DIRECTORS' LIABILITY REFORM BILL 2022

Second Reading

Resumed from an earlier stage of the sitting.

MR P. LILBURNE (Carine) [2.55 pm]: I would like to contribute towards the support for the Directors' Liability Reform Bill 2022 that is before the lower house this afternoon. I would like to acknowledge the contributions of my colleagues today. This afternoon I will not reiterate the valuable points discussed by my fellow members of Parliament, but instead I will discuss how the applicability of the Directors' Liability Reform Bill 2022 correlates to modern accepted practice for directors in Western Australia.

Directors' liability reform was one of 27 deregulation priorities that formed part of the National Partnership Agreement to Deliver a Seamless National Economy, which was an intergovernmental agreement that was entered into by the commonwealth and all states and territories in 2008. The Council of Australian Governments coordinated the implementation of the national agreement, which included driving the reform project's key milestones and ensuring that states and territories complied with the priorities of the agreement. As part of the reform to directors' liability, in November 2008, COAG agreed to increased harmonisation across the country when imposing personal criminal liability on directors for corporate fault. COAG also agreed to a set of principles, and, later, guidelines, wherein directors would be deemed criminally liable for offences committed by corporations and bodies corporate.

As a director of a company registered under the Corporations Act 2001, I understand the implications of responsibility to those that benefit from my decisions and behaviour and how my behaviour and judgement will be assessed and scrutinised by regulatory authorities such as the ATO and the Australian Federal Police. That responsibility can be summarised with the word "values". That single word dictates the reason why decisions are made and acts as a moderating factor in risk and cost–benefit analyses. Choices that I make as a director relate exactly with the expectations outlined in the Directors' Liability Reform Bill 2022.

The bill aims to limit and standardise all provisions that impose derivative liability on directors and other officers of bodies corporate. "Derivative liability" means the personal criminal liability of officers for a body corporate's offending when they have failed to take all reasonable steps to prevent the body corporate from committing an offence. Concepts such as negligent or reckless behaviour are the results of choices made by a director. If a decision is judged to be poor or reckless by an authority, the values that drive the choice made are at the core of the fault mechanism. For example, within the Council of Australian Governments' document, principle 4 states that directors could be liable when they have encouraged or assisted in the commission of the offence, or have been negligent or reckless in relation to the corporation's offending.

An important value for a director of a company in Australia is to be kept informed about the company's financial position and performance, ensuring that the company can pay its debts on time. In Australia, an oversight mechanism exists that will quickly detect an act if the amount of moneys available to pay debt is insufficient. This group, of course, is known collectively as the banks. These financial behemoths will quickly place a stop on the availability of credit to companies if directors do not place value on accountability and record keeping of funds. The Directors' Liability Reform Bill 2022 codifies the importance of corporate governance. In my role as a director, I must account for the money spent on my business's functioning through the submission of business activity statements and yearly tax returns, for example. My choice of behaviour in complying with these regulations is a reflection on the values that I personally abide by.

An important value as a director of a company in Australia is to make decisions in good faith and for a proper purpose. The people of Western Australia regularly hear in the news about international drug smugglers who have been caught by the Australian Federal Police attempting to import large commercial quantities of illegal narcotics into Australia under the premise or disguise of a legitimate corporate business importing parts or chemicals, for example. Once again, the values of the directors in charge of these shell companies have been compromised by the behaviour of greed and criminality. The Australian law enforcement establishment has proven incredibly effective at disrupting these corporate cowboys and bringing them before Australian courts for judgement and justice.

In effect, the Directors' Liability Reform Bill 2022 reinforces and emphasises the liability element of people's decisions. It is an important value as a director of a company in Australia to find out and assess how any decision will affect the company's business performance, especially if it involves a lot of the company's money or could have a material impact on the company's reputation. Research and development of a new business opportunity, business diversification and sourcing new resource bases are a crucial part of directors' responsibilities.

During the COVID pandemic, supply-side issues pressurised both the availability and transportation of core materials for construction and fabrication. Corporate activity must value the importance of maintaining quality assurance mechanisms and programs during resource stress. COAG's fourth principle states that there are steps a reasonable director might take to ensure a corporation's compliance with the legislative obligation. Here I highlight the link between the quality of the good or service being provided and the obligation that directors must adhere to regardless of the business environment a company may find itself in.

