

THE CONTEMPORARY CORPORATION: CURRENT CHALLENGES AND FUTURE DIRECTIONS

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Corporations are a critical part of modern economies: artificial creations of the law, they have underpinned the western world's twentieth century economic miracle. One Nobel Prize winner described the corporation as 'the greatest single discovery of modern times.'

Corporations exercise enormous power: twenty five of the world's largest companies have higher turnover than the GDP of entire countries and in June 2017 there were 2.7 million companies registered in Australia.

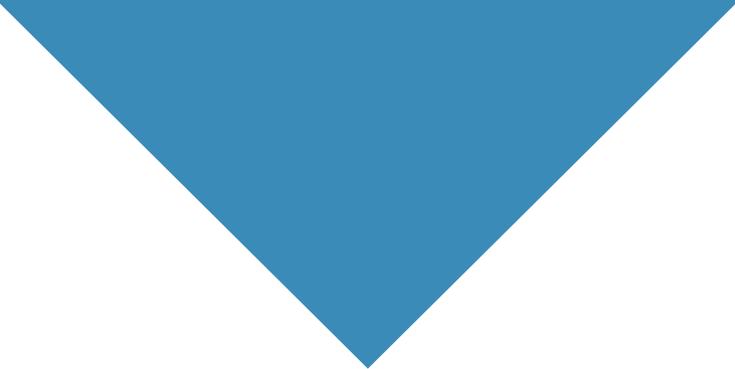
The Banking Royal Commission has provided a stark reminder of the need for effective corporate regulation and of the need for companies to be more accountable to society's expectations regarding ethical profit-making. Indeed, the changing social and political environment of the 21st century is placing enormous pressure on the very idea of a corporation driven centrally by profit. Increasingly, with the encouragement of shareholders and/or at the insistence of consumers, conventional for-profit corporations are paying attention to objectives that are broader than the increase of shareholder wealth, and that promote social and environmental responsibility.

At the same time, not-for-profit corporations are engaging in commercial enterprises in order to support their charitable or other purposes.

A third category, benefit corporations, specifically designed to combine both profit and benefits to society, represent a growing sector and offer an alternative way to conceive of the corporate form.

The desire for change across the corporate sector is illustrated by some recent high-profile initiatives. The Coalition for Inclusive Capitalism, launched in 2014, aims to 'make capitalism more equitable, sustainable, and inclusive'. In August 2019, the US Business Roundtable published a declaration explicitly endorsing a commitment to stakeholders, including their workers, local communities, suppliers, and the environment, rather than simply shareholders (AFR, 21 August p14). In September 2019 (as we were finalising this application) a coalition called Not Business as Usual was formed to support worker participation in the school climate strike of 20 September.

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These initiatives are evidence of a broad desire for change, which may be in part driven by community expectations. The 2019 Company Pulse, a study undertaken by the Committee for Economic Development in Australia, found that 'more than 70 per cent of the general public agreed that large companies should place equal importance on economic, environmental and social performance'.

Change will only be effective and long-lasting if it is supported by appropriate policy and law reform. The issues raised by the changing nature of the corporation are being extensively discussed internationally, but are not at present being sufficiently debated in Australia.

In 2018, the British Academy published *Reforming business for the 21st century: a framework for the future of the corporation*. This report makes some far-reaching findings about the need for corporations to change fundamentally in order to meet present and future challenges. The report emphasises that the idea that corporations should be driven primarily by profit is no longer appropriate. In consequence, a new framework based on three principles is proposed: 'a redefining of shareholder purpose that is distinct from shareholder returns, an establishment of trustworthiness founded on norms of integrity, and the embedding of a culture in organisations that enables both.' (p10). The report identifies five 'levers' that can be used to promote change: diversification of ownership of corporations; corporate governance matched to purpose; extensive regulatory modernisation; fair taxation; and investment options that align public and private purposes.

In Australia, debate has been more limited. As part of its 2018 review of its Corporate Governance Principles, the Australian Securities Exchange (ASX) contemplated the inclusion of a recommendation that companies comment annually on issues relating to their 'social licence to operate'.

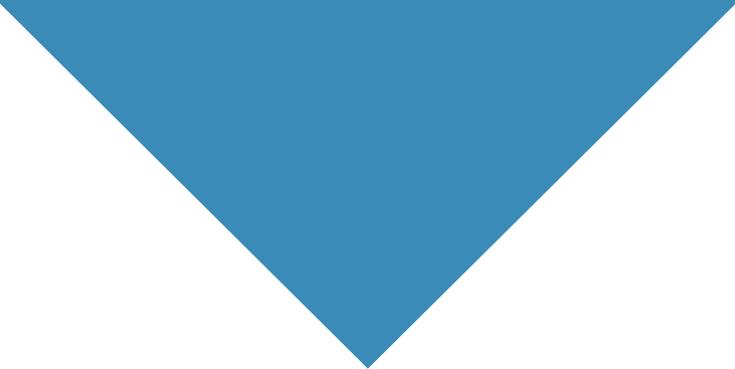
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Although widely used in the mining industry and some other environmentally-sensitive industries, social licence concepts have not been part of standard Australian corporate reporting.

A 2018 study by the Australian Institute of Company Directors and accounting firm KPMG found that Australian directors were 'acutely aware of the need to win the trust of stakeholders' and reported a significant shift in the attitudes of company directors, who were beginning to ask questions about their company's social licence to operate. The ASX suggestion, however, led to significant pushback from some high-profile members of the director community, and the phrase 'social licence to operate' was removed from the final version of the Principles. In light of the apparent shift in attitudes, and international trends, greater clarity is needed as to what is meant by a 'social licence to operate' in contemporary Australia, and how it can be integrated into corporate structures.

The British report was based on thirteen research projects on the future of business, but in the Australian context social science and academic commentary was largely absent from the ASX discussions.





At the core of this debate is a concern about the extent to which society has lost trust in the institutions we rely upon, including the corporations that are responsible for so much of our economic growth and wellbeing. Many of these questions remain unanswered and need to be addressed if the social responsibility of companies is to become a norm within Australian society.

These issues have significance for the entire economy, as well for all people in their engagements with businesses and other enterprises.

The workshop will bring together researchers, corporate lawyers, and policy makers to investigate the changing corporation and consider potential reforms to corporate governance that will best reflect these trends. It will look at the problem of corporate form from theoretical, commercial, and regulatory perspectives with a view to informing current and future developments. Themes will include the following: social licence to operate; responsible innovation; use of the corporate form for social enterprises; and environmental and ecological responsiveness.

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