further. The disclosure rules almost entirely exclude SMEs. If they are not corporations, which two thirds of businesses are not, then the entire system does not apply to them. The definition of SME adopted in this thesis is the European definition, which is up to 250 employees, turnover of 50 million euros and assets up to 43 million Euros.\(^\text{954}\) Whilst the SME definition is set well above the definition for a Small Pty Company, the simple fact is that most companies in Australia are towards the lower end of these criteria and would not have to comply with the reporting obligations. Given that all other disclosure obligations such as continuous disclosure, the ASX recommendations, and ASX listing rules only apply to listed

entities, and only 2200 entities are listed on the ASX,\textsuperscript{955} it is again reasonable to conclude that very few SMEs are governed by these laws. As with the definition of Small Pty Ltd Companies, the requirements for listing on the ASX effectively preclude most SMEs from listing.\textsuperscript{956} This leaves SMEs in a position where they can make voluntary disclosures. The value of the disclosure rules may lie in their ability to encourage larger enterprises to improve their supply chains (and the SMEs it is supplied by). While this is a positive first step, there is a need for governments to further encourage this kind of engagement between large corporations and SMEs. This is explored further in the public procurement reforms proposed in Chapter 7.1.

The government procurement policy is more inclusive, and makes a genuine attempt to engage with SMEs. However, the coverage question arises again given 67,854 Federal Government contracts were awarded to 11,460 suppliers in 2012-13,\textsuperscript{957} and there are 2,100,162 businesses active in Australia.\textsuperscript{958} Several submissions criticized the present framework for not imposing obligations on the suppliers supply chain, which would obviously expand the government’s influence considerably. If one then factors in the enormous expense associated with tendering, the complaints that public servants generally do not investigate the claims made, and the overall frustration that lower standards are imposed on foreign companies, this does not seem to be an environment conducive to the encouragement of more ethical practices. This is not to suggest the government is abdicating its responsibility; it has made a genuine attempt to influence the market and encourage SMEs as well. It is simply the case that the rules are not working in practice and some amendments are required.

Taken in its entirety, it is clear from the evidence presented in this chapter that SMEs slip through the cracks in CSR regulation. As noted in Chapter 2.3, SMEs comprise a significant part of the economy and the risks associated with these operations. To ignore them is to

\begin{flushleft}
\textsuperscript{956}Cost and practicality aside, an entity must meet either the profits test (requiring aggregate profit of $1 million over three years and $400,000 for the last year) or the assets test (requiring assets if at least $3 million, or alternatively a market capitalisation of $10 million and must also have working capital of $1.5 million) in order to be listed under Listing Rule 1.2 - 1.3.
\textsuperscript{957}Department of Finance, Submission 12 to Finance and Public Administration References Committee, Parliament of Australia, Commonwealth Procurement Procedures (July 2014) 4-5.
\end{flushleft}
ignore a substantial part of the problem. Given SMEs represent 99% of businesses in Australia, even the smallest of initiatives, such as changing a few light bulbs, replicated several million times, can make a world of difference. Again, larger corporations are not unimportant in CSR and it is not my intent to suggest they should be ignored. My intent is to point out that SMEs are a substantial problem and should receive considerable attention, which is currently not the case.
Chapter 6: Case Studies

6.1 Introduction:

Chapter 5 discussed the legal system by which Australian SMEs are encouraged to engage in CSR. As was noted in this chapter, whilst a system exists, it is mostly targeted at larger enterprises. Chapter 7 will seek to address this problem, but before embarking upon this task, greater understanding of SMEs is required. Chapter 2.3 – 2.4 also highlighted the extent to which SMEs contribute both positively and negatively to the community. There are a few studies relating to SME contributions to pollution and workplace injuries. However, they have received almost mythical status, whereby no one has attempted to reproduce the results in other jurisdictions and the results are mostly estimates. Most of these figures also do not relate to specific convictions. It is important to have an understanding of SMEs’ contribution to convictions as they ultimately form the ‘low hanging fruit’, involving the most serious incidents, most of which could have been avoided with full legal compliance. This thesis attempts to fill some of these gaps in knowledge by applying a unique methodology and producing data on the contribution of SMEs in Australia to environmental and workplace injury prosecutions.

The three case studies in this chapter attempt to provide an answer to the fundamental research questions raised by thesis. Case Study 1, addresses the first research question. Before even considering how a government might promote CSR, a voluntary endeavour, there is a need to establish there is a problem to be remedied. Case Study 1 addresses this question in part by analysing the percentage of Occupational Health and Safety (OH&S) and Environmental (EPA) convictions that SMEs account for.

Case Study 2 addresses research question 2. The literature, discussed at length in Chapter 2.5.3, describes the major barriers to SMEs engaging in CSR as a lack of resources, lacking awareness of CSR opportunities and their benefits, and an attitudinal barrier towards CSR.

959 For instance studies suggest that SMEs account for 80% of pollution ‘incidents’ and that 5.5% of SMEs have had an employee sustain a workplace injury. See: Mayhew, Claire, and Chris Peterson, *Occupational Health and Safety in Australia* (Allen and Unwin, 1999) 117; Environment Agency, *Greener Business is Good Business, Spotlight on Business, Environmental Performance in 2003*, 10 cited in: Environmental Audit Committee, House of Commons, Corporate Environmental Crime: Second Report of Session 2004–05 (2005) 14. I was also able to (based upon other ABS/ Worksafe Australia statistics) calculate SMEs’ contribution to serious workplace compensation claims at 69.9% in chapter 2.
Case Study 2 attempts to explore the practical side of SME non-compliance. When an SME is convicted of a workplace or environmental offence, is it the result of having insufficient funds, a lack of understanding of legal requirements, or just a plain disinterest in compliance? Clearly, this case study has implications for legal compliance (which is a part of CSR under Archie Carroll’s model of CSR), but also for broader aspects of CSR. If SMEs cannot even comply with the minimum baseline, then how can they be expected to go beyond?

Case Study 3 builds on Case Study 2 by addressing some of the deficiencies of SMEs. Chapter 7 will outline a tranche of reforms. Nevertheless, Case Study 3 is limited to one reform, specifically the role of trade associations. Trade associations have been discussed briefly throughout this thesis. They were noted as a potential driver of CSR in Chapter 2.5.4.1. They were also used as an example to explain the benefits of social capital in Chapter 3.5.1. Trade associations were also noted as potential ‘regulators’ in the context of self-regulation in Chapter 4.4, and it was noted that the Victorian Inquiry into promoting CSR within SMEs suggested trade associations could promote CSR to their membership. With the potential role trade associations could play in CSR hinted at many times in the literature, this case study explores this role in greater detail.

Trade associations are a potential avenue to improve regulatory compliance (and indeed ‘beyond compliance’ CSR) because they are trusted by business and can present information on behalf of regulators as sound commercial practice. Even though the literature has previously identified trade associations as a potential avenue for promoting CSR, for instance using them as a means to disseminate information, there has been little research into how this might work. For instance, what model is to be adopted? Case Study 3

---


961 It should be noted that literature also exists relating to informal associations or clusters amongst small groups of businesses. Whilst this is distinct from formal trade associations, many of the benefits such as sharing information on best practice are similar.


964 Note also the benefits of Self-regulation which would be relevant to promoting CSR, such as providing regulation where traditional command and control regulation is prohibitively costly, and the ability to achieve greater regulatory coverage. See Anthony Ogus, *Rethinking Self-Regulation* in Robert Baldwin, Colin Scott and
therefore looks at an innovative model of trade associations in the live export industry. Whilst it is a unique model that could not be adopted in every trade association, it nevertheless highlights the enormous potential such associations could have in influencing SMEs’ CSR activities.

6.2 Case Study 1: To what Extent do SMEs Contribute to the CSR Debate

In this study, the proportion of SMEs being convicted of environmental and OH&S violations compared with larger corporations will be investigated. This study proceeds under the hypothesis that SMEs contribute heavily in these two areas and therefore warrant further attention, not just in these two areas, but in the broader discussion of promoting CSR. A rather detailed research methodology was employed in this case study making it inappropriate to include in the body of this thesis. Accordingly, a detailed explanation of the research methodology employed can be found in Appendixes 2A and 2B.

6.2.1 Results and Discussion

The more substantial results from this case study are presented in Appendixes A and B that demonstrates which businesses were involved, whether or not they were a SME, and what evidence was used to determine the size of the business.

Table 11: Contribution to EPA and OH&S Convictions by Size

<table>
<thead>
<tr>
<th>Grouping</th>
<th>Number of Successful Prosecutions</th>
<th>Proportion of Successful Prosecutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>SME</td>
<td>31</td>
<td>48%</td>
</tr>
<tr>
<td>Large</td>
<td>16</td>
<td>24.60%</td>
</tr>
<tr>
<td>Government</td>
<td>10</td>
<td>15.40%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Grouping</th>
<th>Number of Successful Prosecutions</th>
<th>Proportion of successful Prosecutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual / Unclassified</td>
<td>6</td>
<td>9.20%</td>
</tr>
<tr>
<td>Illegal Business/ Activity</td>
<td>2</td>
<td>3%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>65</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

Table 11B: Contribution to EPA convictions by Size – Business Only

<table>
<thead>
<tr>
<th>Grouping</th>
<th>Number of Successful Prosecutions</th>
<th>Proportion of successful Prosecutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>SME</td>
<td>31</td>
<td>66%</td>
</tr>
<tr>
<td>Large</td>
<td>16</td>
<td>34%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>47</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

Table 11C: Contribution to OH&S Convictions by Size

<table>
<thead>
<tr>
<th>Grouping</th>
<th>Number of Successful Prosecutions</th>
<th>Proportion of successful Prosecutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>SME</td>
<td>27</td>
<td>60.0%</td>
</tr>
<tr>
<td>Large</td>
<td>8</td>
<td>17.80%</td>
</tr>
<tr>
<td>Government</td>
<td>5</td>
<td>11.10%</td>
</tr>
<tr>
<td>Individual/ Unclassified</td>
<td>5</td>
<td>11.10%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>45</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

Table 11D: Contribution to OH&S convictions by Size – Business Only

<table>
<thead>
<tr>
<th>Grouping</th>
<th>Number of Successful Prosecutions</th>
<th>Proportion of successful Prosecutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>SME</td>
<td>27</td>
<td>77.10%</td>
</tr>
<tr>
<td>Large</td>
<td>8</td>
<td>22.80%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>35</strong></td>
<td><strong>99.9% (Rounding Error)</strong></td>
</tr>
</tbody>
</table>

965 Cases were defined as individual where it was clear that they were unrelated to business activity. For instance, there was one case where the prosecution appears to relate to discharging a weapon in a national park and damaging a tree.

966 Both instances of an ‘illegal business’ related to the illegal importation of animals.
The results in this case study indicate the importance of engaging SMEs in CSR. When prosecutions are viewed in total (that is including governments and prosecutions against individuals unrelated to a business enterprise) SMEs comprise 48% of successful ‘serious’ EPA prosecutions and 60% of OH&S prosecutions. This is compared with 26.6% and 17.8% respectively in the case of large enterprises. When all other groups are excluded, thus comparing only SMEs with large enterprises, SMEs account for 66% of EPA and 77.1% of OH&S convictions. An interesting and unexpected finding is the fact that government bodies (including government funded NGOs) contribute to a surprisingly high amount of convictions. This is unacceptable when the way governments conduct their operations should be an example of best practice for others to follow.

This case study has important implications for this thesis. Given SMEs comprise considerably more prosecutions than larger enterprises; they clearly warrant considerable regulatory attention. This provides an answer to Research Question 1, which considers to what extent SMEs are critical in the CSR debate. This case study suggests that SMEs are very important in any debate about CSR. From an environmental and workplace injury context, SMEs comprise the vast majority of prosecutions. These figures highlight the absurdity of excluding SMEs from any discussion about CSR reform. When these statistics are viewed in light of other research presented in Chapter 2.5.3.2, such as the very low levels of regulatory compliance, it is clear that simply getting SMEs to comply with existing laws is a considerable hurdle for governments. This informs the solutions that will be proposed in Chapter 7, thus providing an answer to Research Question 3.

It should be noted that promoting compliance is not just about enforcing minimum standards; it can promote ‘beyond compliance’ behaviour as well. By simply having their deficiencies drawn to SMEs attention, this may be the impetus for a significant review of operations that may result in behaviour that exceeds regulatory requirements. Furthermore, because a regulator can legally compel full compliance, there is an opportunity for ‘beyond compliance’ behaviour by effectively ‘overshooting’ with the improvements made. Additionally, it is possible, having just been informed that the business is in danger of punishment due to non-compliance, that the business would want to do more than scrape through the next inspection and would want to remain ‘ahead of the game’. Whatever the reason may be, there is a greater prospect of ‘beyond compliance’ behaviour when a regulator is constantly engaged.

with the business community encouraging, or compelling (if necessary) improvements. This is ultimately a further justification for considering legal compliance an aspect of CSR. Legal compliance is an important part of Archie Carroll’s four tier model of CSR, which involves economic, legal, ethical and discretionary responsibilities.\textsuperscript{968} Thus, even though CSR should involve going beyond legal compliance, these ethical and discretionary responsibilities should not come at the expense of a business complying with its legal obligations.

6.3: Case Study 2: To What Extent do the Commonly Asserted Deficiencies of SMEs Account for Convictions

In Chapter 2.5.3, a number of common barriers were advanced for SMEs and their assumed high levels of non-compliance with regulation. For instance, they lack resources, and they fail to understand the regulations that apply to them.\textsuperscript{969} It was discussed in Chapter 4 that non-compliance arises for a multitude of reasons including by way of amoral calculation, organisational incompetence,\textsuperscript{970} and as a matter of political defiance.\textsuperscript{971} There is some empirical research on the causes of workplace injuries, although this does not seem to extend into the causes for workplace safety convictions. These studies tend to confirm two of the three archetypes advanced by Kagan and Scholz as major contributing factors to workplace injury. A study of the largest barriers to better workplace safety compliance noted cost (1\textsuperscript{st} – 37\%) and lack of training (3\textsuperscript{rd} – 32\%) as being major barriers.\textsuperscript{972} A more detailed case study also noted that 72\% of workplace injuries encountered included some form of ‘incorrect work practices’\textsuperscript{973} and 62\% were related to the design or condition of equipment, leading the authors to mention the prohibitive costs in replacing the equipment, and the propensity to


\textsuperscript{970} In this case study, organisational incompetence and lack of awareness are essentially treated as the same concept. A lack of awareness is a barrier to compliance, whereas organizational incompetence is placed in the three ‘archetypes of non-compliance, and is thus effectively a motivational stance. Nevertheless, given organizational incompetence is a consequence of a lack of awareness of legal obligations, they are treated as the same in this case study.


\textsuperscript{973} The individual reasons under this category were: ‘doing the job incorrectly’, ‘should have turned the machine off ’ (9), ‘used the wrong tool (or should have used tool not hand)’, and ‘had my hand in the wrong place’ (7). In most cases respondents indicated that the correct action or behaviour was known but not followed.’
purchase second hand equipment in poor condition. Accordingly, it seems based on the limited data, that organisational incompetence and amoral calculation are important aspects of non-compliance in the occupational health and safety space. There was no mention of political defiance in these studies. These studies are also generally consistent with the literature on barriers to CSR outlined in Chapter 2.5.3.

If reforms are to be properly targeted, there is a need to understand what barriers need to be overcome. Clearly the solution to a regulatory climate where 99.5% of non-compliance results from organisational incompetence, and .5% from amoral calculation, will be different to a situation where the reverse is true. This case study will therefore inform the solutions proposed in Chapter 7 and will assist in answering Research Question 2 by identifying the features of SMEs that prevent them from engaging in CSR, which sets them apart from larger enterprises. Importantly, by using court judgments, this case study will draw upon the extensive investigations by Workcover NSW and the findings of a court, rather than relying upon subjective assessments of managers or the authors themselves. This case study also focuses specifically on prosecutions, rather than injuries in general, which necessarily involves the most serious instances of non-compliance and instances where it is most appropriate to attribute blame to the business.

6.3.1 Methodology

In this case study, the convictions which were the subject of Case Study 1 were used for the sample once again. Unfortunately, it became apparent that there was insufficient information contained within the EPA judgments to properly conduct the case study. For this reason, this case study only analysed the OH&S court judgments. This case study is presented as an exploratory study ascertaining the reasons and motivations behind SME non-compliance with OH&S regulation. Simply put, why do SMEs infringe? Thus the sole method employed in this case study was to scan available court judgments, with specific focus on the reasoning behind the penalties awarded. The original intent was to code the various judgments on the

---


975 For instance, not all workplace injuries are avoidable and not all injuries are serious. More than half of workplace injuries can be attributed to ‘body stressing’ which tends to suggest general lifting and overuse injuries. See Safe Work Australia, *Comparison of Work Health and Safety and Workers’ Compensation Schemes in Australia and New Zealand: Comparative Performance Monitoring Report* (15th ed, 2013) 12. Additionally, 57% of ‘serious’ injuries involve time away from work of between 1-6 weeks.
basis of the main archetypes of business non-compliance proposed by Kagan and Scholz, namely: political defiance, amoral calculation, and organisational incompetence. Additionally, it was intended to identify if the commonly asserted deficiencies of SMEs, such as lack of resources and a lack of understanding or awareness of regulation, were factors in the accidents and resulting prosecutions. A cursory reading of the judgments revealed that this would be insufficient, as almost no evidence of any factor other than lack of awareness was found. Accordingly, the study was adapted to scan for evidence that disproved, rather than proved, a particular motivation for non-compliance. Thus the following evidence was recorded: Lack of understanding of regulation (express or implied), lack of experience, guilty pleas, cooperation with regulatory authorities, contrition, the ease with which the accidents could have been avoided, and any presence of CSR.

6.3.2 Results

The results were quite surprising in that every single case arose as a result of organisational incompetence. Drawing upon the work of Kagan and Scholz, the businesses assumed complete responsibility for incidents. All defendants pleaded guilty, most at the earliest possible time. Almost all prosecutions were a first time offence for the defendant, they cooperated fully with the relevant authorities, and all defendants implemented improved safety measures after the accident, most without any compulsion on the part of regulators. Several defendants offered support to the injured employee well in excess of what they were legally required to, and in many cases suffered medical issues themselves, such as depression, out of guilt for their part in the horrific injuries sustained. This dispels the often quoted analysis of corporations ‘having no soul to be damned and no body to be kicked’. In all cases, the driving force of the company (whether it be the director(s), shareholder(s), or general manager) made honest mistakes, felt

---

976 Ibid.
extremely guilty that their employees had suffered greatly because of these mistakes, and made every possible attempt to take responsibility for their shortcomings.

6.3.2.1 Lack of Understanding/Experience

Out of the 21 cases, 7 of the prosecutions arose from a complete lack of understanding of the regulations attached to the defendants’ business. Of these 7, 3 were determined on the basis of the defendant arguing they had never heard of the regulations,978 with the other four inferred on the facts. The defendants’ misunderstanding of the regulation was inferred on asserting their work methods as ‘standard practice’ in their industry,979 and in one case involving the cutting down of a 20 metre tree, where the defendant had no employee that was properly accredited to cut down large trees, and this was the first occasion that the business had felled a tree larger than 2 metres.980 Even though in several cases there were multiple failings in the defendants’ practices, had they complied with the regulations they did not understand (or had never heard of), the injuries would have been prevented.

In addition to a lack of understanding, five of the prosecutions could be attributed to defendants who had a complete lack of experience in the industry they were operating in.981 In some instances, the defendant or their employees were woefully underqualified for the job at hand. The best example of this is a case where poor communication saw what was originally intended as a ‘private’ favour of one of the company’s employees turn into a job of the company who agreed to employ a number of its contractors.982 The person, who had agreed to assist constructing a pool, had no experience in either pool construction or excavation.983 This lack of experience led to several precautionary measures not being

980 Inspector Wright v Khouzame [2012] NSWIRComm 125 [27].
982 Inspector Christensen v Wadwell Group Pty Ltd (ACN 125 970 345) as Trustee for the Wadwell Family Trust [2012] NSWIRComm 126 [24].
983 Ibid [25].
which lead to a wall collapsing, killing one of the company’s contractors. Another case involved a worker falling through a polycarbonate sheet of a shed, leading to his death. In this case, the defendant was operating a farm business, building only its fourth shed, and the first which involved any form of polycarbonate sheeting. Unsurprisingly, this case also involved a total lack of understanding of the safety requirements, which meant the appropriate safety measures were not deployed. A third case involved a hotel operator forming a corporation to start a mushroom farm. The crush injury sustained resulted from the movement of a heavy condenser unit which none of the workers were qualified to move.

In four of the cases involving either a lack of understanding of the legal requirements or a lack of experience, the business was in effect a ‘side business’ operated part time, or there was some reason that the director/manager could only devote a few hours a week to the business. Inspector Mason v Graham Allen Chapman & anor involved a situation where the director operated other businesses. In the case of Inspector Walker v Earthquake Promotions Pty Ltd (No 2), the corporation operated a Ferris wheel on a seasonal basis and derived an income of approximately $1000 per annum. In another case, a young woman took control of a gardening business (as a sole trader) after her mother was injured in a serious car crash. In addition to her role as proprietor of the business, she was a university student, and worked part time in a pharmacy (for approximately $500 per week) to assist her family. The business was wound down 6 months after the accident and deregistered the following year with the defendant admitting ‘that she could not supervise the work while she was studying.’ In another case, the defendant admitted to, spending approximately one hour a day at the premises after suffering from prostate cancer.

---

984 Ibid.
985 Inspector Ringland v Lonewood Farm Pty Ltd [2013] NSWIRComm 1.
986 Ibid [10].
987 Ibid [14], [21].
989 Ibid [42].
992 Inspector Walker v Earthquake Promotions Pty Ltd (No 2) [2014] NSWIRComm 5 [53].
993 Inspector Wright v Khouzame [2012] NSWIRComm 125 [20].
994 Ibid [14].
995 Ibid [21].
996 Inspector Brandie v Hogan [2012] NSWIRComm 138 [33].
In all, 10 out of 21 cases, involved either a lack of experience in the relevant industry or a lack of understanding of the legal requirements attached to the industry. For the remaining 11 cases, there is no evidence of amoral calculation or political defiance. In many cases, the alterations required were inexpensive. Therefore, there is no evidence of other deficiencies commonly attributed to SMEs. As will be discussed below, there is in fact evidence that refutes any amoral calculation or lack of resources. Thus, in the remaining 11 cases, the deficient safety procedures in place remain unexplained, and the number of cases involving a lack of understanding or experience could in fact be substantially higher (given the evidence listed below, it could be almost 100%).

6.3.2.2 Contrition

Demonstrating contrition should, to some degree, negate the inference that the businesses involved had engaged in reckless behaviour, or had little concern for the wellbeing of their employees. It is true that the mere plea of contrition during a prosecution does not sufficiently prove that a manager/director/shareholder is contrite. However, many defendants demonstrated contrition by actions rather than words.

In all 21 cases, the defendants pleaded guilty. The sentencing discount attached to each penalty is a good indication of how early the defendants pleaded guilty. Of the 21 cases, 12 obtained the full 25% discount, with the remained involving, 22.5% (2), 20% (4), 15% (2), and 10% (1). It is therefore reasonable to infer that 18 of the 21 cases involved guilty pleas at a very early stage of the prosecutions. In 2 of the other 3 cases, there appears to have been genuine reasons for the delay. For instance, in Inspector Brandie v Phillips,[997] several of the charges were dropped, and there appears to have been a dispute as to who had actually employed the injured worker, which once resolved, resulted in an immediately plea of guilty. [998] Similarly, Inspector Walker v Earthquake Promotions Pty Ltd (No 2)[999] involved a plea of guilty, following an amended charge.[1000] The final case offers no explanation for the

---

[997] [2012] NSWIRComm 137.
[998] [22]-[23].
[999] [2014] NSWIRComm 5.
[1000] [46]-[48].
late plea. In 20 of the 21 prosecutions, the defendant fully cooperated with the investigation. In the remaining case, there was no mention of cooperation at all.

The presence of prior convictions could suggest a level of recklessness, which is inconsistent with contrition. Ultimately, for a defendant to be contrite, one would expect improvements to be made and for the defendant to be especially vigilant. Whilst the prior conviction could be totally unrelated, and the mistakes were honestly made, a negative inference could be drawn as to the level of contrition demonstrated. In 18 of the 21 cases, there was no previous conviction listed, leaving 2 cases involving a defendant with prior convictions and 1 where convictions are not mentioned.

Similar to the point about prior convictions, the lack of change resulting from an accident could demonstrate a lack of contrition. On this point, all 21 businesses made some form of change to their practices, plant, or equipment (or alternatively ceased operations). In some instances the changes made were quite substantial and expensive, refuting any suggesting of amoral calculation or cost/benefit analysis. For instance, in Inspector Christensen v Coastal Asphalt and Civil Constructions Pty Ltd, the defendant purchased a new ‘multi wheel roller’. In Inspector Cooper v Ward, the defendant completely overhauled its safety measures in a case involving the death of an employee, having been overcome from the fumes of solvent whilst working inside a boat. The defendant installed an extraction fan, substituted potentially lethal solvents with non-toxic cleaning products where possible, provided appropriate protective equipment, such as gloves, and better enforced its policy on the wearing of safety equipment. Additionally, in one case, the business was significantly scaled back and eventually ceased operations because ‘[the defendant] was upset that the work was not being done properly and she realised that she could not supervise the work while she was studying.’

---

1001 Inspector Cooper v Ward [2013] NSWIRComm 95 [113]-[114].
1003 Inspector Cooper v J I T Offset Pty Ltd [2013] NSWIRComm 90[5]; Inspector Gregory v Big River Timbers (Veneer) Pty Ltd [2013] NSWIRComm 85 [7].
1006 [12].
1007 [2013] NSWIRComm 95.
1008 Inspector Cooper v Ward [2013] NSWIRComm 95 [35].
1009 Inspector Wright v Khouzame [2012] NSWIRComm 125 [21].
A further aspect of many cases which indicates contrition is the extent to which the defendants suffered themselves as a result of the injuries sustained. In 9 of the 21 cases, the defendant claimed to have suffered depression as a result of the workplace accident. In several cases, the depression was quite severe. The tragic events were quite personalised in many of the cases. It is difficult to ascertain the precise size of all of the companies, but it is obvious that many were quite small family companies, involving only a handful of employees. Due to this, there was a personal connection between the defendant and the injured party. In several cases they were described as ‘friends’. Furthermore, most of the cases involved quite horrific injuries. In the most confronting of instances, one of the cases involved the defendant supporting the weight of the injured employee whilst he was stuck in a conveyor awaiting assistance, and passed the employees severed arm to the surgeon who attended the scene. This supports the Health and Safety Executive’s (UK) view that ‘the moral case remains a driver, especially in SMEs where you may know or be related to your colleagues.’

Perhaps the strongest evidence of contrition is the assistance provided to the injured party, which in many cases exceeded any legal obligation. In certain instances, it involved small gestures, such as bringing the employees’ wages to the hospital in cash to ensure the money was accessible, or having an annual safety day to discuss safety issues named after the deceased employee. However, in other instances the assistance provided was substantial and dispels any notions of amoral calculation. The assistance was so substantial that it could not be rationally thought to have produced a positive financial result, but must have been provided on the basis of being ‘the right thing to do’. For instance, in Inspector Bultitude v Eagles, the defendant paid the injured employee’s full wages for 2 years after WorkCover payments had ceased. In another case, the defendant arranged for flowers and for TV to be paid for whilst the injured employee was in hospital, for the human resources manager to

1014 Inspector Christensen v Coastal Asphalt and Civil Constructions Pty Ltd [2012] NSWIRComm 150 [19]-[20].
1015 [2012] NSWIRComm 139.
1016 [22].
drive him to doctors’ appointments, do his shopping and carrying out other errands, assisted with various bills such as groceries, modifying his vehicle to accommodate his disability, modified his work duties and purchased equipment to assist him, and paid a credit card bill totalling $17,963.49. In all, 11 of the 21 cases involved some sort of support or modifications that the defendant would not have been legally obligated to provide.

6.3.2.3 The Ease with Which the Accident Could Have Been Avoided:

It would be frustrating for victims, governments, and regulators alike with how many injuries could have been easily prevented. Nevertheless, given the inexpensive measures available, this suggests that with the right education, many accidents can be avoided. It also dispels the notion of amoral calculation (quite simply because it would be so inexpensive to comply). It also further reinforces the evidence that the bulk of prosecutions arise from a lack of understanding or experience.

In 13 of the 21 cases, there was a relatively easy method of avoiding the injury. In 6 of these cases, the appropriate guard was missing from equipment either because the defendant was unaware of the need for a guard, or because the defendant was unaware that an employee had removed an existing guard. In 2 other cases, the defendant had not deployed appropriate fall protection such as safety mesh or harnesses. Of the remaining 5 cases, 1 involved a contractor removing a safety ledger from scaffolding, a failure to block access to a unfinished stairwell and upper level by way of erecting a fence, failure to cover a hole in a

---

1017 Inspector Howett v K T Regal Pty Ltd [2012] NSWIRComm 144 [19].
concrete slab, failing to ask the landlord to reposition a ‘wet well’ to avoid electrical wire damage, and asking someone if they are a licensed electrician so that they are not left unsupervised.

6.3.2.4 Defendants engaged in CSR or personal philanthropy

Although scarcely discussed, there were 5 cases where the defendant’s personal actions were taken into account. In 2 cases, contributions to charities were identified. Another example involved the defendant donating his time to the local fire brigade and emergency services. Another involved the company’s ‘long history of supporting local organisations’. The final company employed many people from disadvantaged backgrounds, as well as many with past criminal convictions. Whilst engaging in such behaviour does not by itself preclude a company from being an amoral calculator, when combined with the findings above, it does tend to suggest that the managers motivations are altruistic, rather than a more cynical exercise in self-interest. If the driving force of the company (whether director, manager, etc.) is donating to charity, volunteering for community services, or having a more equitable employment policy, it seems inconsistent if they were to then expose their employees to a known risk because it will affect the company’s bottom line to fix.

6.3.2.5 Analysis

This case study was largely split into two categories. The first part sought to explore the reason(s) for a prosecution occurring. The reasons often asserted for non-compliance in SMEs are a lack of funds or a lack of understanding. Furthermore, the often cited reasons for general non-compliance are amoral calculation, defiance, and incompetence. As outlined in this chapter, almost half (10 out of 21) prosecutions proved to be as a result of incompetence. None of the 21 cases supported any of the other factors, leaving 11 cases largely unaccounted for. In the absence of evidence proving a reason for non-compliance, the second part of this

---

1023 Inspector Spence v Multiplus Group Pty Ltd (ACN 132 085 824) [2013] NSWIRComm 69 [7], [15].
1024 Inspector Middleton v Cafe C Pty Ltd [2012] NSWIRComm 131 [35], [42].
1025 Inspector Pile v Rouland [2012] NSWIRComm 149 [26], [32].
1027 Inspector Ringland v Lonewood Farm Pty Ltd [2013] NSWIRComm 1 [23].
1028 Inspector Gregory v Big River Timbers (Veneer) Pty Ltd [2013] NSWIRComm 85 [13].
1029 Inspector Cooper v Ward [2013] NSWIRComm 95 [21].
1030 For instance, it might expect to yield a profit from its enhanced reputation.
case study attempts to disprove other motivations. The argument logically follows that if a defendant is not contrite, makes no attempt to support the injured employee, or makes no alterations to its operating procedures then this is reflective of a negative character or personality more prone to weighing up costs and benefits (the amoral calculator). Additionally, a refusal to accept responsibility, show contrition, or alter clearly deficient practices evidences a defiant personality.

Amongst the evidence, there is no ‘smoking gun’ which singlehandedly proves (or disproves) the motivations involved in failing to provide a safe work environment. It is the totality and consistency of the evidence which strongly points away from amoral calculation and defiance, and therefore towards incompetence (or a lack of awareness). All 21 cases involved a guilty plea, 18 of which occurred at an early stage of the proceedings. In 20 of 21 (with 1 case unexplained) cases, the defendants fully complied with WorkCover’s investigation. In 18 of 21 cases (with 1 case unexplained), there were no previous convictions. Changes were made to the practices of the business following the accidents in all 21 cases. In 9 of 21 cases, the defendants suffered depression, some quite severely, as a result of the injuries sustained to their employees.

These facts all support a high level of contrition on the part of the defendants which is inconsistent with a defiant person who has little respect for regulatory authorities (in this case WorkCover), and believes their own methods to be superior. The fact that 13 of 21 cases could have been resolved with inexpensive alterations, such as the installation of guards, suggests that these defendants are not amoral calculators, or somehow lacking funds. The fact that 5 of 21 defendants engaged in some form of CSR suggests a community oriented attitude that is inconsistent with amoral calculation or defiance. This evidence, taken as a whole, seems to disprove most of the cases being a result of amoral calculation or political defiance. In the absence of alternatives, this suggests that the prosecutions resulted from incompetent management (presumably they were not aware of the legal requirements or did not understand them), rather than more sinister motives. Thus, while only 10 of 21, or approximately half, of the cases could be categorically attributed to organisational incompetence, it is likely that the true figure is in fact much higher.
These are important findings as they suggest that if businesses understand what is required of them, they will likely choose to comply. This suggests further education and persuasion is required from regulators, rather than punishment. Furthermore, given that more than half (13 out of 21) cases could have been easily avoided with minimal investment, this implies even the defiant or amoral calculators would benefit from education as even they are likely to implement relatively inexpensive options.

6.4 Case Study 3: The Role of Trade Associations

The involvement of trade associations in regulation is critical to this thesis. How they communicate with their members is of particular importance as this can be a method of distributing information on new regulation, or educational programs on the merits of CSR. As will be noted in Chapter 7.3.1, they are a trusted source of information and therefore they are an ideal target for governments instead of targeting SMEs individually.\textsuperscript{1031} Accordingly, this case study is intended to provide a part answer to Research Question 3 which considers potential reforms for promoting CSR within SMEs. This case study will inform the solutions to promoting CSR within SMEs in Chapter 7. Its contribution lies in the analysis of a specific model of trade association. Whilst the literature points to trade associations as a potential avenue to promote CSR within SMEs,\textsuperscript{1032} this work has generally not identified a working model. Thus this case study offers insight into how a trade association can assist, and offers a practical detailed solution. Given the substantial concerns surrounding the industry’s social license,\textsuperscript{1033} the trade associations are very active in promoting better practices within the industry. This allows for a particularly good example of the role trade associations could play in promoting CSR to SMEs.

6.4.1 Background

\textsuperscript{1031} Alternatively governments could target both the individual SMEs and have trade associations reinforce this message.
\textsuperscript{1033} As will be noted shortly, several markets have been shut down for an extended period of time by the Commonwealth Government and the industry is particularly divisive.
Most Australians are broadly familiar with the events that led to the live export ban in 2011. Nevertheless, a brief background is required to illustrate the level of animal cruelty at certain abattoirs. 2011 was not the first time a ban had been in place. For instance, a four year ban was in place in Egypt, which was only lifted in 2007.\textsuperscript{1034} In 2011, Animals Australia had been present in several abattoirs operating in Indonesia and was able to obtain footage of animal cruelty. This footage was then passed on to the ABC, which ran a story titled ‘A Bloody Business’ on its Four Corners program on May 30, 2011.\textsuperscript{1035} An extract is provided below to indicate the kind of treatment Australian animals were subjected to:

That was what was so excruciating about it and what I was referring to in the case of the ABC’s courage in running this. In our first cut of this we had even more of those pictures. We had more of the kicking, we had more of the eye gouging, we had more of the water being forced up the animal’s nose. This was what I said was effectively torture. And there is context; he was not just doing it. The animal broke its leg, he was trying to move it, he tried everything in his armoury to move the animal and eventually failed and dragged it.\textsuperscript{1036}

Amidst widespread public outrage, the then Trade Minister, Joe Ludwig, announced a suspension of trade to several abattoirs the following day, which led to a total ban on live exports to Indonesia on the 8th June 2011.\textsuperscript{1037} As will be noted below, the live export trade with Indonesia resumed only after a complete overhaul of animal welfare regulation of exporters. It is this sudden upheaval that makes this event a useful case study. How can a small family-owned farm stay abreast of legal requirements in a complete regulatory overhaul that occurred over several months, as well as ensure that an abattoir in another country is complying? Ultimately, MLA and LiveCorp advocated on their behalf and kept them informed. The events that unfolded during the live export ban in 2011 therefore provide unique insight into the critical role that trade associations have in communicating information about regulation, and by extension, the role they could have in promoting CSR.

The livestock industry is littered with trade associations and peak bodies representing the many different interests including farmers, transport services, meat processors, lot feeders and exporters. In addition, there is a marketing and research body, Meat & Livestock Commonwealth, Parliamentary Debates, 11 October 2012, 8044 (Glenn Sterle).
\textsuperscript{1036} Evidence to Rural Affairs and Transport References Committee, Parliament of Australia, Canberra Wednesday 14th September 2011, 13 (Sarah Ferguson).
\textsuperscript{1037} Bill Farmer, Independent Review of Australia’s Livestock Export Trade (2011) x.
Australia Ltd (MLA), which represents the entire livestock industry, and also has a significant role in the live export trade. MLA’s articles of association reveal that the company has been formed to promote the industry, improve the quality of meat products, enhance production practices, conduct research, and to collaborate with state and Commonwealth Governments on animal welfare issues. It is therefore not a typical trade association that simply promotes the interests of industry.

MLA receives its funding from levies paid on each sale of cattle, sheep, and goats, with government grants matching MLA input dollar for dollar (research only), and contributions from individual members and other trade associations. The levies and co-payments are governed by statute, and a Deed of Agreement between MLA and the Commonwealth Government. The deed also imposes governance requirements such as a requirement to adhere to the ASX Corporate Governance Councils Corporate Governance Principles and Recommendations, maintaining a 3-5 year strategic plan (reviewed annually), and an annual operating plan, as well as completing an independent performance review prior to the expiry of the deed. Australian Livestock Export Corporation Ltd (LiveCorp) is a similar body which exists to represent the live export industry, which collaborates with MLA, and also receives levies, but only from exporters. These two bodies represent an overwhelming majority of the industry. For instance, MLA represents 47,000 producers totalling approximately 80% of red meat industry, and LiveCorp, which is dominated by only a few large exporters, represents 45 exporters.

The industry is quite complex. The table below illustrates the broad relationships between the various trade associations, with the peak national bodies directing the policy direction of

---

1038 Meat & Livestock Australia Ltd, Memorandum of Association, Clause 2.
1041 2012-2016 Deed of Agreement Between the Commonwealth and Meat & Live Stock Australia Ltd.
1042 2012-2016 Deed of Agreement Between the Commonwealth and Meat & Live Stock Australia Ltd.
1043 Evidence to Rural Affairs and Transport References Committee, Parliament of Australia, Canberra Wednesday 14th September 2011, 43 (Cameron Hall).
1045 See Australian Livestock Exporters’ Council (ALEC) Submission to Rural Affairs and Transport References Committee, Animal Welfare Standards in Australia's Live Export Markets, 21 July, 2011, 5. It notes that the top 16 exporters account for 95% of the live export market.
MLA and LiveCorp, with both LiveCorp and MLA working together as the marketing/research arm of the industry.

**Figure 3: Organization Structure of Meat & Livestock Australia (MLA)**


On the subject of the regulation of live exports, there are telling flaws, which make the trade associations and their work on improving animal welfare even more critical. The regulatory system has been criticised on the following bases: ‘Regulatory problems are multiple and diverse: conflicts of interest, legislative incoherence, inconsistent policy and practice, lack of transparency and inadequate enforcement of the law.’1046 The most obvious point to make is that the point of slaughter is where animal welfare is at the greatest risk, and neither the

---

exporter, nor the Commonwealth Government has any regulatory authority to ensure good welfare outcomes. The only hard regulation that the Commonwealth Government can impose is through imposing conditions on export licences. Following the 2011 live export ban in Indonesia, an export licence will only be granted where an exporter can demonstrate compliance with the World Organisation for Animal Health (OIE) international guidelines, they can control and track animals throughout their supply chain, and conduct independent audits of these supply chains to ensure compliance.\(^{1047}\) These requirements form the basis of the Exporter Supply Chain Assurance System (ESCAS). In addition, live exports are governed by the \textit{Export Control Act 1982 (Cth)}, \textit{Australian Meat and Live-stock Industry Act 1997 (Cth)}, the corresponding regulations, animal welfare legislation in each individual state, and the Australian Standards for the Export of Livestock (version 2.3) (2011). It is ultimately the Australian standards that dictate the very specific technical details such as specific load densities\(^{1048}\) or maximum permissible time of water and rest deprivation while at sea.\(^{1049}\)

This legislative regime appears quite comprehensive at first glance, but has been criticised on numerous occasions. For instance, the relevance of state-based legislation on live exports is questionable given the case of \textit{Department of Regional Government and Local Department v Emanuel Exports Pty Ltd} (Unreported, Western Australia Magistrates Court, Crawford M, 8 February 2008). The case was brought after an uncharacteristically high mortality rate of sheep (1.298\%) on a live export voyage.\(^{1050}\) Despite accepting that poor lighting and 120cm high ceilings prevented detection of weight loss and illness,\(^{1051}\) this did not constitute animal cruelty, as there was no evidence as to how many sheep were missed and if they were detected, whether harm could have been prevented.\(^{1052}\) One ground of animal cruelty was upheld, however, given the defendant was granted an export licence under Commonwealth law, the offence was quashed on constitutional law grounds on the basis of an operational inconsistency with the Commonwealth legislation.\(^{1053}\)

\(^{1047}\) Department of Agriculture, Fisheries, and Forestry, \textit{Approved Supply Chain Improvements Program} (2012) Grant Program Guidelines, 3.

\(^{1048}\) Australian Standards for the Export of Livestock (version 2.3) (2011) 50-52 (Appendix 2.2).

\(^{1049}\) Ibid 45-49 (Appendix 2.1).

\(^{1050}\) \textit{Department of Regional Government and Local Department v Emanuel Exports Pty Ltd} (Unreported, Western Australia Magistrates Court, Crawford M, 8 February 2008) [112].

\(^{1051}\) Ibid [116]-[117].

\(^{1052}\) Ibid [133]-[134].

\(^{1053}\) Ibid [202]-[203].
A further weakness is evident in the requirement to comply with international IOE standards. These standards were developed to maximize uptake and are set at the ‘lowest common denominator’ level as a means to promote basic animal welfare practices to developing countries that previously had no requirements. The standards are significantly less onerous than Australian standards. The requirement to meet international standards therefore does not of itself guarantee good animal welfare outcomes. Welfare advocates often also point to the conflicting priorities of government departments which balance conflicting objectives, such as promoting animal welfare, whilst also promoting the success of the livestock industry. By way of example, it is claimed that until 2010, WA had only one inspector who assessed live exporters compliance with regulatory requirements.