A professional director of a corporate entity may find themselves in a position whereby they have identified criminality or the possibility of liability. I again refer to the theme of my speech today, which is the values that those directors then find themselves in; that will dictate how they react to the discovery of criminality. An important value as a director of a company in Australia is to get trusted professional advice when it is needed to make an informed decision. The Directors' Liability Reform Bill 2022 states that there are steps that a reasonable director might take to ensure a corporation's compliance with the legislative obligation. An individual director may seek private legal advice from a trusted lawyer or association if they feel that their personal obligations may be compromised by a corporation's actions. Indeed, authorised support structures such as the Australian Securities and Investments Commission provide reinforcement and guidance information for directors who find themselves in a compromised position. The Australian Criminal Intelligence Commission estimates that the cost of organised crime to Australia is more than $36 billion a year. ACIC creates a national intelligence picture of crime, targets serious and organised crime, and delivers information capability and services to frontline policing and law enforcement.

In this way, ACIC helps to make Australia safer by improving our national ability to connect, discover, understand and respond to the corporate crime and criminal justice issues impacting Australia. A director of a compromised corporation may seek the confidential advice from any such organisation in Australia that will protect them against liability within the context of the Directors' Liability Reform Bill 2022.

Harvard University advocates this doctrine of good corporate governance and oversight to the students attending its courses. In one publication, it states that the mission of Harvard Business School is to educate leaders who make a difference in the world. Achieving this mission requires an environment of trust and mutual respect, free expression and inquiry, and a commitment to truth, excellence and lifelong learning. Harvard Business School advocates that directors can and should be a living model of these values. It is refreshing to see a learned place of learning such as Harvard Business School publicly reinforcing a positive message to its graduates. The fourth COAG principle encourages directors to act in good faith and report areas of concern if corporations do not display appropriate compliance. That principle reduces the possibility for liability if a director acts with due diligence. For example, the imposition of personal criminal liability on a director for the misconduct of a corporation should be confined to situations when there are compelling public policy reasons for doing so—for example, the potential for significant public harm that might be caused by the corporate offending.

Recently, I had a guided tour of Edith Cowan University's Joondalup campus where many of my constituents attend courses. During the presentation from an associate professor of law, he explained to me how ECU highlights during the curriculum lectures the importance of good corporate values within business structures. The Directors' Liability Reform Bill 2022 reinforces this core belief by stating that if a director is not involved in corporate offending, the director's liability should be nil. The fifth COAG principle states that when the fourth principle is satisfied and directors' liability is appropriate, directors could be liable when they have either encouraged or assisted in the commission of an offence or have been negligent or reckless in relation to the corporation's offending.

The bill proposes to amend 69 state acts to remove or standardise provisions that impose personal liability for corporate fault. During the extensive consultation that occurred when drafting the 2015 bill, agencies assessed existing offences under their legislation that imposed derivative liability against the COAG principles to determine whether it was appropriate for officers' liability to apply. This bill is not the principal legislation. It will not be a standalone act to which people will refer in the future. Instead, it will insert standard provisions relating to derivative liability into the Criminal Code and then apply those provisions to specified offences in existing acts, when appropriate, so that the officers will be personally liable when the offences are committed by bodies corporate and officers have failed to take all reasonable steps to prevent such offending. In future, people in WA will need to refer to the Criminal Code to get an understanding of the position on derivative liability.

Effective directors of corporations are adept at expanding the array of choices under consideration. Directors ideally remain grounded in the real world, making sensible decisions based on their values. I commend the Directors' Liability Reform Bill 2022 to the house.

The DEPUTY SPEAKER: I give the call to the member for Willagee.

MR P.C. TINLEY (Willagee) [3.10 pm]: Thank you, Deputy Speaker. I note the member for Bicton has wandered out of the chamber now.

It is indeed a great pleasure to stand to speak on the Directors' Liability Reform Bill 2022. Every member of this chamber, if they are diligent local members, would be involved and intersecting with a range of commercial and not-for-profit governance boards, all of which derive their moral and ethical underpinnings from what is proposed in the foundations of the bill before the house. The salient point is that this legislation has changed over time, certainly since commercial activities started, and as a model has permeated across our society. Retirement villages with resident representation, or strata title companies, have derived their underpinning ethics and morals, and basis for operation from this legislation as it has evolved. The commonwealth Corporations Act details specific matters

on the roles of a company. It identifies a company as a person so it can be sued and prosecuted as a legal entity. I am told that is a legal fiction. We all enjoy a legal dichotomy that makes us scratch our heads. Getting a lawyer to explain a legal fiction is even more confusing!

