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Dear Judith

9 December 2014

**Shareholder Primacy – Is there a need for change?**

Macquarie University's Department of Accounting and Corporate Governance is pleased to provide the Governance Institute of Australia with its views on the Governance Institute of Australia's October 2014 Discussion Paper 'Shareholder primacy: Is there a need for change'?

Macquarie University's response reflects our position as a leading educator to the Australian and global community. This submission has benefited with input from discussions with key constituents.

As detailed in our comments (Appendix 1), Macquarie University believes that there is a need for change so that companies are required to take into account the interests of all stakeholders, and not just shareholders.

Macquarie University would be pleased to discuss this submission as and when required. If you require any further information or comment, please contact Keith Reilly - [keith.reilly@mq.edu.au](mailto:keith.reilly@mq.edu.au)

Yours sincerely

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## **Appendix 1: Macquarie University's Comments on the Discussion Paper Issues**

### **Governance Institute of Australia**

Respondents are asked to consider if there is a need for change to ensure that companies take regard of the interests of stakeholders. There might be no need for change, or the corporations law may be seen as the avenue to pursue to provide for change, or other forms of legislative or social policy intervention may be viewed as more appropriate avenues to pursue. The options set out below may not be the only options available, and respondents should feel free to recommend other possible approaches and set out their rationale for suggesting such approaches.

#### **1. There is no need for a change to the corporations law.**

The law as it stands allows directors to take account of the interests of stakeholders other than shareholders. Two inquiries have confirmed this. Directors themselves have confirmed that they equate the best interests of the corporation with the interests of all stakeholders as a means to achieving the long-term interests of shareholders. At law, directors must already balance the interests of shareholders with their responsibilities under specific statutes regarding workplace health and safety, environmental impact and trade practices.

Do respondents agree? Why? Why not?

***Disagree. Macquarie University believes that ultimately it is Parliament that makes the call on behaviour.***

#### **2. There is a need for a change to the corporations law.**

The equivalent of s 172 in the UK (permissive clause) should be introduced to expand directors' duties so that they should have regard to the interests of stakeholders other than shareholders in promoting the best interests of the company.

Inserting a permissive clause provides clarity as to directors' capacity to consider other stakeholders in decision making. The reasons set out in the paper against introducing such a clause are not compelling, in light of the fact that the UK enacted s 172(1) in 2006 and most of these points have not been an issue. Such a clause does not specify how directors should take into account other stakeholders, only that they consider them.

Do respondents agree? Why? Why not?

***Agree. Macquarie University believes that we live in a global world and the UK represents on this issue 'best practice'.***



**3. There is a need for a change to the corporations law and an explicit clause should be introduced to expand directors' duties so that they must take account of the interests of stakeholders other than shareholders.**

Changing the corporations law to create a wider group to whom the director has a fiduciary duty should not cause any concern, given the impact of corporations on the environment and future communities was not contemplated at the time the concepts of shareholder primacy and limited liability were established. Requirements have changed, as the world has developed. Commercial activity and the generation of wealth cannot be for one group only (shareholders) at the expense of other third parties or the environment.

Do respondents agree? Why? Why not?

***Agree. Macquarie University believes that as detailed in Issue 1, it is ultimately Parliament that makes the call on behaviour***

**4. There is a role for the government to play in protecting the interests of stakeholders — not through amendment to the corporations law, but through other forms of social policy.**

Concerns about issues such as air and water pollution, water extraction, impacts on biodiversity, waste management, workers' rights and safety and community relationships, including land access and ownership and equitable sharing of benefits from corporate activity are large social policy issues that should be a matter for the government. While directors should be encouraged to continue to equate the best interests of the company with the interests of all stakeholders as a means to achieving the long-term interests of shareholders, it is an abrogation of the role of government to suggest that such broad social policy issues should be a matter of director responsibility, particularly given that directors owe a duty to the company and it is not a public duty. The implications and unintended consequences of changing directors' duties or limited liability are very real and of concern, and fundamentally shift the role of protecting the interests of the community, the environment and employees to companies, when such matters are those which governments should address, including through other legislative interventions or forms of social policy.

Do respondents agree? Why? Why not?

***Disagree. As detailed in Issue 1, Macquarie University believes that it is ultimately Parliament that makes the call on behaviour***