If one combines this lack of resources, conflict of interest, and the fact that Australia has no regulatory power overseas, it is unsurprising that almost every single instance of animal cruelty has been ‘identified by persons other than the regulator.’ There have been several instances where non-compliance with the ESCAS have been reported to the Department of Agriculture, Fisheries, and Forestry with limited action taken such as imposing further export conditions. Further conflicts of interest are argued, such as the fact that veterinary health checks are performed by veterinarians, who are employed by the exporter, rather than a regulatory authority. This creates a clear conflict whereby a veterinarian properly carrying out their duties could threaten their own standing in the industry, merely by carrying out their duties diligently. Furthermore, as was seen in the Emmanuel case, even a veterinarian carrying out the duties diligently will struggle to attend to every animal given the sheer number of animals, and the conditions on board the ship.

1060 Ibid.
1061 Ibid.
1062 Ibid 509, 524-525.
6.4.2 Methodology

In this case study, the Live Export Ban in 2011 was selected as a prime example of trade associations having a direct involvement in regulation. It is quite a unique example, given the politically tense situation, and the fact that the Australian government and the individual business in question have limited authority overseas. The reality is that a small farmer cannot reasonably be expected to monitor its livestock along the supply chain from a farm just outside of Darwin or Northern Queensland to an abattoir in Indonesia. The cause of animal welfare is ultimately taken up by the various trade associations, who have the resources to monitor compliance, and have the credibility to influence the Indonesian industry, without the political restraints of a government. Thus, the industry can provide insight into the potential role of trade associations in regulation, supply chain pressure, and communicating information amongst a broad industry, including many SMEs.

Given the notoriety, there is ample material available including the independent inquiry into the live export ban, Hansard, public hearings, industry produced material distributed to its members, and news articles. The publicly available information will thus form the basis of this exploratory single case study. Throughout this research, it became apparent that the trade association ‘model’ employed in the live export industry (MLA) is quite unique and worthy of consideration.

6.4.3 Results

6.4.3.1 Trade Associations Assisting the Framing of Regulation

Throughout the ‘Live Export Ban’ in 2011, various trade associations were involved in the process to design a regulatory system that would be acceptable to the Commonwealth Government and to the broader community. Interestingly, the industry was already working on solutions prior to the ban. There were increasing concerns about animal welfare, which led to several industry forums in February 2011 to discuss possible solutions. By May 2011, the industry had come up with a strategic vision and animal welfare action plan for

---

1063 For instance, been seen to undermine another nation’s sovereignty.
Indonesia. Importantly, one of the major facets of the current ESCAS system is the reliance on international IOE standards, which was included as part of these plans. Following the ban, Minister Ludwig formed an Industry Government Working Group to formulate a supply chain assurance system for live exports. A full list of the members of the working group is listed in its report, but broadly represents large livestock corporations, trade associations (including MLA and LiveCorp) and relevant state and Commonwealth Government departments. The working group proposed four basic principles: meeting OIE standards, traceability from farm to point of slaughter, appropriate reporting and accountability, and independent audits, which are now embodied in the ESCAS system. An important feature of the system is the traceability of animals using a National Livestock Identification System (NLIS) ear tag. It was originally introduced to contain and manage disease outbreak (such as foot and mouth).

In 2009, MLA formed a wholly owned subsidiary, NLIS Ltd, which manages the NLIS database where animal movements are registered. MLA and LiveCorp also publish significant material related to animal welfare for the use of its members. This forms a secondary layer of self-regulation, but given they are effectively the two leading authorities on industry best practice, their publications are a useful resource when legal requirements are vague or unclear. For instance, in Department of Regional Government and Local Department v Emanuel Exports Pty Ltd, a publication for the role of stockman on board a vessel was cited by the Magistrate.

---

1065 Ibid 37-41.
1068 Ibid 22.
1069 Ibid 4.
1073 (Unreported, Western Australia Magistrates Court, Crawford M, 8 February 2008) [22].
6.4.3.2 Trade Associations Direct Assistance to the Live Export Supply Chain

A number of trade associations, most notably MLA and LiveCorp, provide direct assistance to overseas importers of Australian livestock. Whilst varied in nature, the assistance is primarily aimed at improving animal welfare. Therefore, this case study highlights the active role a trade association can assume and the benefits that arise when it does assume such a role. Importantly, there is a particularly obvious financial incentive for trade associations to be responsible as recent history has highlighted the fact that live exporters social license to operate can be revoked at any time. The case study therefore highlights what well-resourced and sensibly structured trade associations can accomplish when they have a significant financial motivation to act ethically.

Prior to the events of 2011, the strategy of MLA was to incrementally improve the practices of its trading partners.\textsuperscript{1074} Therefore, it did not impose or mandate wholesale changes, but rather lobbied for change, and invested money into infrastructure and training for those importers who were willing to improve their practices. MLA is quite upfront in acknowledging poor practices particularly in Indonesian abattoirs (although not to the degree of cruelty which was uncovered by Animals Australia) and has made this information publically available in various reports on its website.\textsuperscript{1075} Without any enforceable powers, MLA has no power to enforce change and therefore had to resort to lobbying and attesting the benefits of more ethical practices. MLA invested approximately $30,000,000 in the 5 years preceding 2011 into its live export operations.\textsuperscript{1076} Of the 109 countries worldwide that export livestock, MLA claims that Australia is the only country which makes investments to improve animal welfare in importing countries. Therefore, not only do these investments yield benefits to Australian animals slaughtered overseas, but also to the animals exported by competing countries. From an exporter point of view (especially smaller exporters), there was a feeling that MLA was solely responsible for animal welfare overseas. Several excerpts from the Senate Committee review in 2011 illustrate this:

\begin{footnotesize}
\footnotesize
\begin{enumerate}
\item Evidence to Rural Affairs and Transport References Committee, Parliament of Australia, Animal Welfare Standards in Australia's Live Export Markets, Darwin, 4 August 2011, 21 (Scott Hansen).
\item Evidence to Rural Affairs and Transport References Committee, Parliament of Australia, Animal Welfare Standards in Australia's Live Export Markets, Darwin, 4 August 2011, 22 (Scott Hansen).
\item Evidence to Rural Affairs and Transport References Committee, Parliament of Australia, Animal Welfare Standards in Australia's Live Export Markets, Canberra, 14 September 2011, 40 (Robert Sutton).
\end{enumerate}
\end{footnotesize}
I think it is partly my own naivety. I did not really understand MLA in a lot of senses. You tend to get very focused on your own little dunghill. When your cattle are gone, you think, ‘Good, they're sold.’

As a producer I once believed responsibility ended at the farm gate. Clearly, it now extends to the point of slaughter in our export markets. We just want our industry to be functioning all the way through. Once we put the cattle on a boat and we send them over to our customers, if you like, there are systems in place that follow them all the way through, which is exactly what needs to happen. We as an industry presumed that that was the way things happened before, and we trusted through MLA, LiveCorp that that was the case.

One way in which MLA attempted to improve animal welfare was through inspections of the abattoirs. MLA did not conduct inspections in the manner a regulator would due to the lack of regulatory power. During the 2011 Inquiry, MLA claimed to have been refused entry to some of the abattoirs they wished to inspect. Whether MLA is conducting an initial inspection, follow up, MLA is an invited guest and operates entirely at the behest of the abattoir’s owner. Nevertheless, MLA has noted instances where importers of livestock have specifically sought them out to request assistance. MLA does attempt to attend abattoirs unannounced on occasion, although this is obviously moderated by the fact that if abattoirs believed MLA’s actions were too intrusive, they could simply withdraw access to the site. It is therefore possible for the abattoirs to conceal poor or cruel practices, despite MLA’s best efforts. Where MLA has observed poor practices, they claim to have directly intervened and informed the onsite manager of the abattoir.
By identifying these deficiencies, MLA then uses this information to target what programs need greater investment. Since 2008, MLA and LiveCorp have commissioned annual independent inspections of abattoirs that receive MLA assistance, noting a moderate improvement over time. Despite numerous inspections, MLA claim to have never witnessed anything worse than poor handling of animals and only once has someone witnessed ‘tail breaking’ but never eye-gouging or tendon slashing. Nevertheless, the overwhelming majority of instances where such reprehensible conduct has been detected involve an NGO. An ABC reporter claimed to have witnessed eye gouging and suggested that she saw ‘tail breaking’ so often that she believed it was ‘routine practice.’ This suggests that abattoirs are concealing the more abhorrent cases of cruelty.

Aside from inspecting facilities of overseas importers of Australian livestock, trade associations (again predominantly MLA) invest in better infrastructure to improve animal welfare outcomes. MLA and LiveCorp in their joint submission to the 2011 inquiry provided a comprehensive list of its investment in infrastructure. The list reveals dozens of projects including the provision of stunners, shade cloths at feedlots, repairing troughs and fans (to avoid heat exhaustion), installing non slip ramps, and reinforcing races to avoid animals breaking barriers. They have also made investments in areas such as efficient transport (to reduce travel time, which is relevant to mortality).

---

1087 Ibid 42.
1089 Evidence to Rural Affairs and Transport References Committee, Parliament of Australia, Canberra, Wednesday 14th September 2011 Canberra (Prof Ivan Caple) 34.
1091 Evidence to Rural Affairs and Transport References Committee, Parliament of Australia, Animal Welfare Standards in Australia's Live Export Markets, Canberra, 14 September 2011, 17 (Sarah Ferguson).
1093 Ibid.
1094 Ibid 31.
Perhaps the most important investment is the investment in restraining boxes, which are used to secure animals that are about to be slaughtered. Prior to Australian intervention, many importing countries (most notably Indonesia) employed extremely poor slaughtering practices. They were manoeuvred to the floor and slaughtered without proper restraint meaning it was likely to sustain significant injuries whilst flailing around after having its throat cut. Horrific practices such as tendon slashing also appear to have been more readily used in the absence of alternatives. The Mark I restraint box was therefore designed and provided by MLA in order to offer a basic level of restraint.

MLA also provided training to stockman, on proper use of the equipment. The Mark I box has been highly criticized as being a contributing factor to the negative animal welfare outcomes. Dr Temple Grandin, a highly influential academic, was scathing of the Mark I box, noting that it violated international standards.

Two reports analysed the appropriateness of the Mark I box (and subsequent iterations). One report noted some of the adverse outcomes associated with the Mark I, II, and III boxes and proposed improvements. The other report was commissioned to gauge the mark I boxes level of compliance with international (IOE) standards. The report found that the intended use of the Mark I Box violated numerous IOE standards, whilst the Mark IV box was fully IOE compliant. This evidence led the Rural Affairs and Transport References Committee in its 2011 inquiry to recommend discontinuing the provision of Mark I restraining boxes. MLA’s defence, the box was designed prior to the IOE standards formation and is designed as a basic improvement that meets the needs of developing countries (who for instance face unreliable provision of power, especially in rural areas). According to MLA and LiveCorp, 112 restraining boxes were installed overseas as at June 2011, with the

---

majority being Mark I boxes. At the same time approximately 80,000 of 500,000 Australian animals were being processed in facilities that used stunning. As briefly touched upon earlier, the trade associations provide training to its overseas partners. The starting point is to provide a set of standard operating procedures for the equipment that MLA provides, particularly on the use of restraining boxes, although they extend to other aspects of animal welfare and include topics, such as training on nutrition and treating sick animals, as well as proper knife use and stock handling. The training provided in Indonesia was so extensive, that MLA has established a permanent team there, including an animal welfare manager and three veterinarians to deliver the training programs.

As noted above, MLA and other trade associations have no coercive powers in overseas markets, thus requiring lobbying if any animal welfare improvements are to be achieved. An important example of lobbying involved the petitioning of local imams to support the use of stunning prior to slaughter and endorse the practice as being consistent with Halal. As part of the training video, MLA included an endorsement from Indonesia’s main Halal certifying body to quell any resistance or fears. Even where religious objections were not evident, there was still ultimately a need to sway managers on the need for stunning. Another important initiative involved encouraging the banning of private sales (this is now mandatory under the ESCAS), which is a well-entrenched part of Middle Eastern culture. A more holistic approach was also taken by reminding importers of the need for vigilance on animal welfare, pointing to the risk of a live export ban.

---

1104 Ibid.
1105 Rural Affairs and Transport References Committee, Animal Welfare Standards in Australia's Live Export Markets, Darwin, 4 August 2011, 23 (Scott Hansen).
1106 Rural Affairs and Transport References Committee, Animal Welfare Standards in Australia's Live Export Markets, Canberra, 14 September 2011, 44 (Cameron Hall).
1108 Ibid 44-45, 50.
1110 Rural Affairs and Transport References Committee, Animal Welfare Standards in Australia's Live Export Markets, Canberra, 14 September 2011, 11 (Sarah Ferguson).
1112 Ibid 41.
1114 Rural Affairs and Transport References Committee, Animal Welfare Standards in Australia's Live Export Markets, Canberra, 20 September 2011, 3 (Scott Hansen).
In summary, it is clear that MLA especially, along with support from other trade associations, has quite an active role in its overseas supply chains. The work done has not always produced ‘good’ animal welfare outcomes, but rather can be seen as an improvement when coming from such a poor starting point. History will tell us that the ESCAS has not marked the end of animal cruelty, but with bipartisan support for a live trade industry, there is a need to continue to invest in improved animal welfare outcomes.

6.4.3.3 The Communicating of information from Trade Associations to Members and other Stakeholders

6.4.3.3.1 Information on Regulation

Chapter 7.3.1 will indicate that trade associations are a trusted source of information for industry. Additionally, research also identified that SMEs quite often lack the expertise to comply with legal requirements, or to engage in any form of CSR. Therefore, a way of addressing the deficiencies of SMEs is to target trade associations and have them communicate messages such as the potential benefits of CSR. For this reason, the manner by which trade associations already engage in communicating information to its members is of vital importance. Given the sudden and quite substantial change in regulation applying to live exports, the influence of MLA and LiveCorp on its members provides fertile ground for study.

As noted above, MLA and a number of trade associations were involved in assisting the government to frame the ESCAS. This placed them in a position to advise their members on the new regulations. Even before the live export ban involving Indonesia, the industry was looking at a system similar to the ESCAS. The then trade minister, Joe Ludwig, had been in regular contact about the need for improvement in animal welfare, which led industry to consider alternative forms of regulation. In February 2011, several forums were held in


1116 Rural Affairs and Transport References Committee, Animal Welfare Standards in Australia's Live Export Markets, Darwin, 4 August 2011, 1 (Peter Kane).
Darwin and Perth, leading to the proposal of a supply chain assurance system quite similar to the current ESCAS, although it is admitted that the ESCAS is more detailed.

Following the initial explanation and development of the ESCAS system, MLA and other trade associations have provided administrative and technical assistance to both domestic exporters and overseas importers. For instance, even simple administrative matters such as database changes, the establishment of a helpline and translating many publications available on the MLA/ LiveCorp websites to Bahasa (Indonesian) are vital for the system to be implemented effectively. In all, MLA set aside a budget of $9,000,000 in order to assist with the implementation of the ESCAS. As part of the suite of assistance, MLA provided a number of officers to consult with importers providing assistance such as training, inspections, infrastructure upgrades, and technical support.

Following the full implementation of ESCAS, MLA is investing in maintaining the high standards by performing gap analysis, developing instructional materials, providing training to government, industry and supply chain members, and providing broad assistance where requested. The ESCAS is quite flexible, which poses challenges. A recent research project by MLA provided a case study on how 12 of the largest exporters were complying with ESCAS. It provides technical advice such as counting animals on and off transport trucks and ships, and having direct contact with abattoirs to enable behaviour to be corrected where inappropriate practices are witnessed.

Better communication with members is a key strategic priority for both LiveCorp and MLA as evidenced in their strategic plans. For instance, one of MLA’s strategies is to: ‘Keep producers informed about the activities and opportunities created by their levy investment in

---

1117 Rural Affairs and Transport References Committee, Animal Welfare Standards in Australia’s Live Export Markets, 4 August 2011, 1 (Peter Kane).
1121 LiveCorp, Strategic Plan 2013-15, 8.
1123 Ibid 18, 28.
R&D and marketing.\textsuperscript{1125} One of the key initiatives under this strategy is to produce a members’ magazine, provide useful and up to date online information and use rural media as a key means of communication.\textsuperscript{1126} Equally, two key strategic objective of LiveCorp are to:

Develop and deliver targeted exporter, government and other stakeholder communications that serve to secure, promote and inform the activities of the livestock export sector; and

Maximise collaboration with key Australian and international stakeholders involved in the livestock export industry\textsuperscript{1127}

6.4.3.3.2 Information on Best Practice and CSR

Aside from communications regarding the regulation of the industry, MLA disseminates information on farming and livestock ‘best practice’. There are obviously commercial reasons to implement these initiatives,\textsuperscript{1128} but nevertheless they yield animal welfare and broader CSR benefits. Not only does MLA disseminate existing knowledge, but it also engages in research of its own to directly benefit the Australian livestock industry. Obviously, this specifically addresses a number of the barriers frequently experienced within SMEs. This improved knowledge base assists in reducing SMEs’ awareness problems (assuming they access the information) and it should also assist with cost issues. Irrespective of awareness issues, problems still have to be solved by SMEs, and they will be solved far more efficiently if SMEs have access to readymade solutions and best practice information.

Furthermore, within MLA’s goals, there are ‘sub-objectives’, many of which directly demonstrate MLA’s strategies and aims for disseminating research to its members. Some of these sub objectives are listed below:

3.5 Increase producer engagement with MLA information and tools to build capability
(1) Keep producers informed about activities and opportunities created by their levy investment in R&D and marketing
(2) Facilitate the uptake of MLA information, tools and learning opportunities to influence positive practice change

\textsuperscript{1125} Meat & Livestock Australia, \textit{Annual Operating Plan 2013-14}, 31.
\textsuperscript{1126} Ibid.
\textsuperscript{1128} For instance better profitability from healthier animals and lower mortality rates.
(3) Partner with producers and stakeholders who use and value MLA tools and information to help influence their peers as well as inform future MLA programs and activities. \(^{1129}\)

Interestingly, MLA goes beyond animal welfare into other areas relevant to CSR, for instance mentioning ‘natural resource management’ and ‘responding to climate change’. \(^{1130}\) Again these sub-objectives extend to improving the uptake of CSR measures by ‘engag[ing] industry stakeholders to demonstrate environmental stewardship’ and ‘improv[ing] industry capability, knowledge and adoption of new technologies.’ \(^{1131}\)

MLA’s annual operating plans and the joint MLA/ LiveCorp submission to the 2011 Inquiry detail more specifically what research projects have been undertaken and outline future plans. MLA maintains a full list of its completed research. \(^{1132}\) Research and development presently accounts for approximately 12.1% of MLA’s expenditure, \(^{1133}\) with total expenditure on research sitting at 23 million dollars a year over the past three years. \(^{1134}\) Indicative of the quality of the research being undertaken, several dozen peer reviewed journal articles and several honours/ PhD theses have been awarded. \(^{1135}\) The research projects involve many animal welfare issues such as deaths at sea, the impact of heat stress, elimination/reduction of disease in animals, qualities and breeds that are more suitable for export, research into better infrastructure, and in identifying weaknesses in overseas jurisdictions, and solutions to incrementally improve animal welfare outcomes. \(^{1136}\)

As mentioned previously, MLA also aims to limit the livestock industries’ impact on climate change. In support of this goal, MLA has conducted research to minimise water and energy consumption, \(^{1137}\) as well as reducing methane production. \(^{1138}\) Broader environmental research


\(^{1130}\) Ibid 9.

\(^{1131}\) Ibid.


\(^{1133}\) Ibid 4.

\(^{1134}\) Meat & Livestock Australia, Corporate Plan 2010 – 2015, 12.


\(^{1137}\) Meat & Livestock Australia, Annual Operating Plan 2011-12, 26.

\(^{1138}\) Ibid 28.
has also considered ways to minimise waste water\textsuperscript{1139} and improve recycling.\textsuperscript{1140} MLA has invested heavily in promoting greater awareness of this research amongst members.\textsuperscript{1141} Significant work has been done to ensure sound communication strategies are in place. The various methods of communication developed include:

- Production of the members magazine ‘feedback’
- Rural media
- Ongoing updating and enhancing of the MLA website
- Running producer forums and further engagement in pre-existing events.
- Social Media\textsuperscript{1142}
- MLA demonstrations and workshops\textsuperscript{1143}
- ‘Online learning resources, publications and video tutorials’
- Establishing links with other organisations\textsuperscript{1144}

The extremely detailed MLA website links all of these methods which hosts latest news, publications, advice, and operates as a general ‘one stop shop’ for industry members. There has also been a recent surge in investment into demonstration activities. There are presently 30 producer demonstration sites operating around the country.\textsuperscript{1145} Owing to the previously ‘ad-hoc’ nature of these demonstrations, MLA has appointed a producer demonstration site coordinator with the aim of ‘shorten[ing] the time lag between research and development and on farm adoption.’\textsuperscript{1146} The primary remit of the coordinator is to: ‘motivate and drive producer groups to extend their results beyond the core group, facilitate linkages between groups as well as provide communication leads to MLA.’\textsuperscript{1147}

It is difficult to quantify what improvements have been achieved through MLA’s efforts, particularly in the area of animal welfare. However one area capable of analysis is animal mortality during voyages in the live export market. The government provides access to

\textsuperscript{1139} Ibid 27.
\textsuperscript{1140} Ibid 33.
\textsuperscript{1141} Meat & Livestock Australia/ LiveCorp, Live Export R&D Strategic Plan (2000) 6.
\textsuperscript{1142} All proceeding points from Meat & Livestock Australia, Annual Operating Plan 2011-12, 36.
\textsuperscript{1143} Ibid 31.
\textsuperscript{1144} Meat & Livestock Australia, Advertisement: National Producer Demonstration Sites Coordinator (2014) 1.
\textsuperscript{1145} Ibid 1.
\textsuperscript{1146} Ibid 1-2.
statistics which reveal mortality in all animals has reduced by half since 2000. This amended table shows the precise figures.1148

### Table 12: Morality Rate of Animals Transported by Sea

<table>
<thead>
<tr>
<th></th>
<th>2000 (%) Mortality</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cattle</td>
<td>0.19</td>
<td>0.19</td>
<td>0.23</td>
<td>0.10</td>
<td>0.12</td>
<td>0.14</td>
<td>0.175</td>
</tr>
<tr>
<td>Buffalo</td>
<td>0.74</td>
<td>0.26</td>
<td>0.55</td>
<td>0.52</td>
<td>0.42</td>
<td>0.10</td>
<td>0.26</td>
</tr>
<tr>
<td>Sheep</td>
<td>1.34</td>
<td>1.26</td>
<td>1.24</td>
<td>0.99</td>
<td>0.77</td>
<td>0.97</td>
<td>0.89</td>
</tr>
<tr>
<td>Goat</td>
<td>1.98</td>
<td>1.95</td>
<td>1.62</td>
<td>0.76</td>
<td>0.94</td>
<td>0.68</td>
<td>0.50</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>2007 (%) Mortality</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cattle</td>
<td>0.10</td>
<td>0.11</td>
<td>0.10</td>
<td>0.14</td>
<td>0.15</td>
<td>0.11</td>
<td>0.11</td>
</tr>
<tr>
<td>Buffalo</td>
<td>0.14</td>
<td>0.18</td>
<td>0.03</td>
<td>0.04</td>
<td>1.22</td>
<td>0.12</td>
<td>0.13</td>
</tr>
<tr>
<td>Sheep</td>
<td>0.99</td>
<td>0.88</td>
<td>0.90</td>
<td>0.89</td>
<td>0.74</td>
<td>0.88</td>
<td>0.74</td>
</tr>
<tr>
<td>Goat</td>
<td>0.71</td>
<td>1.32</td>
<td>0.17</td>
<td>0.69</td>
<td>0</td>
<td>0.08</td>
<td>0</td>
</tr>
</tbody>
</table>


Whilst there are spikes in individual years, it is indisputable that the trend has been downward. Clearly the regulatory landscape over the past 13 years should be credited with much of this improvement, but MLA’s contributions in this area should also be acknowledged. The independent review in 2011 noted the significant ground made in ‘improving the suitability of cattle for export’.1149 Aside from the specific research


undertaken, MLA has produced several publications, such as the ‘Is it Fit to Export’ Guide\textsuperscript{1150} and a veterinary handbook, which provides advice on matters such as detecting sick animals, common diseases in livestock, managing of feeding/ water at sea, etc.\textsuperscript{1151} On the specific subject of the improvements under the ESCAS (of which MLA and LiveCorp assisted in its formation), Temple Grandin, a leading animal welfare expert and previous critic of the industry, notes that the ESCAS system has substantially improved animal welfare outcomes.\textsuperscript{1152}

6.4.4 Discussion

Before drawing any conclusions, it should be noted that the live export example is quite unique. There is no industry that immediately comes to mind that has a more precarious social license to operate. With the intense public scrutiny, industry members know that they need to maintain the highest possible standards or their social license will be revoked. There can be no greater financial motivation to engage in CSR than this. It is argued that trade associations that are perceived as less legitimate and face greater public scrutiny are the most likely to engage in some form of CSR.\textsuperscript{1153} Furthermore, owing to the levies paid on each livestock transaction, MLA and LiveCorp enjoy revenues\textsuperscript{1154} similar to large public companies, and quite foreign to an average trade association. With these two points in mind, it is clear that a government could not simply direct another trade association to behave like MLA. They are unlikely to have either the funds or the inclination. It is admitted then that the MLA model could not be applied universally to all trade associations. Because of this, the MLA model is proposed in Chapter 7.3.3.1, alongside broader proposals for encouraging trade associations and networks to promote CSR. Whilst the MLA model could be quite successful in promoting CSR among SMEs, there is a need to expand coverage beyond a few select groups. Again this points to the need for a pluralistic or smart regulation approach.


\textsuperscript{1151} Meat and Livestock Australia, Veterinary Handbook for the Live Export Industry Version 4.0 (2012) iii.


\textsuperscript{1154} According to its latest financial report, MLA received $162 million in revenue, including $102 million in levies and $42 million in ‘R & D’ matching grants from government. See: Meat & Livestock Australia, Annual report 2012-13, 62, 66.
which combines a number of institutions and regulatory instruments in order to engage the SME population. This approach will be discussed further in Chapter 7 (Introduction) and 7.6.

This case study however highlights an interesting model of governance that could be applied elsewhere. First, there are the levies paid on each animal sold. This enables MLA and LiveCorp to fund substantial research into better farming practices, including animal welfare. It is therefore beneficial to all parties, whereby farmers benefit from research that has a positive commercial affect, but also increases animal welfare, reduces energy consumption, etc. Given the levies are governed by legislation; it permits government to retain some level of control on how the money is spent. Additionally, because MLA is reliant on the government for funding, it permits the government to impose governance requirements through a memorandum of understanding. The model therefore exists as a form of compromise, whereby industry receives the autonomy it desires, but the government retains a level of control which could be exercised if MLA or LiveCorp fail in their broader duties to the community. This is particularly important in animal welfare outcomes overseas. As trade associations, MLA and LiveCorp are trusted more than a foreign government, making it easier to persuade abattoir operators of the commercial advantages of improved animal welfare practices.

An important aspect of the model is the fact that MLA is essentially a marketing and research body of the entire livestock industry (not just live exporters). It essentially represents a ‘one stop shop’ for farmers searching for information. It therefore has a consolidated, sophisticated method of communication. It has a very detailed and easy to use website, with all of the relevant publications and research; they engage on rural radio, have a monthly ‘feedback’ magazine and have demonstration sites to educate farmers. This is especially important given Chapter 2.5.3.2 highlighted the fact that significant barriers to CSR involve a lack of awareness of the business’s impact on the community, and a lack of information.\textsuperscript{1155}

Even though the live export industry has significant problems to be overcome, the MLA model is quite strong in relation to CSR. They have been directly involved in shaping regulation to improve animal welfare (even prior to the Indonesian ban) and then assisting with its implementation amongst its members. They invest heavily in research, not all related

to CSR, but certainly there is evidence of substantial research into animal welfare, water and energy usage, and waste minimisation. They have lobbied extensively overseas for better animal welfare practices, even maintaining permanent staff in Indonesia. They have invested heavily into better infrastructure to improve animal welfare outcomes. They have educated and trained personnel both in Australia and overseas, and have developed comprehensive and sophisticated methods of communicating best practice and CSR-related information to its members. Given how much has been able to be accomplished, the MLA model is worthy of consideration and is highlighted in Chapter 7 when discussing potential reforms.

6.5 Analysis and Conclusion

This chapter has ultimately advanced an understanding of CSR with respect to SMEs. First, it has added to the understanding of SMEs’ contribution to the negative aspects of business. Whilst CSR research has traditionally focused on larger businesses, it appears as though SMEs account for a substantial number of prosecutions in both workplace and environmental areas. Disappointingly, government bodies contribute fairly heavily to prosecutions as well. This sets a poor example, especially where governments are trying to promote beyond compliance behaviour. If it is accepted that SMEs contribute heavily to the negative aspects of business, then it logically follows that they deserve considerable attention when considering CSR. Thus, Case Study 1 assists in establishing that there is a problem that needs to be addressed via some form of regulation. This in part addresses Research Question 1:

To what extent are SMEs a critical component of the CSR debate?

Secondly, Case Study 2 has advanced an understanding of CSR by highlighting the common deficiencies inherent in SMEs. Whilst it was assumed that other deficiencies, such as a lack of funds would contribute to the OH&S convictions, there was no evidence of this. To the contrary, there was substantial evidence that non-compliance was a result of a lack of experience in the industry and a lack of understanding of the legal requirements. Whilst care should be taken in inferring broader implications for CSR, this finding does inform the CSR debate. How can a government or regulator expect SMEs to go beyond compliance and be aware of practices or technologies that save power or water, minimise waste, or improve safety (beyond compliance) when they do not even fully understand the legal environment in which they operate. It suggests SME managers lack the ability to find information relevant to
their business, and generally lack the expertise to implement ‘beyond compliance’ (or even compliant) practices. Thus, this case study advanced an understanding of research question 2:

*What are some of the unique characteristics of SMEs which prevent them from engaging in CSR and require a different regulatory approach?*

If CSR is to be promoted, great care must be given to the methods of communication. This ultimately informs an understanding of what reforms and solutions are necessarily to improve CSR within SMEs. An interesting and unexpected outcome of this case study was a finding that roughly a quarter of the prosecutions involved director/managers who engaged in some form of CSR.\(^{1156}\) This, in conjunction with the high number of SMEs that provided assistance to the injured employees well beyond legal requirements, demonstrates that SMEs are willing to engage in activities that have no direct financial benefits because ‘they are the right thing to do’. Whilst there are no doubt many rational calculators operating a business, this case study dispels any notions that they are somehow in the majority. This is an important finding in the promoting of CSR, as it suggests a more punitive approach is unnecessary, and as demonstrated in the discussion of responsive regulation in Chapter 4.3, could well be counterproductive. It follows then that a persuasive educative approach will greatly assist the promotion of CSR. Thus, this case study also assists in answering Research Question 3.

Thirdly, Case Study 3 has advanced an understanding of the possible solutions to promoting CSR within SMEs. The idea of asking trade associations to promote CSR is gaining traction,\(^{1157}\) in part due to a realisation that businesses rely heavily on them for information.\(^{1158}\) The case study advances an understanding of how trade associations can promote CSR by analysing an interesting model where this is already occurring. It is a notable feature of MLA that it receives substantial levies, which enable it to actively promote CSR through investments in infrastructure, training and education, and research. Perhaps of interest to governments is the fact that it provides a form of self-regulation that still allows for government control. The peak industry councils advise MLA on how to spend the levies, but

---

\(^{1156}\) Or alternatively contributed to a cause that would be considered CSR if it was done on behalf of the company.


government maintains some control as the levies are governed by legislation and a memorandum of understanding between MLA and the Commonwealth Government.

It effectively retains all the benefits of self-regulation, such as industry acceptance, flexibility, and drawing on the expertise of those best placed to improve the industry, whilst still enabling government to intervene should the trade association(s) remain recalcitrant. Thus, this case study assists in answering Research Question 3. It should be noted that MLA is an atypical model for a trade association due to its vast resources. It is not intended to represent a model that could be adopted by every trade association, which would then engage every SME. It is nevertheless an example of best practice and highlights the possibilities of trade associations and their capacity for communicating information on CSR and legal compliance to its membership. As noted earlier, the trade associations reforms presented in Chapter 7.3.3 go beyond simply proposing the MLA model. Whilst the MLA model could offer much to a few SMEs, there is a need to engage even the poorer resourced trade associations to better promote CSR within their membership.

In its totality, this chapter provides support to several conclusions. SMEs are a critical part of the CSR debate. Their sheer numbers ensure that they feature heavily in areas, such as OH&S and EPA convictions, which in effect means avoidable workplace injuries and environmental damage. Because SMEs are a critical aspect of the CSR debate, it follows that they should be afforded considerable attention when attempting to promote CSR. This attention should be focused (although not exclusively) on their lack of understanding and ready access to information. The literature suggests that the reason SMEs do not engage in CSR and do not comply with regulation is mostly a lack of understanding and information. The chapter has highlighted this point, not through surveys or qualitative assessments by researchers, but through concrete evidence argued and accepted by courts. The methodology is in this respect quite novel. On the subject of how to address this lack of understanding and lack of access to appropriate information, this chapter suggests that trade associations might be a valid solution. Case Study 3 demonstrates that where there is sufficient funding and incentive, trade associations can have quite an active role in not just promoting CSR within its members, but engaging in CSR themselves. Clearly trade associations will not be the sole solution to promoting CSR within SMEs. Chapter 7 will explore a range of possible solutions and reforms in order to encourage CSR, one of which will obviously include trade
associations. Clearly the model employed by MLA and LiveCorp, as well as their active involvement in assisting with regulation, will provide critical insight into how they might improve the landscape for promoting CSR to SMEs.

As a final point, it is important to note the other drivers of animal welfare outcomes in this case study. MLA/LiveCorp probably have the greatest influence on animal welfare outcomes in the live export trade, even more so than the Commonwealth Government. However they did not single-handedly solve the problem. In its testimony at the senate inquiry, MLA did not even know the problem existed, as it claims to have never witnessed the treatment that was depicted in the footage on the Four Corners program. Ultimately, the pressure from Animals Australia (an NGO), the media, the threat of further bans, or more stringent conditions strongly encouraged MLA to act. In Chapter 7, it will be stressed that there is no one solution that will solve the SME CSR problem. In all, five reforms will be proposed. Chapter 7 will highlight the fact that these reforms interact with one another to create many synergies, therefore making the framework stronger than the individual reforms on their own. Ultimately, many groups and institutions will have to be involved. Nevertheless, Case Study 3 demonstrates the potential impact a trade association could have with the right policy levers in place.

The following chapter will outline a framework of reforms. This chapter investigated SMEs’ contributions to OH&S and EPA convictions, the limitations of SMEs that lead to convictions, and the potential of trade associations in promoting CSR. Chapter 7 will draw upon these findings, and much of the literature discussed in the proceeding seven chapters in order to identify reforms that will assist in addressing the weaknesses inherent in SMEs, and have the capacity to increase the engagement in CSR within SMEs.
Chapter 7: Reform

Chapter 6 introduced 3 case studies. The first case study highlighted SMEs substantial contribution to OH&S and EPA convictions (Chapter 6.2), thus strengthening the case for addressing SMEs in any CSR reform. Additionally, Case Study 2 in Chapter 6.3 established that a lack of understanding of legal requirements is the key contributor in these convictions. Case Study 3 in Chapter 6.4 analysed the untapped potential of networks and trade associations, noting the MLA model as a possible model that could be used to promote CSR. Having established the need for reform, as well as canvassing the relevant literature for possible methods of reform, this chapter embarks upon the task of proposing a series of reforms that will better promote CSR within SMEs. Thus, it addresses the third research question of identifying ‘potential solutions to the problem of promoting CSR within SMEs.’ It is important to note that such a task cannot be solved by any one solution. As will be discussed shortly, there are many barriers to overcome, and even amongst SMEs, businesses exhibit different motivations and different weaknesses. Thus, several complementary reforms are required to engage the broad spectrum of SMEs.

The proposed reforms seek to address an array of problems applicable to most SMEs. Chapter 2.5.3 involved a thorough analysis of the literature on the barriers to engaging CSR for SMEs. Key barriers include a lack of resources (time, staff, and money), as well as a lack of knowledge of their impacts on the community,¹¹⁵⁹ ways to improve,¹¹⁶⁰ and of complying with regulation.¹¹⁶¹ Chapter 4 offered great assistance when considering potential avenues for reform by discussing regulatory theory. Compliance with existing laws is within the realm of CSR as defined by Archie Carroll’s pyramidal definition of CSR. Compliance is not an optional or aspirational goal. Laws must be complied with, and where they are not, action is required to ensure compliance. The work of Kagan and Scholz informs this debate, dispelling the notion that all non-compliance is the result of amoral calculation, whereby parties wilfully

Infringe regulation out of a perception that it is cheaper not to comply. Kagan and Scholz assert three primary archetypes of how people respond to regulation; the ‘amoral calculator’, the ‘political citizen’, and the ‘organisationally incompetent’. Thus responsive regulation asserts a healthy balance of persuasion and punishment to encourage compliance.

In addition, there is a need for self-regulation. Governments ‘cannot legislate for morality’, thus there is a need for industries to self-regulate and promote better practices in a way that is seen as more legitimate than government simply imposing new laws. Government should be prepared to advise industry and communicate its expectations. Given the presence of self-regulation, there is always the risk of free riding and businesses not adopting the voluntary regulation. There is thus a need to encourage compliance in a way perceived to be voluntary and legitimate, whilst still maintaining a moderate level of coercion. This necessitates market-based regulation, to appeal to the self-interested who would otherwise ‘free ride’. Arguably, responsive regulation would also assist by attempting to educate on the benefits of CSR with a threat of more stringent command and control regulation lingering in the background should businesses self-regulatory efforts not meet expectations. With this broad array of regulatory tools, the proposed system thus becomes ‘smart regulation’. Ultimately, reform of this magnitude which touches upon so many aspects of human and organisational behaviour requires many interrelated solutions. The solutions proposed below, viewed as a whole, will integrate all of these attributes so as to appeal to the greatest number of SMEs.

The risk of ‘smorgasbordism’ has being previously alluded to in Chapter 4.6.2. It should not be assumed that more regulation necessarily translates into better regulation. There is the potential for counterproductive forms of regulation that work against one another. Additionally, all forms of regulation have some cost, and employing multiple options at once can be inefficient. The reforms proposed are designed to be non-invasive and also to share the costs of regulation around various institutions. Furthermore, the fact that SMEs are

---

1163 Ibid.
1164 See generally Ian Ayres and John Braithwaite, Responsive Regulation: Transcending the Deregulation (Oxford University Press, 1992).
predominantly unincorporated has been emphasized throughout this thesis. It is important to note that all five reforms will apply, irrespective of a business’s structure.

Importantly, there is some evidence of this being argued in the literature. Craig Parker, Janice Redmond, and Mike Simpson have argued for a pluralistic system in order to promote voluntary environmental behaviour within SMEs, noting the need to appeal to the heterogeneous SME population. They also propose a number of broad solutions that would comprise this pluralistic system. In this respect, their work is a sensible first step along the path to sensible CSR reform with respect to SMEs. The contribution of this thesis is to extend beyond these broad ideas.

This chapter proposes specific solutions. It does not broadly state that trade associations could be of assistance: it proposes a particular model for trade associations that could be of assistance. It does not broadly state government procurement could be of assistance: it provides guidance as to what the contracting process might look like. Whilst much of the literature presents solutions in a broad context, this chapter will suggest how these solutions might work in practice. Furthermore, this chapter will look at the interrelations of these solutions. The benefit of a pluralistic approach is not simply a matter of one solution addressing one problem or one SME, while another solution addresses a different problem. It is the synergies of the system as a whole. Any individual reform has inherent weaknesses, but these weaknesses can be addressed through other reforms. As one example, market-based regulation can support self-regulation, by giving businesses a strong motivation to comply with what is ultimately a voluntary system. In this respect, the framework presented is stronger than any individual reform.

This chapter proceeds by introducing five reforms, and identifying some of the issues that might need to be overcome in order to implement them effectively. The reforms proposed include public procurement/supply chain pressure, business school education, trade associations and networks, market based solutions, and measures to increase compliance with

---

1168 Ibid 295.
1169 Ibid 296.
existing laws. After these five solutions are outlined, the combined framework and the possible synergies in implementing all five reforms are discussed.

7.1 Public Procurement and Supply Chain Management

7.1.1 Introduction

According to OECD estimates, Australia’s public procurement represents 12% of GDP. As such, the Federal, State, and Territory Governments are large customers which can exert significant influence on their supply chains in key industries. Precise break downs are difficult, but it is clear that certain forms of procurement dominate. In a list of top 20 categories of procurement for 2013-14, the top 2 categories (namely professional/administrative services, and defence) dwarfed the remaining 18 categories, and the top category involved 94 times greater expenditure than the 20th category. Given this variable influence, public procurement could not be regarded as a universal regulatory tool, simply because there are many industries it has no influence over. However, there clearly are areas where government could have a profound impact including: construction, commercial leasing, automotive, stationary, furniture, and professional services such as legal services.

It should be noted that public procurement as a tool for enacting social change is not a new development. Accordingly, the extension of public procurement into CSR-related concerns, such as the environment, has been referred to as ‘old wine in new bottles’. The use of building public works as a means to provide employment for the long term unemployed dates back to the 19th century. The period following WWI saw a marked increase in the use of procurement to meet social ends most notably in areas such as promoting employment for disabled ex-servicemen. Since then, public procurement has been used as a tool to promote social causes of the day such as affirmative action for women and minorities in the 1950s and

---

60s in the United States. It is estimated that as of 2012, 56 countries had some form of social public procurement policy. Procurement is regarded as such an important aspect of reform, that it is enshrined in South Africa’s constitution.

Even though procurement has been used to advance social causes for several centuries, it still remains the next frontier in promoting CSR. Importantly, social procurement or supply chain management, whether private or public, can assist smaller enterprises engaging in environmental or CSR practices by communicating information and expertise from buyer to supplier. It is also noteworthy that businesses often feel pressure to improve their supply chain engagement upon hearing of competitors’ success in implementing some form of CSR policy or activity, and look to their nearest rivals when presented with demands from their own customers. Thus, it is suggested that stronger public procurement policies can promote better supply chain management practices, which will benefit a business’s private customers, and not just governments.

