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**Discussion Paper - Shareholder Primacy: Is there a need for change?  
SUBMISSION BY AUSTRALIAN SHAREHOLDERS' ASSOCIATION**

We submit the following comments on this paper.

The Australian Shareholders' Association (ASA) represents its members to promote and safeguard their interests in the Australian equity capital markets. The ASA is an independent not-for-profit organisation funded by and operating in the interests of its members, primarily individual and retail investors, self-managed superannuation fund (SMSF) trustees and investors generally seeking ASA's representation and support. ASA also represents those investors and shareholders who are not members, but follow the ASA through various means, as our relevance extends to the broader investor community.

We make the following comments.

**Introduction**

Directors in today's environment of close scrutiny are increasingly aware of their responsibilities to more groups and individuals than just shareholders. ASA holds to the view that directors must act in the best interests of the company and that, in a narrow sense, is seen as acting in the best interests of shareholders. Directors are expected to protect those interests. As the providers of capital, shareholders have rights and may regard directors as custodians of their investment.

Notwithstanding the above, it is evident that directors are aware that their decisions have a wider impact than creating the conditions for profitability. It is usual for reference to be made to stakeholders in reporting results or operational activities. In many instances this is a direct result of a range of legislation which can come under the heading of ESG. There are many groups in the community with strong positions on a range of issues, some of which are covered by legislation while others are not. It is not possible for directors to be sure they have taken account of every group claiming to be a stakeholder.

It is interesting that governments and individuals assert that companies should not minimise their tax, legitimately, while those same individuals claim the right to do so!

It is suggested that S181 of the Corporations Act, which requires directors to have regard to the interests of other stakeholders be amended to compel them to do so. What does this mean in practice and how feasible is it? Stakeholders taking legal action if they do not like a board decision?

### **Part 1**

ASA accepts that directors would be remiss if they ignored the interests of creditors in considering the continuing solvency of the company. In this regard the interests of stakeholders can also be in the interests of shareholders. Mention is made of debt holders being “owners” rather than the shareholders. We think this is a stretch identifying parties who have contracted to provide capital on a defined basis, including return and repayment with those who have no such right but have financed the company with expectations but no guaranteed rights.

### **Part 2**

Governments have responsibilities to many groups in the community and often this is recognised by Acts, Laws, Regulations and overseeing bodies. There is a raft of diverse groups all claiming the right to be heard and often with conflicting policies and positions. Companies currently attempt to take account of the views of government and groups as part of their responsibility to have “regard”. Without further compulsion that approach has been seen as sufficient.

### **Part 3**

More and more companies explain their position on ESG issues in their annual reports and on their websites. However if protecting jobs, not investing in growth opportunities or ceasing to sell legal products causes shareholders to suffer financially through reduced returns then that outcome disadvantages not just the shareholders but other stakeholders who rely on corporate success.

### **Part 4: Is there a need for change?**

Four questions are posed for answer:

#### *1. There is no need for a change to the Corporations Law.*

ASA agree that directors, at least in the ASX 200 where we are most active, do take account of the interests of stakeholders. They do so as responsible people with a wider view of the future success of the company. We note the outcome of inquiries and the expressed views of directors. However we do not agree that the current position is strong enough to meet community perceptions or at times reality.

#### *2. There is a need for a change to the Corporations Law .....company.*

ASA supports the permissive clause as it provides clarity. It also requires all companies listed or not to take regard of stakeholder interests and be seen to do so through reporting requirements.

#### *3. There is a need for change with an explicit clause.*

ASA does not support this approach. It will lead to disputes and legal actions (which can occur now but with less authority) from any group with a barrow to push.

4. *There is a role for the government to play.....social policy.*

Governments play such a role now and will continue to do so. However ASA does not want to see government continually extending its reach into corporate governance. We therefore do not see government driving director responsibility.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Ian Curry', written in a cursive style.

Ian Curry  
Chairman