From the perspective of this thesis, it is suggested that the public procurement reform proposed in this section will create a number of benefits. The most obvious is that, as a large purchaser of goods and services, governments can have a meaningful impact on the environment and society in their own right. Beyond these benefits, it is proposed that the improvements in practices required under a public tender cause permanent change within the contracting business and therefore their overall operations are improved. Furthermore, by extending criteria to assistance of the lead contractors own supply chain, these improvements will be diffused throughout the supply chain (including many SMEs). In addition, there are many areas where more green or CSR-related practices can benefit the government’s bottom line. For instance, an IT overhaul in Copenhagen not only reduced carbon emissions by

---

1176 Ibid 260-261.
1178 It provides that the government may use procurement to advance people disadvantaged by discrimination. See the Constitution of the Republic of South Africa 1996 (SA) s217(2)(b).
approximately 77%, it also saved 8.5 million Danish Krone (DKK) in power costs over five years.\footnote{Nordic Council of Ministers, Benefits of Green Public Procurement (Nordic Council of Ministers' Publishing house, 2010) 56-57.} When total costs are taken into consideration, it is hoped it will reduce costs by 40%.\footnote{Ibid 56.} A further study across seven EU countries suggests life cycling costing can reduce overall costs by 3-4%, and reduce CO\textsubscript{2} emissions by 10-15%, which in certain areas and under more ambitious criteria can increase to 9% and almost 100% respectively.\footnote{Ibid 37-38.} Studies have also estimated life-cycle costing can generate savings of between 8-30%\footnote{New Zealand Business Council for Sustainable Development, Sustainable Procurement in Government: Opportunities for Business’ (2009) 3; There are also other examples where this is suggested by experienced procurement officers although not accompanied by empirical evidence. See House of Commons Environmental Audit Committee, House of Commons, Sustainable Public Procurement: Sixth Report of Session 2004–05 (2005) EV30.} and general procurement practices can reduce CO\textsubscript{2} emissions by 25%.\footnote{PricewaterhouseCoopers, Collection of Statistical Information on Green Public Procurement in the EU: Report on Data Collection Results (2009) 7.} Beyond these savings, it is proposed that governments, as large purchasers, can create sufficient demand for CSR products to create a market for these products that spawns innovation. This was seen in the Copenhagen IT example, whereby Dell offered to plant trees to offset the carbon emissions generated.\footnote{Nordic Council of Ministers, Benefits of Green Public Procurement (Nordic Council of Ministers' Publishing House, 2010) 57.} Dell now offers this to all of its commercial clients. The obvious benefits of public procurement in this area is that as a large purchaser, this could enable greater economies of scale, which then makes the product more attractive to private businesses. Thus, for a variety of reasons, it is suggested that public procurement which imposes CSR criteria could have substantial impacts that extend beyond the initial government-supplier relationship.

The reforms proposed in this section are intended to address both the lack of awareness and lack of resources barriers that SMEs routinely face to their CSR endeavours. As will be noted, the solution presented is intended to encourage large enterprises to engage their SME suppliers. Thus, this assists in providing both expertise and resources to the SMEs in the supply chain. Importantly, for both large and SME enterprises, there is a strong financial incentive in implementing CSR, thus addressing both the organisationally incompetent and rational calculator businesses.
Research in public procurement, specifically empirical studies related to public procurement, is limited. However the supply chain management literature (which also includes procurement from private enterprise to private enterprise) is far more expansive. This literature suggests that ‘preparatory’ work is being done. For instance, a widely cited study confirms that almost two thirds of small businesses have had environmental criteria imposed upon them, along with ‘labour rights (42%), human rights (36%) and corruption (32%)’. A UK study uncovered similar findings with 55% of respondents (operating in the manufacturing and service industries) claiming to have to meet some form of environmental criteria, including ‘returnable packaging’ and making products more recyclable. Importantly, studies have noted that SMEs are less likely to manage the environmental and social effects of their supply chain. On the surface, supply chain management and social public procurement are widely practised. However, as will be noted in more detail below, commitment is somewhat questionable. Several studies confirm this. For instance, evaluations of the quality of information contained in voluntary sustainability reports have noted supply chain information was by far the poorest quality of information, and despite many companies imposing sustainability criteria, very few assisted or tracked performance of these criteria.

It should be noted from the outset that a major parliamentary inquiry was held into public procurement in Australia. The terms of reference were broad but did include ‘the economic, social and environmental benefits of utilizing Australian goods and services’. Thus even though the inquiry was primarily aimed at promoting the purchase of Australian made goods, there was discussion of the environmental effects of doing so. Specifically, the inquiry noted the ‘urgent need for a stronger methodology to assess whole-of-life costs within

---

Ordinary, this would raise hopes for promoting CSR-related criteria in public procurement, as the concept of ‘whole-of-life’ costing makes environmental products cheaper by including maintenance and disposal costs, instead of the purchase price. However, it seems as though the committee were more interested in economic concerns. Only the dissenting opinions of Senators Nick Xenophon and John Madigan appear to specifically address environmental or social issues. Additionally, the new procurement rules do not appear to have made drastic changes to the environmental or other CSR-related criteria. From a CSR perspective, it seems as though the inquiry reinforced the status quo.

### 7.1.2 Supply Chain Management (by Private Enterprise): A Literature Review

Having discussed at length the systems in place in Australian Government procurement in Chapter 5.3, there is a need to review the literature on how private businesses are incorporating CSR into their supply chains. As will be noted below, the procurement solution proposed in this chapter is to require large enterprises to assist their supply chains (including SMEs) to incorporate CSR into their operations through public tendering processes. It will therefore be necessary to understand how SMEs and large enterprises are already engaging in supply chain management and what their capabilities are.

Supply chain management is a relatively new concept. Whilst globalization is a trend that has occurred over half a century, manufacturing operations moving offshore is a far more recent development. This has dispersed traditionally localised operations across many countries and therefore created risks for the end of line companies. Events, such as the uncovering of Nike sweatshops or the Rana Plaza factory Collapse in Bangladesh, have the potential to cause great reputational damage for any company involved.

Even though incorporating CSR into supply chains is quite new, greater supplier engagement has occurred over several decades. Following Japan’s example, many firms in the 1980s and 1990s attempted to reduce their supply chain, relying on fewer larger suppliers, and

---


1196 Ibid vii.

1197 Ibid 95, 97.

developed more collaborative relationships with them in order to improve the quality and cost of goods. However, in many instances this relationship is more authoritarian than collaborative. For instance, Wal-Mart is frequently scrutinised by the media for its treatment of suppliers, especially the demand for low prices. Given Wal-Mart’s enormous size, it is argued that suppliers have little choice but to cede to Wal-Mart’s wishes. This authoritarian approach, whilst unpopular, is not necessarily bad for suppliers with arguments suggesting Wal-Mart’s expanded reach may still yield greater financial benefits than not selling to Wal-Mart, and the demands placed can force suppliers to adopt more efficient processes.

Whatever the case may be, the example is nevertheless instructive on how very large companies can have a substantial influence over their suppliers. It is important to note that engagement with suppliers on price and quality is a positive first step, as it is often accompanied by CSR-related engagement, and a greater likelihood that businesses will ‘collaborate in environmental planning, establishing common environmental goals, and jointly addressing the environmental aspects of product- and process-design.’

As is the case with much of the literature outlined in this thesis, it seems that large companies are most likely to engage in some form of CSR supply chain management, with SMEs lagging behind. It is proposed that larger buying power amongst large companies is an important reason behind this disparity. Not only does this increase large companies’ influence over its suppliers, but it makes better financial sense as greater purchasing volume will translate into economies of scale, and make incorporating CSR into supply chain management a more cost effective strategy. There is also greater pressure on larger more

1201 Ibid.
visible companies to be seen to be engaging in their supply chain, whilst SMEs often have lower levels of risk attributed to their operations. It is also argued that those SMEs which do impose codes of conduct or CSR criteria on their suppliers often lack the power and resources to properly enforce their policy. Despite these issues, there is evidence of SMEs being able to influence their own supply chains, effectively becoming ‘transmitters’ of CSR requirements rather than simply complying with demands. This is an important finding as the literature suggests that supply chain management is predominantly focused on the ‘first tier suppliers’, thus ignoring much of the supply chain beneath them. Therefore, SMEs as suppliers to larger companies could have a valuable role in pushing CSR further down the supply chain.

An important aspect of any good supply chain management practices is that there must be genuine collaboration between firms. Even aspects of the relationship, such as a record of paying invoices on time, can generate the trust required for a supplier to invest in the relationship. It is unfortunate that in many instances sustainability or CSR requirements are communicated as demands with little input from the suppliers, often leading to the suppliers not understanding the requirements and resisting change. The literature also suggests that dictatorial commands are often met with a ‘reactive approach’ where suppliers focus on measuring their performance, rather than actually implementing good CSR practice. It is important to note that the literature suggests genuine collaborative approaches often stem from ‘institutional pressure’, which includes regulation, and would arguably include other forms of pressure from government such as procurement rules. Equally, support from government seems to be an important factor in encouraging SMEs to

1212 Ibid 500.
1214 Ibid 187.
1216 Ibid.
involve themselves in some form of CSR-related supply chain activity. Whilst genuine collaboration, as opposed to more tokenistic efforts is argued to be uncommon below, there are certainly examples of this occurring in practice.

The example of IKEA was explained in some detail in Chapter 2.5.4.1, where it was acknowledged that they work closely with their suppliers and inspect the supplier’s facilities before taking receipt of the first delivery. Whilst they demonstrate a collaborative approach and make all attempts to work with their suppliers, they have demonstrated a willingness to terminate contracts where performance is consistently subpar, and have done so on at least 354 occasions since the implementation of their code.

Whilst IKEA is a world leader in supply chain management, there are numerous other examples of customers working collaboratively with their suppliers for instance sharing costs in the short term, holding workshops, educating on the benefits of clean technology, forming industry partnerships with multiple suppliers to share experiences, assistance with new technology, and ‘ongoing dialogue’. This is set across the backdrop of relatively high levels of supply chain management within firms, and an acknowledgement that customers should share the responsibility with suppliers. On the whole, the literature

---

1219 Obviously IKEA is not an SME, but it has a vast supply chain, working with many businesses, including SMES. Thus IKEA’s supply chain management activities can influence SME CSR, which is the intent of this reform.
suggests threats and demands from large customers are less likely to work than genuine collaboration where the customer assists the supplier to improve its operations.

7.1.2.1 Barriers

As discussed above, many governments and private enterprises are already incorporating social and environmental criteria into their procurement practices. This section addresses the question of why the current systems in place are insufficient in an attempt to identify solutions that will promote more companies to influence their supply chain in more meaningful ways.

7.1.2.1.1 Social Procurement Disadvantages SMEs

Put simply, social or green public procurement disadvantages SMEs. Due to their marginal existence and their lack of funds, onerous tendering requirements, whether private or public, affect SMEs disproportionately. In addition, the criteria may require investment in expensive capital equipment which has longer term benefits. This is a particular problem because upfront costs are regarded as the biggest barrier for SMEs to comply with the end user’s requirements. Thus, it is possible that more onerous criteria actually reduces CSR amongst SMEs if they effectively give up on certain customers who impose criteria that are not achievable. It is a standard principle of public procurement that SMEs should not be shut out of the process. It has been reiterated throughout this thesis that SMEs are especially heterogeneous, which extends into the procurement sphere. The European Commission notes that public procurement is ‘unlikely to affect every SME in the same way. Some may be more able than others to reap the benefits of more responsible public procurement and seize opportunities to compete on the social standards aspects of the contract.’

1228 Christopher McCrudden, Buying Social Justice: Equality, Government Procurement, and Legal Change (Oxford University Press, 2007) 5 (Chapter 5). Please note this is the page number to the chapter. The book was accessed electronically and there was no means to decipher the actual page number.


1231 Ibid 13.
7.1.2.1.3 Tokenism

The problem of tokenism is linked to many of the problems SMEs experience when buyers attempt to influence their practices. As briefly touched upon in the preceding section, many firms are open to the accusation that they care more about community perceptions than actual change. The most obvious way this occurs is through shifting the burden of a ‘green’ supply chain onto their suppliers. It is argued that supply chain management often confers greater benefits to large customers than it does to the supplier, despite the supplier being the one that is actually addressing CSR concerns.¹²³²

A commonly cited concern of suppliers is that buyers often appear unwilling to pay a premium for what is effectively a premium good. There are numerous instances of companies who have demanded environmental improvements and then seem to have based their purchasing decision on lowest price.¹²³³ In other instances, environmental concerns appeared to be an ‘exercise in paperwork’ with suppliers suggesting they invest greater effort into answering questionnaires where ‘customers genuinely seem interested’.¹²³⁴ Additionally, some suppliers note that they are being asked to improve their environmental practices beyond the level of the buyer who is demanding change.¹²³⁵ Paying a premium assists suppliers to cope with short term cost increases,¹²³⁶ which may lead to longer term profits in the future which would in turn lower the price.

Another aspect of these conflicting obligations is the refusal to compromise on delivery times.¹²³⁷ This creates an absurd situation where companies are imposing onerous deadlines whilst demanding that workers should not be forced to do overtime.¹²³⁸ Unreasonable overtime may be less of an issue in Australia. However there are industries such as logistics

¹²³⁶ Ibid 17.
(specifically truck drivers and operators of heavy machinery), where unreasonable deadlines pose a serious safety risk. Customer demand for prompt and flexible delivery has also been demonstrated to increase workplace risks in businesses that produce goods by imposing substantial overtime, shortening production times, and suppliers prioritising meeting these demands instead of improving workplace conditions. A further cause for suppliers to be cynical of their buyer’s intentions is the lack of formal obligations arising from demands for better practices. A study noted that 64% of companies had environmental criteria imposed, OH&S (56%), labour rights (42%), human rights (36%), and corruption (32%). The corresponding figures for audit verification or contractual obligations being a part of these requirements was 31%, 17%, <10%, <10%, and 2%.

From the supplier’s perspective there is very little incentive for improvement where their customers are unwilling to pay a premium and do not seem interested in policing compliance in any form. In such circumstances there are many SMEs who misrepresent their activities with few improvements been made. It is therefore extremely hypocritical for a company at the end of the supply chain to make demands of smaller suppliers, not pay a premium, pay mere lip service to their demands and not police them, and then seek to reap the reputational rewards at another business’s expense. In these respects, supply chain management can simply be a customer promoting its own interests, which does not make it any more responsible.

7.1.2.1.4 General Barriers

Beyond the substantial barriers listed above there are many more specific barriers to implementing a CSR friendly supply chain. Obviously, the costs were touched upon when mentioning both tokenism and SME disadvantage. The issue of cost is clearly a problem and manifests in a variety of ways. For instance, there is a further concern that there are insufficient economies of scale to warrant change. Cost saving measures can also be rendered

---

1241 Ibid 455.
uneconomic, for instance, because there is not enough waste to reduce in order to justify new processes or machinery. In addition to this concern, there is a free rider problem which prevents purchasers from investing heavily in their supply chains without also enabling their competitors to benefit.

Like CSR more broadly, barriers such as a lack of information and expertise, lack of regulation, and definitional problems, also exist in the supply chain. There are also practical barriers, such as a difficulty in finding businesses that offer sustainable products in quantities that the purchaser requires, as well as adequately regulated eco-labelling. Questions also exist (perhaps unfairly) as to the ‘effectiveness and efficiency’ of these products, and the perception that SMEs involve a ‘greater risk than larger firms that have an established track record.’ A number of these barriers come together to create a frustratingly cyclical problem, whereby there are no economies of scale for improvements, thus SMEs do not improve, buyers willing to purchase green products cannot find them, which in turn means there is not a large enough market for large companies to move into the industry, which means other buyers are sceptical about dealing with SMEs, which means no company actually buys the products meaning that there is no demand to improve, no track record of the supplier, and no confirmation that the products are of high quality because few companies are using them.

7.1.3 Benefits:

Given the substantial barriers to change, there is a particular need to justify the effort and expense. The argument asserted in this thesis is that the substantial social and economic benefits mentioned in previous chapters outweigh these costs.

---

1245 Global CSR and Copenhagen Business School for the Danish Ministry of Foreign Affairs, Changing Course – A Study into Responsible Supply Chain Management (2011) 18.
1247 Ibid.
One of the most universal benefits of social procurement (either public or private) is the potential for budgetary savings by taking a whole-of-life or life-cycle costing approach to procurement. When adopting a life-cycle analysis of cost, rather than simply analysing purchase price, there is the potential for sourcing cheaper goods. In a study of select New Zealand Government departments, it was found that adopting life-cycle costing generated between 8%-30% in savings. More responsible public procurement practices have also been estimated to reduce CO₂ emissions by 25%.

An obvious indirect benefit is that by being prepared to pay a premium for goods that will save the government in the long term, this assists SMEs and other suppliers to recoup their upfront costs thus satisfying both parties. With governments being such substantial purchasers of goods, this can also greatly assist in creating a much larger market for eco-products thus enabling greater economies of scale and lowering the price of the product. This is also likely to encourage an influx of providers who offer environmentally friendly goods and services, thus mitigating the difficulty in locating these products. Presumably, if governments are buying eco products without incident, it also assuages any fears in the private sector relating to the quality of the previously untested products.

Aside from the direct impact upon the government’s supply chain, there is the likelihood that private enterprise outside of the government’s supply chain would also be influenced by these actions. Much like the criticism by SMEs of their suppliers, there would be cynical reactions to a government that called for action whilst not enacting change on its own behalf. In addition, by altering their procurement practices, governments can create a model or framework which can be emulated by other enterprises and alleviate some of the

---

1254 Garba Ibrahim Malumfashi, “Green” Public Procurement Policies, Climate Change Mitigation and International Trade Regulation: An Assessment of the WTO Agreement on Government Procurement (PhD, University of Dundee, 2010) 151.
Similarly, the products purchased in effect become ‘best practice’ which many businesses will be encouraged to follow.\footnote{Su-Yol Lee and Robert Klassen, ‘Drivers and Enablers That Foster Environmental Management Capabilities in Small and Medium-Sized Suppliers in Supply Chains’ (2008) 17(6) Production and Operations Management 573, 584.} Similar to the cyclical effect described above, governments can stimulate growth in sustainable procurement by creating a market for the goods, thus lowering their cost and demonstrating their quality, which in turn creates more demand.\footnote{Bjørn Bauer et al, Benefits of Green Public Procurement (2009) TemaNord Report 39.}

Empirical data suggests government imposed procurement criteria can have a mixed effect. A study noted that 82% of SMEs would be motivated to improve by criteria imposed in government contracts, however 25% suggests they would be ‘put off’ from tendering, 12% believed the criteria would be ‘counterproductive’,\footnote{Denise Baden, Ian Harwood, and David Woodward ‘The Effect of Buyer Pressure on Suppliers in SMEs to Demonstrate CSR Practices – an Added Incentive or Counterproductive?’ (2009) 27(6) European Management Journal 429, 429.} and 33% believed that criteria would impose lower standards than they already adhere to.\footnote{Ibid.} These negative perceptions are interesting as they are consistent with the concerns mentioned above about the perception that buyers are unwilling to pay a premium, meanwhile asking for greater standards than they impose upon themselves. It would be interesting to note the differences in responses if they were compensated for meeting additional criteria. Nevertheless, the idea that customer demand is a significant driver of CSR is consistent with the literature discussed in Chapter 2.5.4.1.

A rather interesting study was conducted in China, which noted that companies engaging in CSR resulted in businesses being granted additional trade credit.\footnote{Min Zhang et al, ‘Do Suppliers Applaud Corporate Social Performance’ (2014) 121(4) Journal of Business Ethics 543, 550.} The authors surmised that companies which had a greater ‘corporate social performance’ had closer relationships with their suppliers.\footnote{Ibid.} The authors also noted the greater affect this had on non-state owned enterprises compared with state owned enterprises, noting the greater insolvency risk for non-state owned enterprises.\footnote{Ibid.} Some of the risks and uncertainties were mitigated by a closer relationship between buyer and supplier. It is clear that closer relationships lead to greater trust and therefore greater credit which was attributed to the companies engaging in CSR.
This link between trust and business is evident elsewhere, for example, the social capital literature notes the ability of high levels of trust to reduce the need for formal controls and therefore reduces transaction costs, with the most notable example being the New York diamond market.\textsuperscript{1263} Trust creates more loyal customers willing to pay for the convenience of a trusted brand.\textsuperscript{1264} It also creates a form of insurance that when something inevitably goes wrong, people are more willing to attribute the defect to ‘bad luck rather than bad management.’\textsuperscript{1265} Given the amount of hesitance, and cynicism amongst buyers and suppliers mentioned above, it would seem that closer engagement that fosters mutual trust would potentially remove or mitigate some of the barriers to ‘greener’ procurement practices. There is certainly prior evidence to suggest suppliers are more willing to improve their practices where this is a significant history with the buyer.\textsuperscript{1266}

Another substantial benefit of public procurement can be to the overall government budget by addressing problems that have to be addressed anyway. An obvious example of this is in employing vulnerable groups. For instance, Penrith Council has set up a catering company that specifically employs indigenous women who have been victims of domestic abuse.\textsuperscript{1267} Another example from the private sector involves Telstra\textsuperscript{1268} engaging 13 MINDA\textsuperscript{1269} affiliated enterprises which employs intellectually impaired workers as part of cleaning and maintenance contracts.\textsuperscript{1270} This initiative has created 300 jobs for mentally impaired people.\textsuperscript{1271} This clearly has an impact on government budgets due to the low probability of employment elsewhere and the fact that they would otherwise draw social security (not to mention the health and wellbeing effects of being meaningfully employed).

\textsuperscript{1264} Al Golin, Trust or Consequences: Build Trust Today or Lose Your Market Tomorrow (AMACOM Books, 2003) 28.
\textsuperscript{1268} Telstra is the largest telecommunications company in Australia that was previously government owned, but has been privatised.
\textsuperscript{1269} MINDA is an Australian organisation that supports people with intellectual disabilities. See: MINDA, Overview, MINDA <https://www.mindainc.com.au/overview>.
\textsuperscript{1271} Ibid.
7.1.4 The Solution

Having identified the numerous barriers associated with promoting CSR through a supply chain, there is one stand out solution that solves many of the issues. Larger entities (both public and private) must genuinely involve themselves in their supply chain and provide meaningful assistance, rather than viewing their obligations as passive members in the process that simply issues demands. If governments were to act in this manner by simply issuing costly demands in order to improve its own reputation, there would be understandable political tension. As has been mentioned previously, it is quite hypocritical for an organisation to claim CSR credentials that pertain to actions forced upon others, without any support or willingness to pay a premium. It essentially involves asking another company to fund part of the company’s public relations strategy.

From a practical perspective, in a comparison of six countries (the other five of which were Western European), Australia had the lowest level of collaboration between government customers, thus demonstrating room for improvement.\(^{1272}\) If organisations were to develop closer relationships with their suppliers, it would remove, or at least mitigate, most of the barriers identified above. Thus, providing support mitigates cost concerns as premiums are paid as compensation and suppliers may be able to make use of the technical expertise of buyers, thus reducing their costs.\(^{1273}\) Clearly, this addresses the problem of procurement practices disadvantaging SMEs. Furthermore, because there is a closer relationship between buyer and supplier, it is less likely that issues such as child labour go unnoticed. Additionally, when issues such as these arise, there is less likely to be a knee-jerk reaction that does not solve the problem (and potentially worsens it), as there is greater trust and understanding of the two parties' positions. Improvements can therefore be negotiated. By definition, the issues of tokenism are addressed because the buyer is taking active steps to improve their buyers' operations. Obligations do not necessarily have to be contractual or subject to audit, but clearly a closer relationship will have superior informal monitoring than simply handing a supplier a checklist and saying ‘fill this out’. Positive relationships can also change the tone of any formal requirements. Nokia’s position on this subject is enlightening:


\(^{1273}\) An example of this is General motors who frequently hold ‘Green Days’ in order to assist their suppliers by, amongst other forms of assistance, allowing suppliers to speak with their engineers. See: Business For Social Responsibility, *Suppliers’ Perspectives on Greening the Supply Chain* (2001) 20.
We carry out regular supplier assessments as a tool to help promote good performance and also to monitor compliance. This is not, however, a policing activity. We see on-site assessments as an opportunity to raise awareness, identify potential risks and share best practices.\textsuperscript{1274}

This is especially important as formal audits and inspection can have a similar effect to command and control regulation in that the supplier resents the interference with their business and this potentially leads to lower compliance.\textsuperscript{1275} As is the case with responsive regulation, the tone and the (hopefully) positive prior relationship is important in negotiating change with business. There is a cyclical nature to many of the barriers relevant to SMEs and supply chain management. Even removing one or two of them could potentially break the cycle. By having a closer more trusting relationship with suppliers, more reliable information about the quality of their products can be garnered, and a more detailed assessment of their perceived riskiness as an entity can assuage any fears. This trust works both ways and suppliers should be more willing to make the required investment into cleaner and more responsible practices in the knowledge that the buyer is genuine, will assist, and will provide a guaranteed market that justifies the investment. This situation should then act as a catalyst for even greater green and social procurement, as there is greater demand for it, thus allowing for greater economies of scale and lowering prices, which in turn should spark the interest of less committed buyers and suppliers.

It is a complex problem for governments to promote these relationships. Obviously providing information on the benefits of these relationships would be a positive starting point. Clearly the government will have to lead the way with its own procurement policies. As was discussed in Chapter 5.3, there are already procurement rules and policies in place in Australia to promote procurement related to CSR. This will be briefly touched upon below. It was noted in this chapter that simply increasing the specifications or demands will potentially have the effect of forcing SMEs out of tendering for government contracts. Perversely, this could reduce the level of CSR among SMEs. Thus, there is a need for more creative solutions. It is also important to reiterate that, in many circumstances, it will not be appropriate to engage in green or social procurement. This may occur where the contract is


too small, or the product is somehow inappropriate for alteration. Again, the closer the relationship between buyer and supplier, the greater likelihood this can be navigated effectively without unreasonable claims being made on both sides. The principal point is that green public procurement will not be a panacea, but it can push organisations in the right direction which in turn influences other buyers.

There is an obvious problem to producing a procurement system that addresses the extent to which a supplier assists subordinate members of its supply chain. It will be very difficult to appropriately compare the assistance provided and rank it for tendering purposes.\textsuperscript{1276} How does a company that provided technical assistance (e.g. loaning staff) compare to a company that provided a financial grant or paid for the cost of a certification process? How do you compare the amounts of money spent when maybe the needs are completely different (e.g. one company only provided a $1000 grant because that was all that was required versus another that provided $10000)? Even though there are currently ‘points systems’ in place which can rank environmental and social criteria against price\textsuperscript{1277} (so that a higher priced good might win in a tender due to it being awarded more points in other areas), this still does not solve the issue of what constitutes a ‘point’ when you are considering assistance provided to third parties. The general consensus is that these complex issues need to be addressed early.\textsuperscript{1278} Parties actually need to gauge if what is been asked for is economically viable and this must be done as easily as possible.\textsuperscript{1279} As much as there is a need to pay a premium, if buyers (especially governments) are genuine, there is a practical reality that the premium might be so high (for instance doubling the price) that the buyer needs to rethink their demands.\textsuperscript{1280}

\textsuperscript{1276} There is literature on the difficulty of measuring other metrics such as OH&S which clearly would involve similar problems. The authors mention several questions that could be reworded and applied in this context, but the point still stands that it would be exceedingly difficult to have a transparent system that measures and ranks such broad criteria. See John Harris, \textit{New Paths to Business Value: Linking Environment, Health and Safety Performance to Strategic Sourcing} in Joseph Sarkis, \textit{Greening the Supply Chain} (Springer, 2006) 54.

\textsuperscript{1277} For an example see: Phoebe Bolton, ‘Protecting the Environment through Public Procurement: The Case of South Africa’ (2008) 32(1) \textit{Natural Resources Forum} 1, 3, 5-7.


The required solution then is to prequalify suppliers for tenders. This would involve a supplier’s involvement in their supply chain to be viewed independent of other tendering criteria and it would be assessed on an acceptable or unacceptable basis, rather than involving specific ranking of their efforts. This prequalification has been advanced previously as a means to establishing ‘minimum standards’ when addressing issues such as labour relations. Even though there would still be issues of defining acceptability in the context of supply chain assistance, it is much more easily resolved than in tendering criteria that requires ranking. The prequalification ‘criteria’ should be expressed in broad terms with wording to the effect of ‘suppliers must seek to engage with their supply chains and provide assistance in improving their environmental and social performance’. At a minimum the process should be asking 4 fundamental questions:

- ‘Is the supplier aware of this impact or issue?’
- ‘Does the supplier have goals or policies regarding this impact?’
- ‘Does the supplier have detailed plans in place to measure, manage and improve this impact?’
- ‘What is the supplier’s performance regarding this impact during the most recent year?’

Supporting material could then give examples of the types of activities the government is looking for and essentially provide a template for the minimum level of compliance that would see suppliers pass the prequalification stage. Ideally these examples would include: direct financial assistance (with specific dollar amounts as examples), auditing processes such as inspection or informal onsite assistance, provision of equipment, access to technical assistance and expertise, premiums paid for the goods, etc.

Even though the solution proposed in this chapter places greater obligations on its suppliers, it is consistent with current trends. As has been mentioned earlier in this chapter, plenty of companies are already being asked about their CSR credentials in contract negotiations, this solution simply extends the process and attempts to achieve actual change rather than simply handing a supplier a checklist and thinking the job is done. In addition, linking public procurement to social objectives is not a new phenomenon. Promoting gender and racial

---


1282 Note this was cited from John Harris, ‘New Paths to Business Value: Linking Environment, Health and Safety Performance to Strategic Sourcing’ in Joseph Sarkis, Greening the Supply Chain (2006, Springer) 54 which was specifically addressing the issue of OH&S not broader notions of CSR and the supply chain. Nevertheless they are quite relevant in this instance.
equality, as well as providing jobs for disabled people, is a decades old concept. This solution simply seeks to take these noble causes a step further.

Aside from this more radical proposal, a few other solutions were uncovered in analysis of the literature. There has been much discussion of the need to pay a premium, but little discussion on how this should be structured. An initiative from the North Shore City Council (New Zealand) provides valuable insight. It effectively pays a ‘sliding scale’ ranging from 90%-105% of the contract price depending upon the suppliers performance in relation to Key Performance indicators. The obvious benefit of such a move is that it can encourage even greater performance than simply offering a fixed premium.

In terms of actual solutions, specific details and contract clauses are difficult to provide on the basis that they will need to be modified to the specific circumstances entailed in the procurement and are often confidential in nature. However, one article noted all of the areas addressed in procurement contracts which could be of assistance. They include criteria such as energy use, materials used, emissions, recycled content, packaging, the use of an environmental management system (EMS), etc.

It is interesting that there appears to be greater use of product related criteria, as opposed to organisation related criteria. Presumably this is due to the fact that the end product is a more readily discernible measure of ‘greenness’ rather than the broad organisational features of the business. Whilst understandable, focusing only on the end product can lead to what was described earlier in this section where the requirements are merely passed down the supply chain with the contractor doing little, whilst reaping the majority of rewards. From the perspective of encouraging SMEs to engage in CSR, it is necessary to include organisation based criteria, such as any technical advice or financial assistance provided to its supply chain. Ultimately, these criteria should ensure that the end product has the appropriate green or CSR features, but the lead contractor should also be able to demonstrate support through

---

1283 At least in the context of returned soldiers.
1286 For instance, the materials used to construct a product would be an example of a product related criterion, whereas the need for an environmental management system would be an example of an organisation related criterion.
its supply chain. As far as the process adopted is concerned, the organisational aspects regarding supply chain engagement should mostly be assessed at a prequalification stage as noted above. This will ensure a minimum standard is enforced, but would address concerns about the ability to accurately assign weightings for what are broad aspects of the contract.

Beyond these specific points, there are some broad features that should be included. First, there is a need for all CSR-related criteria to be addressed at the prequalification stage. As it has been noted, it will not be appropriate for every contract to have some form of CSR criteria included. In some instances it will simply not be needed, in others it may be too expensive relative to the benefits on offer. If the procuring body is ignorant of the costs or practical aspects of what they are asking, this can be addressed early at the prequalification stage. This leads to a second point about suitability. It would be absurd to apply such stringent criteria to small contracts. On this basis, there should be a minimum dollar threshold before the rules apply. Importantly, in the Commonwealth Procurement Rules, it is a requirement to consider green criteria (for instance consideration of whole-of-life costs) in all contracts. Thus, it is proposed to keep the procurement rules as they are currently written to set a floor for all contracts. However, passed a certain monetary threshold, a second tier of requirements would be triggered.

Beyond the prequalification process, it is important for the environmental criteria to have a meaningful impact on the tender. Thus, the criteria must be included and have an appropriate weighting. Whilst this appears common sense, with little data on this subject available it appears as though it rarely happens with one study noting that even though half of the contracts analysed involved environmental criteria, only 35% used the criteria at the award stage, and only 12.5% used environmental criteria consistently throughout the specification, qualification, and award process.\textsuperscript{1287} Thus, criteria must be included at the award stage and given sufficient weighting to change behaviour. This is another point of contention as it appears the weights used are generally low. Again specific examples in this area are scarce, but one study notes environmental weights tend to be a maximum of 10%.\textsuperscript{1288} Other studies have suggested weightings ranging from 5-20%, but note that on average it has the lowest

\textsuperscript{1287} Mieko Igarashi, Luitzen de Boer, and Ottar Michelsen, ‘Investigating the Anatomy of Supplier Selection in Green Public Procurement’ (2015) 108(Part A) Journal of Cleaner Production 442, 446.

weighting of all criteria and is dwarfed by price and quality, both in weighting, and the frequency with which the criteria is applied.\textsuperscript{1289}

From an Australian point of view, the only policy that appears to mention specific weightings is the \textit{ICT Sustainability Plan 2010 - 2015} which notes that agencies must include an ‘appropriate measure or weighting’ and then suggests that this \textit{could} be 20\%.\textsuperscript{1290} There was some discussion of weightings in the recent Commonwealth Government review on public procurement. For instance, a submission from SPC Ardmona noted the belief that tenders were frequently decided on lowest price and that a failure to properly weigh non-financial factors was disadvantaging Australian businesses.\textsuperscript{1291} The Australian National Audit office noted in its submissions that weightings were applied based on a case by case basis.\textsuperscript{1292} Furthermore, there were complaints amongst businesses that the application of value for money was inconsistent and that the weightings applied lacked transparency.\textsuperscript{1293} This is extremely disappointing as it is difficult to improve processes when businesses appear to have limited understanding of how they will be judged. Recommendation 7 of the Commonwealth inquiry into public procurement proposed the need for a ‘methodology to quantify the factors used to assess whole-of-life costs’.\textsuperscript{1294} However, this was rejected by the government which favoured ‘flexible and adaptable’ processes.\textsuperscript{1295}

Thus, it can be seen that the weightings applied in Australian procurement are ad-hoc, inconsistent, not transparent, and there is apparently little political will for reform. This is unfortunate, as any criteria can become meaningless if the weighting applied is too low. For instance a weighting of 5\% will do little to change the outcomes of a tender and therefore the practices of the tendering companies. Furthermore, the problems identified earlier with relation to employee training and competence suggests that many procuring authorities

\textsuperscript{1289} Mieko Igarashi, Luitzen de Boer, and Ottar Michelsen, ‘Investigating the Anatomy of Supplier Selection in Green Public Procurement’ (2015) 108(Par A) \textit{Journal of Cleaner Production} 442, 446.
\textsuperscript{1291} Finance and Public Administration References Committee, Parliament of Australia, Commonwealth Procurement Procedures (2014) 33 citing Submission 45 (SPC Ardmona) 2.
\textsuperscript{1292} Evidence to Finance and Public Administration References Committee, Parliament of Australia, 21 March 2014, 14 (Tracey Martin).
\textsuperscript{1294} Finance and Public Administration References Committee, Parliament of Australia, \textit{Inquiry into Commonwealth Procurement Procedures} (2014) IX.
simply ignore requirements and more flexible requirements are even less likely to be applied.\textsuperscript{1296} In fact, in a survey of procurement within municipalities in Norway, only 5.6% of the organisations surveyed believed they had the requisite expertise to apply environmental criteria, with 70% acknowledging the benefits of standard form criteria from a central authority.\textsuperscript{1297} Whilst it is difficult to gauge an appropriate weighting (for instance what is the likely difference in outcome between 10, 12, 18 or 20%), it must be sufficiently high to encourage meaningful changes, and it must be communicated clearly to businesses in the tendering process. Accordingly a minimum weighting of between 10-15% is proposed to apply to \textit{all} procurements that exceed the monetary threshold mentioned earlier in this section.

It is clear that there needs to be some form of enforceability of the environmental criteria. As has been noted above, there is the widely held view that both private and public bodies rarely check that requirements are being complied with. It seems that it is rare for a contract to include any monitoring rights, such as inspection, with the preferred means of discouraging non-compliance being through a financial penalty,\textsuperscript{1298} and compliance is often checked through self-inspection.\textsuperscript{1299} This is of course undesirable, as contractors should not be permitted to simply undercut their competition then pay a penalty to avoid environmental criteria. If this is allowed to occur, then this introduces the possibility of rational calculation whereby contractors deliberately do not comply with the terms as it is simply cheaper to pay the penalty. Thus, the proposed reforms broadly stated are represented below:

\textsuperscript{1296} For instance, a study found that 75% of respondents felt the environmental criteria had no bearing on the final decision made. See Ottar Michelsen and Luitzen de Boer, ‘Green Procurement in Norway: A Survey of Practices at the Municipal and County Level’ (2009) 91(1) \textit{Journal of Environmental Management} 160, 165.
Table 13: Summary of Proposed Reforms – Public Procurement

<table>
<thead>
<tr>
<th>Stage</th>
<th>Action required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organisational level</td>
<td>1) There is a clear need for public procurement officials to have greater expertise. This has been addressed to a degree, although the results have not yet materialised. Need to review if further action is required.</td>
</tr>
<tr>
<td>Planning Stage</td>
<td>1) Establish a two tier set of procurement rules (the first tier remains effectively the same, whilst beyond a certain monetary threshold, the second more stringent tier is triggered.</td>
</tr>
<tr>
<td>Prequalification Stage</td>
<td>1) Organisational criteria that specifically addresses the support provided by lead contractors to their supply chain to be assessed at the prequalification stage. This will introduce a minimum standard, but avoid difficult calculations at the award stage</td>
</tr>
</tbody>
</table>
| Award Stage                  | 1) CSR-related criteria to involve minimum weighting of 10-15%.  
2) In line with the NZ example, procuring authority could offer a premium for above compliance.  
3) There must be some provision for inspection or monitoring, rather than imposing penalty provisions. |

Note the example cited involved a payment structure of between 90-105%, as noted above a penalty system could be undesirable, thus only the suggestion of paying above 100% of the contract is suggested.
As a form of market-based regulation, public procurement has the potential to have a strong influence in promoting CSR within SMEs. Governments are substantial customers in a number of industries. Thus, even though it retains the voluntary aspect of CSR, the threat of losing business (or alternatively, the lure of gaining new business) is likely to be highly influential. Additionally, it is hoped that by introducing large businesses (and even potentially SMEs) to the idea of green procurement, they will introduce their own policies on procurement or supply chain management. Additionally, many changes likely to be undertaken to satisfy the procurement criteria will apply across a business’s entire customer base. If new machinery is purchased to make a process more environmentally friendly, that can be used to produce goods for private customers as well. Thus, there is the potential for flow on benefits from a sound ‘green’ public procurement framework.

7.2 Business School Education

Business school education is a particularly important reform. As will be noted in the conclusion to this chapter, information strategies in regulation complement every other form of regulation. If people do not have the requisite knowledge or expertise, then most reforms are unlikely to be beneficial. Thus, this reform is aimed at creating a workforce that accepts CSR as something to aspire to, that knows of its potential benefits, and is aware of potential options that could assist their future employers. Ultimately, the business students of today will be the business leaders of tomorrow, who will manage the trade associations or the large corporations who attempt to apply supply chain pressure, and they will be the accountants or advisers who advise on the benefits of certain CSR options. Even though not all SMEs will be managed by people with a business degree, many SMEs will employ such people, either in a full time or advisory capacity. Given the wide reach of this reform, it is intended to complement the other reforms proposed below. This reform is clearly aimed at addressing the general lack of awareness exhibited by SMEs. By creating a body of well-informed men and women who understand the key issues surrounding CSR, it is argued that this knowledge will permeate through to many SMEs who engage with large customers, relevant trade associations, or engage professional services such as hiring accountants.

As will be demonstrated throughout this thesis, ethics (as well as CSR and sustainability) education has a positive impact on business students. Whilst it is difficult to attribute future ethical actions to a specific class in business school, various studies demonstrate that ethics
education improves a student’s ability to recognise ethical situations, and has the capacity to change opinions on issues, such as whether morals have a place in business, as well as the need for being taught ethics in the first place. Clearly, arming students with this knowledge will not prevent every unethical act from being taken and education should not be viewed as a panacea. However, it is argued that by challenging some of the more self-interested concepts within business disciplines, by demonstrating that students have a choice, and by highlighting the potential consequences of these choices, that instances of unethical behaviour will be reduced. Furthermore, on the specific subject of CSR, if students are at least educated on the potential economic benefits of engaging in CSR, then this will presumably encourage even the self-interested to implement some form of CSR within their business.\textsuperscript{1301}

From the perspective of SMEs, it is perhaps more difficult to envisage education being of benefit, given a study of the education levels of business owners demonstrate that only a third of Australian SME owners have a bachelor’s degree and 13\% have a masters or MBA.\textsuperscript{1302} ABS statistics suggest that these figures may be inflated, pointing to 4.7\% of owner-managers having a postgraduate degree, 16.2\% a bachelor’s degree, with 30.7\% of owner-managers having not completed any qualification outside of school.\textsuperscript{1303} By contrast, a US study of predominantly medium-sized businesses noted that the owner–managers of 23 of the 26 companies studied held master’s degrees, and only one did not at least hold a bachelor’s degree, suggesting size might be a factor in the qualifications of management.\textsuperscript{1304}

Clearly, whatever the level of education, not all of the qualifications would be in the business field. It is admitted that education within business schools probably achieves little in addressing CSR within a newsagent with one employee or a delicatessen with three

\textsuperscript{1301} Clearly the question of whether CSR can be a profitable exercise is itself a major area of research and is largely assumed for the sake of brevity here. A very good entry point into the ‘business case’ for CSR is Elizabeth Karucz et al, ‘The Business Case for Corporate Social Responsibility’ in Andrew Crane et al, The Oxford Handbook of Corporate Social Responsibility (Oxford University Press, 2008) 83-112.

\textsuperscript{1302} Paul Weber, Louis Geneste, Michael Schaper, and W Soontiens, Western Australian Small Business Benchmarks 2008 (2009) main report, Perth, Curtin University of Technology 11. It should also be noted that the authors acknowledged their results skewed upward (in comparison to earlier ABS data) in favour of a greater number of SMEs owners with a tertiary education citing their use of an alumni network as a possible reason for this.


employees. Nevertheless, for a reasonable proportion of SMEs, the size of their operations will create a need for professional staff including other directors, mid-level management and accounting staff, many of which will hold some form of business qualification. The hope is that these professional staff will push the company to engage in some form of CSR (at the very least, an accountant aware of some of the financial benefits of CSR should be able to say ‘I think we can cuts costs here if we implement some form of waste or energy minimization policy.’) There does seem to be some evidence of accountants providing advice outside of traditional accounting advice including contracts, human resource and employment matters, and OH&S to small businesses. There is an obvious concern for accountants to ensure they are not providing legal advice, or advice well outside of their expertise. However, in this respect, the limited research available suggests the advice provided is ‘common sense’, advice related to the costs of certain actions, does not pertain to specific disputes, and where the accountant(s) is out of their depth, they refer the client on to more qualified professionals such as lawyers. Thus, as a highly trusted source of information for SMEs, appropriately trained accountants could also act as intermediaries and refer clients to consultants with more direct expertise in CSR.

Amidst corporate scandals and unethical behaviour, inevitably, the question ‘why do people do bad things?’ arises. There are two potential answers to this question. First, business leaders may have natural proclivities towards unethical behaviour, and the substantial financial rewards may in fact act as a lure to the greedy and ethically challenged. The second possibility is that these proclivities are learned at business school or once graduates enter the

1305 The Breakdown of Business Size in Australia is Micro (1-4 employees), Small (28%), and Medium (10%). See Australian Bureau of Statistics, Counts of Australian Businesses, Including Entries and Exits (2010) 8165, 8.
1306 Obviously this could be through the introduction of new equipment or simply rationalizing the use of existing equipment.
workforce. This is the ‘bad apples’ or ‘bad barrels’ conundrum. In the case of the ‘bad barrels’, there is a very real chance that reform could yield significant results. By targeting the culture that business students and graduates are immersed in, this effectively tackles the problem at its source, thereby potentially improving the entire business landscape.

When public opinion is suggesting we ‘fire all of the MBAs under 35’, perhaps business schools should be having a period of self-reflection. Indeed many academics have engaged in such reflection. Sumantra Ghosal has suggested business academics ‘need[s] to own up to [their] role in creating Enrons’. Similarly, Dennis Gioia proposed: ‘If we really believe in life-long learning, we should act as if we can change attitudes toward ethical and responsible behaviour in positions of organisational leadership.’ Others have remarked that despite ethics sometimes being unpopular, business education requires ‘teaching people what they need to know and not just what they want to know.’ Any initiatives to promote more ethical business practices must therefore involve the institutions most actively involved in shaping business behaviour, which includes business schools.

Given the breadth of the research in this area, it is important to clarify precisely what is being argued in this section. There are many areas in which universities can promote responsibility and ethics such as signing up to international declarations, demonstrating a commitment for change, ‘greening the campus’ by implementing measures such as energy/water saving equipment, curriculum change, and institutional change whereby a university completely alters the way in which it teaches ethics related subjects and provides support at a university

---

1318 For instance, the Talloires declaration is a 10 point commitment to promote sustainability within universities. See: Association of University Leaders for a Sustainable Future, Talloires declaration, Association of University Leaders for a Sustainable Future <http://www.ulsf.org/programs_talloires.html>.
level (an example would be professional development programs).\textsuperscript{1319} To be clear, whilst many of these options have merit, most are overlooked for the sake of brevity and direct relevance to this thesis. This section focuses on the most direct reform to ethics/CSR education, namely tertiary education primarily focused on business schools.

### 7.2.1 Will Education Change the Way Business Leaders Think?

Obviously, if promoting CSR education is to be a worthwhile endeavour, there has to be some possibility of changing behaviours. On this point, opinions are somewhat mixed.\textsuperscript{1320} Attitudes towards ethics seem to vary on the basis of ‘cultural background,’\textsuperscript{1321} gender,\textsuperscript{1322} age,\textsuperscript{1323} and prior exposure/knowledge,\textsuperscript{1324} thus making generalizations difficult. There are many empirical studies which suggest business students tend to have more unethical tendencies than other members of the community. Clearly, there is a problem if students have entered university with an unethical mindset, which will make it less likely that education will change their attitudes. For instance, one study showed that students who are ‘more materialistic’ are generally ‘not comfortable with businesses having a social responsibility beyond profits and wealth maximization’.\textsuperscript{1325} This lead to a conclusion that people with a greater disposition towards acquiring material wealth would be less inclined to engage in CSR initiatives.\textsuperscript{1326} Therefore, this highlights that the presence of ethical traits can differ quite substantially amongst different groups. Even within business majors, differences have been found. For instance, studies have confirmed that ‘finance majors had significantly lower


\textsuperscript{1320} Donald Neubaum et al, ‘Business Education and Its Relationship to Student Personal Moral Philosophies and Attitudes Toward Profits: An Empirical Response to Critics’ (2009) 8(1) Academy of Management Learning & Education 9, 18 which failed to find differences in ethics between students.


\textsuperscript{1322} Julie Fitzpatrick, Business Students Perceptions of Corporate Social Responsibility (2013) 47(1) College Student Journal 86, 93.


\textsuperscript{1326} Ibid 172.
levels of empathy’ and exhibited greater levels of ‘narcissism’. A separate study has found management majors are the most dishonest, whilst accounting majors are the least dishonest.

When comparing business students with students in other fields, they often are seen in a negative light. For instance, business students have been shown to be greedier compared with education students. When justifying their actions, the education students also made far greater reference to concepts of fairness than their business counterparts. Similarly, business students have been shown to more actively engage in academic dishonesty. For instance, when questioning students about their intended occupation, those proposing to enter the business field admitted to the highest level of academic dishonesty at 76%, with Engineering/Science second at 72%, whilst those hoping for an education degree cheated the least at 58%. When comparing areas of study, business students were again the worst, with 87% admitting to some form of academic dishonesty. This study is dated, and certainly in an era of Turnitin, 87% of students cheating does not seem likely. However, it is the justifications given for the cheating that are worrisome. References to a low likelihood of being caught, material wealth expressed as a major goal in life, and expressing a need to cheat because ‘students [are] getting ahead by cheating and leaving you behind’ are concerning. This outlook on life can easily be applied to a business context. This suggests a broader problem where many students are less likely to be receptive to some form of ethics training. It should be noted that these claims are challenged to a degree, and there are studies which refute differences between business students and those in other courses, or at least could not find any evidence of these differences.

It is easy to focus on a few, albeit telling, flaws without analysing students beliefs about the role of business. After all, CSR, ethics, and sustainability are all concepts primarily

1330 Ibid 649.
1333 Ibid 211-212.
concerned with what students think about business’s role in society, as well as how they will behave once they are employed. In a survey of students (not exclusively business students), respondents believed that employers should exercise responsibility towards employees (78%), customers (68%), the environment (53%) and local community (49%), with shareholders last at 35%.\footnote{The Higher Education Academy, ‘Employable Graduates for Responsible Employers’ (2008) Report to the Higher Education Academy 11.} The same study outlined how graduates specifically research their employer’s history of ethical behaviour,\footnote{Ibid 13.} suggesting that whilst ‘their main concern was to get a job’, the employer’s record was a ‘differentiating [factor] in their choice of job’.\footnote{Ibid 14.} Within this study, high levels of students engaging in recycling, donating to charity, volunteering, investing ethically, and purchasing environmentally friendly products was reported.\footnote{Ibid 29.} Another study produced findings that 82% of business students believed that businesses should adhere to some form of ethics, but only 25% thought the current ethical standards were meeting society’s requirements, 70% thought standards were falling, and 70% believe they could be taught business ethics.\footnote{Frederick Crane, ‘The Teaching Business Ethics: An Imperative of Business Schools’ (2004) 79(3) Journal of Education for Business 149, 150.} These findings seem to dispel the notion that the majority of students who enrol in business schools are unteachable moral deviants in contrast to the findings of earlier studies.

Whilst the negative findings regarding business students are concerning, they do not of themselves prove that business students are unteachable on the subject of ethics and CSR. Although they might start from a lower base of ethics, as long as students are being educated in a way which pushes their ethical tendencies in the right direction, this makes ethics or CSR education worthwhile. On this subject, the literature is again mixed, but somewhat more promising. James Glenn summarised the earliest work in this field noting that of the ten studies, six noted a positive impact, two found no impact, one noted a positive impact, which then diminished to having no impact over time, and one study was mixed.\footnote{James Glenn, ‘Can a Business and Society Course Affect the Ethical Judgment of Future Managers?’ (1992) 11(3) Journal of Business Ethics 217, 218.} In this respect, it does seem as though the majority of studies that could not find a link between an improvement in ethics and education are somewhat dated.\footnote{See for instance, T. Martin, ‘Do Courses in Ethics Improve the Ethical Judgment of Students?’ (1981) 20(2) Business Society 17, 21.}
More recent studies confirm a generally positive trend. When students were asked whether business ethics should be taught, 68% answered affirmatively, which increased to 88% after students had taken the course. Furthermore, in the same study, there were noticeable improvements in responses to questions such as ‘the only moral of business is making money’ and ‘moral values are irrelevant to the business world.’ Other studies have recorded similar findings for questions such as the responsibility of a company is to ‘maximise value for shareholders’ and ‘comply with all laws and regulations.’ Positive improvements after undertaking some form of ethics training have been noted in many instances.

There is also evidence showing graduates continue to refine these attitudes outside of business school, with greater work experience, which is a double edged finding. This reflects that business schools could be doing more to shape the ethical attitudes of their students, but also disproves the notion that business students are unmalleable on the subject of ethics. Business school deans certainly believe the education students receive at university makes them more alert to ethical issues. It seems as though students’ views on academic dishonesty can be modified, with a finding that students cheat less at universities with ‘honour codes’, and those without such codes more readily attempted to rationalise their conduct. Education has also been shown to improve the skills related to ethics, raising the

---

1343 Ibid 573.
1344 Obviously this is consistent with legal obligations. However the question arises as to whether a blind adherence to shareholder maximization produces ethical outcomes, or even long term shareholder maximization, where companies are making short term decisions. An Australian study of directors suggests that most directors understand their duties to the company to be quite broad with 94 percent suggesting they can take into account groups other than shareholders and not a single response evidenced a short term shareholder maximization approach. See: Anderson, Malcolm, Meredith Jones, Shelley Marshall, Richard Marshall, and Ian Ramsay, ‘Evaluating the Shareholder Primacy Theory: Evidence from a Survey of Australian Directors’, University of Melbourne Legal Studies Research Paper No 302, University of Melbourne, November 20 2007).
ability to recognise ethical situations in one study by close to 50%. Ultimately, it is hoped that if students are accustomed to considering the ethical consequences of their decisions in business school, then this process will continue in their professional life.

Lawrence Kohlberg has advanced a theory of cognitive moral development, which states a person’s moral development develops well into adulthood with most adults operating at a ‘conventional level’ where they attempt to meet others’ expectations. This is supported by one study which found ethics education to be most effective in the oldest age bracket studied (24+) and least effective in the youngest (13-14). However, the study offers the fact that the older groups studied ethics as an elective, which is likely to attract more willing students, as a possible explanation for the findings. In perhaps the strongest indication of the effect of ethics education, a survey of recent MBA alumni found that education had a profound effect on the next stage of their career. On average, in the proceeding 2.8 years after completing the MBA, 47% of students switched employers, 12% started their own business (27% were motivated to start a new company), and 14% were working for the same company, but in a different field. Importantly, 75% of graduates operated in positions where sustainability held greater importance in their job description. These findings alongside the earlier study, which noted students who had completed an ethics course were 50% more likely to spot ethical issues, raises a valid point. The benefit of such education is not just to change mindsets, but also give those who are already oriented towards ethics, and CSR, the skills to translate this mindset into action. Thus, the literature, (especially more

---

1353 The seminal work of which is: Lawrence Kohlberg, 'Stage and Sequence: The Cognitive-Developmental Approach to Socialization', in David Goslin, Handbook of Socialization Theory and Research (Rand McNally, 1969).
1356 Ibid.
1358 Ibid 31.
1359 Ibid.
recent studies) viewed as a whole, supports the conclusion that teaching ethics has a positive influence on the ethical mindsets and behaviours of business students.

7.2.2 The Current Problem

Having established the likely benefits of some form of ethics or CSR-oriented education, it is necessary to consider whether the current efforts by universities to embed these topics into business school curriculums are sufficient. The argument presented in this paper is that these efforts, although improving, are insufficient, and more can certainly be done. It should be noted that perfection should not be the measure of sufficiency. A ‘no more Enrons’ standard is simply too high. Education should not be viewed as a panacea, and not be judged a failure if a few bad apples completely ignore what they learned in business school. However, when scandals are still a relatively frequent occurrence, some self-reflection is required to consider whether everything that can be done is being done within universities. As will be demonstrated below, this is simply not the case.

7.2.2.1 The Integration of Ethics and CSR Teaching

A substantial part of the problem is a lack of content. Ethics related topics are simply not been taught often enough to a sufficient number of business students. It is not a case of university leadership believing ethics and CSR as irrelevant, it is a case of ambivalence, whereby it is relegated behind ‘core’ courses, in part due to institutional pressures outlined below. For instance, Columbia University was regarded as one of the early adopters of ethics education, but did not offer a ‘regular’ MBA ethics class until 1961.1360

An example of this lack of teaching can be found in a survey of course coordinators, which suggested they believed there should be more teaching on the subject than there currently is.1361 A survey of business school deans has also yielded high levels of agreement for the proposition that there should be more ethics education taught in business schools.1362 By way

of example, a study conducted in 2003 noted only a third of European universities had compulsory CSR-related courses.\textsuperscript{1363} Earlier research in the United States yielded a 20\% figure for compulsory ethics courses.\textsuperscript{1364} Some of these studies are again dated, given the rapid changes to business education in the past decade. However, recent studies confirm the same trend with business school deans believing that there should be more teaching at undergraduate level\textsuperscript{1365} than is currently the case.\textsuperscript{1366} Early studies have shown when specifically considering CSR, as opposed to ethics, the situation is in fact worse. A study in 2004 found that only 12\% of the surveyed MBA programs had a ‘dedicated’ CSR course, whilst only 32\% offered electives.\textsuperscript{1367}

When confining the analysis to Australia, the situation is equally concerning. A study by Jodie Fisher and Ingrid Bonn suggests that more than half of Australia’s universities engage in sustainability and environmental education, but only in a superficial manner.\textsuperscript{1368} In this study of available course information, 93.75\% of Australian universities did not refer to sustainability at a ‘course level’ and 57.5\% did not refer to sustainability at all.\textsuperscript{1369} These findings lead to the authors concluding that sustainability has a ‘low profile in over half of Australian universities’ business/management courses.\textsuperscript{1370} In a separate study, Sharyn Rundle-Thiele and Walter Wymr also found that only 25\% of Australian universities offer ‘dedicated’ ethics courses.\textsuperscript{1371} When judging the overall quality of education, research undertaken on behalf of the Australian Government Department of the Environment and Heritage was similarly pessimistic. When judging MBA programs at 37 universities on the

\textsuperscript{1365} Note that in this same study, the reverse was true with regards to postgraduate study.
basis of sustainability, they found that zero were ‘world class’, 3 were ‘good practice’ schools, 13 were ‘acceptable’, with the other 17 containing ‘little or no’ relevant sustainability education. The minimum requirements of ‘acceptability’ require a university to have electives addressing sustainability, relevant assignments, faculty research, and ‘limited involvement’ with business stakeholders. These are not onerous requirements, yet half of the universities in Australian did not meet them. This is consistent with similar claims made by Kate Sherren that ‘[o]n the whole, sustainability is not very thoroughly or uniformly integrated across Australian universities.”

Even when introducing topics, such as ethics and CSR into business courses, they are generally taught in a minimalist fashion, and are peripheral to core subjects, such as accounting or finance. On the subject of improvement over the past decade, the findings are mixed. Business schools worldwide have seen an increase in ethics based courses from 34% in 2001 to 79% in 2011, which are the most recent figures. Equally, a review of business schools from the United States and Europe found that 75% of undergraduate and 55% of MBA degrees offered CSR courses. This study also noted a correlation between the university’s reputation and greater CSR content. This confirms earlier findings that top universities generally have high levels of ethics teaching.

At a broader level, it seems as though there are still problems within universities, with recent surveys demonstrating low levels of integration in CSR and sustainability with the content

1372 Daniella Tilbury, C. Crawley, and F. Berry, Education about and for Sustainability in Australian Business Schools (2004) Report prepared by the Australian Research Institute in Education for Sustainability (ARIES) and Arup Sustainability for the Australian Government Department of the Environment and Heritage 22, 27, 30.
1373 Ibid 21.
1378 Ibid.
still being relatively uncommon across the curriculum.\textsuperscript{1380} Other studies confirm that whilst the number of courses has increased, the structure has not changed with 75\% of these courses still being offered as electives.\textsuperscript{1381} It may seem trivial to focus on elective status, but there is the very real issue of ‘preaching to the converted’ if ethics and CSR courses remain voluntary.\textsuperscript{1382} This is not to say that voluntary courses have no value. As mentioned above, they enhance the skills of the ‘converted’ so that they may act upon their beliefs. However, there is also the argument that the people who would opt out of an ethics class, in favour of more interesting core subjects, are exactly the people that should be learning about ethics and CSR.

### 7.2.2.2 Course Content

Aside from the argument that business schools are not teaching enough ethics and CSR, an argument has been raised that business schools are actually contributing to the poor ethics of students by teaching self-interested concepts and theories. It is believed that students can actually leave with worse ethics than when they entered business school.\textsuperscript{1383} As has been noted earlier, student perceptions are malleable meaning they can also pick up poor character traits. For instance, a study has shown that some MBA students leave business school with a greater sense that shareholder maximization is the ‘prime responsibility’ of business.\textsuperscript{1384} There are empirical studies which suggest even a single course can have negative impacts on ethical mindsets.\textsuperscript{1385} The reality is that business schools propagate theories that demonstrate a very negative view of human behaviour. The most relevant to business ethics is agency theory, which presupposes managers ‘cannot be trusted to do their jobs’\textsuperscript{1386} and they are


\textsuperscript{1381} Andrea Rasche, Dirk Ulrich and Ingo Schedel, ‘Cross-Disciplinary Ethics Education in MBA Programs: Rhetoric or Reality?’ (2013) 12(1) Academy of Management Learning & Education 71, 71, 75.

\textsuperscript{1382} Ibid 77-78.

\textsuperscript{1383} A good summary of literature coming to this conclusion can be found in: Joseph Wolfe and David Fritzschke, ‘Teaching Business Ethics with Management and Marketing Games, Simulation and Gaming’ (1998) 29(1) Simulation and Gaming 44, 45.

\textsuperscript{1384} Gioia, Dennis, ‘Business Education's Role in the Crisis of Corporate Confidence’ (2002) 16(3) The Academy of Management Executive 142, 142.

\textsuperscript{1385} For instance, one such study asked questions both at the start and end of a economics course relating to whether students would report instances of their business being ‘undercharged’ for goods or whether they would personally return money addressed to someone else. The study found that the ethical response was worse after the course than before. See: Robert Frank et al, ‘Studying Economics Inhibit Cooperation?’ (1993) 7(2) The Journal of Economic Perspectives 159, 168-169.

I can produce a personal example of a tutorial question where I was asked to calculate the financial benefits of a firm paying its bills early, or on the last day it was due, or late. I ultimately came away from that class thinking that it made financial sense for a firm to pay as late as possible, whether or not that was the intention of the tutor.

When constantly bombarding young impressionable minds with material that presumes greed and self-interest to be the norm, it is unsurprising when students are ‘freed … from any sense of moral responsibility’. Inevitably, this leads to some students believing they have to ‘sell their souls’ to succeed, thinking whistleblowing is ‘career suicide’, and that they need to cheat just to keep up. It is exactly this kind of thinking that suggests business schools are failing in their duty to prepare students for their careers. It is also argued that some of the games and simulations routinely used in business schools are presented in a vacuum, identifying neither the positive or negative contributions of business, effectively creating a ‘value free learning environment’.

**7.2.3 The Solution:**

It is argued here that ethics teaching is insufficient, which is why CSR teaching is proposed. The primary reason for this is that the literature indicates a very low ambition with regards to ethics. Good business ethics is quite frequently equated with an absence of bad ethics. Accordingly, questions asked of respondents in ethics research and of students in business ethics classes often include actions such as ‘padding expense accounts’, paying bribes, ignoring legal requirements, etc. From the definition provided in Chapter 2.2.1, it is clear that CSR goes far beyond avoiding these sorts of issues. It requires a business taking active...
steps that exceed their legal obligations. CSR is not simply the absence of unethical behaviour. Peter Drucker was highly critical of the concept of business ethics. Drucker argued that ethics should ‘focus on right behaviour rather than avoiding wrongdoing … ’. Drucker rejected the notion of a business having its own set of ethics suggesting that a businessman had the same responsibilities as any other professional: ‘above all, not knowingly to do harm.’ Quite simply, business ethics, at least in so far as it appears to be taught in business schools, is not enough. Business ethics do not require a company to reduce its environmental impacts beyond what is legally required, nor does it encourage philanthropy or contributions to the community. Accordingly, CSR must be taught in a meaningful capacity. Furthermore, business students should have a basic understanding of the concept, the potential benefits of engaging in CSR, and be taught the basic skills necessary to develop and enforce a CSR policy within a company.

While this paper considers how education might advance CSR amongst SMEs, there has been little discussion about SMEs when analysing the literature on ethics, CSR, and sustainability education, for the most part, because there is very little to say. Of the 200+ journal articles, reports, and books consulted on this subject, there were perhaps half a dozen passages relating to SMEs, none of which were directly related to educating students in CSR or ethics. With all of the barriers to CSR and ethics education mentioned above, and given the promotion of CSR or ethics within SMEs is a far less prominent field, it is likely that there is very little content directed towards SMEs. Indeed one of the barriers was a lack of qualified ethics and CSR academics, which would only be greater in the more specialised SME field. It is reasonable to assume that the starting point for more effective SME CSR and ethics teaching is to gain greater acceptance of CSR and ethics within larger enterprises. SMEs are more marginal enterprises, and, as has been noted, their environmental impacts are frequently underestimated. If business schools cannot even convince their students that a Fortune 500 or ASX 200 company should have social responsibilities, then it is going to be

---

1395 Ibid 256.
1396 Ibid 254-255.
impossible to convince students that a SME with limited resources should have these same responsibilities.

Much of the previous literature on business ethics discussed in this chapter will be relevant. From a content perspective, some of the more pertinent research on SMEs outlined in Chapter 2 would be relevant. Students should be made aware that SMEs are important to the CSR debate. For instance, students should be aware that SMEs comprise an overwhelming number of businesses, they contribute heavily to the economy, and also contribute heavily to some of the problems associated with business such as environmental impacts and OH&S incidents. One of the major barriers to SMEs engaging in some form of CSR is a total lack of awareness of issues relevant to CSR.\textsuperscript{1401} Studies have confirmed overwhelmingly that SMEs do not believe their operations have an environmental impact,\textsuperscript{1402} even when operating in industries with high environmental impact such as waste disposal.\textsuperscript{1403} At the most basic level, the goal when integrating SME components into traditional CSR and ethics education should be to reinforce what is already taught, but also to dispel the mistaken assumptions that SMEs are somehow different or less important than their larger counterparts. Whilst a one employee firm changing three light bulbs, and/ or engaging in some form of recycling might not seem like much, if replicated by a million firms, it will have a substantial impact. If students are forced to ponder these questions, then this is clearly a step in the right direction.

Even though many of the barriers listed above seem so numerous and insurmountable, there is one solution that would potentially address almost all of them: Industry or trade associations. Most of the barriers listed above stem from a lack of understanding, lack of support, and a lack of demand from students, and a perceived irrelevance of the subject to the workplace, which then causes universities and business schools to be apathetic. Trade associations could assist in linking businesses to universities and providing guest speakers, therefore resolving many of the issues surrounding apathy and the perceived lack of importance of CSR and ethics to a business school curriculum.

It is generally accepted that universities lag behind business on the subject of CSR and sustainability. This was evident in an Australian Government funded project linking universities with businesses which demonstrated the difficulty of academics keeping up with their corporate partners. The technical aspects of fields such as sustainability are so ‘rapidly changing’ it requires tirelessly updating teaching materials far quicker than textbooks are updated and it is assumed that academics are ‘subject matter experts’. 

This leads to the conclusion that industry can assist with the knowledge constraints of universities in teaching subjects such as CSR, sustainability, and ethics. Businesses have specialist staff that have a full time interest in the field, they can share examples and case studies, and ultimately they can add a practical element to the course. These industry partners can also assist with any negative perceptions amongst students. For instance, a student is more likely to respond to suggestions that business graduates do not need to ‘sell their souls’ to succeed from someone that has forged a successful career in practice. There is a common theme that successful sustainability initiatives in Australian universities have involved some form of industry partnership, making it an unsurprising recommendation in several studies. Trade and industry associations can have a positive impact on these partnerships by linking interested members to universities, and promoting the benefits of such partnerships. It is hoped that this would translate into greater interest amongst trade association members.

---

1406 Ibid 57.
Aside from trade associations, there are solutions to many of these institutional problems, for instance, the University of Dubai include the ‘Instructor’s role in developing students course specific skills: Ethical and legal responsibilities in organisations and society’ as a component of their student evaluations of teaching. Faculty who do not meet the required 3.5 score (on a 5 point Likert scale) are required to form a plan to improve their performance in this area. Furthermore, deans can emphasize the importance of ethics in induction processes, offer additional support to faculty to allow them to attend conferences, and provide adequate training, and actively pursue highly qualified staff.

7.2.5.1 What to Teach:

It is argued that to ‘actively seek to persuade students to a particular ethical point of view is misguided.’ The general purpose of ethics teaching is to educate students on the multiple ways of dealing with any situation, and, upon making this realization, students need to be able to justify their actions. As was mentioned earlier, ethics education can simply assist students to identify ethical issues, and whilst this by itself does not guarantee an ethical decision will be made, it will likely reduce unethical conduct resulting from ignorance or indifference. It is also argued that by having their ‘backbones stiffened’, recent graduates are more likely to resist the potentially unreasonable and unethical demands of their employers.

At a more specific level, a need for greater emphasis on humanities has been advanced in areas such as ‘ethics and business law’, ‘social and industrial history’, ‘politics’, ‘psychology’, and ‘sociology and social anthropology’. Studying history could introduce students to corporate charters, the ‘Bubble Act’, and the size and boundary restrictions placed

---

1411 Ibid.
1414 Ibid.
1415 Ibid 124.
on corporations throughout the 18th and 19th centuries. Importantly, this would highlight a time where the purpose of corporations was to serve a public function, and to acknowledge the concerns of prominent figures, including several U.S Presidents, who believed corporations were becoming too powerful.1418 Importantly, a study of history could highlight the changing nature and expectations of business by noting that certain rights considered commonplace in contemporary society, such as workers compensation and minimum wages, were a recent invention and faced strong opposition from the business community.1419 James Worthy proposes:

What is needed is not preoccupation with the past but a better understanding of how the present evolved out of the past and how the future is in process of evolving out of the present. The businessman needs a more acute sense of where business is going, and he cannot have that in proper degree without knowing where it has been.1420

Given the value of business history, it is disappointing that history appears to have been slowly cut1421 over several decades.1422

Aside from business history, brief sessions in sociology and psychology could dispel some of the more pessimistic assumptions of human behaviour that are routinely taught in business schools. In addition, when dealing with the specific question of ethics, students require practical examples. Ethics should not be about ‘window dressing’, students should learn that ethics forms a critical aspect ‘of daily decision making, not just a code hanging on the walls.’1423 Specific examples of assessment have been advocated such as researching real company policies and analysing potential areas of improvement.1424 Students need to be aware that even when in mid-level positions, they play a crucial role in the ethical culture of a

1418 For instance in 1864, Abraham Lincoln lamented that ‘corporations have been enthroned’, suggesting ‘an era of corruption in high places will follow … until wealth is aggregated in a few hands … and the republic is destroyed.’ See: Jem Bendell, ‘Barricades and Boardrooms – A Contemporary History of the Corporate Accountability Movement’ (2004) United Nations Research Institute for Social Development Business and Society Programme Paper number 13, 11.
1420 Ibid 79.
business. Merely by acting in an ‘open, fair, trustworthy, and caring’ manner, they influence the behaviour of those around them. Importantly, students must understand the consequences of their behaviour, which is argued to be the ultimate objective of any ethics or CSR education. Having hopefully changed mindsets and oriented students towards ethical behaviour, there is a need to teach the practical skills by which students can action their new mindsets. How do you establish an ethical culture, how should ethical behaviour be encouraged or unethical behaviour discouraged, what should be in a code of conduct, and what are the likely scenarios that students will encounter that will test their willpower? Ethics and CSR education is intended to allow students to answer these relevant questions.

7.2.4 Conclusion

This section has advocated teaching a combination of ethics, CSR, and sustainability as a potential solution to promoting CSR within SMEs. Once again, education will not solve the world’s ills, and is not presented here as a panacea. The coverage of SMEs affected by this reform will be limited on the basis that smaller SMEs are less likely to require professional staff, (such as accountants) and managers who have business degrees. Nevertheless, it is likely to have an impact on a sufficient number of SMEs to make the reform worthwhile. Importantly, it targets a key weakness of SMEs, which is a lack of awareness of many issues pertinent to CSR, namely, SMEs underestimating their impacts on the environment, overestimating the cost in engaging in CSR, and not actually knowing how to engage in CSR. If you can establish a positive mindset amongst the people most likely to manage or give advice to an SME, and teach them the skills to action these new found beliefs, then this is a tremendous starting point for promoting CSR.

Many problems with ethics, CSR, and sustainability teaching were identified throughout this section. Whilst this could make the problem seem insurmountable, many of these barriers stem from student perceptions about the topic. Students are taught ethics are important, yet

1426 Ibid.
they are met with elective course offerings and are persistently taught concepts that contradict ethical principles. Students then disengage, making ethics and CSR a lower priority for business schools, who bow to market pressures in the form of student demand. Importantly, the SME teaching should be supplementary to pre-existing teaching, not independent of it. Whilst this paper is advancing the need for better ethics and CSR as it relates to SMEs, clearly this endeavour requires a solid foundation. Students must already be enlightened to and accepting of ethics and CSR within any business, before embarking upon the even more difficult task of extending social responsibilities to small, and at times, financially marginal enterprises.

7.3 Trade Associations and other Forms of Networks

As mentioned previously, the Victorian Parliamentary Committee has suggested trade associations should play a greater role in promoting CSR to its members.1429 For clarification purposes, when referring to a ‘network’, the term is used in a colloquial sense referring to structures where multiple businesses come together to share information, resources, or engage in other collaborative activities on a regular basis. This definition would therefore include structures such as trade associations, as well as other forms of business groups.

Throughout this thesis it has been demonstrated that SMEs experience a number of barriers to improving their operations. They lack awareness of legal obligations, awareness of areas of potential improvement, and the resources (whether it is time, staff, or money) to enact improvements within their operations. Thus, these issues must be at the centre of any discussion of SME reform whether it is CSR-related, or otherwise. This section will demonstrate that networks could play a critical role in SME CSR reform through the pooling of resources, thus gaining access to greater expertise and being able to share costs, thereby reducing the price of any changes to their business. The primary function of networks and trade associations is to relay information to its members, which in the context of CSR, could be helpful in addressing SMEs knowledge and awareness constraints. There are many different types of networks,1430 but this chapter focuses on two specific models and proposes

them as potential areas of reform. The first example includes the trade or industry associations which represent the interests of an entire industry (an example of which is MLA discussed in Chapter 6). The second involves business clusters or regional networks which involve two or more businesses (generally in close geographical proximity to one another) forming networks due to some form of synergy. Two of the more famous examples of this type of association are the film industry in Hollywood and the information technology industry in Silicon Valley.

7.3.1 Benefits:

Governments have been aware of the potential benefits of networks and other forms of business associations for some time. For instance, the Australian Commonwealth Government conducted research in 1995 and produced an extensive report. However, the overwhelming majority of research has focused on the economic benefits of these networks rather than issues relevant to CSR. As will be discussed, some of these economic advantages could be applied equally to CSR (such as the transfer or creation of knowledge). It is important to note that the benefits gained in networks are generally underestimated and are only clearly understood after a network has been formed. This supports the consistent theme throughout this thesis of a general lack of awareness on the part of SMEs towards their business operations and suggests that if more SMEs could be encouraged to collaborate with other firms, they could make meaningful contributions both to the economy and to CSR.

Before noting more specific benefits of networks and trade associations, it is important to note how SMEs engage with trade associations. It is important to appreciate how SMEs obtain their information, which will be a necessary element of overcoming SMEs’ awareness barrier to engaging in CSR. Trade associations are a valuable source of information. An Australian study has highlighted their importance in the dissemination of information noting that SMEs are three times more likely to go to a business network or trade association than a government body. Another study in UK suggested that SMEs slightly favoured the

1432 Ibid xxiii.
authorities (54%) over their industry association (49%) which also confirms trade association’s importance. Australian Sensis data has suggested more diverse information sources citing state governments (29%), industry associations (26%), internet (8%) as well as consultants, local government and regulatory authorities. Similarly, another study surveyed where SMEs located information in order to comply, with the responses being government publications (41%), trade associations (15%), trade magazines (6%), and no awareness (38%).

Whilst the results partially conflict, they do confirm that trade associations are a significant source of information. This is reflected in a Victorian Parliamentary Inquiry’s recommendation that trade associations should be encouraged to promote CSR to their members. Importantly, studies have confirmed that trade associations are a major driver of small business ethics. Thus, when considering any potential roles for trade associations it is necessary to consider the fact that they are a vital source of information, and sometimes more trusted than government regulators.

7.3.1.1 Economic

An OECD report concluded that the major benefits of networks and other associations are the ability to share costs, the ability to combine expertise to address complex problems, ‘learning effects’, increased efficiency through innovation, the communication of often ‘difficult to codify’ industry knowledge, and the speed with which a group of small nimble business can respond to business opportunities. Other studies have noted benefits such as ‘learning opportunities’, ‘networking opportunities’, ‘sharing common problems and finding

solutions’, mentoring, and guest speakers.\textsuperscript{1442} Whilst these benefits are varied in nature, most stem from a communication of knowledge or information amongst networks. It is unsurprising then that there is an overwhelming body of work that demonstrates that businesses that operate in clusters and networks are more innovative,\textsuperscript{1443} which ultimately translates into a better performing business.\textsuperscript{1444}

Universities also collaborate with private firms through consultancy, shared facilities and joint training.\textsuperscript{1445} These collaborations are thought to have a substantial impact on knowledge transfer to firms within close proximity to the university. This is confirmed by multiple studies,\textsuperscript{1446} with academics thought to be a central part of the innovation process.\textsuperscript{1447} This transfer is not unidirectional, as universities have also been shown to benefit from the transfer of knowledge.\textsuperscript{1448} Whilst there are certainly commercial reasons why universities and staff might want to collaborate with local firms, the overwhelming consensus appears to be a desire to understand the practical applicability of their research.\textsuperscript{1449} Studies demonstrate that economic benefits flow both to the private firms by way of increased performance,\textsuperscript{1450} increased sales per employee,\textsuperscript{1451} and a general improvement to research and development

\textsuperscript{1444} Paul Geroski, Steve Machin, and John Van Reenan ‘The Profitability of Innovating Firms’ (1993) 24(2) Rand Journal of Economics 208-209.
outcomes. From a university perspective, private research funding is demonstrated to be greater when the university operates in close proximity to an industrial hub.

This communication of knowledge is also consistent with types of services that networks and trade associations commonly offer such as conferences, newsletters, journals, fact sheets, management and employee training, and one to one technical advice. In geographical networks, this information can be exceptionally valuable. For instance, in a buyer/supplier network, customers who are actually using the product can provide invaluable information on how the product works in practice and how it can be improved. Obviously, networks can also grant access to additional markets, or introduce prospective buyers and suppliers creating an obvious benefit.

It is not entirely clear whether SMEs gain as much from these networks as large businesses. From one perspective, barriers such as a lack of resources and knowledge are more commonly attributed to SMEs, which should be mitigated by the pooling of resources that occurs in networks and associations. A study noted that businesses with greater than 50 employees were 2.5 times more likely to loan employees to another business, and four times more likely to exchange innovative prototypes with other firms. Similarly, other studies have shown that from a knowledge perspective, SMEs benefit more. It is proposed that larger enterprises, due to their resources, will have more to offer a network, and greater resources to allow for experimentation and collaboration within a network. However, large enterprises are claimed to gain more from networks and join them more frequently than

---

1456 Ibid xix.
SMEs.\textsuperscript{1460} Equally, larger firms seem more willing to collaborate with universities,\textsuperscript{1461} and experience greater positive effects to their innovation levels than smaller firms.\textsuperscript{1462} This also seems to be true of larger firms’ collaboration with other firms.\textsuperscript{1463} Interestingly, size was a predictor of the benefits experienced with progressively more companies gaining a benefit as the size of the company increased from micro to small, medium, and large.\textsuperscript{1464} However, the study did argue that this was most likely due to larger companies being involved in a greater number of networks.\textsuperscript{1465}

Whilst there may be a great deal of overlap between trade association activities that yield economic benefits, and CSR benefits, it is also important to realise that there may be a conflict. ‘Some trade associations see their chief selling hook as the desire of companies to fight off all regulation and political intervention.’\textsuperscript{1466} Given the constraints of trade associations listed below, such as a lack of resources and small fragmented membership bases, there is pressure to fight unpopular regulation.\textsuperscript{1467}

7.3.1.2 CSR-Related Benefits of Network and Associations

Although the economic benefits of networks have been promoted for a substantial length of time, the idea of networking to promote CSR is a reasonably new phenomenon. It is admitted that there are substantial gaps in the literature in this area, especially with respect to SMEs.\textsuperscript{1468} This can clearly advance a CSR agenda. As has been stated consistently throughout this thesis, SMEs lack awareness of many issues including, opportunities for promoting CSR,\textsuperscript{1469}

\textsuperscript{1460}Ibid 113-114.
\textsuperscript{1465} Ibid 96.
\textsuperscript{1467} Ibid.
and compliance with regulations.\textsuperscript{1470} This was also demonstrated to be a major cause of OH&S failures resulting in convictions in Case Study 2. Thus, introducing a trade association with expertise in relation to compliance and best business practice can assist in the communication of this information. Clearly the communication of knowledge will assist in remedying the failures mentioned above. Participants can relay to other members information such as discussions during an inspection from a regulator, experiences relating to new ‘green’ technology, or even just brainstorm a current problem.\textsuperscript{1471} It is also noted that advice that is obtained from a ‘peer’ is more likely to be accepted and acted upon.\textsuperscript{1472}

Clearly a large trade association would be expected to provide assistance in relation to complying with applicable legislation. This was demonstrated at length in Case Study 3, where MLA was extensively involved in ensuring members and the end supply chain in countries such as Indonesia, were complying with the requirements imposed by the Commonwealth, which included compliance with ILO regulations. MLA invested in infrastructure overseas, conducted informal visits, and kept industry members abreast of developments and regulatory changes during the live export ban in Indonesia. In addition, MLA has recently placed greater focus on its hands on product demonstration sites and appointed a national manager. Clearly these all generate improvements in animal welfare, but they are also looking to improve water and electricity usage in the industry. Some of the infrastructure provided to overseas abattoirs also involves beneficial OH&S outcomes, such as restraining boxes that prevent injury when an animal is slaughtered, and involve demonstrations and guides on use, thus involving the transfer of best practice. This demonstrates that where a trade association has significant resources and the inclination, it can assume a critical role in disseminating information about legal compliance and CSR. Importantly, MLA is not only disseminating pre-existing knowledge, it is also creating knowledge through its research activities.


Resources were also noted as a significant barrier to engaging in CSR in Chapter 2.5.3.1. SMEs are marginal enterprises and generally do not have vast financial reserves to introduce new technology, even where it might prove profitable in the medium to longer term. In these circumstances, the ability to pool resources and share costs across multiple SMEs within a network or association will be of benefit. Examples have included shared treatment facilities. A more extensive example involved a situation where several dairy farms collaborated on developing a prototype support mechanism to reduce back injuries after receiving some funding. After the preliminary brainstorming phase, one farm implemented the support into their operations. Due to the other dairies being involved in the process and being able to see the support in use, and borrow it, they were able to manufacture their own support. Similarly, in a prime fishing area in New Zealand, all fisheries pooled resources to research fish farming techniques and are investigating more sustainable ways of harvesting mussels. As has been noted in Chapter 2.5.2.2, the practice of CSR can be fairly simple with the installation of water/ energy saving technology, and this again features in the literature on networks, with members able to share costs and generate discounts from increased purchasing power.

Clearly, from a trade association perspective, access to funding from larger more profitable enterprises is also a consideration. Some interesting CSR-related initiatives from trade associations have included OH&S employee training, a local crèche, and product certification, in house consultancy, eco labelling programs, and environmental

---

1474 The need for this innovation seems to have arisen from the fact that smaller enterprises cannot afford equipment traditionally employed by larger firms in the same industry. See Hans Limborg et al, ‘Networking among Small and Medium-Sized Enterprises: Meeting the Challenge of Promoting Safety and Health Measures’ (2014) 21(2) Small Enterprise Research 214, 216.
demonstration projects. All these initiatives ultimately benefit from having a critical mass of businesses that require the service to make it cost-effective. As a final point, the collaboration can be an example of CSR in itself. For instance, some firms permit employees to work with charities and NGOs during work hours and partner with these organisations beyond a simple donation. James Austin has proposed a three stage model of engagement with non-profits, whereby stage I (philanthropic) involves the simple provision of donations, stage II (transactional) involves reciprocal relations, such as having involved both parties in each other’s activities, and Stage III (integration) where the relationship is more formal and integrated, for example having the high level management of the company spending time at the non-profit to help them improve their policies and procedures. In summary, due to the pooling of resources and communication of information that occurs within these networks, networks could address two of the most important barriers to engaging CSR within SMEs noted in Chapter 2.5.3.1 – 2.5.3.2, a lack of awareness and resources.

### 7.3.2 Barriers to Implementation

The previous section noted the benefits of these associations by noting they address several of the key barriers to SMEs engaging in CSR. From the outset, it should be noted that this section discusses barriers specific to associations and networks working effectively. Thus, these barriers need to be considered when proposing a ‘model’ network or trade association, and prescribing a role for government in promoting these networks. The major barriers or problems associated with forming a network (geographical clusters as opposed to trade associations) involve time constraints, issues of confidentiality, inequitable procedures and to a lesser degree, cost. One would assume that cost would be a substantial factor. However, this does not seem to be the case. It was the least mentioned barrier in a study, which is consistent with a study on barriers to joining a local chamber of commerce with respondents.

---

1482 For instance, the non for profit attended and helped to promote a marketing event at the businesses store.
1483 James Austin, ‘Strategic Collaboration Between Nonprofits and Businesses’ (2000) 29(1) *Nonprofit and Voluntary Sector Quarterly* 69, 73-75.
1485 Ibid.
being prepared to pay three times the current level for membership. However, in another study cost did appear to be a common barrier amongst small businesses, suggesting size is a factor.

In the context of trade associations, there are some fairly substantial barriers, both to entry, and to the trade association pursuing a CSR agenda. As will be noted below, many of these could be solved through a MLA style model. There is a substantial ‘free rider’ problem attached to trade associations as they are ultimately voluntary. Businesses can seek to benefit from the association without actually contributing in any way. This might be achieved through making use of publicly accessible information or by trading on the perceived ethics of a self-regulated industry without adopting any related codes of practice. Where free riding is endemic, there is little incentive for willing parties to join, thus limiting the membership base. This leads to substantial resource constraints.

In addition to the free rider problem, there is an issue of vested interests and an inability for SMEs to exercise influence. Many businesses will take a cost benefit analysis to joining a trade association, which, given the often sliding scale of membership fees according to size, suggests larger businesses will try to extract greater value. Under these circumstances there is the risk that SMEs interests will be subordinated to larger members of the association. Whilst it is understandable, given the fierce competition amongst associations for members, there is still the problem that SMEs’ needs will be ignored.

The issue of size is also relevant to the effectiveness of a network or trade association. Larger associations tend to have vast resources that enable them to offer greater services, but this size comes at the expense of being able to facilitate trust through closer relationships with its

---

1490 Terry Besser and Nancy Miller, 'The Structural, Social, and Strategic Factors Associated with Successful Business Networks’ (2011) 23(3-4) Entrepreneurship & Regional Development 113, 117.
1492 Ibid 256-257.
members. Trust is an integral driver of networks. A lack of trust can reduce the capacity to diffuse knowledge throughout a network. Trust is said to have ‘two dimensions: benevolence and dependability.’

When a business is looking to obtain knowledge from outside sources, they need to be able to depend on the veracity of the information, but when trying to generate knowledge ‘in house’ there is still a need for benevolent third parties to offer advice and help facilitate new ideas. Even once formed, a network depends on trust which greatly impacts upon behaviour at meetings and the ‘ability to share relevant knowledge.’

The impact of trust is demonstrated in a study that compared the level of knowledge communication between networks of different ages. The findings revealed that network age did not have an impact on the communication of knowledge, but rather the ‘maturity’, defined as a combination of age, a pre-existing working relationship, and any prior social interactions (for instance some employees had worked for multiple members of a network). This seems to align with the social capital literature which suggests trust helps to facilitate exchange (for instance, the diamond markets) and is a valuable resource. Clearly, if trust is a major driver, then a lack of trust is a significant barrier to creating effective networks and associations. Whilst the necessity of social capital and trust within networks has been challenged, it is acknowledged that the presence of social capital and trust can improve the network through lower transaction costs.

A counter to these arguments, raised in Chapter 3.5.2, suggests that where an insular culture is allowed to develop, this can exclude outsiders. Nevertheless, trust does seem an important factor in the development of networks, as a study noted that a ‘fear of losing control’ is the greatest barrier to the

---

1493 Terry Besser and Nancy Miller, ‘The Structural, Social, and Strategic Factors Associated with Successful Business Networks’ (2011) 23(3-4) Entrepreneurship & Regional Development 113, 129.
1495 Ibid.
1498 Ibid 330-331.
1500 Ibid 51.
formation of a network, and a lack of control and trust is the major (44%) reason for SMEs abandoning a network.\textsuperscript{1501}

There is also evidence that smaller trade associations remain better informed due to low circulation cost and the direct involvement of members in the running of the association.\textsuperscript{1502} Clearly there is balance to be struck between a large well-resourced trade association and one that becomes too large, therefore struggling to communicate with its members. The argument often levelled at trade associations are that there are simply too many.\textsuperscript{1503} This creates the issue of many small associations that compete amongst one another,\textsuperscript{1504} and often use resources inefficiently through the duplication of services, which other associations and government departments provide.\textsuperscript{1505} On this point, it is important to understand that from a regional cluster or network perspective; eighty percent involve only two firms, quite often involving a buyer and supplier.\textsuperscript{1506}

A further problem exists with many associations and networks lacking the resources to provide helpful services. Clearly, a lack of funding is present due to the problems listed above such as having small fragmented associations that suffer from the free rider problem and a low membership base. However, the lack of resources is not limited to financial reserves. Associations also struggle with a lack of management staff. In smaller associations, management roles are quite often drawn from volunteer members. There is some frustration amongst association leaders that businesses make demands without being willing to invest their own time into a project.\textsuperscript{1507} There are also increasing demands of executives from their

\textsuperscript{1505}Ameeta Jain, ‘Knowledge Distribution Nodes and Home Based Businesses: Role of Local Business Associations and Local Council in Casey LGA’ (2011) 17(2) Australasian Journal of Regional Studies 122, 132.
employer, which translates into volunteers having less time for voluntary association work.\textsuperscript{1508}

From the perspective of networks, there is a suggestion that networking is a skill that must be learned.\textsuperscript{1509} Given the exchange of information involved in these networks, it is clear that a substantial barrier is trust and concerns over the risks posed by disclosing information to other members of a network.\textsuperscript{1510} The vast majority of managers prefer to deal with networks they have had previous experience with.\textsuperscript{1511} Australian literature has previously suggested that SMEs are not particularly receptive to the idea of engaging with networks with 73\% of respondents suggesting they would be unwilling to do so.\textsuperscript{1512} A subsequent Australian study presents contrasting data suggesting that two thirds of respondents were currently participating in a network.\textsuperscript{1513} The Authors of this study, Yvonne Brunetto and Rod Farr-Wharton, argue that these statistics are by no means an endorsement of Australian business community, suggesting:

\begin{quote}
Australian firms lack a collaborative culture because of a lack of research and development, and exporting culture within the Australian business environment. Such a culture has failed to materialise because Australia is dominated by predominantly foreign owned large organisations that are less innovative and export oriented than Australian firms undertaking research and development (R&D).
\end{quote}

Thus, the catalysts which have encouraged collaboration in other countries seem to be missing within the Australian business community.\textsuperscript{1515} There is some level of conflict within

\begin{flushright}
\textsuperscript{1515} Ibid; another study in a comparison of six countries, noted that Australia had the second highest level of collaboration, but the worst level of innovation. See: Ester Basri, ‘Inter-Firm Technological Collaboration in Australia: Implications for Innovation Performance and Public Policy’ in Organisation for Economic Co-operation and Development, \textit{Innovative Networks: Co-operation in National Innovation Systems} (OECD, 2001) 154.
\end{flushright}
the Australian literature, but as a whole, it could be said that many SMEs see a role for networks within Australian business. This view is supported within the business community in the United Kingdom where 70% of respondents agreed that networks should have a more significant role in promoting environmentally friendly practices.\textsuperscript{1516} Again, from an economic perspective, Australian figures reveal smaller companies are less likely to collaborate and innovate, but once they do, they produce a greater number of innovations per employee.\textsuperscript{1517} This suggests that SMEs are an untapped resource as far as governments wishing to promote CSR are concerned, which could be harnessed through encouraging greater collaboration with larger enterprises.

7.3.3 The Solution

It is important to understand that networks grow organically and vary tremendously. Whilst governments around the world attempt to create the next Silicon Valley, very few have achieved anything nearing this level of success. Whilst the literature discussed has suggested the potential for knowledge spillovers and communication, this is not always experienced in practice.\textsuperscript{1518} Equally, innovation is not dictated by the mere presence of a network, but by the quality and intensity of the relationships within the network.\textsuperscript{1519} Studies have noted quite different levels of knowledge amongst different networks\textsuperscript{1520} and within entire industries.\textsuperscript{1521} Different industries also seem to benefit quite differently from being in close proximity to universities.\textsuperscript{1522} This suggests that collaboration can be unsuccessful, and even those that are initially successful, can fall away as partners lose motivation.\textsuperscript{1523} Even where useful knowledge is possessed by a firm in the network, this does not guarantee it will be diffused to


\textsuperscript{1518} João Ferreira, Roel Rutten, and Attila Varga, Cooperation, Clusters, and Knowledge Transfer: Universities and Firms Towards Regional Competitiveness (Springer, 2013) 12-14.


other members of the network.\footnote{Hans Limborg et al, ‘Networking among Small and Medium-Sized Enterprises: Meeting the Challenge of Promoting Safety and Health Measures’ (2014) 21(2) \textit{Small Enterprise Research} 214, 219-20.} Equally, trade associations that operate within different industries will experience disparate levels of public scrutiny and criticism, thus greatly impacting upon their motivation for action.\footnote{Anja Schaefer and Finola Kerrigan, ‘Trade Associations and Corporate Social Responsibility: Evidence from the UK Water and Film Industries’ (2008) 17(2) \textit{Business Ethics: A European Review} 171, 192.} With this in mind, two examples are presented below as being quite successful and worthy of analysis.

\subsection*{7.3.3.1 The MLA Model}

The trade association model proposed in this chapter is in line with the Meat and Livestock Australia (MLA) model outlined in Case Study 3 in Chapter 6.4. This model is quite specific and could likely only be applied to other industries trading in common commodities or industries where the products are very similar (e.g. car manufacturers) to enable the imposition of a levy. Whilst not essential, it is also clear that the tenuous social license of the live export industry was a significant driver of behaviour, suggesting that this would be required to achieve maximum cooperation from industry. Under the \textit{Primary Industries (Excise) Levies Act 1999} (Cth) there are 26 separate products covered under some form of levy arrangement.\footnote{Schedules 1-26.} Whilst many are related to meat, there are similar arrangements for wine grapes, rice, sugar cane, honey, dried fruits, cotton, dairy produce, and horticultural products.\footnote{Defined as fruits, vegetables, nuts, and flowers. See: \textit{Primary Industries (Levies Act) 1999} (Cth) Schedule 3 [5],[6]; \textit{Primary Industries (Customs) Charges Act 1999} (Cth) Schedule 15.} This suggests several industries are already benefitting from this model. Given the negative findings noted above, such as the fact that many trade associations are poorly funded, it is proposed here that this model could be extended further.

There are several features of the MLA model that differentiate it from more traditional trade associations. The first difference is the substantial resources available to it due to the association’s ability to raise duties on each animal sold.\footnote{See: \textit{Primary Industries (Levies Act) 1999} (Cth) Schedule 3 3 [5],[6]; \textit{Primary Industries (Customs) Charges Act 1999} (Cth) – Schedule 3 [2],[3] for the imposition of levies on cattle producers. \textit{Primary Industries (Levies Act) 1999} (Cth) schedule 12 and 18 cover the Goat and Sheep levies.} Secondly, due to these duties operating via legislation,\footnote{\textit{Primary Industries (Levies Act) 1999} (Cth) 3 [5],[6]; \textit{Primary Industries (Customs) Charges Act 1999} (Cth) Schedule 3 [2],[3].} the Commonwealth Government has sufficient leverage to negotiate a deed of agreement with MLA. As noted in Chapter 6.4.1, that agreement imposes
governance requirements such as a requirement to adhere to the *ASX Corporate Governance Council’s Corporate Governance Principles and Recommendations* (despite not being a listed company), maintaining a 3-5 year strategic plan (reviewed annually), and an annual operating plan, as well as completing an independent performance review prior to the expiry of the deed.\textsuperscript{1530} MLA’s articles of association also expand beyond the traditional promotional roles, including research and collaboration with state and Commonwealth Governments on animal welfare issues.\textsuperscript{1531}

These differences mitigate a number of the problems experienced by trade association and networks listed above. Because the levies are based on each animal sold, the payments to MLA are compulsory, thus eradicating the ‘free rider’ problem. It is clear that many associations also lack appropriate resources to provide meaningful services, which is simply not the case under the MLA model. MLA generates annual revenues in the millions of dollars, which enables it to provide substantial assistance to the industry, and to promote CSR outcomes. MLA’s activities are detailed at length in Chapter 6.4, and extend to investment in substantial infrastructure in importing countries to improve animal welfare outcomes, providing training, lobbying abattoirs in Indonesia and abroad, more humane animal welfare practices, and conducting substantial research to improve the industry’s animal welfare, commercial, and CSR (e.g. energy and water efficiency) performance. These activities are possible because of the substantial resources at MLA’s disposal. Beyond these deficiencies, it was noted that larger associations can struggle to communicate with their members. Again, due to having substantial resources, MLA has been able to develop multiple effective channels for communication, as well as providing training and demonstrations. Thus, it would seem communication is not a substantial problem for MLA.

From a government perspective, the MLA model is a solid compromise. As a trade association, MLA has the appearance of operating free from government interference. It has the respect of the industry, and can lobby for better practices in countries such as Indonesia, not as an overbearing government infringing the sovereignty of another country, but as a trade partner promoting best practice. Similarly, circulating its research in Australia and offering training workshops is likely to be better received by a trade association perceived to

\textsuperscript{1530} 2012-2016 *Deed of Agreement Between the Commonwealth and Meat & Live Stock Australia Ltd* 7, 13, 15, 17.

\textsuperscript{1531} Meat & Livestock Australia Ltd, *Memorandum of Association*, Clause 2.
be loyal to industry, rather than a government regulator. MLA was also heavily involved in the formation of the new ESCAS regulations, which suggests that there should be a greater commitment to comply with a scheme they helped to form. However, government does have the capacity to influence MLA. As noted above, the vast majority of MLA’s funding comes from levies governed by legislation. Due to this leverage, the Commonwealth Government enters into regular deeds of agreement which imposes governance requirements on MLA. Even though it is unlikely to be a popular decision, should MLA fail to meet the government’s expectations, the Commonwealth Government could take action and correct any failings. In all likelihood, even the threat of this action would likely motivate MLA to improve their performance. Thus, the government is essentially able to retain the benefits of having an industry association as a co-regulator trusted by industry, whilst still having a degree of control in the background.

7.3.3.2 Promoting Networks – Landcare as an Example

From the literature discussed in this section, it is clear that networks are not a panacea. They grow organically, cannot be forced, and quite often they do not function as effectively as they should. Martin Perry argues that for every study that suggests networks have demonstrable benefits, there are studies that contradict this. It is acknowledged that this is a developing field of research and the factors that will lead to a network’s success are not widely understood. In this respect, the proposal of networks as a solution to promoting CSR within SMEs should be treated with caution. It is clear that some networks fail. However, it is also clear that some networks are particularly useful in communicating information to its members, which spawns innovative ideas and leads to economic benefits. A logical extension of this communication is that it could extend to CSR-related information, and therefore assist SMEs in their CSR performance. Given the pooling of resources and sharing of innovative ideas that occurs within these networks, networks could ultimately address many of the key barriers to SMEs engaging in CSR, namely a lack of resources and a general lack of awareness of possible initiatives. Whilst empirical evidence of the communication of CSR-related information amongst networks is scarce, the example of Landcare is presented as a successful initiative that has achieved the communication of better environmental practices on a mass scale.

1532 Martin Perry, Business Clusters: An International Perspective (Routledge, 2005) 182.
Landcare was established in 1989, following a recommendation from the National Farmers’ Federation and the Australian Conservation Foundation.\textsuperscript{1533} This achievement in itself is worthy of noting, given the collaboration between a trade association and an environmental NGO. The initiative was essentially a nationalised rebranding of networks that existed in Victoria from 1985.\textsuperscript{1534} Landcare Australia Ltd was formed to facilitate the goals of Landcare, namely to increase awareness of sustainable land use and to encourage sponsorship from the private sector.\textsuperscript{1535} Whilst there is a strong involvement with farmers, Landcare is more than a simple network of commercial farmers; it also involves thousands of volunteers working on public projects. Landcare is thus described as ‘a system of volunteer organisations that is loosely coordinated at state and regional levels.’\textsuperscript{1536} Broadly, Landcare operates as a partnership with local communities who are best placed to identify areas of need.\textsuperscript{1537} Substantial funding is required to facilitate the nationwide projects which are managed through the National Heritage Trust, funded in part by the sale of Telstra.\textsuperscript{1538} Owing to the success of the Landcare program, there are now 6000 Landcare affiliated networks in Australia,\textsuperscript{1539} and in surveys spanning nine years, the percentage of respondents being involved in Landcare almost doubled from 22.6% to 43.2%.\textsuperscript{1540} The model has been replicated in another 15 countries.\textsuperscript{1541}

Given the aim of promoting better and more sustainable practices, there is a substantial focus on the methods of disseminating best practice. This education is facilitated in practical fashion with practical demonstrations on farms.\textsuperscript{1542} Beyond this method of dissemination, more traditional methods are employed by Landcare, such as field days, seminars, and

\begin{flushright}
\end{flushright}

\begin{flushright}
\end{flushright}

\begin{flushright}
\end{flushright}

\begin{flushright}
\end{flushright}

\begin{flushright}
\textsuperscript{1537} Jan Elder, ‘Landcare and Ecological Modernization in Australia: Promoting Ecological Awareness or Economic Development?’ (2006) 7(1) \textit{Agricultural Economics Review} 35, 37.
\end{flushright}

\begin{flushright}
\textsuperscript{1538} Brooke Summers, ‘Landcare: Why is it Good Business?’ (1995) 37(4) \textit{Trees and Natural Resources} 13, 15; Note that Telstra is an Australian telecommunications company.
\end{flushright}

\begin{flushright}
\end{flushright}

\begin{flushright}
\end{flushright}

\begin{flushright}
\end{flushright}
conferences where farming practices can be discussed, as well as newsletters and bringing in consultants to discuss pertinent issues. Importantly, Landcare groups also engage the wider community and attempt to disseminate the knowledge gained beyond their membership into the broader community, and other Landcare networks. For instance, groups have set up a network shopfront in their local council, run bus tours through the projects for schools and universities, and have held meetings in conjunction with other well attended local events and groups such as church services, sporting associations, and rural fire services. A survey of the reasons why members joined Landcare noted that success stories (45%) and knowing someone else who joined (40%) were important factors. Not only do individual networks attempt to disseminate information, but the Landcare website is extraordinarily detailed with links to a variety of research publications, their annual magazine, general information, and dozens of case studies indicating success stories.

This comprehensive approach to disseminating industry best practice makes it unsurprising that the vast majority of members join with the expectation that Landcare will assist their land management practices (82%) and provide greater learning opportunities for land management (81%) and the opportunity to discuss issues with other people (75%). It is also important to note the participatory approach of Landcare, with many networks employing person-to-person contact which studies note to be important in obtaining the full benefits of networks as knowledge can remain dormant due to members underselling their expertise, and only gaining confidence in their own abilities and knowledge after sharing their thoughts with others.
It should be noted that high participation rates alone do not establish the utility of Landcare’s work. Nevertheless, a survey conducted in 2012 reflected a view amongst 95% of members that Landcare remains relevant even 25 years after its formation. Just in the first phase (1996/7-2001/2) of the National Heritage Trust’s funding, it is claimed that the work completed included 1.5 million hectares of native vegetation planting and maintenance, with 63 million plants and trees planted and 206 tonnes of nitrogen diverted away from rivers and lakes. From a communication of information perspective, various studies note that Landcare activities improve awareness and knowledge of sustainable farming issues and improve the uptake of best practice, with estimates that 90 percent of networks achieve positive outcomes. There is also substantial corporate ‘buy in’ with claims that there is a ratio of between 1:2.8–1:12 of government investment to private investment in Landcare activities.

Landcare’s website lists dozens of case studies with quantifiable outcomes. For instance, sustainably increasing sheep herd densities on farms by 30%, reducing the spread of imported weeds that threaten native flora diversity, and reducing energy usage costs by 40% in select dairy farming processes on farms have been achieved in these case studies. Many of these projects, as examples of best practice, served as demonstration sites, or employed information dissemination methods so that these results could be reproduced elsewhere. Beyond these sustainability objectives, Landcare is also believed to produce a variety of benefits in relation to producing social capital. A recent Senate Committee Inquiry received several

---

submissions to this effect noting the non-financial benefits of forming networks amongst traditionally isolated farmers,\textsuperscript{1557} as have academics.\textsuperscript{1558}

On the whole, the Landcare initiative seems to have been quite successful in promoting the sustainable use of land and has produced enduring benefits throughout its 25 year history. The Landcare initiative stands as authority for the potential of networks in communicating sustainability (as a proxy for CSR) related information amongst individuals and businesses, many of which were SMEs. Given the substantial funding from the government, and the additional corporate funding, there seems to have been fewer issues with fragmentation and low levels of resources. Additionally, it seems that gaining trust amongst members has not been a significant issue, perhaps due to the community oriented nature of the work done, and the widespread support for the program. This suggests that in the right set of circumstances the use of networks could be a useful tool in promoting CSR within SMEs. Importantly, if used in conjunction with other proposals for reform in this chapter, such as public procurement, stronger trade associations, or even CSR/ business ethics education,\textsuperscript{1559} the networks are likely to be better resourced and will develop a more collaborative culture. In terms of what governments can do to help facilitate networks, associations, and encouraging greater involvement from SMEs, Wolfgang Polt offers some assistance. He suggests policies should be aimed at promoting awareness of the benefits of networks, aiding the search for partners, providing assistance in forming an organisational structure, providing resources, and helping to engender trust amongst the parties.\textsuperscript{1560}

An important aspect of the networks and trade associations proposed here is that they not only address the resource and awareness constraints of SMEs, but also all three motivational stances advanced by Kagan and Scholz. By providing greater access to resources and reducing costs, the rational calculator is encouraged to engage with the network or association and therefore CSR. By providing a means of disseminating best practice

\textsuperscript{1557} Tasmanian Farmers and Graziers Association, Submission 64 to Environment and Communications References Committee, National Landcare Program, August 2014, 5; Landcare Tasmania Inc, Submission 55 to Environment and Communications References Committee, National Landcare Program, 14 August 2014, 5.


\textsuperscript{1559} For instance, it is arguable that managers who undertook a business / commerce degree with a greater focus in ethics and CSR are more likely to support supply chain management initiatives or to donate money to networks such as Landcare.

information on CSR, the organisationally incompetent are assisted. Finally, due to the information being presented through a network or trade association, the information is more likely to be positively received by the political citizens who are suspicious of governments overreaching.

7.4 Other Market-Based Solutions

One of the greatest barriers to SMEs engaging in CSR is they lack the resources, which suggests a need to alleviate the financial costs associated with CSR. One of the greatest opportunities for promoting CSR is through promoting specific initiatives that actually generate a financial benefit (the business case for CSR). Whilst other barriers to these ‘win-win’ solutions exist, such as a lack of awareness of the opportunities for profit, there are significant financial constraints which must be addressed. Chapter 2.5.3.1 outlined the financial situation of most SMEs, characterising them as marginal operations, many of which are at risk of failure in the first few years. In this climate, even initiatives that are demonstrably profitable could be overlooked if they require large upfront costs and deliver longer term benefits. For instance, why should an SME owner be concerned about workers compensation insurance costs decreasing in three years if they are worried about meeting loan repayments by the end of the month? If the truly marginal and cost conscious enterprises are to be encouraged, immediate (or at least short term) assistance will be required.

There is a significant cost associated with these market-based incentives, meaning they should be used sparingly and only where efficient. Given the financial benefits involved, they are also prone to rorting and fraud. John Braithwaite has detailed absurd behaviour in the nursing home industry, detailing homes getting advanced warning of inspections and putting up photos of movie stars, renting pot plants, and putting residents who were asleep into rooms with activities in order to maximise government incentives for making nursing homes more liveable. Richard Titmuss has also noted the perverse outcomes that have arisen from the commercial blood market in the United States noting the substantially higher risk of

1563 At the time of writing, there has been one high profile case this week with the fraud involved in an Australian Jobs program. See: Linton Besser and Ali Russell, ‘The Jobs Game’, Australian Broadcasting Corporation (online), March 12 2015 <http://www.abc.net.au/4corners/stories/2015/02/23/4183437.htm>.
infection at commercial banks versus organisations accepting only voluntary donations\textsuperscript{1565} as money tends to provide an incentive for people with health complaints, such as drug use, alcoholism, and hepatitis, to lie about their medical history.\textsuperscript{1566} Titmuss also found the system to be inefficient through the greater ‘bureaucratization’ associated with a market-based system, as well as additional ‘administrative, accounting, and computer overheads.’\textsuperscript{1567} Importantly, Titmuss argued the private market ‘represses the expression of altruism [and] erodes the sense of community …’\textsuperscript{1568} Thus, it is important to note that market-based regulation can introduce new problems and its appropriateness to a particular problem should be carefully considered.

This section is specifically targeted and not intended to address every possible reform. Whilst there are numerous options for market-based regulation, whether they are loans, tax concessions, taxes, grants, or preferential treatment in procurement, they generally operate in a similar fashion.\textsuperscript{1569} They put a price on undesirable behaviour and seek to create markets where desirable behaviour is more profitable than undesirable behaviour. Therefore, rather than analysing the full gamut of market-based initiatives, discussion is limited to a current initiative that could have substantial benefits to the community (both economic and social) and could be both expanded in scope and exported to other jurisdictions. The example is one where the potential benefits to the government are substantial and the impact on the community is likely to also be substantial. It therefore represents ‘low hanging fruit’ that in most jurisdictions remains unpicked.

7.4.1 The Back to Work Act 2015 (Vic)

The \textit{Back to Work Act 2015} (Vic) is an interesting use of market-based regulation that was proposed in 2014. It essentially provides tax relief for businesses who employ the long term unemployed and other disadvantaged groups. NSW and Tasmania have implemented similar schemes that provide payroll tax relief for taking on new employees. For instance, the NSW ‘Jobs Action Plan’ provides a payroll tax rebate of up to $5000 for employers creating new

\textsuperscript{1566} Ibid 114.
\textsuperscript{1567} Ibid 246.
\textsuperscript{1568} Ibid 245.
jobs for a period of two years or more. Tasmania offers a similar rebate for employers that create new jobs. The difference in the case of the proposed Victorian Scheme that makes it relevant to CSR is it appears more targeted at specific groups such as the long term unemployed.

The minister must publish ‘notice’ of the eligibility criteria in the Government Gazette, but the notice is not regarded as a legislative instrument, ensuring added flexibility in adding additional criteria by absolving the Minister from a need to comply with the requirements of the Subordinate Legislation Act 1994 (Vic). This flexibility has already been utilized. Whilst the original criteria initially applied only to young, retrenched, and long term unemployed workers, this criteria has since been expanded to include refugees, Aboriginal/ Torres Strait Islanders, disability or sole parent pensioners, members of drought affected households, social housing tenants, youth justice clients, or currently unemployed apprentice/ trainees. Clearly with this expanded criteria, this is a powerful avenue for promoting employment within disadvantaged groups.

Critics might raise the implausibility of effecting long term change through this initiative. For instance, there might be employers willing to ‘game’ the system and terminate the employment once the maximum level of financial benefit has been received. This is of course a risk and has been pointed out in other market-based initiatives. For instance, concerns have been raised about the long term viability of initiatives that incentivise farmers to promote the growth of native vegetation on their land. Farmers have made various complaints about such programs noting the longer term consequences of promoting more vegetation for the rest of the farmer’s productive land, unforeseen problems such as pests and undervaluing the cost.

---

1572 Victoria, Parliamentary Debates, Legislative Council, 12 February 2015, 235 (Gavin Jennings).
1573 Back to Work Bill 2014 (Vic) s5(2),(3).
1574 Back to Work Bill 2014 (Vic) Explanatory memorandum clause 5.
1575 Victoria, Victorian Government Gazette no G12, 26 March 2015, 669.
1576 Victoria, Victorian Government Gazette no S320, 29 October 2015, 3.
involved in controlling weeds.\textsuperscript{1578} This would obviously diminish the long term commitment of farmers to the program.

With respect to the \textit{Back to Work Bill 2014} (Vic), the benefits cannot be completely undone with waning commitment from employers. Unlike the native vegetation initiative, where the farmers can simply clear the land and eradicate any benefit of the program, at worst the employer can terminate an employee. Whilst this does not lead to permanent long term employment as intended, it still provides work experience (or alternatively removes a large gap in work experience) that will increase the chances of that employee finding other employment. Whilst high levels of gaming within this initiative would be undesirable, there are guaranteed benefits which reflect the fact that market-based regulation, like other forms of regulation, is not a panacea, but can be useful in certain circumstances. Obviously, there are also deterrents in place to prevent businesses from engaging in illegal behaviour including a requirement to keep proper records, the creation of offences related to misleading information, and granting power to inspectors to enter premises.\textsuperscript{1579}

\subsection*{7.4.2 Conclusion}

The Victorian scheme will arguably generate enormous benefits not just to Victoria, but to the Commonwealth Government. By creating jobs for those who otherwise would struggle to find employment means these people will pay income tax instead of drawing on welfare. From a state perspective, there are also many societal benefits to reducing long term and youth unemployment. It will likely reduce crime, prevent family breakdown, and reduce those accessing other state based training and education initiatives by encouraging private enterprises to train them instead. In one initiative, it targets all three archetypes proposed by Robert Kagan and John Scholz,\textsuperscript{1580} which was addressed in Chapter 4.3 It targets the organisationally incompetent by providing a well-advertised scheme\textsuperscript{1581} and providing the funds to assist with any additional costs, the ‘amoral calculators’ by appealing to their self-interest, and the politically defiant by projecting an image of government as assisting the down trodden and solving a problem with assistance instead of threats.

\begin{footnotesize}
\begin{footnotes}{l}
\textsuperscript{1578} Ibid 1056-9.
\textsuperscript{1579} \textit{Back to Work Act 2015}(Vic) ss 20, 22, 31, 48.
\textsuperscript{1581} The \textit{Back to Work Bill 2014} (Vic) was a major policy platform during the last State election.
\end{footnotes}
\end{footnotesize}
As noted above, the section was not intended to be an exhaustive list of market-based initiatives but there are many creative solutions that have proven to be successful. For instance, in New Zealand there was a push to abolish logging efforts along the West Coast. Instead of simply giving money to residents and the proprietors for lost business, the West Coast Development Trust was formed, which provides loans to local business at better than commercial terms, thus effectively replacing the lost business from logging operations.\footnote{Charlotte Streck, Richard Tarasofsky, and Robert O'Sullivan, \textit{Climate Change and Forests: Emerging Policy and Market Opportunities} (Brookings Institutional Press, 2008) 273.}

Whilst not directly relevant to CSR, the Swedish National Society for Road Safety advertised a lottery whereby the plates of all drivers were recorded and those obeying the speed limit were entered into the lottery, ultimately paid for by the fines of those who were caught speeding.\footnote{Daniele Nosenzo et al, ‘Encouraging Compliance: Bonuses Versus Fines in Inspection Games’ (2014) 30(3) \textit{The Journal of Law, Economics, & Organisation} 623, 624.} Depending upon a regulator’s imagination, there are numerous options that could assist in regulation and could operate in conjunction with more traditional forms of regulation.

### 7.5 Regulatory Tools to Increase Compliance

Whilst the rest of this chapter focuses on measures to promote activities amongst SMEs that go beyond legal requirements, this section focuses on compliance with pre-existing legal requirements. Whilst CSR, by definition involves voluntarily engaging in ‘beyond compliance’ activities, under the model proposed by Archie Carroll, CSR also involves complying with legal obligations.\footnote{Archie Carroll, ‘A Three-Dimensional Conceptual Model of Corporate Performance’ (1979) 4(4) \textit{Academy of Management Review} 497, 499.} A business or corporation must ultimately comply with its legal obligations to be regarded as ‘responsible’. With regards to SMEs, there is clearly much to be done in this area. This section will outline the very poor standards of compliance amongst SMEs. It is clear from this literature that whilst SMEs are generally willing to comply, they lack the knowledge and expertise to do so. This is in part supported by the findings in Case Study 3, which noted a majority of OH&S convictions were a result of a lack of understanding of legal requirements. It is clear that regulators find it difficult to regulate and monitor SMEs, with an inability to inspect premises regularly, making it difficult for regulators to educate SMEs on compliance. In the absence of significantly greater budgets, there is a demonstrable need for creative ways of extending regulators’ influence over SMEs.
Critically, there is a need for efficient regulatory tools that will educate vast numbers of SMEs on their legal obligations at low cost. Clearly this section is intended to raise compliance levels among the SME population. However, merely by pointing to the need for improvement, there is the potential for above compliance behaviour.

7.5.1 Barriers to Compliance and SME Perceptions of These Barriers

As a preliminary point about regulation, compliance, and the relevance to SMEs, there is a clear issue of cost. It is frequently claimed that SMEs are those most affected by compliance burdens. Whilst there are obvious political motivations behind such claims, there is also some truth to them which will be discussed in Chapter 7.5.3. Given SMEs are the businesses least capable of absorbing these costs, any regulatory effort must be approached with caution and a need to keep such burdens at a minimum.

7.5.1.1 Low Levels of Regulator Engagement

From the perspective of regulators, SMEs require the most assistance in interpreting and complying with legislation, whilst regulators find providing assistance to SMEs quite challenging. Managers participating in this survey were asked to gauge the effectiveness of the government’s response to environmental laws. More than half could not answer this question as they had no prior experience with the relevant pieces of legislation or regulators. When removing those SMEs operating within the ‘waste sector’, the figure of SMEs with no ‘regulatory contact or experience’ rose to 75%. In the OH&S realm in the United States, it was calculated that the regulator could only inspect each premise once every 75 years. Current ASIC Chairman, Greg Medcraft, has noted that ASIC inspects insurers every 7 years, the ‘big four’ audit firms every 1.5 years, and in the case of every other audit firm, less than once a decade. A study of the United States chemical industry also noted that in investigations related to workplace deaths, larger enterprises were almost twice as

1586 Ibid 148.
1587 Ibid 150.
1589 Justin O’Brien and Dr George Gilligan, Submission 121 to Senate Economic References Committee, Inquiry into the Performance of the Australian Securities and Investments Commission, 21 October 2013, 15.
likely to have been previously inspected.\textsuperscript{1590} Whilst clearly there is a substantial variance in some of these figures, it is clear that constant surveillance by regulators is simply unrealistic. It is therefore unsurprising that in regards to environmental regulation, estimates suggest 80\% of enforcement actions are initiated by information provided by third parties.\textsuperscript{1591} This is a genuine problem for addressing compliance in SMEs as they are consistently shown to be more reactive (reacting to injuries\textsuperscript{1592} or waiting for regulators to tell them what to do)\textsuperscript{1593} than proactive to issues of compliance, when compared to larger organisations. Despite their overwhelming numbers, they are frequently outnumbered in voluntary initiatives.\textsuperscript{1594} Large businesses are also more likely to use regulators’ publications and information\textsuperscript{1595} and take more comprehensive action in risk assessment and reduction activities.\textsuperscript{1596} SMEs are less likely to record the costs or benefits from investing in better OH&S,\textsuperscript{1597} making it unsurprising that far fewer SMEs believed taking action yielded greater benefits than costs.\textsuperscript{1598}

\textbf{7.5.1.2 Difficulty Accessing Information}

There was a generally poor sentiment expressed towards government responses to regulation. Numerous managers expressed the need to be proactive in obtaining up to date information, suggesting that regulators did not directly target them with any form of regulatory guidance


\textsuperscript{1594} See for instance, Terry Davies, and Jan Mazurek, \textit{Industry Incentives for Environmental Improvement: Evaluation of U.S Federal Initiatives} (1996) Combined Executive Summary for Three Reports Submitted to the IDEA 21 Work Group of the Global Environmental Management Initiative 16, which noted the 60/40 split in favour of larger businesses in the US environmental 33/50 program (check details e.g US/environmental).


Only 16% of the managers surveyed were happy with the level of guidance provided by regulators, with 79% being unhappy and the remaining 5% were undecided.

There was evidence that some small businesses relied more heavily on trade associations than the regulator, noting that the information was more tailored to their individual needs. The findings are curious given other studies have produced far higher (approximately 66%) rates of satisfaction with government assistance.

7.5.1.3 How Do SMEs want to be Regulated?

Results are mixed in regards to the preferences of SMEs in relation to regulation. One UK study found a particularly low level of support for the proposition that additional environmental legislation would produce a positive outcome for the environment. In this study, only 16% agreed with the proposition, of which many qualified this by suggesting it could be a significant financial imposition if environmental laws were too onerous. In stark contrast to this study, another UK survey produced wildly different results, which suggested 60% of those surveyed agreed with a similar proposition. A key reason advanced for this high level of support was the fact that more stringent levels of regulation create a ‘level playing field’ and essentially establishes a minimum standard of behaviour.

One of the participants in the survey described the need for such a level playing field:


The Cowboys that produce things more cheaply by cutting corners, by leaving debris, will prosper against those who have a public conscience. There have to be penalties to put the cowboys out.\footnote{Ibid 36.}

This claim is largely supported by a further UK study which suggested 45\% of respondents felt it was risky to engage in voluntary action due to the risk of loss of competiveness where rivals do not emulate these changes.\footnote{Andrea Revell, David Stokes and Hsin Chen, ‘Small Businesses and the Environment: Turning Over a New Leaf’ (2010) 19(5) Business Strategy and the Environment 273, 283.} In addition, 83\% of SME respondents believed there are competitors who knowingly break the law.\footnote{Judith Petts, Andrew Herd, Simon Gerrard and Chris Horne, ‘The Climate and Culture of Environmental Compliance within SMEs’ (1999) 8(1) Business Strategy and the Environment 14, 23.} Equally, a failure to punish those who are contravening the law is argued to have a demoralising effect on people who comply with the law.\footnote{Ken Devos, ‘Measuring and Analysing Deterrence in Taxpayer Compliance Research’ (2007) 10(2) Journal of Australian Taxation 182, 187-188.} It is perhaps unsurprising then that 70\% of the same respondents felt that penalties were too low and 53\% thought regulations were too weak.\footnote{Judith Petts, Andrew Herd, Simon Gerrard, and Chris Horne, ‘The Climate and Culture of Environmental Compliance within SMEs’ (1999) 8(1) Business Strategy and the Environment 14, 22.} Additionally, 60\% of respondents felt that legislation which imposed environmental requirements on businesses ensures a level playing field.\footnote{Andrea Revell, David Stokes and Hsin Chen, ‘Small Businesses and the Environment: Turning Over a New Leaf’ (2010) 19(5) Business Strategy and the Environment 273, 283.} Equally SMEs have expressed reservations about a purely self-regulatory approach.\footnote{Fiona Tilley, ‘The Gap Between The Environmental Attitudes and the Environmental Behaviour of Small Firms’ (1999) 8(4) Business Strategy and the Environment 238, 242.} A further study from New Zealand established a form of ‘middle ground’ suggesting the need for a complementary system that involves both legislation and self-regulation. In this study 87\% agreed with the proposition that some level of self-regulation is required to ensure environmental protection.\footnote{Sue Cassells and Kate Lewis, ‘SMEs and the Environmental Responsibility: Do Actions Reflect Attitudes?’ (2011) 18(3) Corporate Social Responsibility and Environmental Management 186, 194.} This is consistent with another UK study where 91\% argued regulation alone would not work.\footnote{Judith Petts, Andrew Herd, Simon Gerrard, and Chris Horne, ‘The Climate and Culture of Environmental Compliance within SMEs’ (1999) 8(1) Business Strategy and the Environment 14, 22.} Reformers and academics should approach statistics relating to satisfaction with the regulatory system with caution. Previous studies have shown quite contradictory evidence presented by SMEs, whereby they complain of the impacts of regulation, but few can identify direct impacts on them.\footnote{Sara Carter, Colin Mason and Stephen Tagg, ‘Perceptions and Experience of Employment Regulation in UK Small Firms (2009) 27 Environment and Planning C: Government and Policy 263, 276.}

Further studies have looked at SMEs preferences for government support and intervention with one study yielding the following results: Enforcing a level playing field (47\% of
respondents), regional and sector specific networks (44%), public dissemination of information to raise awareness of environmental and economic risks (41%), advanced notice of regulatory changes (41%), examples of best practice (32%), education and workshops (25%), and pressure through public procurement (16%). Where information is being communicated to SMEs, there is a need to review the method of delivery. Some SMEs have expressed a feeling of ‘bombardment’ on the basis that multiple government agencies and NGOs approach them. Therefore, SMEs expressed a desire for a coordinated approach, rather than overlapping ad-hoc approaches. A report produced for the European Union, made reference to a need for ‘one-stop shops’ when it comes to regulatory guidance. Sensis data also suggests Australian firms prefer face-to-face discussions (46%), internet (22%), telephone discussions (16%), and information events (7%). The Sensis surveys also reveal the need for Australian regulators to better advertise the availability of the information.

7.5.2 Solutions to Non-Compliance and Promoting ‘Beyond Compliance’

It is clear that a lack of knowledge and expertise play a significant role in non-compliance amongst SMEs. This was demonstrated, not only in this section, but also in Case Study 2 in Chapter 6.3 which considered the causes of OH&S convictions. Much like Case Study 2, there is a repudiation of the idea that every firm is a rational or amoral calculator when it comes to compliance. These surveys demonstrated high levels of support for at least a minimal level of mandatory regulation to ensure a ‘level playing’ field. Surveys also suggest SMEs are not entirely happy with the delivery of information from regulators. This adds empirical support to responsive regulation that views the role of a regulator as being more educative than punitive.


Christine Parker, drawing upon the work of David Cruickshanks-Boyd and Jim Mantle proposes a four pronged strategy to regulation.\footnote{Christine Parker, \textit{The Open Corporation: Effective Self-regulation and Democracy} (Cambridge University Press, 2002) 265 citing David Cruickshanks-Boyd and Jim Mantle, ‘Best Practice in Health, Safety and Environmental Regulation’ (1996) \textit{Environmental Law, Policy and Public Opinion} 100.} First, industry leaders should be targeted for self-regulation and ‘beyond compliance’, through incentives such as awards or formal recognition, penalty discounts for faults detected, reduced regulatory attention, etc.\footnote{Christine Parker, \textit{The Open Corporation: Effective Self-regulation and Democracy} (Cambridge University Press 2002 265, 267-268).} Public awards can draw attention to compliance or CSR issues in a similar way that prosecutions and enforcement activities can.\footnote{Peter Grabosky, ‘Regulation by Reward: On the Use of Incentives as Regulatory Instruments’ (1995) 17(3) \textit{Law & Policy} 257, 263.} Secondly, those who are adequately complying with their legal obligations should also be encouraged to voluntary exceed legal compliance with these same rewards. Thirdly, those who are willing to comply, but lack the information and expertise to do so, should be targeted with education, and those who are unwilling to comply should be coerced into compliance with traditional penalties.\footnote{Christine Parker, \textit{The Open Corporation: Effective Self-regulation and Democracy} (Cambridge University Press, 2002) 265.} This model essentially encompasses a responsive regulation model, but expands the role of regulators to also promote ‘beyond compliance’ measures through self-regulation. Importantly, if the ‘beyond compliance’ measures are rewarded, this would require some form of verification which can provide information to the regulator about the realistic limits of what businesses can achieve.\footnote{Ibid 267-268.} Thus, this would not only encourage some businesses to exceed their legal obligations, but also assists in forming or amending any mandatory regulation.

On the specific subject of awards and formal recognition, the regulation of forest protection is an example where it has been implemented successfully. Winners are presented with an award and advertised in a widely circulated forestry news publication.\footnote{Graham Wilkinson, Mick Schofield, and Peter Kanowski, ‘Regulating Forestry — Experience With Compliance and Enforcement over the 25 Years of Tasmania's Forest Practices System’ (2014) \textit{40 Forest Policy and Economics} 1, 5.} A testimonial from an award winner provides insight into the benefits of such an approach:

\begin{quote}
It’s great for us that we have won this forest practices award. For us, it’s an acknowledgement of the quality of work which we strive to achieve. Our motto is safety and quality before quantity. Because of this ethos, we are not just focused on prices and so we do not always offer the most competitive price.
\end{quote}
Now, thanks to this award, we can justify our approach. This will help in maintaining high standards as it will justify our rates, which are higher than some other contractors.\textsuperscript{1627}

Christine Parker has previously proposed a ‘label or mark certifying a high level of compliance’ as a means to promote self-regulation,\textsuperscript{1628} suggesting an awards program could be extended. For instance, inspectors might have the discretion to recommend an exemplary business for some form of formal recognition. Whilst small, this initiative could assist in building a business case for CSR by enhancing a business’s reputation. Furthermore, it should reinforce a positive and fair image of the regulator that will assist the regulator in its enforcement and education initiatives. Importantly, such initiatives are inexpensive, and serve as a supplement to other forms of regulation with few obvious drawbacks.

Moving specifically to the subject of encouraging more companies to comply, the use of self-audit or inspection is worthy of consideration, and has been advocated by many eminent scholars in the regulatory field including Neil Gunningham and Peter Grabosky. The level of formality can vary in such initiatives. For instance, simply putting an audit or self-inspection document on the regulator’s website with no other formality attached is an inexpensive way of educating businesses on how to comply with their legal obligations. Even though there is no substantial difference in this method of delivery from a fact sheet or other materials commonly used by regulators, the fact that the audit conforms (or is at least similar to) a document used by inspectors imparts greater authority on the document. Whilst subtle, the difference between a fact sheet that states ‘have you done X, Y, Z’ compared with a self-audit report that states ‘as inspectors we are looking for A, B, C’ is that the second example conveys quite clearly that failing a self-audit puts the business in non-compliance and is therefore risking a sanction. Given the inexpensive nature of this type of self-audit it should be considered. However, the lack of a coercive element suggests it might be rarely utilized. For instance, it requires businesses to visit the regulators website, making it less useful than more formal schemes. Furthermore, without a credible threat of inspection, there is perhaps little to be gained for a business completing a self-inspection. These concerns could be alleviated with the assistance of trade associations promoting these materials.


\textsuperscript{1628} Christine Parker, \textit{The Open Corporation: Effective Self-regulation and Democracy} (Cambridge University Press, 2002) 269.
There are many examples of formal self-inspection or audits that have been implemented in Australia and overseas. The Queensland workplace safety regulator has previously made its audit criteria available to businesses.\(^{1629}\) Similarly, a scheme in WA requires businesses to disclose the amount of ‘waste solvent’ generated annually, and disclose plans for waste minimization.\(^{1630}\) The benefits of these approaches, and their superiority over less formal approaches, lie in a greater uptake. These plans and audits can be assessed and used as a means of determining which premises are targeted for inspection when these audits or plans demonstrate activity that ‘fall outside industry norms’.\(^{1631}\) Alternatively, where there is a substantial uptake of voluntary self-audits, regulators can target those who do not participate.

Other initiatives have combined a variety of elements to strengthen the overall self-inspection scheme. For instance, Minnesota has previously encouraged self-inspection through ‘Green Star’ awards to those businesses that complete a full audit, and specifically in the printing industry, encouraged the main trade association to form a company to conduct inspections, whilst offering a partial amnesty from sanction.\(^{1632}\) The amnesty was a concern to the regulator, but any defects detected by voluntary inspection received special consideration in a determination about the action taken or the penalty pursued by the regulator.\(^{1633}\) Although not linked to formal schemes, and more applicable to larger organisations that self-inspect of their own volition, many states in the United States regard self-inspection and related documents as privileged for the purposes of any investigation by a regulator.\(^{1634}\) Whilst there are many creative ways to promote these initiatives, there is still a need to demonstrate a strong capacity for inspection and enforcement. One of the Minnesota Pollution Control Agency self-audit initiatives yielded only a 4.6% rate of participation amongst the body shop/auto repair industry.\(^{1635}\) The agency followed up a second time, threatening an inspection for those who did not participate and achieve a far greater participation rate.\(^{1636}\) It is critical to emphasise that whilst self-regulation can have a significant role in promoting


\(^{1630}\) Ibid.

\(^{1631}\) Ibid.


\(^{1633}\) Ibid.


\(^{1636}\) Ibid.
CSR and ‘beyond compliance’ measures, traditional regulation and surveillance is a vital part of any scheme, primarily because it works. Various studies emphasize that citations for non-compliance reduce (by as much as 50%) after the first inspection,\textsuperscript{1637} with citations increasing as the time between inspections increases.\textsuperscript{1638} Most importantly, in the case of OH&S, injuries decline for several years following an inspection.\textsuperscript{1639} Furthermore, positive actions such as implementing a formal OH&S system are motivated primarily by legal obligation, with self-interested reasons such as reduced insurance costs and adverse publicity having less of an impact.\textsuperscript{1640}

Aside from possible incentives, a positive working relationship with the regulator and other key stakeholders is necessary for any self-regulatory measure to be successful. In a study of why voluntary environmental initiatives in the United States had failed, a ‘lack of a statutory base’, ‘EPA management’, and ‘pervasive mistrust’, were found to be the primary factors.\textsuperscript{1641} By contrast, an extremely successful initiative (greater than 70% participation and reduction in OH&S risks by 51-69%)\textsuperscript{1642} in Finland was designed by a partnership between regulators, trade associations and unions, rather than being offered on a ‘take it or leave it’ basis by the regulator.\textsuperscript{1643} These findings emphasize the value of a responsive regulation approach, especially as it applies to CSR and other forms of self-regulation. Whilst there is a need to maintain a mandatory statutory scheme and a genuine threat of detecting non-compliance, if there is to be any prospect of encouraging ‘beyond compliance’ behaviour, the mandatory aspects of the scheme must be policed in a way that projects an image of fairness and cooperation. If these trust issues can be overcome, there are demonstrable benefits to having


\textsuperscript{1643} Ibid 685.
government bodies on board as the government affiliation gives any initiative brand recognition, international recognition, and a formal endorsement by government. 1644

7.5.3 Analysis / Discussion

This section highlights the landscape faced by regulators attempting to improve compliance. It is clear that SMEs often struggle to comply with legal obligations, primarily because they do not know how to comply. Given the overwhelming number of SMEs, regulators clearly struggle to maintain a constant presence, with inspection rates ranging from once every few years to once every century. Given the extent of these problems, it is unlikely that there is a solution that will achieve full compliance from every business. This is argued in the literature. 1645 With these realistic expectations in mind, it is necessary to find solutions that expand regulatory coverage and stretch a regulator’s budget further. Neil Gunningham and Darren Sinclair propose several factors for success in any regulatory initiatives. 1646 First, they argue there is a need to appeal to a business’s self-interest and focus on ‘win-win solutions’ 1647 (compliance action that also generates a profit). Secondly, there is a need to form partnerships with key stakeholders such as trade associations. 1648 Thirdly, any information must come from the right sources such as ‘customers, suppliers and competitors, industry peers, networks and associations’. 1649 Therefore, a collaborative approach is required and regulators must use trade associations and other groups, as a means of expanding regulatory coverage. This section detailed the fact that many groups get regulatory advice from sources other than the regulator. Furthermore, by involving trade associations and other industry bodies, there is an added element of legitimacy that can promote compliance (and ‘beyond compliance’) as good business practice, without relying on a threat of sanction. Additionally, where SMEs are involved in a supply chain that wins government contracts, part of the assistance offered by large enterprises might entail advice on compliance, or the

1646 Ibid 17.
1647 For instance, the Health and Safety Executive (UK) have put out SME case studies demonstrating the possible savings in improving OH&S systems. See: Health and Safety Executive, Six SME Case Studies that Demonstrate the Business Benefit of Effective Management of Occupational Health and Safety (2006) Research Report 504, v.
1649 Ibid.
procurement rules might require a contractor’s entire supply chain to comply with its legal obligations, thus necessitating some level of monitoring from the lead contractor.

Whether the strategy employed is informational, reward based, or sanction based, regulators ultimately need the cooperation of other groups. Surveys noted in this chapter demonstrate that businesses actually want to see wilfully non-compliant operators shut down. Responsive regulation outlines a strategy of providing education to the majority of businesses who want to comply, but do not know how, leaving sanctions for the minority who flagrantly ignore their legal obligations. This suggests there is a significant role for initiatives, such as self-audits, rewards, and other informational or educative campaigns, with a threat of sanction still in the background should these initiatives fail to bring about substantial change.

7.6 Conclusion – Putting the Framework Together

From the outset of this chapter, and throughout much of this thesis, it has been noted that there is unlikely to be a single solution to the very complex problem of promoting CSR within SMEs. SMEs are heterogeneous. They range from a single employee newsagent with minimal environmental impact to a 250 employee chemical manufacturer. They all suffer different barriers to engaging in CSR (or indeed simply complying with current regulations); they will have wildly varying financial situations, levels of education, and industry experience. Their motivations for engaging or not engaging in CSR will differ. Furthermore, each regulatory tool suffers from some form of critical weakness, whether it is through a lack of enforceability in self-regulation, or the potential expense of many forms of market-based regulation. The best a government can achieve is to employ a range of initiatives that address the differences within the SME population, and complement, rather than hinder one another. Neil Gunningham and Darren Sinclair argue that in most situations, regulatory pluralism or a range of options are preferable to ‘harness the strengths of individual mechanisms while compensating for their weaknesses through the use of additional and complementary instruments.’ 1650

This range of solutions addresses the three primary archetypes of businesses and their motivations for compliance (in this instance ‘beyond compliance’). It targets the ‘amoral

calculators’ by indulging their self-interest. Public procurement and other forms of supply
chain management will create a market for CSR products and the solution advocated in that
section will involve larger companies assisting to make SMEs’ procedures better. The other
market-based incentives, albeit not fully discussed, will potentially assist by making it
cheaper to engage in CSR, and more expensive to do nothing. This has a cumulative market-
based effect, because, by encouraging more and more businesses to engage in CSR (and
rewarding that endeavour), it places those who do not engage in CSR at an increasingly
competitive disadvantage.\textsuperscript{1651} In the case of compliance, solutions such as rewarding and
encouraging self-audit makes it increasingly difficult to justify non-compliance, as
compliance is made easier, and by expanding regulatory coverage, non-compliance will be
detected more often by regulators. On the subject of the organisationally incompetent, this
framework will educate them in a variety of ways. Reforms to business school education will
create a new generation of ethically and CSR minded students. Whilst many SMEs will not
require managers with an MBA or business school qualification, many will require
professional support, such as accountants who may be able to identify cost savings or other
financial benefits in taking up CSR initiatives. Furthermore, trade associations disseminate
both CSR and regulatory information. This was demonstrated at length by Case Study 3
involving MLA in Chapter 6.4. Regulators also have a clear role in education, a role which
would be strengthened by initiatives to expand their regulatory coverage. Lastly, the
politically defiant are placated by receiving information from trusted sources, such as trade
associations, and witnessing a government encourage CSR through incentives, not lecturing,
imimidating, or demonizing.

The two\textsuperscript{1652} primary deficiencies that prevent SMEs from complying with existing laws and
engaging in CSR are a lack of resources and a general lack of awareness, whether it is
ignorance of their own impacts on the community, or of possible solutions. This framework
again addresses both points. The lack of resources can clearly be addressed by some form of
market-based initiative that alleviates some of the financial burden. Additionally, the
requirement of larger companies assisting SMEs to tender for government contracts also
assists by potentially providing both financial and technical expertise. Trade associations can
also alleviate these financial burdens indirectly, by providing easy to access advice (whether

\textsuperscript{1651} For instance, not only will they have hopefully gained from pursue win-win solutions, but they will also gain
through an enhanced reputation for safety, environmental protection, etc.
\textsuperscript{1652} There is of course a third, which is attitude. This was effectively considered in the discussion of the
politically defiant in the previous section.
it relates to complying with regulation, engaging in CSR, or disseminating its own research), thus reducing staff time required to produce or obtain this information by other means. Clearly the arguments advanced when targeting the organisationally incompetent with education are essentially the same, and are therefore reasserted here as targeting the general lack of awareness of SMEs. Importantly, this non-interventionist approach which involves trusted sources of information, such as trade associations, addresses the third deficiency or barrier of SMEs engaging in CSR, which is attitude. It is more difficult for SMEs to justify doing nothing when there are financial incentives in place and assistance from third parties, rather than more legal regulation.

As a final point, these five broad categories of reform complement one another by addressing some of the weaknesses of the other reforms. For instance, business school education might prompt more ethical behaviour from many students. In addition, education could be strengthened by a perceived legitimacy if there are industry guest speakers and partnerships, possibly arranged by trade associations. This education is further enhanced by emphasizing that not only is ethics and CSR a moral imperative, but a financial one as well. Market-based incentives that make certain initiatives profitable would emphasize this, as well as opening up valuable markets in the public sector. On the subject of public procurement and private supply chain management, tokenism often employed by larger organisations demanding SMEs to improve their operations, whilst being unwilling to pay a premium or even meet the same standards, might be addressed through business school and trade association-based education. The perceived lack of enforceability of trade association-based self-regulation is enhanced by providing financial incentives through public procurement and other market-based regulation. It might also be improved by a more collaborative and educative stance by regulators, armed with the knowledge that they have greater regulatory reach through creative means, such as self-audit, and can either take a punitive or persuasive stance, with a preference for the latter. Market-based regulation will be inappropriate in many circumstances meaning other forms of regulation will need to fill the void. Trade associations can assist with the promotion of all forms of regulation and provide assistance to SMEs to comply (or alternatively encourage voluntary compliance).

Traditional command and control regulation, enforced by regulators with expanded regulatory reach, can set a minimum baseline and emphasize that if a business is not
constantly trying to improve, it may fall into non-compliance. As a final point, it was noted that regulatory enforcement is too expensive to constantly monitor every business all the time. Regulators simply do not have the resources to inspect all premises regularly, and even if they did, they could not prosecute all violations. Thus, if other strategies, such as business school education, public procurement, trade associations, and market-based education can push more and more businesses into compliance, then a regulator can concentrate its efforts on those that are genuinely unwilling to comply.

By illustrating the potential synergies evident with certain combinations of regulatory tools, this section has highlighted the need to employ a tranche of reforms to engage all the different types of SMEs. This is where the strength of this framework lies. Most of these solutions have been presented individually in some form before (albeit many of the specific solutions are novel). The strength of this approach arises in putting together a framework of solutions, all which complement one another and which address their respective weaknesses. However, it should not be assumed that a plurality of regulatory approaches will be of benefit. Promoting CSR is a complex problem, even more so within SMEs. If this were not the case, then the problem would have been solved decades ago. If the problem is to be solved or the situation at least improved, this will require a variety of institutions tackling the issue on multiple fronts. It is possible for combinations to hinder compliance where they reduce the effect of other instruments, thus lowering the overall utility of both regulations.

An obvious example was presented above in the case of a combative command and control approach by regulators destroying relationships, as well as limiting the participation in voluntary initiatives. Furthermore, by investing in a scheme that yields no benefits, the regulator will have fewer resources to employ traditional command and control regulation, thereby weakening that instrument as well. This thesis asserts for the myriad of reasons listed above that the framework listed in this chapter achieves the aim of enhancing regulatory efforts without compromising or causing unintended consequences that hinder regulation.

An important point to make is that regulation tends to disproportionately affect SMEs and impose proportionately higher compliance costs. Most of the solutions, while regulatory in nature, do not impose additional compliance burdens on SMEs. The only solution likely to

---

1653 For instance, trade associations have been advanced as critical to CSR, whereas the MLA model has not been analysed.

impose greater compliance cost is the public procurement option, but as noted, it is assumed that much of the SME involvement will be at the subcontractor level with the costs falling on larger enterprises at the tender stage and in assisting their supply chains. Furthermore, the use of trade associations, public procurement (by having lead contractors support their supply chain), and market-based regulation is intended to help alleviate the cost of SMEs engaging in some form of CSR activity. The following table represents how each reform affects the barriers and motivations of SMEs towards CSR and compliance generally.

Table 14: Summary of the Impact of Proposed Reforms

<table>
<thead>
<tr>
<th>Barriers</th>
<th>Solutions</th>
<th>Education</th>
<th>Procurement / Supply Chain</th>
<th>Trade Associations</th>
<th>Market-Based Solutions / Incentives</th>
<th>Creative Tools for Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lack of Awareness</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Lack of Resources</td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Attitude</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Barriers</td>
<td>Amoral Calculator</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Politically Defiant</td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Organisationally Incompetent</td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

As the table demonstrates, there is a need for a framework consisting of multiple reforms. Four of the five solutions do not address all barriers and motivations. In the case of trade associations, few would argue it is wise to rely exclusively on them to promote CSR. In addition, whilst supply chain management addresses all but one of the groups, the coverage is limited due to it affecting only those businesses performing some role in government contracts. Thus, it is clear that a variety of solutions are required to address all the main

---

The question mark is intended to denote the fact that while compliance activities are not specifically designed to assuage the politically defiant, this reform nevertheless has implications for political defiance. Presented in the right way, these activities should receive at least lukewarm support from the defiant. Of course there is a risk that they will be resisted where the regulators’ actions are perceived to be overreaching.
barriers to compliance and all motivations. Additionally, by addressing most barriers and motivations by multiple reforms, they augment one another and expand the regulatory reach as some reforms will only be appropriate in certain circumstances (for instance the MLA model of trade associations clearly could not work for all industries). Therefore, as argued at the start of this chapter, the framework provided creates many synergies and will be more effective than any individual reform.
Chapter 8: Concluding Remarks

This thesis aimed to advance an understanding of SMEs potential contribution to CSR, and to propose a framework that might promote more SMEs to increase their engagement in CSR. Three primary research questions were adopted.

Research Question 1:

To What extent are SMEs a critical component of the CSR debate?

Research Question 2:

What are some of the unique characteristics of SMEs which prevent them from engaging in CSR and require a different regulatory approach?

Research Question 3:

What are the potential regulatory solutions to address the problem of promoting CSR within SMEs?

Having addressed these questions in previous chapters, these questions can now be answered in detail.

8.1 To What Extent are SMEs a critical component of the CSR debate?

Chapters 2 and 6 provide an empirical basis for suggesting SMEs are a critical part of any debate on CSR. Chapter 2.4 details the limited literature available relating to SMEs negative contributions to the environment and workplace safety. Broadly, the conclusion that can be drawn from these studies is that SMEs are the overwhelming majority of businesses in Australia (99%). Furthermore, despite each individual SME’s minor contribution to the environment and other aspects of CSR, their cumulative contributions are substantial and in many instances, outweigh the contributions of larger enterprises. The literature notes
substantial contributions to global pollution, CO₂ emissions, waste discharges, overall environmental impact, energy use, and workplace injuries. Case Study 1 in Chapter 6.2 expands upon this work. Case Study 1 specifically targets the proportion of environmental and workplace safety related prosecutions that can be attributed to SMEs conclude that they are 66% and 77% respectively. Thus, it can be concluded from this case study that SMEs are an important part of the CSR debate as SMEs contribute to a substantial proportion of non-compliant behaviour that leads to prosecutions.

8.2 What are some of the Unique Characteristics of SMEs which prevent them from Engaging in CSR and Require a Different Regulatory Approach?

Chapter 2.5.3 provides substantial insight into the barriers to CSR experienced by SMEs. Broadly, they can be placed into three groups. First, SMEs experience substantial resource constraints. This is predominantly a financial issue, although the lack of resources extends into a lack of expert staff, and a lack of time for the owner-manager to take on a CSR role. Secondly, a general lack of awareness and the information required to implement some form of CSR acts as an additional barrier. Thirdly, attitudinal barriers exist. This barrier has the tendency to cut across the other two, for instance there is a commonly held view that SMEs do not have a serious impact on the environment. This clearly exists as both an attitudinal and awareness barrier. Chapter 4.3 briefly notes that there are three primary archetypes of businesses who do not comply with regulation: The amoral calculator, the politically defiant, and the organisationally incompetent. These are the three attitudes which act as barriers to the uptake of CSR initiatives. Case Study 2 in Chapter 6.3 was designed to quantify the

1663 Whilst incompetence is not itself an attitude, it could be the result of attitudes such as a manager being blasé, not paying attention to the finer details, regarding legal compliance as being told what to do, etc.
extent to which these attitudes and barriers cause SMEs to be in non-compliance, leading to prosecution. At least in the area of workplace safety, there is no evidence of either amoral calculation or political defiance. Non-compliance appears to be the result of organisational incompetence (described as a lack of awareness of either legal requirements or a material fact, for instance that an employee is not a fully qualified electrician, or that guards are removed from certain equipment), which resulted from having insufficient checks and procedures in place. This leads to an inevitable conclusion that the primary method of tackling CSR within SMEs should involve education presented from a number of sources, whether it is through regulators, tertiary education, or stakeholders such as trade associations. While Case Study 3 in Chapter 6.4 could not find any evidence of financial or resource issues causing non-compliance, several studies presented in Chapter 2.5.3.1 note these constraints, suggesting that there is a need to provide some form of financial relief for SMEs to engage in CSR.

Chapter 2.5 outlines the differences between large corporations and SMEs in engaging in CSR. In certain circumstances there are opportunities for win-win outcomes, such as cost reductions in high environmental impact industries, but for most SMEs, the financial benefits are less obvious. The potential for lost sales through poor conduct is also potentially mitigated by a lack of public profile, although, as noted in Chapter 2.5.1.1, SME reputations are a complex issue. Thus, the drivers for SMEs engaging in CSR differ quite substantially to their larger counterparts. In many instances, SMEs did not consider their actions to be a form of CSR, but regarded them as good business practice. The manner in which SMEs implement any CSR initiatives is also quite different, compared with larger businesses. They are less formal and tend to focus on the local community. The literature, taken as a whole, suggests that SMEs differ quite substantially in their approach to CSR when compared to larger enterprises. This leads to an inevitable conclusion that promoting CSR within SMEs requires a substantially different approach, and that one size fits all solutions directed at larger enterprises will not sway SMEs.

Having noted that SMEs require an approach to CSR tailored to their own specific circumstances, Chapter 5 concludes that SMEs are largely ignored. Whilst the ASX Corporate Governance Recommendations do promote CSR, by definition, SMEs do not meet the tests
required of listing.\textsuperscript{1664} Furthermore, only a third of SMEs are incorporated.\textsuperscript{1665} Thus, the \textit{Corporations Act 2001} (Cth) is not directly relevant to them. Public procurement is a further means by which governments in Australia promote CSR. Whilst the use of procurement rules to promote CSR is laudable, the practical reality is that adherence to these rules is not guaranteed to create change amongst SMEs. A review of public procurement in IT, noted that many Australian SMEs withdrew entirely from government contracts, and most SMEs are at least selective in which tenders they participate in.\textsuperscript{1666} This tends to suggest that SMEs’ involvement in public procurement is limited to being contracted by a third party who won the tender. Chapter 7.1.2.1.3 notes that this could be a problem, as there is a tendency for tokenism and larger enterprises pushing obligations onto SMEs without improving their own operations. There is also further distance in the relationship between governments and subcontractors, making monitoring and enforcement more difficult. CSR is also promoted through the use of quite specific environmental, workplace safety, and other supporting legislation which imposes minimum standards. Clearly, this legislation applies equally to SMEs, but questions linger as to its effectiveness. Chapters 2.5.3.2 and 7.5.1.1 demonstrates that SMEs generally have a very poor awareness of regulatory requirements and experience limited contact with regulators. Thus, in this instance, the legal solution quite clearly addresses CSR within SMEs. However, poor enforcement ensures that its impact is limited.

In summary, the above evidence identifies a clear problem when addressing CSR within SMEs. SMEs clearly have a different experience with CSR compared to larger businesses. This demonstrates an obvious need to have some form of regulation in place that is specifically tailored to SMEs. Quite clearly, the current Australian approach is insufficient, at times excluding SMEs altogether. These findings establish a clear need for reform.

\textsuperscript{1664} ASX Listing Rules 1.2 - 1.3
8.3 What are the Potential Regulatory Solutions to Address the Problem of Promoting CSR within SMEs?

Interestingly, there was a fairly large group of SMEs that engage in some form of CSR, and other SMEs that were at least receptive to the idea of CSR. A review of the literature in Chapter 2.5 identified a ‘value-action gap’, whereby many firms did not act upon their purported ethical tendencies. Perhaps the most important conclusion of Chapter 2 was the variation in motivations and barriers to CSR that SMEs experienced. The heterogeneous nature of SMEs suggests there is no single solution that will solve the problem of promoting CSR within SMEs. A framework of solutions will be required in order to address the many barriers and motivations to engaging in CSR that SMEs experience. Interestingly, the literature suggested that some firms engaged in CSR without directly considering the actions to be ethical, but rather good business practice. This suggests that ‘win-win’ solutions or the business case for CSR is a powerful element of any policy framework.

Chapter 4 expands upon the need for a framework of reforms. Chapter 4 assesses the utility of regulatory tools at a government’s disposal. The overwhelming conclusion reached by Chapter 4.7 is that no specific tool could be said to be superior to another, or will work effectively in all circumstances. Each regulatory tool suffers from some form of weakness, whether it is lack of enforceability, lack of flexibility, or otherwise, once again lending support to the argument for some form of regulatory pluralism. Ultimately, a framework consisting of several reforms targeted both at addressing the different types of SMEs, and at mitigating the weaknesses of each individual regulatory tool, will be required to engage the full gamut of SMEs. Five broad reforms are proposed in Chapter 7 as a sound framework for promoting CSR within SMEs. They involve a combination of business school education, public procurement, trade associations, select market-based regulation, and measures to better enforce current laws such as self-audit.

1667 In the introduction to that section.
1670 E.g. the amoral calculators, politically defiant, and the organisationally incompetent.
These reforms are selected for two reasons. First, they each address at least one of the critical failings of SMEs, or their motivations. For instance, business school education should mitigate the awareness or knowledge barriers that SMEs experience, whilst also orienting students towards more ethical mindsets. Equally, market-based solutions provide financial incentive for those motivated by self-interest (amoral calculators) and assists with alleviating the financial burdens that might otherwise prevent an SME from engaging in CSR. Secondly, these reforms are intended to be complementary. For instance, one of the weaknesses of self-regulation or engaging trade associations to promote an initiative is that there is no obligation that can be enforced. However, by applying pressure in a variety of ways, there is a greater expectation that such an association will assist. For instance, a trade association which cared about its members’ interests is more likely to proactively promote CSR where there are financial incentives in place, where government contracts might be at risk, and/or when there is a greater threat of inspection and sanction, either for non-compliance or non-participation in a voluntary scheme. More punitive measures are also likely to be more readily accepted by the politically defiant when accompanied by incentives and assistance. These examples demonstrate the intent of this framework. It both addresses specific problems via individual reforms, and creates many synergies, whereby the overall framework is stronger than the sum of its reforms.

8.4 Future Directions for Research

Throughout writing this thesis, it became clear that several glaring gaps in the literature existed. First, it was noted that there is a lack of empirical data relating to SMEs’ contributions to the more negative aspects of business such as the environment and workplace injuries. Whilst Case Study 1 in Chapter 6.2 produced some useful empirical data, there is clearly much more that can be done in this area. There is a need for statistics in more countries, both to reaffirm the accuracy of pre-existing data, but also to allow for cross-cultural comparisons. Such comparisons enable an analysis of which countries are the most successful in reducing SMEs’ impact and why.

Furthermore, there is a glaring need to be able to precisely quantify the financial benefits of engaging in CSR. Despite conducting substantial research in the area, only one study could
be located which identified precise financial benefits (e.g. dollars saved) by an SME engaging in CSR. Throughout this thesis, the importance of the profit motive was noted repeatedly and thus it is crucial to be able to present raw data to SMEs. This will ultimately add substance to the claim that CSR is a profitable exercise and is likely to increase SMEs’ enthusiasm for CSR.

8.5 Conclusion

Broadly stated, this thesis has advanced several key arguments. First, SMEs are important to CSR due to their substantial economic and non-economic contributions. Secondly, SMEs differ quite substantially from larger enterprises, and therefore require a tailored approach to CSR. Thirdly, in the demonstrated absence of such an approach, there is a clear need for reform, with business school education, trade associations, public procurement, options to enhance compliance, and market-based solutions being sound options for reform. These reforms are based upon research in the context of case studies, with reference to both corporate and regulatory theory, and are aimed at addressing the barriers and drivers of the diverse SME population.

Whilst the problems identified in this thesis might seem substantial and numerous, several non-invasive reforms were outlined in Chapter 7. This means that quite substantial gains could be made without inflicting ‘red tape’ on SMEs. As has been stated on numerous occasions, one SME changing a few light bulbs might seem unimportant. However, if this is replicated across several million SMEs, then this will yield substantial benefits. Thus, the problem is not insurmountable. It is a matter of finding a means of communicating with a large amount of businesses, and doing so in a way that appeals to their nature, whether it be self-interest, fear of sanction, altruism, or otherwise. Adopting the reforms outlined in Chapter 7 would be a noteworthy step towards this laudable goal.
Appendixes

Appendix 1A – Results for Case Study 1 – EPA Convictions

EPA

<table>
<thead>
<tr>
<th>Company name</th>
<th>Date of offence</th>
<th>Classification</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aargus Pty Ltd</td>
<td>22/02/2013</td>
<td>SME</td>
<td>No report</td>
</tr>
<tr>
<td>Alcobell Pty Ltd</td>
<td>4/10/2012</td>
<td>SME</td>
<td>No report</td>
</tr>
<tr>
<td>Alexandria Landfill Pty Ltd</td>
<td>23/05/2012</td>
<td>Large</td>
<td>Report - assets of $250 m it is connected to Argus case - but different offence</td>
</tr>
<tr>
<td>Andy's Earthworks Pty Ltd</td>
<td>22/01/2013</td>
<td>SME</td>
<td></td>
</tr>
<tr>
<td>Atlantic Pacific Foods Pty Ltd</td>
<td>15/08/2013</td>
<td>SME</td>
<td>No report</td>
</tr>
<tr>
<td>Ausgrid</td>
<td>22/04/2013</td>
<td>Government</td>
<td>Government owned corporation</td>
</tr>
<tr>
<td>Austar Coal Mine Pty Ltd</td>
<td>12/12/2011</td>
<td>SME</td>
<td>Subsidiary of Yancoal Australia = large</td>
</tr>
<tr>
<td>B.D &amp; M.C Lewis Pty Ltd</td>
<td>12/04/2011</td>
<td>SME</td>
<td>No report, no website</td>
</tr>
<tr>
<td>Bent Christopher</td>
<td>17/09/2013</td>
<td>Illegal Business</td>
<td></td>
</tr>
<tr>
<td>Big River Group Pty Ltd</td>
<td>11/05/2011</td>
<td>Large</td>
<td>Report - 350 employees + $84.9 m assets</td>
</tr>
<tr>
<td>Bio Torque Fuels Pty Ltd</td>
<td>24/11/2011</td>
<td>SME</td>
<td>No report, no website</td>
</tr>
<tr>
<td>BMG Environmental Group Pty Ltd</td>
<td>3/04/2012</td>
<td>SME</td>
<td>No report</td>
</tr>
<tr>
<td>Bombala Investments Pty Ltd</td>
<td>18/05/2012</td>
<td>SME</td>
<td>No report, case - 2 directors (wife inactive)</td>
</tr>
<tr>
<td>Bombala Investments Pty Ltd (2)</td>
<td>1/11/2013</td>
<td>SME</td>
<td>No report, case - 2 directors (wife inactive)</td>
</tr>
<tr>
<td>Bourke Shire Council</td>
<td>1/06/2012</td>
<td>Government</td>
<td>Government</td>
</tr>
<tr>
<td>Bulga Coal Management Pty Ltd</td>
<td>14/05/2014</td>
<td>Large</td>
<td>Subsidiary of Glencore Removed - EPA news connects it to Alcobell case</td>
</tr>
<tr>
<td>Alistair Murray Cambell</td>
<td>16/11/2012</td>
<td>Individual / unclassified</td>
<td>Company is Sydney Waste Services - no report</td>
</tr>
<tr>
<td>Coal and Allied Operations Pty Ltd</td>
<td>16/08/2013</td>
<td>Large</td>
<td>Subsidiary of Rio Tinto</td>
</tr>
<tr>
<td>Coffs Harbour Hardwood Sales Pty Ltd</td>
<td></td>
<td>SME</td>
<td>Report - 1.2 m assets</td>
</tr>
<tr>
<td>Ben David Collins</td>
<td>2/09/2013</td>
<td>Individual / unclassified</td>
<td></td>
</tr>
<tr>
<td>Con Dionys</td>
<td>25/06/2013</td>
<td>SME</td>
<td>Offence clearly not related to business</td>
</tr>
<tr>
<td>Nathan James Doll</td>
<td>21/06/2013</td>
<td>Individual / unclassified</td>
<td>No report, news - shareholder $200 m project with related co</td>
</tr>
<tr>
<td>Ed Kelly Constructions Pty Ltd</td>
<td>4/05/2012</td>
<td>Large</td>
<td></td>
</tr>
<tr>
<td>Evo's Transport Pty Limited</td>
<td>6/08/2012</td>
<td>SME</td>
<td>No report</td>
</tr>
<tr>
<td>Forbes Shire Council</td>
<td>26/03/2014</td>
<td>Government</td>
<td>Gov</td>
</tr>
<tr>
<td>Forestry Commission of NSW</td>
<td>10/07/2013</td>
<td>Government</td>
<td>Gov</td>
</tr>
<tr>
<td>Forestry Commission of NSW</td>
<td>8/06/2011</td>
<td>Government</td>
<td>Gov</td>
</tr>
<tr>
<td>Fortune Enterprises Pty Ltd</td>
<td>9/08/2011</td>
<td>SME</td>
<td>No report, no website</td>
</tr>
<tr>
<td>Geoff Robinson Pty Ltd</td>
<td>9/02/2011</td>
<td>SME</td>
<td>No report, no website, case - business operated on family home</td>
</tr>
<tr>
<td>Huntsman Corporation Australia Pty Ltd</td>
<td></td>
<td>SME</td>
<td>Subsidiary of the Huntsman group, case - $9 billion revenue</td>
</tr>
<tr>
<td>J &amp; ABS Investments Pty Ltd</td>
<td>2/05/2011</td>
<td>SME</td>
<td>No report - case - hadn't drawn salary from company for months</td>
</tr>
<tr>
<td>Kinsley Constructions Pty Ltd</td>
<td>1/06/2012</td>
<td>SME</td>
<td>No report - website 42 employees</td>
</tr>
<tr>
<td>Kontrans Logistics Pty Ltd</td>
<td>8/03/2012</td>
<td>SME</td>
<td>No report, no website</td>
</tr>
<tr>
<td>Lampo Pty Ltd</td>
<td>18/05/2012</td>
<td>SME</td>
<td>No report, no website</td>
</tr>
<tr>
<td>Name</td>
<td>Date</td>
<td>Type</td>
<td>Description</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>-----------</td>
<td>---------------</td>
<td>----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>James Fredrick Lawrensen</td>
<td>21/09/2011</td>
<td>Individual / unclassified</td>
<td></td>
</tr>
<tr>
<td>LEDA Management Services Limited</td>
<td>23/07/2013</td>
<td>Large</td>
<td>Subsidiary of LEDA group</td>
</tr>
<tr>
<td>John Lee</td>
<td>9/08/2011</td>
<td>Individual / unclassified</td>
<td></td>
</tr>
<tr>
<td>Lewis Bros (Chatsworth) Pty Ltd</td>
<td>12/04/2011</td>
<td>SME</td>
<td>No report, no website</td>
</tr>
<tr>
<td>Lithgow City Council</td>
<td>11/02/2011</td>
<td>Government</td>
<td></td>
</tr>
<tr>
<td>M.A. Roche Group Pty Ltd</td>
<td>8/11/2013</td>
<td>SME</td>
<td>No report, case - 7 full time staff</td>
</tr>
<tr>
<td>Allan Robert McCarthy</td>
<td>30/11/2012</td>
<td>Individual / unclassified</td>
<td>EPA news - was operating an unlawful business on own property</td>
</tr>
<tr>
<td>Moolarben Coal Operations Pty Ltd</td>
<td>30/03/2012</td>
<td>SME</td>
<td>Subsidiary joint venture - 80% owned by Yancoal</td>
</tr>
<tr>
<td>Moolarben Coal Operations Pty Ltd</td>
<td>19/04/2012</td>
<td>SME</td>
<td>Subsidiary joint venture - 80% owned by Yancoal</td>
</tr>
<tr>
<td>Christopher Murdoch</td>
<td>2/03/2011</td>
<td>Individual / unclassified</td>
<td>Corp group - couldn’t get report due to ‘cooperative status’</td>
</tr>
<tr>
<td>New South Wales Sugar Milling Cooperative Limited</td>
<td>12/04/2011</td>
<td>unclassified</td>
<td></td>
</tr>
<tr>
<td>Paradigm Engineering Pty Ltd</td>
<td>20/02/2013</td>
<td>SME</td>
<td>No report, No website</td>
</tr>
<tr>
<td>Peak Gold Mines Pty Ltd</td>
<td>11/09/2013</td>
<td>SME</td>
<td>Subsidiary of Peak Gold Asia Pacific Pty Ltd</td>
</tr>
<tr>
<td>Pipeline Drillers Group Pty Ltd</td>
<td>20/02/2012</td>
<td>SME</td>
<td>No report, is a group, website lists major assets which suggests SME</td>
</tr>
<tr>
<td>Port Waratah Coal Services Ltd</td>
<td>16/08/2013</td>
<td>Large</td>
<td>Report - $1.8 billion assets</td>
</tr>
<tr>
<td>Port Waratah Coal Services Ltd (2)</td>
<td>27/03/2014</td>
<td>Large</td>
<td>Report - $1.8 billion assets</td>
</tr>
<tr>
<td>Queanbeyan City Council</td>
<td>18/09/2012</td>
<td>Government</td>
<td>Government</td>
</tr>
<tr>
<td>Ravensworth Operations Pty Ltd</td>
<td>29/10/2012</td>
<td>Large</td>
<td>Subsidiary of Xstrata</td>
</tr>
<tr>
<td>Raytons (NSW) Pty Ltd</td>
<td>13/09/2012</td>
<td>SME</td>
<td>No report, no website</td>
</tr>
<tr>
<td>Richards Sand and Soil (Froma Court no 2 Pty Ltd)</td>
<td></td>
<td>SME</td>
<td>No report, no website</td>
</tr>
<tr>
<td>Shannongrove Pty Ltd</td>
<td>5/09/2012</td>
<td>SME</td>
<td>no report, no website, case - family business</td>
</tr>
<tr>
<td>Sibelco Australia Limited</td>
<td>7/09/2011</td>
<td>Large</td>
<td>Subsidiary of Sibelco</td>
</tr>
<tr>
<td>Neil Andrew Simpson</td>
<td>5/09/2013</td>
<td>Illegal Business</td>
<td>Illegal business - importing reptiles</td>
</tr>
<tr>
<td>Wayne Smith</td>
<td>20/05/2013</td>
<td>SME</td>
<td>business called - All Clean Liquid Waste - not incorporated -</td>
</tr>
<tr>
<td>Snowy River Shire Council</td>
<td>5/04/2012</td>
<td>Government</td>
<td></td>
</tr>
<tr>
<td>Stocon Pty Ltd</td>
<td>16/04/2013</td>
<td>SME</td>
<td>No case - no website</td>
</tr>
<tr>
<td>Tea Garden Farms Pty Ltd</td>
<td>30/04/2012</td>
<td>SME</td>
<td>No report, no website, case - single director</td>
</tr>
<tr>
<td>Unomedical Pty Ltd</td>
<td>3/08/2011</td>
<td>SME</td>
<td>Report - $3.2 m assets</td>
</tr>
<tr>
<td>Vaccount Pty Ltd T / as Tableland Timbers</td>
<td>14/11/2011</td>
<td>SME</td>
<td>No website</td>
</tr>
<tr>
<td>Volk Holding Pty Ltd</td>
<td>15/03/2013</td>
<td>SME</td>
<td>No report, no website</td>
</tr>
<tr>
<td>Wyong Shire Council</td>
<td>9/03/2012</td>
<td>Government</td>
<td>Government</td>
</tr>
</tbody>
</table>
## Appendix 1B - Results for Case Study 1 – OH&S Convictions

### OH&S

<table>
<thead>
<tr>
<th>Names</th>
<th>Date</th>
<th>SME</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coastal Asphalt and Civil Constructions Pty Ltd</td>
<td>20/12/2012</td>
<td>SME</td>
<td>Case - 34 staff, no report</td>
</tr>
<tr>
<td>Bakhos Youssef Khali</td>
<td>01/12/2012</td>
<td>SME</td>
<td>Could not connect to corporation - hair salon</td>
</tr>
<tr>
<td>KT Regal Pty Ltd</td>
<td>01/12/2012</td>
<td>SME</td>
<td>Case - 11 staff, no report</td>
</tr>
<tr>
<td>Leighton Contractors Pty Ltd</td>
<td>01/12/2012</td>
<td>SME</td>
<td>Subsidiary of Leighton Holdings</td>
</tr>
<tr>
<td>Michael Hogan (go kart case)</td>
<td>22/12/20</td>
<td>SME</td>
<td>Case - facts suggests SME - family run</td>
</tr>
<tr>
<td>Lenara Pty Ltd (eagles case)</td>
<td>01/12/2012</td>
<td>SME</td>
<td>No Report, No website</td>
</tr>
<tr>
<td>Westrac Pty Ltd</td>
<td>01/12/2012</td>
<td>Large</td>
<td>Report - 4174 employees + $2.76 billion assets</td>
</tr>
<tr>
<td>Philips Roofing (Newcastle) Pty Ltd</td>
<td>03/12/2012</td>
<td>SME</td>
<td>No report - case - director receiving 40,000 pa from business</td>
</tr>
<tr>
<td>State of NSW (NSW Police Force)</td>
<td>03/12/2012</td>
<td>SME</td>
<td>Government</td>
</tr>
<tr>
<td>Omega International Coatings Pty Ltd</td>
<td>03/12/2012</td>
<td>SME</td>
<td>No report</td>
</tr>
<tr>
<td>Graffica Pty Ltd</td>
<td>02/12/2012</td>
<td>SME</td>
<td>No Report, No website</td>
</tr>
<tr>
<td>Wavebay Pty Ltd</td>
<td>02/12/2012</td>
<td>SME</td>
<td>No Report, No website</td>
</tr>
<tr>
<td>Café C Pty Ltd</td>
<td>02/12/2012</td>
<td>SME</td>
<td>Case - 6 staff, no report</td>
</tr>
<tr>
<td>Zheina Khouzame</td>
<td>02/12/2012</td>
<td>SME</td>
<td>Case - facts clearly support SME - $200 in business account</td>
</tr>
<tr>
<td>Wadwell Group Pty Ltd</td>
<td>02/12/2012</td>
<td>SME</td>
<td>No report, No website - case - facts suggest SME</td>
</tr>
<tr>
<td>S M International Pty Ltd</td>
<td>02/12/2012</td>
<td>SME</td>
<td>No report, no website</td>
</tr>
<tr>
<td>Majeed Masaomi</td>
<td>02/12/2012</td>
<td>SME</td>
<td>No report - no evidence of corporate group</td>
</tr>
<tr>
<td>Daniel Gallagher (Orange Waste Bins Pty Ltd)</td>
<td>02/12/2012</td>
<td>SME</td>
<td>Subsidiary of Coles</td>
</tr>
<tr>
<td>Coles Group Supply Chain Pty Ltd</td>
<td>02/12/2012</td>
<td>SME</td>
<td>Subsidiary of Leighton Holdings</td>
</tr>
<tr>
<td>John Elmore Cooper</td>
<td>02/12/2012</td>
<td>SME</td>
<td>No Report, case - assets of 133,074 - sole trader</td>
</tr>
<tr>
<td>Amit Karan</td>
<td>02/12/2012</td>
<td>SME</td>
<td>EPA news connect to business name - no website – No report</td>
</tr>
<tr>
<td>University of NSW</td>
<td>02/12/2012</td>
<td>SME</td>
<td>Report (obtained via Google) - 1.5 bill in 2012</td>
</tr>
<tr>
<td>Nizar Alameddine</td>
<td>02/12/2012</td>
<td>SME</td>
<td>Subsidiary of a Transfield Services - website - 18000 employees</td>
</tr>
<tr>
<td>Transfield Services Engineering Group Limited</td>
<td>02/12/2012</td>
<td>SME</td>
<td>No report</td>
</tr>
<tr>
<td>SG Foodservice Pty Ltd</td>
<td>02/12/2012</td>
<td>SME</td>
<td>No report, website – ‘over 50 employees’</td>
</tr>
<tr>
<td>Company Name</td>
<td>Start Date</td>
<td>Category</td>
<td>Notes</td>
</tr>
<tr>
<td>--------------------------------------------------</td>
<td>------------</td>
<td>----------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>Seovic Engineering Pty Ltd</td>
<td>3/06/20</td>
<td>SME</td>
<td>No report - website - no evidence of group, case - overdraft 500k</td>
</tr>
<tr>
<td>Multiplus Group Pty Ltd</td>
<td>16/08/2</td>
<td>SME</td>
<td>No report, case - sole director company</td>
</tr>
<tr>
<td>G &amp; N Chapman Pty Ltd</td>
<td>28/08/2</td>
<td>SME</td>
<td>No report, case – side business - no full time employees</td>
</tr>
<tr>
<td>Big River Timbers (Veneer) Pty Ltd</td>
<td>24/9/2</td>
<td>Large</td>
<td>Report - 350 employees + $84.9 mil assets</td>
</tr>
<tr>
<td>On Track Community Programs Limited</td>
<td>27/09/2</td>
<td>Government</td>
<td>Gov funded NGO</td>
</tr>
<tr>
<td>Ali Mohamed Eli Ibrahim</td>
<td>9/10/2</td>
<td>unclassified</td>
<td>Case - parent company (Zac’s Packs - 80 staff) - report - 17.5 mil assets</td>
</tr>
<tr>
<td>J I T Offset Pty Ltd (Zac’s Packs)</td>
<td>10/10/2</td>
<td>SME</td>
<td>Trade as &quot;Primo&quot; - website - 4000 employees</td>
</tr>
<tr>
<td>P &amp; M Quality Smallgoods</td>
<td>31/10/2</td>
<td>Large</td>
<td>No report, case - employed over 100 employees + 17mil turnover in 2008</td>
</tr>
<tr>
<td>Richard Geoffrey Ward</td>
<td>20/12/2</td>
<td>SME</td>
<td>Trade as &quot;Primo&quot; - website - 4000 employees</td>
</tr>
<tr>
<td>State of NSW (NSW Police Force)</td>
<td>4/02/20</td>
<td>Government</td>
<td>Government</td>
</tr>
<tr>
<td>Orica Australia Pty Ltd</td>
<td>20/02/2</td>
<td>Large</td>
<td>Subsidiary of Orica</td>
</tr>
<tr>
<td>Earth Quake Promotions Pty Ltd (Department of AG and Justice, Correct Services)</td>
<td>21/03/2</td>
<td>SME</td>
<td>No report - case - company's income 1000 p/a</td>
</tr>
<tr>
<td>Max Tse Gunnedah Leather Processors Pty Ltd</td>
<td>23/05/2</td>
<td>SME</td>
<td>Report - 52 employees + 11.9 mil assets</td>
</tr>
<tr>
<td>Hospitality Training Network Limited</td>
<td>10/06/2</td>
<td>Government</td>
<td>Formed as a partnership with a government department/Tafe NSW/ trade association</td>
</tr>
</tbody>
</table>
Appendix 2A – Case Study 1 Methodology: EPA convictions

This case study was limited to EPA convictions in NSW. From the NSW EPA website, 267 convictions were recorded between the 1st January, 2011 and the date of searching the website (19/5/2014). These initial results produced many convictions for fairly trivial matters. For instance, a $750 fine for a ‘smokey vehicle’ was encountered numerous times. These matters quite often involved prosecutions against individuals, which caused a problem in that the judgments were not reported (due to being minor), making it impossible to determine whether they were offences related to business activities. Had these minor prosecutions been included, this would have rendered the results effectively meaningless as a large proportion of the prosecutions would remain in an ‘unclassified’ state. Therefore, only ‘serious’ convictions, defined as convictions resulting in a penalty of $3500 or greater (or the equivalent amount in payments to the EPA for the cost of investigation), were included.1671 This figure was selected on the basis that it appeared to be roughly the minimum penalty imposed for more serious offences. Additionally, several convictions that involved multiple breaches that totalled more than $3500 in penalties were included.1672 Even though these breaches inevitably involved minor issues, such as ‘smokey vehicles’, multiple minor breaches were classified as serious on the basis of a cumulative environmental impact. An argument could also be made that multiple minor breaches indicates a greater propensity for non-compliance, which is more serious and poses a greater potential threat to the community. There were no classification issues, as multiple breaches were almost always levelled against a corporation.1673

The EPA website provides the names of individuals and corporations who were the subject of these convictions, which enabled this case study to be conducted. An ASIC company search was conducted on each corporate offender revealing what documents it had submitted to ASIC. When discussing the definition of SME in Chapter 2.2.2, reference was made to the effect of section 45A of the Corporations Act 2001 (Cth). As was stated in that chapter, the definition of small and large proprietary company is not used as an SME definition in this

1671 In several instances, although a conviction was recorded for what appeared to be a fairly serious breach, no penalty was imposed beyond an order to pay the EPA’s investigation costs. It was therefore assumed that in certain instances, this was used as a proxy penalty as sometimes these costs were close to $100,000.
1672 For instance there was a conviction involving 5 counts of a ‘smokey vehicle’, a breach of s16 of Protection of the Environment Operations (Clean Air) Regulations 2010 (NSW).
1673 Using the smokey vehicle example, it is unlikely that an individual would own 5-6 vehicles to incur that many breaches.
thesis. Under the Corporations Act 2001 (Cth) section 292(1), (2), large proprietary and public companies are required to lodge an annual financial report, but small proprietary companies are exempt from this requirement. Given the definition of small proprietary company in s45A, it follows that if a company did not lodge a report, it is a small proprietary company, and if it is a small proprietary company, it is by definition an SME. An obvious exception to this is where the company forms part of a corporate group involving a parent company filing consolidated reports. Where companies filed annual reports, the financial details revealed whether or not the company was an SME. Whilst the use of financial reports is the primary means of categorising a company or business, secondary sources are also utilised. For instance, websites often provided details on the scale of operations, and can link unknown subsidiaries to their much larger parent companies. Additionally, the reported judgments utilised in Case Study 3 sometimes discussed facts which indicated the company’s size. Thus the case study is approached from the starting point that if a company did not file an annual report, it is an SME, and this classification would only change where there is clear evidence from other sources that the company was in fact large.

Where evidence was difficult to obtain, this itself strengthens the case for the company being a SME. It seems unlikely that a company, which by definition must hold millions of dollars of assets or generate millions in revenue, would not invest in a website. For those companies that did submit an annual report, there is still the possibility that whilst they meet the criteria of being ‘large’ for the purposes of the Corporations Act 2001 (Cth) they are actually still an SME. From the remaining large Pty companies, their annual reports can be accessed (for a fee) via an ASIC company search, which revealed their financial position. A further point which should be made is that subsidiaries of large multinational companies were categorised as ‘large’ for this study. The majority of these companies were subsidiaries of mining companies, such as Yancoal and Rio Tinto, whose financial positions were obviously consolidated in their parent company’s annual reports (for instance, not a single mining company in the study filed an annual report). On a practical level, not only were they highly

1674 This definition was not used as it was substantially different to other definitions of SME. For instance, the ABS definition of SME includes businesses employing up to 199 employees instead of the 50 employees in section 45A.
1675 The requirements are that the company satisfies 2 of the 3 tests including: Having fewer than 50 employees, having gross assets less than $12.5 million, and annual revenue less than $25million.
likely to fit the definition of large, but their compliance and governance processes were likely to be influenced by the parent company, making it inappropriate to classify them as SMEs.\textsuperscript{1676}

One of the limitations of the data set was that not all prosecutions were pursued against companies and therefore the company search methodology could not be applied to convictions against individuals who operate as a sole trader or partnership. For this reason, the study produced results which had a certain number of convictions unaccounted for. However, this number is relatively small. In order to account for as many individuals as possible, further details of the offence were explored. For instance, an Austlii search under the NSW Land Court, focusing specifically on cases involving the NSW EPA revealed that many of the individual convictions ran parallel to the corporate convictions and were a result of the same offence. Therefore, these convictions were removed from the sample to avoid double counting. Where these cases were reported, a simple description of the facts indicated whether the prosecution was related to a business enterprise. Furthermore, it was possible to connect some individuals to corporate/business convictions through the EPA website which frequently issues press releases about its recent convictions. Given information or judgments were not available for all prosecutions, the results gathered should be regarded as a close estimate. A table of the full list of companies involved in the case study and the information relied upon to classify each company is contained in Appendixes 1A and 1B.

\textsuperscript{1676} The mining example is a strong one, as it is a fair assumption that a board of a multinational mining company would not want to risk the negative publicity from the poor practices of one of one of its subsidiaries (for example leading to a mine collapse, environmental degradation, etc).
Appendix 2B – Case Study 1 Methodology: OH&S Convictions

The methodology employed for the OH&S convictions was essentially the same as the EPA section of the case study. In this instance there was no need for a filter, as all prosecutions involved serious injury or death, with the exception of one.\textsuperscript{1677} Prosecutions against individuals were not an issue as they necessarily involve breaches in a working environment. Even where reported judgments were unavailable, the WorkCover NSW website gave a brief description of each case (more so than the EPA convictions), making it easier to attribute the individuals prosecution to the business. Court judgments, websites, annual financial reports, and news articles\textsuperscript{1678} (where available) were again used to support the findings of this case study.

\textsuperscript{1677} Inspector Wright v Khouzame [2012] NSWIRComm 125.
\textsuperscript{1678} Obtained via a simple google search.
Bibliography

Articles, Books, and Reports


Acheson, Graeme, John Turner, and Qing Ye, 'The Character and Denomination of Shares in the Victorian Equity Market' (2012) 65(3) Economic History Review 862


Adams, Carol, and George Harte, 'The Changing Portrayal of the Employment of Women in British Banks' and Retail Companies' Corporate Annual Reports (1998) 23(8) Accounting, Organizations and Society 781


Adrian Sargeant and Helga Stephenson, 'Corporate Giving: Targeting the Likely Donor' (1997) 2(1) *International Journal of Non-profit and Voluntary Sector Marketing* 64


Ahmad, Jamilah, and David Crowther, *Developments in Corporate Governance and Responsibility: Education and Corporate Social Responsibility: International Perspectives* (Emerald, 2013)


Albors-Garrigós, José, Carlos A. Rincon-Diaz, and Juan Ignacio Igartua-Lopez, 'Research Technology Organisations as Leaders of R&D Collaboration with SMEs: Role, Barriers and Facilitators' (2014) 26(1) *Technology Analysis & Strategic Management* 37


Alm, James, and Juan Luis Gomez, 'Social Capital and Tax Morale in Spain' (2008) 38(1) Economic Analysis and Policy 73


Amann, Markus, Jens Roehrich, Michael Ebig, and Christine Harland, 'Driving Sustainable Supply Chain Management in the Public Sector' (2014) 19(3) Supply Chain Management: An International Journal 351


Andersen, Mette, Tage Skjoett-Larsen, ‘Corporate Social Responsibility in Global Supply Chains’ (2009) 14(2) Supply Chain Management: An International Journal 75


Andre, Kevin, 'The Ethics of Care as a Determinant for Stakeholder Inclusion and CSR Perception in Business Education' (2013) 8(1) Society and Business Review 32

Anselin, Luc, Attila Varga, and Zoltan Acs, ‘Local Geographic Spillovers Between University Research and High Technology Innovations’ (1997) 42(3) Journal of Urban Economics 422


Arend, Richard, and Joel Wisner, 'Small Business and Supply Chain Management: is there a Fit?' (2005) 20(3) Journal of Business Venturing 403


Arjen Wals, 'Sustainability in Higher Education in the Context of the UN DESD: a Review of Learning and Institutionalization Processes' (2014) 62 Journal of Cleaner Production 8


Arrow, Kenneth, ‘Gifts and Exchanges’ (1972) 1(4) Philosophy & Public Affairs 343

Arts, Bas,' "Green Alliances" of Business and NGO: New Styles of Self-Regulation or "Dead-End Roads"?' (2002) 9(1) Corporate Social Responsibility and Environmental Management 26

Atack, Jeremy, ‘Industrial Structure and the Emergence of the Modern Corporation’ (1985) 22(1) Explorations in Economic History 29


Austin, James, ‘Strategic Collaboration between Non-profits and Businesses’ (2000) 29(1) Non-profit and Voluntary Sector Quarterly 69

Austin, Robert, and Ian Ramsay, Ford’s Principles of Corporations Law (Lexisnexis, 14th ed, 2010)

Australian Competition and Consumer Commission, Green Marketing and the Australian Consumer Law (2011)


Avery, George, and Jennifer Schultz, 'Regulation, Financial Incentives, and the Production of Quality' (2007) 22(4) American Journal of Medical Quality 265


Ayres, Ian, and John Braithwaite, Responsive Regulation: Transcending the Deregulation Debate (Oxford University Press, 1992)

Ayuso, Silvia, Mercè Roca, and Rosa Colomé, ‘SMEs as “Transmitters” of CSR Requirements in the Supply Chain’ (2013) 18(5) Supply Chain Management: An International Journal 497


Baker, Hugh, 'Practical Problems of Trade Associations' (1926) 11(4) Proceedings of the Academy of Political Science in the City of New York 77


Bala, Alba, Paco Munoz, Joan Rieradevall, and Pere Ysern, 'Experiences with Greening Suppliers: The Universitat Autonoma de Barcelona' (2008) 16(15) Journal of Cleaner Production 1610


Baldwin, Robert, Colin Scott and Christopher Hood, A Reader on Regulation (Oxford University Press, 1998)

Baldwin, Robert, Martin Cave and Martin Lodge, The Oxford Handbook of Regulation (Oxford University Press, 2010)

Baldwin, Robert, Martin Cave and Martin Lodge, Understanding Regulation: Theory, Strategy and Practice (Oxford University Press, 2nd ed, 2012)

Baldwin, Robert, Rules and Government (Oxford University Press, 1995)


Barkley, David, and Mark Henry 'Rural Industrial Development: To Cluster or Not to Cluster?' (1997) 19(2) Review of Agricultural Economics 308


Baron, Paula, 'Bringing Back the Bubble? Regulation of Corporate Abuse by an Action in Public Nuisance' (1992) 11(2) University of Tasmania Law Review 149


Baughn, Christopher, Nancy Bodie, and John McIntosh, 'Corporate Social and Environmental Responsibility in Asian Countries and Other Geographical Regions' (2007) 14(4) Corporate Social Responsibility and Environmental Management 189

Baumann-Pauly, Dorothee, Chritopher Wickert, Laura Spence, and Andreas Scherer ‘Organizing Corporate Social Responsibility in Small and Large Firms: Size Matters’ (2013) 115(4) Journal of Business Ethics 693


Beamon, Benita, 'Designing the Green Supply Chain' (1999) 12(4) Logistics Information Management 332


Beder, Sharon, ‘Charging the Earth: The Promotion of Price-Based Measures for Pollution Control’ (1996) 16(1) Ecological Economics 51


Benn, Suzanne, and Dianne Bolton, Key Concepts in Corporate Social Responsibility (SAGE, 2011)


Bennett, Robert, ‘Business Associations and their Potential Contribution to the Competitiveness of SMEs’ (1998) 10(3) Entrepreneurship & Regional Development 243


Bennett, Robert, 'Explaining the Membership of Voluntary Local Business Associations: The Example of British Chambers of Commerce’ (1998) 32(6) Regional Studies 503


Bessant, John, and David Francis, 'Using Learning Networks to Help Improve Manufacturing Competitiveness' (1999) 19(6) Technovation 373


Besser, Terry, and Nancy Miller, ‘The Structural, Social, and Strategic Factors Associated with Successful Business Networks’ (2011) 23(3-4) Entrepreneurship & Regional Development 113


Bird, Joanna, and Jennifer Hill 'Regulatory Rooms in Australian Corporate Law' (1999) 25(3) Brooklyn Journal of International Law 555


Bjorklund, Maria, 'Influence from the Business Environment from the Business Environment on Environmental Purchasing — Drivers and Hinders of Purchasing Green Transportation Services’ (2011) 17(1) Journal of Purchasing and Supply Management 11

Black, Julia, and Robert Baldwin, ‘When Risk Based Regulation Aims Low: Approaches and Challenges’ (2012) 6(1) Regulation and Governance 2


Black, Julia, 'Constructing and Contesting Legitimacy and Accountability in Polycentric Regulatory Regimes' (2008) 2(2) Regulation & Governance 137


Black, Julia, 'Decentring Regulation: Understanding the Role of Regulation and Self-Regulation in a 'Post-Regulatory' World' (2001) 54(1) Current Legal Problems 103


Boatright, John, ‘From Hired Hands to Co-Owners: Compensation, Team Production, and the Role of the CEO’ (2009) 19(4) Business Ethics Quarterly 471


Boehm, Frédéric, ‘Regulatory Capture: Cost vs Incentive-Based Regulation’ 10(1) International Journal of Regulation and Governance 1

Bok, Derek, ‘Can Higher Education Foster Higher Morals?’ (1988) 66 Business and Society Review 4

Bolton, Phoebe, ‘Protecting the Environment through Public Procurement: The Case of South Africa’ (2008) 32(1) Natural Resources Forum 1

Boman, Johan, and Ulf Andersson, 'Eco-labelling of Courses and Programs at University of Gothenburg' (2013) 48 Journal of Cleaner Production 48

Bone, Jeffrey, Legal Perspectives on Corporate Responsibility: Contractarian or Communitarian Thought?’ (2011) 24(2) Canadian Journal of Law and Jurisprudence 277


Boschma, Ron, 'Competitiveness of Regions from an Evolutionary Perspective' (2004) 38(9) Regional Studies 1001
Boström, Magnus, and Mikael Karlsson, 'Responsible Procurement, Complex Product Chains and the Integration of Vertical and Horizontal Governance' (2013) 23(6) *Environmental Policy and Governance* 381


Bowen, Frances, Paul Cousins, Richard Lamming, and Adam Faruk, ‘Horses for Courses Explaining the Gap between the Theory and Practice of Green Supply’ (2001) 35 *Greener Management International* 41


Braithwaite, John, ‘Rewards and Regulation’ (2002) 29(1) *Journal of Law and Society* 12

Braithwaite, John, ‘The Essence of Responsive Regulation’ (2011) 44(3) *University of British Columbia Law Review* 475


Braithwaite, John, Restorative Justice and Responsive Regulation (Oxford University Press, 2002)

Braithwaite, John, 'The Limits of Economism in Controlling Harmful Corporate Conduct' (1981-82) 16(3) Law & Society Review 481

Braithwaite, John, To Punish or Persuade: Enforcement of Coal Mine Safety (State University of New York Press, 1985)

Braithwaite, John, Tony Makkai and Valerie Braithwaite, Regulating Aged Care (Edward Elgar Publishing, 2007)


Branson, Richard, Screw Business as Usual (Virgin Books, 2011)


Brenkert, George, 'Marketing Trust: Barriers and Bridges' 16(1/3) (1997) Business & Professional Ethics Journal 77


Brian Cook, 'The Politics of Market-Based Environmental Regulation: Continuity and Change in Air Pollution Control Policy Conflict' (2002) 83(1) Social Science Quarterly 156


Brooks, Benjamin, 'The Natural Selection of Organizational and Safety Culture within a Small to Medium Sized Enterprise (SME)' (2008) 39(1) *Journal of Safety Research* 73


Buchanan, James, and Gordon Tullock, 'Polluters' Profits and Political Response: Direct Controls Versus Taxes' (1975) 65(1) *The American Economic Review* 139


Cagney, Penelope, and Bernard Ross, Global Fundraising How the World is Changing the Rules of Philanthropy (Wiley, 2013)


Callan, Scott, and Janet Thomas 'Corporate Financial Performance and Corporate Social Performance: An Update and Reinvestigation' (2009) 16(2) Corporate Social Responsibility and Environmental Management 61


Carey, Peter, and George Tanewski, ‘The Provision of Business Advice to SMEs by External Accountants’ (2016)31(3) Managerial Auditing Journal 290


Carrington, Michal, Benjamin Neville, and Gregory Whitwell, 'Why Ethical Consumers Don't Walk Their Talk: Towards a Framework for Understanding the Gap Between the Ethical Purchase Intentions and Actual Buying Behaviour of Ethically Minded Consumers' (2010) 97(1) *Journal of Business Ethics* 139


Cassells, Sue, and Kate Lewis, ‘SMEs and the Environmental Responsibility: Do Actions Reflect Attitudes?’ (2011) 18(3) Corporate Social Responsibility and Environmental Management 186


Chadee, Doren, Retha Wiesner, and Banjo Roxas, 'Environmental Sustainability Change Management in SMEs: Learning from Sustainability Champions' (2011) 5(3-4) International Journal of Learning and Change 194


Chandler, Alred, and Takashi Hikino, Scale and Scope: the Dynamics of Industrial Capitalism (Belknap, 1994)


Cheryl Rodgers, ‘Sustainable Entrepreneurship in SMEs: A Case Study Analysis (2010) 17(3) Corporate Social Responsibility and Environmental Management 125


Chobotová, Veronika, ‘The Role of Market-Based Instruments for Biodiversity Conservation in Central and Eastern Europe’ (2013) 95 Ecological Economics 41


Ciliberti, Francesco, Job de Haan, Gerard de Groot, and Pierpaolo Pontrandolfo, 'CSR Codes and the Principal-Agent Problem in Supply Chains: Four Case Studies' (2011) 19(8) *Journal of Cleaner Production* 885


Clarke, Andrew, ‘Small and Medium Sized Enterprises (SMEs) and Corporate Governance: Politics, Resources and Trickle Down Effects’ (2006) 58(6) *Keeping Good Companies* 335


Clements, Mike, and Graham Bowrey, 'Corporate Social Responsibility in Public Sector Supply Chains: An Insight' (2010) 8(2) *Journal of New Business Ideas and Trends* 1


Coleman, James, ‘Social Capital in the Creation of Human Capital’ (1988) 94(S1) *American Journal of Sociology* s95
Corbett, Angus, 'Corporate Social Responsibility Do We Have Good Cause to be Sceptical About It?' (2008) 17(1) Griffith Law Review 413


Cox, James, Harry Munsinger, 'Bias in the Boardroom: Psychological Foundations and Legal Implications of Corporate Cohesion' (1985) 48(3) Law and Contemporary Problems 83

Cox, Paul, 'The Public, the Private and the Corporation' (1997) 80(2) Marquette Law Review 393


Crane, Andrew, Dirk Matten, Abagail McWilliams, Jeremy Moon, and Donald Siegel, Oxford Handbook of Corporate Social Responsibility (Oxford University Press, 2008)

Crawford, Elise, and Cynthia Williams 'Should Corporate Social Reporting be Voluntary or Mandatory? Evidence from the Banking Sector in France and the United States' (2010) 10(4) *Corporate Governance* 512


Cruz, Jose, 'Dynamics of Supply Chain Networks with Corporate Social Responsibility Through Integrated Environmental Decision-Making' (2008) 184(3) *European Journal of Operational Research* 1005


Cuilla, Joanne, ‘Do MBA Students Have Ethics Phobia’ (1985) 53 *Business and Society Review* 52


Curtis, Allan, and Marike Van Nouhuys, ‘Landcare Participation in Australia: The Volunteer Perspective’ (1999) 7(2) *Sustainable Development* 98


Curtis, Allan, Andrew Britton, and Jonathan Sobels, ‘Landcare Networks in Australia: State Sponsored Participation through Local Organizations’ (1999) 42(1) *Journal of Environmental Planning and Management* 5


Dandridge, Thomas, 'Children Are Not "Little Grown-Ups:" Small Business Needs its Own Organizational Theory' (1979) 17 *Journal of Small Business Management* 53


Davis, Keith ‘The Case for and Against Business Assumption of Social Responsibilities’ (1973) 16(2) *Academy of Management Journal* 312


De bruijn, Theo, and Peter Hofman, ‘Pollution Prevention in Small and Medium-Sized Enterprises’ (2001) 30 *Greener Management International* 71


Deegan, Craig, and Michaela Rankin, 'Do Australian Companies Report Environmental News Objectively? An Analysis of Environmental Disclosures by Firms Prosecuted Successfully by the Environmental Protection Authority' (1996) 9(1) Accounting, Auditing and Accountability Journal 50


Dellios, Emily, ‘Sustainability Reporting in Australia’ (2012) 64(9) Keeping Good Companies 521


Denise Steckstor, The Effects of Cause-Related Marketing on Customers’ Attitudes and Buying Behaviour (Gabler, 2011)

Dennis Patterson, A Companion to Philosophy of Law and Legal Theory (Blackwell Publishing, 2nd ed, 2010)


Department of Trade and Industry, Engaging SMEs in Community and Social Issues (2002)


Dickson, Pat, and Mark Weaver 'Institutional Readiness and Small to Medium-Sized Enterprise Alliance Formation' (2011) 49(1) Journal of Small Business Management 126


Dobers, Peter, and Minna Halme, 'Corporate Social Responsibility and Developing Countries' (2009) 16(5) Corporate Social Responsibility and Environmental Management 237
Dodd, Merrick, ‘For Whom are Corporate Managers Trustees?’ (1932) 45(7) Harvard Law Review 1145

Dodd, Merrick, and Gardiner Means, The Modern Corporation and Private Property (Transaction Publishers, 1932)


Donald McIntosh, 'The Objective Bases of Max Weber's Ideal Types' (1977) 16(3) History and Theory 265


Drake, Frances, Martin Purvis, and Jane Hunt, ‘Meeting the Environmental Challenge: A Case of Win-Win or Lose-Win? A Study of the UK Baking and Refrigeration Industries’ 13(3) Business Strategy and the Environment 172

Drucker, Peter, The Changing World of the Executive (Heinemann, 1982)

Drucker, Peter, The Effective Executive (Heinemann, 1967)


Duarte, Fernanda, “‘What We Learn Today is How We Behave Tomorrow’: A Study on Students' Perceptions of Ethics in Management Education’ (2008) 4(1/2) Social Responsibility Journal 120


Dunfee, Thomas, 'Corporate Governance in a Market with Morality' (1999) 62(3) Law and Contemporary Problems 129


Ebert, Tara, Trust as the Key to Loyalty in Business-to-Consumer Exchanges: Trust Building Measures in the Banking Industry (Gabler, 2009)

Economides, Kim, and Julian Webb, 'Teaching Ethics and Professionalism: A Lesson from the Antipodes' (2001) 4(2) Legal Ethics 91


Elliott, Mark, and Christopher Armitage, 'Promoting Drivers’ Compliance with Speed Limits: Testing an Intervention Based on the Theory of Planned Behaviour' (2009) 100(1) British Journal of Psychology 111


Engle, Robert, 'Corporate Social Responsibility in Host Countries: A Perspective from American Managers’ (2007) 14(1) Corporate Social Responsibility and Environmental Management 16


European Commission, *Small, Clean and Competitive* (European Commission, 2008) 15


Fassin, Yves, ‘The Stakeholder Model Refined’ (2009) 84(1) *Journal of Business Ethics* 113


Fine, Ben, Social Capital Versus Social Theory: Political Economy and Social Science at the Turn of the Millennium (Routledge, 2001)


Fitzpatrick, Julie, Business Students Perceptions of Corporate Social Responsibility (2013) 47(1) College Student Journal 86


Formoy, Ronald, The Historical Foundations of Modern Company Law (Sweet and Maxwell, 1923)


Frederick, Robert, Companion to Business Ethics (Blackwell Publishers, 1999)


Friedman, Andrew, and Samantha Miles, ‘SMEs and the Environment: Two Case Studies’ (2001) 8(4) Eco-Management and Auditing 200


Fukuyama, Francis, ‘Social Capital, Civil Society and Development’ (2001) 22(1) Third World Quarterly 7


Galea, Chris, *Teaching Business Sustainability, Volume 2: Cases, Simulations and Experiential Approaches* (Greenleaf, 2007)


Gareth Campbell and John Turner, ‘Substitutes for Legal Protection: Corporate Governance and Dividends in Victorian Britain’ (2011) 64(2) *Economic History Review* 571


Geert, Hofstede, 'Cultural Constraints in Management Theories' (1993) 7(1) *The Executive* 81


Gibson, Brian, George Vozikis, and Mark Weaver, 'Exploring Governance Issues in Family Firms' (2013) 20(2) Small Enterprise Research 87


Gino, Francesco, and Adam Galinsky, ‘Vicarious Dishonesty: When Psychological Closeness Creates Distance From One’s Moral Compass’ (2012) 119(1) Organizational Behaviour and Human Decision Processes 15

Gioia, Dennis, ‘Business Education's Role in the Crisis of Corporate Confidence’ (2002) 16(3) The Academy of Management Executive 142


Glenn, James, ‘Can a Business and Society Course Affect the Ethical Judgment of Future Managers?’ (1992) 11(3) Journal of Business Ethics 217


Goslin, David, Handbook of Socialization Theory and Research (Rand McNally, 1969)


Grabosky, Peter, and John Braithwaite, Business Regulation and Australia's Future (Australian Institute of Criminology, 1993)

Grabosky, Peter, and John Braithwaite, Of Manners Gentle: Enforcement Strategies of Australian Business Regulatory Agencies (Oxford University Press, 1986)
Grabosky, Peter, 'Beyond Responsive Regulation: The Expanding Role of Non-State Actors in the Regulatory Process' (2013) 7(1) Regulation & Governance 114

Grabosky, Peter, ‘Regulation by Reward: On the Use of Incentives as Regulatory Instruments’ (1995) 17(3) Law & Policy 257


Grandori, Anna, Interfirm Networks: Organization and Industrial Competitiveness (Routledge, 1999)

Granly, Bjørg, and, Torgeir Welo ‘EMS and Sustainability: Experiences with ISO 14001 and Eco-Lighthouse in Norwegian Metal Processing SMEs’ (2014) 64 Journal of Cleaner Production 194


Gray, Rob, ‘Sustainability + Accounting Education: The Elephant in the Classroom’ (2013) 22(4) Accounting Education: An International Journal 308


Greiner, Romy, 'Applicability of Market-Based Instruments for Safeguarding Water Quality in Coastal Waterways: Case Study for Darwin Harbour, Australia' (2014) 509 *Journal of Hydrology* 1


Guthrie, James, and Leed Parker, ‘Corporate Social Reporting: A Rebuttal of Legitimacy Theory’ (1989) 19(76) *Accounting and Business Research* 343

Guyatt, Danyelle, ‘Meeting Objectives and Resisting Conventions; A Focus on Institutional Investors and Long-Term Responsible Investing’ (2005) 5(3) *Corporate Governance* 139


Haigh, Matthew, ‘Managed Investments, Managed Disclosures: Financial Services Reform in Practice’ (2006) 19(2) Accounting, Auditing & Accountability Journal 186

Haines, Fiona, The Paradox of Regulation: What Regulation can Achieve and What it Cannot (Edward Elgar, 2011)


Haila, Fawzi, and Joakim Tell, ‘Creating Synergies Between SMEs and Universities for ISO 14001 Certification’ (2013) 48 Journal of Cleaner Production 85

Hall, Jeremy, ‘Environmental Supply Chain Innovation’ (2001) 35 Greener Management International 105

Halpern, David, Social Capital (Polity, 2005)


Hannah, Paul, Government by Procurement (1963) 18(4) The Business Lawyer 997

Hanna-Leena, Pesonen, ‘Challenges of Integrating Environmental Sustainability Issues into Business School Curriculum: A Case Study from The University Of Jyväskylä, Finland’ (2003) 27(2) Journal of Management Education 158

Hans Limborg, Sisse Gron, Maya Flensborg Jensen, ‘Networking among Small and Medium-Sized Enterprises: Meeting the Challenge of Promoting Safety and Health Measures’ (2014) 21(2) Small Enterprise Research 214,
Hanson, Dallas, and Bruce Tranter 'Who Are the Shareholders in Australia and What Are Their Ethical Opinions? An Empirical Analysis (2006) 14(1) Corporate Governance: An International Review 23

Hardin, Garrett, ‘The Tragedy of the Commons’ (1968) 162(3859) Science 1243


Hargovan, Anil, and Jason Harris, ‘For Whom the Bell Tolls: Directors’ Duties to Creditors after Bell’ (2013) 35(2) Sydney Law Review 433


Harris, Ron, ‘The History of Team Production Theory’ (2015) 38(2) Seattle University Law Review 537


Harrison, Rob, Terry Newholm and Deirdre Shaw, The Ethical Consumer (Sage, 2005)


Häuberer, Julia, Social Capital Theory: Towards a Methodological Foundation (VS Verlag für | Springer Fachmedien Wiesbaden, 2011)


Henle, Christine, ‘Bad Apples or Bad Barrels? A Former CEO Discusses the Interplay of Person and Situation with Implications for Business Education’ (2006) 5(3) Academy of Management Learning & Education 346


Hetzner, Candace, 'Why We Mean What We Say: The History and Use of ' Corporate Social Responsibility' (1987) 6(3) Business & Professional Ethics Journal 23


Hillary, Ruth, Small and Medium-Sized Enterprises and the Environment: Business Imperatives (Greenleaf, 2000)


Huisingh, Don, and Desta Mebratu, “Educating the Educators” as a Strategy for Enhancing Education on Cleaner Production’ (2000) 8(5) Journal of Cleaner Production 439


Hutchins, Margot, and John Sutherland, ‘An Exploration of Measures of Social Sustainability and Their Application to Supply Chain Decisions’ (2008) 16(15) Journal of Cleaner Production 1688


Idowu, Samuel, and Walter Filho, Global Practices of Corporate Social Responsibility (Springer, 2009)

Idowu, Samuel, Claus Strue Frederiksen, Asli Yuksel Mermod, and Morten Ebe Juul Nielsen, Corporate Social Responsibility and Governance Theory and Practice (Springer, 2015)


Idowu, Samuel, Abubakar Kasum, and Asli Yuksel Mermod, People, Planet and Profit: Socio-Economic Perspectives of CSR (2014 Gower Publishing)

Idowu, Samuel, and Céline Louche, Theory and Practice of Corporate Social Responsibility (Springer, 2011)
Igarashi, Mieko, Luitzen de Boer, and Annik Magerholm Fet, 'What is Required for Greener Supplier Selection? A Literature Review and Conceptual Model Development' (2013) 19(4) Journal of Purchasing and Supply Management 247

Igarashi, Mieko, Luitzen de Boer, and Ottar Michelsen, ‘Investigating the Anatomy of Supplier Selection in Green Public Procurement’ (2015) 108(Part A) Journal of Cleaner Production 442


Jain, Ameeta, ‘Knowledge Distribution Nodes and Home Based Businesses: Role of Local Business Associations and Local Council in Casey LGA’ (2011) 17(2) Australasian Journal of Regional Studies 122


Jana Dlouhá, Donald Huisingh, Andrew Barton, 'Learning Networks in Higher Education: Universities in Search of Making Effective Regional Impacts' (2013) 49 Journal of Cleaner Production 5


Jeananne Nicholls, Joseph Hair, Charles Ragland, and Kurt Schimmel, ‘Ethics, Corporate Social Responsibility, and Sustainability Education in AACSB Undergraduate and Graduate Marketing Curricula: A Benchmark Study’ (2013) 35(2) Journal of Marketing Education 129

Jean-Jacques Rousseau, The Social Contract (Adelaide University, 2008) - Reprint

Jeffrey Pilcher, The Oxford Handbook of Food History (Oxford University Press, 2012)


João Ferreira, Roel Rutten, and Attila Varga, Cooperation, Clusters, and Knowledge Transfer: Universities and Firms Towards Regional Competitiveness (Springer, 2013) 31


Jose Moneva, Pablo Archel, and Carmen Correa, ‘GRI and The Camouflaging Of Corporate Unsustainability’ (2006) 30(2) *Accounting Forum* 121

Joseph Sarkis, *Greening the Supply Chain* (Springer, 2006)


Kaptein, Muel, 'Ethical Guidelines for Compiling Corporate Social Reports' (2007) 27 *Journal of Corporate Citizenship* 71
Kathryn Hegarty, Ian Thomas, Cathryn Kriewaldt, Sarah Holdsworth, and Sarah Bekessy, ‘Insights into the Value of a ‘Stand-Alone’ Course for Sustainability Education’ 17(4) Environmental Education Research 451


Keay, Andrew, The Enlightened Shareholder Value Principle and Corporate Governance (Routledge, 2013)


Kennedy-Glans, Donna, and Bob Schulz, Corporate Integrity (Wiley, 2005)


Kidwell, Linda, ‘Student Honor Codes as a Tool for Teaching Professional Ethics’ (2001) 29(1/2) Journal of Business Ethics 45


Kish-Gephart, Jennifer, David Harrison, and Linda Trevino, ‘Bad Apples, Bad Cases, and Bad Barrels: Meta-Analytic Evidence about Sources of Unethical Decisions at Work’ (2010) 95 (1) Journal of Applied Psychology 1


Klein, Elizabeth, and Jean Du Plessis, ‘Corporate Donations, the Best Interest of the Company and the Proper Purpose Doctrine’ (2005) 28(1) University of New South Wales Law Journal 69


Klewitz, Johanna, and Erik Hansen, ‘Sustainability-Oriented Innovation of SMEs: a Systematic Review’ (2014) 65 *Journal of Cleaner Production* 57

Knight, Louise, Christine Harland, Jan Telgen, Khi Thai, Guy Callender, and Katy McKen, *Public Procurement: International Cases and Commentary* (Routledge, 2007)


Kobayashi, Kesaji, and Hidemasa Morikawa, *Development of Managerial Enterprise: The International Conference on Business History* vol 12 (University of Tokyo Press, 1986)


Kolk, Ans, and Jonatan Pinkse, 'The Integration of Corporate Governance in Corporate Social Responsibility Disclosures' (2010) 17(1) *Corporate Social Responsibility and Environmental Management* 15


Kourtit, Karima, Peter Nijkamp, Roger Stough, Drivers of Innovation, Entrepreneurship and Regional Dynamics (Springer, 2011)


Lamm, Felicity, ‘Small Businesses and OH&S Advisors’ (1997) 25(1-3) Safety Science 153

Lamming, Richard, and Jon Hampson, ‘The Environment as a Supply Chain Management Issue’ (1996) 7(S1) British Journal of Management S45


Lane, Michael, Dietrich Schaupp, and Barbara Parsons, 'Pygmalian Effect: An Issue for Business Education and Ethics' (1988) 7(3) Journal of Business Ethics 223


Laudal, Thomas, 'Drivers and Barriers of CSR and the Size and Internationalization of Firms' (2011) 7(2) *Social Responsibility Journal* 234


Lee, Ki-Hoon, David Herold, and Ae-Li Yu, 'Small and Medium Enterprises and Corporate Social Responsibility Practice: A Swedish Perspective' (2016) 23(2) *Corporate Social Responsibility and Environmental Management* 88


Lee, Su-Yol, ‘Drivers for the Participation of Small and Medium-Sized Suppliers in Green Supply Chain Initiatives’ 13(3) *Supply Chain Management: An International Journal* 185


Lidgren, Alexander, Hakan Rodhe, and Don Huisingh, 'A Systemic Approach to Incorporate Sustainability into University Courses and Curricula' (2006) 14(9) Journal of Cleaner Production 797


Lipton, Philip, Abe Herzberg, and Michelle Welsh, Understanding Company Law (Lawbook Co, 16th ed, 2012)
Lipton, Philip, Abe Herzberg, and Michelle Welsh, *Understanding Company Law* (Lawbook Co, 17th ed, 2014)


Livermore, Shaw, 'Unlimited Liability in Early American Corporations' (1935) 43(5) *Journal of Political Economy* 674


Lockett, Nigel, Frank Cave, Ron Kerr, and Sarah Robinson, ‘The Influence of Co-Location in Higher Education Institutions on Small Firms’ Perspectives of Knowledge Transfer’ (2009) 21(3) *Entrepreneurship & Regional Development* 265


Lorsch, Jay, and Jack Young, ‘Pawns or Potentates: The Reality of America's Corporate Boards’ (1990) 4(4) The Executive 85


Lozano, Rodrigo, Rebeka Lukman, Francisco Lozano, Donald Huisingh, and Wim Lambrechts, 'Declarations for Sustainability in Higher Education: Becoming Better Leaders through Addressing the University System’ (2013) 48 Journal of Cleaner Production 10


Lozano, Rodrigo, 'Incorporation and Institutionalization of SD into Universities: Breaking Through Barriers to Change' (2006) 14(9) Journal of Cleaner Production 787


Maier, Pauline, The Revolutionary Origins of the American Corporation (1993) 50(1) The William and Mary Quarterly 51


Malmberg, Anders, and Dominic Power, 'How Do (Firms in) Clusters Create Knowledge?' (2005) 12(4) Industry and Innovation 409


Margaret Bailey, ‘Landcare Group Networks as Models for Holistic Management’ (1996) 3(3) Eco-Management and Auditing 147


Marilyn Neimark, 'The Selling of Ethics' (1995) 8(3) Accounting, Auditing & Accountability Journal 81


Marsden, Peter, and Nan Lin, Social Structure and Network Analysis (Sage Publications, 1982)

Martin, Sean, Jennifer Kish-Gephart, and James Detert, 'Blind forces: Ethical Infrastructures and Moral Disengagement in Organizations' (2014) 4(4) Organizational Psychology Review 295


Matten, Dirk, Andrew Crane and Wendy Chapple 'Behind the Mask: Revealing the True Face of Corporate Citizenship' (2003) 45(1/2) Journal of Business Ethics 109


May, Peter, 'Regulation and Compliance Motivations: Examining Different Approaches’ (2005) 65(1) Public Administration Review 31

Mayer, David, Maribeth Kuenzi, Rebecca Greenbaum, Mary Bardes, Rommel (Bombie) Salvador, ‘How Low Does Ethical leadership flow? Test of a Trickle-Down Model’ (2009) 108(1) Organizational Behaviour and Human Decision Processes 1

Mayhew, Claire, ‘OHS Challenges in Australian Small Business: Old Problems and Emerging Risks’ (2002) 6(1) Safety Science Monitor 26,

Mayhew, Claire, and Chris Peterson, Occupational Health and Safety in Australia (Allen and Unwin, 1999)


McCrudden, Christopher, Using Public Procurement to Achieve Social Outcomes (2004) 28(4) Natural Resources Forum 257


McQueen, Rob, 'An Examination of Australian Corporate Law and Regulation 1901-1961' (1992) 15(1) University of New South Wales Law Journal 1


McQueen, Rob, A Social History of Company Law – Great Britain and the Australian Colonies 1854-1920 (Ashgate, 2009)

McQueen, Rob, 'The Flowers of Progress: Corporations Law in the Colonies' (2008) 17(1) Griffith Law Review 383


Memery, Juliet, Philip Megicks, Robert Angell, and Jasmine Williams, 'Understanding Ethical Grocery Shoppers' (2012) 65(9) Journal Of Business Research 1283


Millar, Jo, and Allan Curtis, ‘Moving Farmer Knowledge Beyond the Farm Gate An Australian Study of Farmer Knowledge in Group Learning’ (1997) 4(2) European Journal of Agricultural Education and Extension 133


Mills, Reece, and Louisa Tomas, 'Integrating Education for Sustainability in Preservice Teacher Education: A Case Study from a Regional Australian University' (2013) 29(2) Australian Journal of Environmental Education 152


Moon, Jeremy, and Marc Orlitzky, ‘Corporate Social Responsibility and Sustainability Education: A Trans-Atlantic Comparison’ (2011) 17(5) *Journal of Management & Organization* 583

Moore, Samuel, and Susan Manring, 'Strategy Development in Small and Medium Sized Enterprises for Sustainability and Increased Value Creation' (2009) 17(2) *Journal of Cleaner Production* 276

Moran, Michael, 'Theories of Regulation and Changes in Regulation: the Case of Financial Markets' (1986) 34(2) *Political Studies* 185

Moratis, Lars, Jeroen Hoff, and Bert Reul, 'A Dual Challenge Facing Management Education: Simulation-Based Learning and Learning about CSR' (2006) 25(3) *Journal of Management Development* 213


Morf, Duffy, Dale Flesher, Mario Hayek, Stephanie Pane, and Caroline Hayek, ‘Shifts in Corporate Accountability Reflected in Socially Responsible Reporting: A Historical Review’ (2013) 19(1) *Journal of Management History* 87


Moura-Leite, Rosamaria, and Robert Padgett, ‘Historical Background of Corporate Social Responsibility’ (2011) 7(4) *Social Responsibility Journal* 528


Mulder, Karel, Jordi Segalàs, and Didac Ferrer-Balas, ‘How to Educate Engineers For/in Sustainable Development’ (2012) 13(3) *International Journal of Sustainability in Higher Education* 211

Muller, Alan, and Roman Kraussl, ‘The Value of Corporate Philanthropy During Times of Crisis: The Sensegiving Effect of Employee Involvement’ (2011) 103(2) *Journal of Business Ethics* 203


Murillo, David, and Joseph Lozano, ‘SMEs and CSR: An Approach to CSR in their Own Words’ (2006) 67(3) *Journal of Business Ethics* 227

Murillo, David, and Joseph Lozano, 'Pushing Forward SME CSR Through a Network: an Account from the Catalan Model'


Muscio, Alessandro, Davide Quaglione, and Michele Scarpinato, 'The Effects of Universities' Proximity to Industrial Districts on University–Industry Collaboration’ 23(3) China Economic Review 639

Nader, Ralph, Mark Green and Joel Seligmen, Taming the Giant Corporation (Norton & Company, 5th ed, 1976)


Naeem, Malik, and Neil Peach, 'Promotion of Sustainability in Postgraduate Education in the Asia Pacific Region' (2011) 12(3) International Journal of Sustainability in Higher Education 280


Neal, Alan, 'Corporate Social Responsibility: Governance Gain or Laissez-Faire Fig Leaf’ (2008) 29(4) Comparative Labor Law & Policy Journal 459


Nelson, Sue, ‘Reflections from the International Conference on Legal Ethics from Exeter’ (2004) 7(2) Legal Ethics 159


Nguyen, Thi Thanh Man, 'Altruistic or Opportunistic: Consumer Perception of Cause-Related Products' (2015) 19(1) *Academy of Marketing Studies Journal* 177


Nielsen, Anne, and Christa Thomsen, 'Sustainable Development: The Role of Network Communication’ (2011) 18(1) *Corporate Social Responsibility and Environmental Management* 1


Nikolaeva, Ralitza, and Marta Bicho, 'The Role of Institutional and Reputational Factors in the Voluntary Adoption of Corporate Social Responsibility Reporting Standards' (2011) 39(1) *Journal of the Academy of Marketing Science* 136


O'Dair, D, 'Ethics by the Pervasive Method -The Case of Contract' (1997) 17(2) Legal Studies 305


Organisation for Economic Co-operation and Development, Taxation of SMEs: Key Issues and Policy Considerations No 18 (OECD, 2009)


Overell, Michael, Larelle Chapple, and Peter Clarkson, 'Environmental Reporting in the Australian Mining Industry: Complying With Regulation or Meeting International Best Practice?' (2008) 36(2) Australian Business Law Review 137


Owen, David, ‘CSR after Enron: A Role for the Academic Accounting Profession?’ (2005) 14(2) European Accounting Review 395


Pagell, Mark, and Anton Shevchenko, 'Why Research in Sustainable Supply Chain Management Should Have no Future' (2014) 50(1) Journal of Supply Chain Management 44


Palakshappa, Nitha, Sandy Bulmer, Gabriel Eweje, and Philip Kitchen, 'Integrated Strategic Partnerships Between Business and Not-for-Profit Organisations: A Case Study From New Zealand' (2010) 16(4) Journal of Marketing Communications 255


Pedersen, Esben, and Mette Andersen, ‘Safeguarding Corporate Social Responsibility (CSR) in Global Supply Chains: How Codes of Conduct are Managed in Buyer-Supplier Relationships’ (2006) 6(3-4) Journal of Public Affairs 228


Pennington, Lenore, and Elizabeth More, 'Sustainability Reporting: Rhetoric Versus Reality?' (2010) 10(1) Employment Relations Record 24


Perry, Martin, Small Business and Network Economies (Routledge, 1999)


Phillips, Michael, Corporate Moral Personhood and Three Conceptions of the Corporation’ (1992) 2(4) *Business Ethics Quarterly* 435

Phillips, Robert, Edward Freeman, and Andrew Wicks, ‘What Stakeholder Theory is Not’ (2003) 13(4) *Business Ethics Quarterly* 479


Piper, Thomas, Mary Gentile, and Sharon Daloz Parks, Can Ethics be Taught?: Perspectives, Challenges, and Approaches at Harvard Business School (Harvard Business School, 1993)


Porter, Glenn, and Harold Livesay, Merchants and Manufacturers: Studies in the Changing Structure of Nineteenth Century Marketing (Johns Hopkins University Press, 1971)


Prno, Jason, and Scott Slocombe, ‘Exploring the Origins of “Social License to Operate” in the Mining Sector: Perspectives from Governance and Sustainability Theories’ (2012) 37(3) Resources Policy 346

Procurement Working Group (South Australia) 13 March 2012, Final Report


Quinn, John, ‘Personal Ethics and Business Ethics: The Ethical Attitudes of Owner / Managers of Small Business’ (1997) 16(2) *Journal of Business Ethics* 119


Race, Digby, Allan Curtis, ‘Reflections on the Effectiveness of Market-Based Instruments to Secure Long-Term Environmental Gains in Southeast Australia: Understanding Landholders’ Experiences’ (2013) 26(9) *Society and Natural Resources* 1050


Rasche, Andrea, Dirk Ulrich and Ingo Schedel, ‘Cross-Disciplinary Ethics Education in MBA Programs: Rhetoric or Reality?’ (2013) 12(1) *Academy of Management Learning & Education* 71

Rauer, Johan, and Lutz Kaufmann, 'Mitigating External Barriers to Implementing Green Supply Chain Management: A Grounded Theory Investigation of Green-Tech Companies' Rare Earth Metals Supply Chains' (2015) 51(2) *Journal of Supply Chain Management* 65


Redmond, Louise, ‘The Challenge of CSR’ (2005/06) 87 *Reform* 22

Remko, van Hoek, 'From Reversed Logistics to Green Supply Chains' (1999) 4(3) Supply Chain Management: An International Journal 129


Rest, James, Development in Judging Moral Issues (University of Minnesota Press, 1979)


Rhode, Deborah, ‘Ethics by the Pervasive Method’ (1992) 42(1) Journal of Legal Education 31


Richards, Paul, 'The Limitations of Market-Based Regulation of the Electronic Communications Sector' (2006) 30(3) Telecommunications Policy 201


Rizzi, Francesco, Marco Frey, Francesco Testa, and Andrea Appolloni, 'Environmental Value Chain in Green SME Networks: the Threat of the Abilene Paradox' (2014) 85 Journal of Cleaner Production 265


Rotta, Carlo, Short Guide to Ethical Risk (Gower Publishing, 2010)


Sammeck, Jan, New Institutional Economics Perspective on Industry Self-Regulation (Gabler, 2011)

Sandford, Cedric, 'Minimising the Compliance Costs of a GST' (1998) 14(2) Australian Tax Forum 125

Sang Lee, Sung Tae Kim, and Donghyun Choi, 'Green Supply Chain Management and Organizational Performance' (2012) 112(8) Industrial Management & Data Systems 1148

Santos, Maria, ‘CSR in SMEs: Strategies, Practices, Motivations and Obstacles’ (2011) 7(3) Social Responsibility Journal 490


Sargeant, Adrian, and Helga Stephenson, ‘Corporate Giving: Targeting the Likely Donor’ (1997) 2(1) Journal of Nonprofit and Voluntary Sector Marketing 64


408

Schaltegger, Stefan, Sarah Elena Windolph, and Dorli Harms, Corporate Sustainability in International Comparison: State of Practice, Opportunities and Challenges (Springer, 2014)


Scholz, John, 'Voluntary Compliance and Regulatory Enforcement' (1984) 6(4) Law & Policy 385


Senn, Myriam, Non-State Regulatory Regimes: Understanding Institutional Transformation (Springer, 2011)

Seuring, Stefan, and Martin Muller, 'From a Literature Review to a Conceptual Framework for Sustainable Supply Chain Management' (2008) 16(15) Journal of Cleaner Production 1699

Shapiro, Sidney, ‘The Complexity of Regulatory Capture: Diagnosis, Causality and Remediation’ (2012) 17(1) Roger Williams University Law Review 221


Sharoja Sapiei, Noor, Mazni Abdullah, Noor Adwa Sulaiman, 'Regressivity of the Corporate Taxpayers’ Compliance Costs' (2014) 164 Procedia - Social and Behavioural Sciences 26


Shaub, Michael, 'Limits to the Effectiveness of Accounting Ethics Education' (1994) 13(1/2) Business & Professional Ethics Journal 129


Sherren, Kate, ‘Core Issues: Reflections on Sustainability in Australian University Coursework Programs’ (2006) 7(4) International Journal of Sustainability in Higher Education 400


Sison, Alejo José, Corporate Governance and Ethics: an Aristotelian Perspective (Edward Elgar, 2008)


Smith, Phil, Grahame Collier, and Hazel Storey, ‘As Aussie as Vegemite: Building the Capacity of Sustainability Educators in Australia’ (2011) 27(1) Australian Journal of Environmental Education 175


Spence, Laura, and René Schmidpeter, 'SMEs, Social Capital and the Common Good' (2003) 45(1/2) Journal of Business Ethics 93


Stewart, Richard, ‘Models for Environmental Regulation: Central Planning Versus Market-Based Approaches’ (1992) 19(3) Environmental Affairs 547


Stranden, Mark, ‘The Corporation in Society Time to Revise its Role?’ (2005-6) 87 Reform 12


Studer, Sonja, Stephen Tsang, Richard Welford, and Peter Hills 'SMEs and Voluntary Environmental Initiatives: a Study of Stakeholders’ Perspectives in Hong Kong' (2008) 51(2) Journal of Environmental Planning and Management 285


Sutopo, Wahyudi, Muh Hisjam, and Yuniaristanto, 'An Agri-Food Supply Chain Model to Enhance the Business Skills of Small-Scale Farmers Using Corporate Social Responsibility' (2012) 16(1) *Makara, Teknologi* 43


Swan, Peter, ‘Market-Based Regulation of Freight Transportation: A Primer’ (2011) 50(1) *Transportation Journal* 91


Sweeney, Lorraine, 'Corporate Social Responsibility in Ireland: Barriers and Opportunities experienced by SMEs when undertaking CSR’ (2007) 7(4) *Corporate Governance* 516


Taylor, Davis, and Chad Miller, 'Rethinking Local Business Clusters: the Case of Food Clusters for Promoting Community Development' (2010) 41(1) *Community Development* 108


Testa, Francesco, Eleonora Annunziata, Fabio Iraldo, and Marco Frey 'Drawbacks and Opportunities of Green Public Procurement: an Effective Tool for Sustainable Production' (2016) 112(3) *Journal of Cleaner Production* 1893


Tetrault Sirsly, Carol-A nn, '75 Years of Lessons Learned: Chief Executive Officer Values and Corporate Social Responsibility' (2009) 15(1) *Journal of Management History* 78

The Financial Services Authority (UK), *Principles-Based Regulation Focusing on the Outcomes that Matter* (2007)


Thompson, Judith, Howard Smith, and Jacqueline Hood, ‘Charitable Contributions by Small Businesses’ (1993) 31(3) *Journal of Small Business Management* 35, 40

Thompson, Lindsay, ‘The Future of Enterprise Regulation: Corporate Social Accountability and Human Freedom’ (2008) 3(2) *Journal of Business and Technology Law* 1401

Thomson, Joyce, and Tim Jackson, 'Sustainable Procurement in Practice: Lessons from Local Government’ (2007) 50(3) *Journal of Environmental Planning and Management* 421


Tiong, Paul, 'An Examination of the Sustainability Disclosures of ANZ, NAB and Westpac' (2011) 3 *The Finsia Journal of Applied Finance* 12


Tran-Nam, Binh, Chris Evan, and Phil Lignier, 'Personal Taxpayer Compliance Costs: Recent Evidence from Australia' (2014) 29(1) Australian Tax Forum 137


Treviño, Linda, Kenneth Butterfield, and Donald McCabe, 'The Ethical Context in Organizations: Influences on Employee Attitudes and Behaviours’ (1998) 8(3) Business Ethics Quarterly 447


Tuunanen, Mika, Josef, Windsperger, Gérard Cliquet, and George Hendrikse, New Developments in the Theory of Networks: Franchising, Alliances and Cooperatives (2011 Springer-Verlag)


Unauthored, 'Ten Top Rips for Small to Medium Enterprise (SME) Success: 21st Century Entrepreneurs are Profiting from the SME Owner-Manager Model' (2014) 30(2) Strategic Direction 14

Utting, Peter, and José Carlos Marques, Corporate Social Responsibility and Regulatory Governance: Towards Inclusive Development? (Palgrave Macmillan, 2010)


Van Buren, Harry, 'If Fairness is the Problem, is Consent the Solution? Integrating ISCT and Stakeholder Theory' (2001) 11(3) Business Ethics Quarterly 481


Van Gossum, Peter, Bas Arts, and Kris Verheyen ‘From “Smart Regulation” to “Regulatory Arrangements”’ (2010) 43(3) Policy Sciences 245


Victor, Bart, and John Cullen, ‘The Organizational Bases of Ethical Work Climates’ (1988) 33(1) *Administrative Science Quarterly* 101


Villa, Agostino, and Dario Antonelli, *A Road Map to the Development of European SME Networks: Towards Collaborative Innovation* (Springer, 2009)


Walck, Christa, 'Integrating Sustainability into Management Education: A Dean's Perspective' (2009) 33(3) *Journal of Management Education* 384


Walker, Elizabeth, Janice Redmond, Beverley Webster, and Megan Le Clus, 'Small Business Owners: Too Busy to Train' (2007) 14(2) *Journal of Small Business and Enterprise Development* 294


Walker, Helen, and Lutz Preuss, ‘Fostering Sustainability Through Sourcing From Small Businesses: Public Sector Perspectives’ (2008) 16(15) *Journal of Cleaner Production* 1600

Walker, Helen, and Neil Jones, ‘Sustainable Supply Chain Management Across the UK Private Sector (2012) 17(1) *Supply Chain Management: An International Journal* 15


Wang, Rong, 'Socially Responsible Supply Chain Partnership Based-On CSR Equity Model' (2012) 2 American Journal of Industrial and Business Management 184


Ware, Caroline, The Early New England Cotton Manufacturers (Houghton Mifflin, 1931)


Whincop, Michael, Bridging the Entrepreneurial Financing Gap: Linking Governance with Regulatory Policy (Ashgate, 2001)


Wieland, Jamie, and Dale Fitzgibbons, ‘Integrating Corporate Sustainability and Organizational Strategy Within the Undergraduate Business Curriculum’ (2013) 10(4) Organization Management Journal 255

Wilkinson, Graham, Mick Schofield, and Peter Kanowski, 'Regulating forestry — Experience with Compliance and Enforcement over the 25 years of Tasmania's Forest Practices System' (2014) 40 Forest Policy and Economics 1


Wilson, Lou, and John Spoehr, ’Labour Relations and the Transfer of Knowledge in Industrial Clusters: Why do Skilled Workers Share Knowledge with Colleagues in Other Firms?’ (2010) 48(1) Geographical Research 42


Winter, Ian, Social Capital and Public Policy in Australia (Australian Institute of Family Studies, 2000)


Worthy, James, ‘Education for Business Leadership’ (1955) 28(1) The Journal of Business 76

Wright, Robert, Corporation Nation (University of Pennsylvania Press, 2014)


Wu, Chong, and David Barnes, 'An Integrated Model for Green Partner Selection and Supply Chain Construction' (2016) 112(3) *Journal of Cleaner Production* 2114


Cases

ASIC v Vizard (2005) 54 ACSR 394

ASIC v Healey (2011) 83 ACSR 484

ASIC v Macdonald (no 11) (2009) 71 ACSR 368

ASIC v Vines [2007] NSWCA 75

Atwell & Co Pty Ltd v Itci Pty Ltd (Civil Claims) [2013] VCAT 1417


Bell Group v Westpac Banking (No 9) (2008) 70 ACSR 1

Cyclists Touring Club v Hopkinson [1910] 1 Ch 179

Darvall v North Sydney Brick & Tile Co Ltd (no 2) (1987) 6 ACLC 154

Department of Regional Government and Local Department v Emanuel Exports Pty Ltd (Unreported, Western Australia Magistrates Court, Crawford M, 8 February 2008)

Dodge v. Ford Motor Co. 170 N.W. 668 (Mich. 1919)

Evans v Brunner, Mond and Co Ltd [1921] 1 Ch 359


Greenhalgh v Arderne Cinemas Ltd [1951] Ch 286

Grove v Flavel (1986) 43 SASR 410

Hampson v Prices Patent Candle Co (1876) 24 WR 754

Henderson v Bank of Australasia (1889) 40 Ch D 170.

Hutton v West Cork (1883) 23 Ch ED 654

Inspector Brandie v Hogan [2012] NSWIRComm 138

Inspector Brandie v Phillips [2012] NSWIRComm 137

Inspector Bultitude v Eagles [2012] NSWIRComm 139

Inspector Christensen v Coastal Asphalt and Civil Constructions Pty Ltd [2012] NSWIRComm 150

Inspector Christensen v Wadwell Group Pty Ltd (ACN 125 970 345) as Trustee for the Wadwell Family Trust [2012] NSWIRComm 126
Inspector Cooper v J I T Offset Pty Ltd [2013] NSWIRComm 90
Inspector Cooper v Ward [2013] NSWIRComm 95
Inspector Gregory v Big River Timbers (Veneer) Pty Ltd [2013] NSWIRComm 85
Inspector Howett v K T Regal Pty Ltd [2012] NSWIRComm 144
Inspector Hughes v Advanced Metal Door Frames Pty Ltd [2013] NSWIRComm 2
Inspector McGrath v Cooper [2013] NSWIRComm 14
Inspector Middleton v Cafe C Pty Ltd [2012] NSWIRComm 131
Inspector Nicholson v Seovic Engineering Pty Limited (ACN 003 791 973) [2013] NSWIRComm
Inspector Pile v Rouland [2012] NSWIRComm 149
Inspector Ringland v Lonewood Farm Pty Ltd [2013] NSWIRComm 1
Inspector Spence v Multiplus Group Pty Ltd (ACN 132 085 824) [2013] NSWIRComm 69
Inspector Walker v Earthquake Promotions Pty Ltd (No 2) [2014] NSWIRComm 5
Inspector Wright v Khouzame [2012] NSWIRComm 125
Kinsela & Anor v Russell Kinsell Pty Ltd (in liq) (1986) 10 ACLR 395
Nicholson v Permakraft NZ) Ltd (in liq) [1985] 1 NZLR 242
Parke v Daily News [1962] 1 Ch D 927
People’s Department Stores v Wise [2004] 3 S.C.R 461
Re Lee, Behrens & Co [1932] 2 Ch 46
Re New World Alliance Pty Ltd; Sycotex Pty Ltd v Baseler (no 2) (1994) 51 FCR 425
Ring v Sutton 1980) 5 ACLR 546
Spies v The Queen (2000) 201 CLR 603

Stiassny v North Shore City Council [2008] NZCA 522

Taunton v The Royal Insurance Company [1864] 33 LJ Rep 406

Tomkinson v South-Eastern Railway Company (1887) 35 Ch D 675

Walker v Wimborne (1976) 137 CLR 1

Westpac v Bell Group (No 3) (2012) 270 FLR 1

Westpac v Bell Group [2013] HCATrans 049

Winkworth v Edward Baron Development Co. Ltd. [1987] 1 All ER 114

Woolworths v Kelly (1991) 4 ACSR 431
Legislation

Age Discrimination Act 2004 (Cth)

Agricultural and Veterinary Chemicals (Administration Act) 1992 (Cth)

Audit Reform and Corporate Disclosure) Bill 2003 (Cth) Explanatory Memorandum

Australian Meat and Live-stock Industry Act 1997 (Cth)

Australian Securities and Investments Commission Act 2001 (Cth)

Back to Work Act 2015 (Vic)

Back to Work Bill 2014 (Vic)

Back to Work Bill 2014 (Vic) Explanatory memorandum

6 Geo I, c 18, “Bubble Act 1720 (UK)”

Commonwealth Authorities and Companies Act 1997 (Cth)

Companies Act 2006 (UK)

Competition and Consumer Act 2010 (Cth)

Constitution of the Republic of South Africa 1996 (SA)

Contaminated Land Management Act 1997 (NSW)

Corporations Act 2001 (Cth)

Dangerous Goods (Road and Rail Transport) Act 2008 (NSW)

Disability Discrimination Act 1992 (Cth)

Energy Efficiency Opportunities (Repeal) Act 2014 (Cth).

Environment Protection (Sea Dumping) Act 1981 (Cth)

Environmentally Hazardous Chemicals Act 1985 (NSW)

Explosives Act 2003 (NSW)

Export Control Act 1982(Cth)

Fair Trading Amendment (Australian Consumer Law) Act 2010 (NSW)

Financial Management and Accountability Act 1997 (Cth)
Financial Management and Accountability Regulations 1997 (Cth)

Financial Management and Audit Act 1990 (Tas)

Forestry Act 2012 (NSW)

Government Procurement Act 2001 (ACT)

Government Procurement Regulations 2007 (ACT)

Hazardous Waste (Regulation of Exports and Imports) Act 1989 (Cth)

Illegal Logging Prohibition Act 2012 (Cth)

Legislative Instruments Act 2003 (Cth)

Live Animal Export (Slaughter) Prohibition Bill 2012 (Cth)

Local Government (General) Regulations 2005 (NSW)

National Environment Protection Council (New South Wales) Act 1995 (NSW)

Ozone Protection Act 1989 (NSW)

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 (Cth)

Pesticides Act 1999 (NSW)

Primary Industries (Excuse) Levies Act 1999 (Cth)

Procurement Act 1995 (NT)

Product Stewardship Act 2011 (Cth)

Protection of the Environment Administration Act 1991 (NSW)

Protection of the Environment Operations (Clean Air) Regulations 2010 (NSW)

Protection of the Environment Operations Act 1997 (NSW)

Public Finance and Audit Act 1983 (NSW)

Public Governance, Performance and Accountability Act 2013 (Cth)

Public Governance, Performance and Accountability Act 2013 (Cth) Explanatory Statement

Public Sector Employment and Management (Goods and Services) Regulations 2010 (NSW)

Public Sector Employment and Management Act 2002 (NSW)
Racial Discrimination Act 1975 (Cth)

Radiation Control Act 1990 (NSW)

Recreation Vehicles Act 1983 (NSW)

Rural Workers Accommodation Act 1969 (NSW)

Sex Discrimination Act 1984 (Cth)

State Procurement Act 2004 (SA)

State Supply Commission Act 1991 (WA)

Subordinate Legislation Act 1994 (Vic)

The Local Government Act 1993 (NSW)

Trade Practices Act 1975 (Cth)

Waste Avoidance and Resource Recovery Act 2001 (NSW)

Work Health and Safety Act 2011 (NSW)

Work Health and Safety Regulations 2011 (NSW)

Workplace Gender Equality Act 2012 (Cth)
Other Sources

2012-2016 Deed of Agreement Between the Commonwealth and Meat & Livestock Australia Ltd

Accenture / UN Global Compact, The UN Global Compact-Accenture CEO Study on Sustainability 2013: Architects of a Better World (2013)


ACT Government, Procurement Circular PC08: Sustainable Procurement (2014)


Association of University Leaders for a Sustainable Future, Talloires declaration, Association of University Leaders for a Sustainable Future < http://www.ulsf.org/programs_talloires.html>

ASX Corporate Governance Council, Corporate Governance Principles and Recommendations 3rd ed (2014)

ASX Listing Rules


Australian Chief Veterinary Officer (ACVO) *An Assessment of the Ongoing Appropriateness of Mark I and IV Restraint Boxes* (2011) Executive Summary

Australian Communications Consumer Action Network, Submission No 6 to Senate Standing Committee on Finance and Public Administration References Committee, *Inquiry into Commonwealth Procurement Procedures*, 19 December 2013


Australian Council of Trade Unions, Submission No 14 to Senate Standing Committee on Finance and Public Administration References Committee, *Inquiry into Commonwealth Procurement Procedures*, November 2013

Australian Federation of Disability Organisations, Submission No 5 to Senate Standing Committee on Finance and Public Administration References Committee, *Inquiry into Commonwealth Procurement Procedures*, 31 December 2013
Australian Furniture Association, Submission No 23 to Senate Standing Committee on Finance and Public Administration References Committee, Inquiry into Commonwealth Procurement Procedures, 9 January 2014


Australian Industry Group, Submission No 10 to Senate Standing Committee on Finance and Public Administration References Committee, Inquiry into Commonwealth Procurement Procedures, 19 December 2013

Australian Information Industry Association, Submission No 7 to Senate Standing Committee on Finance and Public Administration References Committee, Inquiry into Commonwealth Procurement Procedures, December 2013


Australian Livestock Exporters’ Council (ALEC) Submission to Independent Review into Australia’s Livestock Export Trade (2011)

Australian Made Campaign Limited, Submission No 27 to Senate Standing Committee on Finance and Public Administration References Committee, Inquiry into Commonwealth Procurement Procedures, January 2014

Australian Manufacturing Workers’ Union, Submission No 18 to Senate Standing Committee on Finance and Public Administration References Committee, Inquiry into Commonwealth Procurement Procedures, December 2013


Australian National Audit Office, Home Insulation Program (2010)


Australian National Audit Office, Submission No 31 to Senate Standing Committee on Finance and Public Administration References Committee, Inquiry into Commonwealth Procurement Procedures, 17 January 2014

Australian Paper, Submission No 17 to Senate Standing Committee on Finance and Public Administration References Committee, Inquiry into Commonwealth Procurement Procedures, December 2013

Australian Procurement and Construction Council, Assessing a Supplier’s Sustainability Credentials (Undated)


Australian Services Union/ Financial Sector Union, Submission No 19 to Senate Standing Committee on Finance and Public Administration References Committee, *Inquiry into Commonwealth Procurement Procedures*, December 2013

Australian Standards for the Export of Livestock (version 2.3) (2011)


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


Buhmann, Karin, 'The Danish CSR Reporting Requirement as Reflexive Law: Employing CSR as a Modality to Promote Public Policy' (Law Legal Studies Research Paper Series No. 2011-36, University of Oslo, 29 August 2011)

Business for Social Responsibility, ‘*Suppliers’ Perspectives on Greening the Supply Chain*’ (2001)

Chan, Mui, *The Impact of Corporate Governance and Firm Characteristics on the Voluntary Disclosure of Corporate Social Responsibility Information: Australian Evidence* (PhD, University of Western Australia, 2010)


City of Greater Dandenong, Submission No 35 to Senate Standing Committee on Finance and Public Administration References Committee, *Inquiry into Commonwealth Procurement Procedures*, Undated


C-Metrics Pty Ltd, Submission No 21 to Senate Standing Committee on Finance and Public Administration References Committee, *Inquiry into Commonwealth Procurement Procedures*, 8 January 2014


*Companies Act 2006* (UK) Explanatory Notes


Construction, Forestry, Mining, and Energy Union, Submission No 39 to Senate Standing Committee on Finance and Public Administration References Committee, *Inquiry into Commonwealth Procurement Procedures*, December 2013


Department of Agriculture, Fisheries, and Forestry, *Approved Supply Chain Improvements Program* (2012) Grant Program Guidelines


Department of Business (NT), *Procurement Direction F2: Procurement Principles* (2013)


Department of Finance (WA), *Sustainable Procurement Practice Guidelines* (2011)

Department of Finance and Deregulation, Commonwealth Procurement Rules: Achieving Value for Money (2012)


Department of Finance, *Commonwealth Procurement Rules* (2014)


Department of Finance, Submission 12 to Finance and Public Administration References Committee, Parliament of Australia, *Commonwealth Procurement Procedures*

Department of Finance, Submission No 12 to Senate Standing Committee on Finance and Public Administration References Committee, Inquiry into *Commonwealth Procurement Procedures*, 26 February 2014

Department of Housing and Public Works (Qld), *Principle 1: Fact Sheet* (2013)

Department of Housing and Public Works (Qld), *Principle 4: Fact Sheet* (2013)

Department of Housing and Public Works (Qld), *Procurement Guidance Integrating Sustainability into the Procurement Process* (2014)

Department of Housing and Public Works (Qld), *Queensland Procurement Policy Bridging Document: Differences Between the Former State Procurement Policy and the New the Queensland Procurement Policy* (2013)


Department of Industry, Submission No 36 to Senate Standing Committee on Finance and Public Administration References Committee, *Inquiry into Commonwealth Procurement Procedures*, Undated


Department of Treasury and Finance (Tas), *Central Procurement Board Guide* (2014)


Department of Treasury and Finance (Vic), *Victorian Guide to Regulation* (2011)


Durkin, Patrick, ‘ASIC Bid to Pre-empt Budget Cuts’, *The Australian Financial Review* (Melbourne), 17 September 2012


Emantra Pty Ltd, Submission No 29 to Senate Standing Committee on Finance and Public Administration References Committee, *Inquiry into Commonwealth Procurement Procedures*, 17 January 2014


Environmental Protection Authority (SA), EPA (SA) <Container Deposits <http://www.epa.sa.gov.au/environmental_info/container_deposit>

Environmental Protection Authority, Victoria Compliance and Enforcement Policy (2011)


Ethical Clothing Australia, Submission No 28 to Senate Standing Committee on Finance and Public Administration References Committee, Inquiry into Commonwealth Procurement Procedures, January 2014


European Commission, European SMEs and Social and Environmental Responsibility (2002) Observatory of European SMEs No 4


Ferguson, Sarah, and Michael Doyle, A Bloody Business, Australian Broadcasting Corporation (Online), 30 May 2011 <http://www.abc.net.au/4corners/content/2011/s3228880.htm>


Furniture Cabinets Joinery Alliance Ltd, Submission No 26 to Senate Standing Committee on Finance and Public Administration References Committee, *Inquiry into Commonwealth Procurement Procedures*, January 2014


Global CSR and Copenhagen Business School for the Danish Ministry of Foreign Affairs, *Changing Course – A Study into Responsible Supply Chain Management* (2011)


Good Environmental Choice Australia, Submission No 24 to Senate Standing Committee on Finance and Public Administration References Committee, *Inquiry into Commonwealth Procurement Procedures*, 10 January 2014


Greenwood, Michelle, ‘Corporate Social Reporting - Getting to the 'Other' Bottom Line’ (Working Paper No 57/02, Monash University, November 2002)


Hill, Jennifer, 'Corporate Criminal Liability in Australia: An Evolving Corporate Governance Technique' (Working Paper Number 03-10, Vanderbilt University Law School, Undated)


Hunting, S. J. Mah, and Daniela Tilbury (2006) Education About and For Sustainability in Australian Business Schools: Embedding Sustainability in MBA Programs, Australian Research Institute in Education for Sustainability (ARIES) for the Australian Government Department of the Environment and Water Resources, ARIES,

Ibrahim Malumfashi, Garba “Green” Public Procurement Policies, Climate Change Mitigation and International Trade Regulation: An Assessment of the WTO Agreement on Government Procurement (PhD, University of Dundee, 2010)


Jehan Loza and Sarah Ogilvie, Corporate Australia Building Trust and Stronger Communities? A Review of Current Trends and Themes (2005) For the Prime Minister’s Community Business Partnership (The Partnership)


Laing, Rosemary, Submission No 2 to Senate Standing Committee on Finance and Public Administration References Committee, *Inquiry into Commonwealth Procurement Procedures*, 16 December 2013


Landcare Tasmania Inc, Submission No 55 to Environment and Communications References Committee, *National Landcare Program*, 14 August 2014


Lawrence, Jeffrey, and Geof Stapledon, *'Do Independent Directors Add Value?’* (1999) Centre for Corporate Law and Securities Regulation, The University of Melbourne

Li, Yongqiang, 'Governance, Regulation and Performance of Non-listed Small Corporations in Australia: A Structural Equation Modelling Approach' (PhD, Victoria University, 2014)


Margaret McMurdo, 'Caveat Director - Recent Developments and Future Directions' (Paper presented at Inaugural Women Lawyers Conference Celebrating Excellence, Sydney, 30 September 2006)


Marshall, Shelly, and Ian Ramsay, 'Shareholders and Directors’ Duties: Law, Theory and Evidence' (Legal Studies Research Paper No 411, University of Melbourne, June 2009)


Meat & Livestock Australia Ltd, *Memorandum of Association*


Meat & Livestock Australia, *Annual Operating Plan 2013-14*

Meat & Livestock Australia, *Annual Report 2012-13*

Meat & Livestock Australia, *Corporate Plan 2010 – 2015*


Mileva, Elitsa, *Sustainability Reporting and SMEs – From ISO 14001 to Global Reporting Initiative* (Master Thesis, Aalborg University, 2013)


Murphy, Kristina, Moving towards a More Effective Model of Regulatory Enforcement in the Australian Taxation Office (Working Paper No 45, Australian National University, November 2004)

National Disability Services, Submission No 9 to Senate Standing Committee on Finance and Public Administration References Committee, *Inquiry into Commonwealth Procurement Procedures*, December 2013


Nielsen, *Doing Well By Doing Good: Increasingly Consumers Care About Corporate Social Responsibility, But Does Concern Convert to Consumption?* (2014)

Justine Nolan, ‘Corporate Accountability and Triple Bottom Line Reporting: Determining the Material Issues for Disclosure’ (University of New South Wales Faculty of Law Research Series 15, 20 March 2007)


Northern Territory Procurement Code (2011)

O’Brien, Justin, and Dr George Gilligan, Submission 121 to Senate Economic References Committee, *Inquiry into the Performance of the Australian Securities and Investments Commission*, 21 October 2013


Plastow, Kevin, *An Analysis of the Nature and Effectiveness of Corporate Governance in Smaller Listed Australian Companies* (PhD, Queensland University of Technology, 2011)

Plew, Carolin, *Key Drivers of University-Industry Relationships and the Impact of Organisational Culture Difference: a Dyadic Study* (PhD, University of Adelaide, 2005)


Professionals Australia, Submission No 4 to Senate Standing Committee on Finance and Public Administration References Committee, *Inquiry into Commonwealth Procurement Procedures*, November 2013


Reich, Robert, ‘The Case Against Corporate Social Responsibility’ (Goldman Working Paper Series No GSPP08-003, University of California, August 1, 2008)


Romano, Roberta, 'What Is the Value of Other Constituency Statutes to Shareholders?' (Faculty Scholarship Series Paper No 1957, Yale University, 1 January 1993)


Seddon, Nick, Submission No 1 to Senate Standing Committee on Finance and Public Administration References Committee, *Inquiry into Commonwealth Procurement Procedures*, Undated


Sensis, *Sensis® Business Index - Small and Medium Enterprises* (June 2012)


South East Melbourne Manufacturers Alliance, Submission No 34 to Senate Standing Committee on Finance and Public Administration References Committee, *Inquiry into Commonwealth Procurement Procedures*, Undated

Spencer, Elizabeth, *The Regulation of the Franchise Relationship in Australia: A Contractual Analysis* (PhD, Bond University, 2007)


State Procurement Board (SA), *Sustainable Procurement Guidelines* (2010)


Tasmanian Farmers and Graziers Association, Submission No 64 to Environment and Communications References Committee, National Landcare Program, August, 2014

The Association of Chartered Certified Accountants, *Disclosures on Supply Chain Sustainability* (2011)


The Committee for Gippsland Inc, Submission No 32 to Senate Standing Committee on Finance and Public Administration References Committee, *Inquiry into Commonwealth Procurement Procedures*, 21 January 2014

*The Equator Principles* (2013)


Thomas, Janelle, and Suzanne Benn, *Education about and for Sustainability in Australian Business Schools Stage 3* (2009) A Report prepared by the Australian Research Institute in
Education for Sustainability for the Australian Government Department of the Environment, Water, Heritage and the Arts


Tilbury, Daniella, C. Crawley and F. Berry, Education about and for Sustainability in Australian Business Schools (2004) Report prepared by the Australian Research Institute in Education for Sustainability (ARIES) and Arup Sustainability for the Australian Government Department of the Environment and Heritage


Transport Workers’ Union, Submission No 30 to Senate Standing Committee on Finance and Public Administration References Committee, Inquiry into Commonwealth Procurement Procedures, 20 January 2014

Treasurer’s Instruction No 1101(Tas): Procurement Principles: Goods and Services (2014)

Treasurer’s Instruction No 1112 (Tas): Common Use / Whole-of-Government Contracts and Other Arrangements: Goods and Services (2014)

Treasurer’s Instruction No 1121 (Tas): Climate Change and Environmental Impact: Goods and Services (2014)

Treasurer’s Instruction No 1207 (Tas): Procurement from Businesses that Provide Employment to Persons with Disabilities: Goods and Services (2016)


United Nations Global Compact, A New Era of Sustainability: UN Global Compact-Accenture CEO Study (2010)

United Nations Global Compact, Global Corporate Sustainability Report (2013)


Victoria, Parliamentary Debates, Legislative Council, 12 February 2015, 235 (Gavin Jennings).

Victoria, Victorian Government Gazette no G12, 26 March 2015

Victoria, Victorian Government Gazette no S320, 29 October 2015