The growth of corporate governance has a long history. It is worthy to note that history because much of the detail in this bill goes way back. We find corporations law largely in western democracies such as the United States and the United Kingdom. We got our corporations law from the Westminster system. It is a vast subject that has a very long and rich history. It brings together managerial accountability, board structure and shareholder rights, which at times intersect, align or conflict with each other depending on the board, the shareholders and the ambitions of the particular entity. In this case, it is a commercial entity. As I said, it can also be the not-for-profits and more relaxed boards of schools and other institutions that we as local members work with.

Corporate governance started when corporations began. It goes back to the East India Company, for example. In the US, there was the Hudson's Bay Company. The was the Levant Company and other major charter companies in the sixteenth and seventeenth centuries. It was a really interesting time when globalisation was in its infancy but nonetheless growing.

After World War II, the US had particularly strong economic growth. Something we circle around but do not often land on is the idea of the post Industrial Revolution. During the Industrial Revolution, some countries had gross domestic product per person output relative to population three times that of the US. For example, a worker in England had a GDP value of around 20¢ a day in today's dollars. It was an agrarian subsistence economy with pieceworkers and those sorts of things. During the Industrial Revolution, the GDP output of the United Kingdom per person, with 12 million people, was three times that of the United States. Obviously the United States caught up. Its per person GDP output is massive. This is important. In the UK, it went from 20¢ a day to $20 a day. That massive economic capacity allowed the country to protect itself and to grow. The dominance of the UK across much the world came through some of its increased productivity.

Productivity is a fundamental driver of profit and a country's economic strength, which obviously gives it geopolitical strength. As the number of organisations increased and they became more connected and complex, and the free market was more than just a subsistence farmer taking their product to a village market, they became very much globalised and more complex. Of course, there was the entry and growth of more and more sophisticated taxation systems, ensuring that the collective wealth was proportionally distributed by government to the people. The world became a more complex place.

After World War II, we saw massive increases in productivity and the global economic strength of various countries. We also saw an interesting dichotomy between managers and boards of directors. The CEOs and senior managers highly influenced the selection of directors and basically put in place their own boards. Unless they were dealing with matters like dividends and stock prices, investors tended to steer away from the whole idea of governance. If we contrast that concept of governance with what happens today, I note that we now have ethical investment funds for which the environmental, social and governance investment strategy of a particular company is fundamentally important. We have seen a significant shift in governance and what directors take responsibility for. The idea is that the corporate entity as a legal entity in its own right—or as a person, as they say—has taken on real significance.

We need only look at the issues around Juukan Gorge and the impact that had on Rio Tinto's share price. It also lost directors, managers and, more importantly, community confidence. They are the far-reaching issues that directors of companies and entities need to grapple with these days. The idea of a director going on a board as part of a representational model is now completely defunct. The Directors' Liability Reform Bill 2022 very much underscores the evolution of governance.

Importantly, in the 1970s, the Securities and Exchange Commission in the US started to gain traction. It brought to the forefront issues of corporate governance and had a broad stance on corporate governance reform. In 1976, the term "corporate governance" first appeared in the *Federal Register*, which is the official journal of the government of the United States. It started in 1976. In the lifetime of many members of this chamber, it has gone from an almost laissez-faire style of representation to one that has started to gain significant legal traction.

In the 1960s, there was an interesting case in the US with Penn Central Transportation Co. The company had diversified, like every business with a view to the future, looking for new technologies and opportunities to invest. Penn Central diversified into pipelines, hotels, industrial parks and lands, and commercial real estate. However, when the company filed for bankruptcy in 1970, the board came under public fire, and rightly so given the pace of change. In 1974, the SEC brought proceedings against three outside directors for misrepresenting the company's financial condition and a wide range of acts of misconduct by Penn Central executives. This was the first official case in the US. Much of the movement in the corporate governance world was in the US. It was taken up by many US universities as a discipline of study.

This was the first major prosecution of a regulator over a governance body, and there were several consequences for it—payments to foreign officials for falsifying corporate records et cetera. We saw a consequence of this in the United States for some of those who raised funds by political donations from different companies. All listed US companies are governed, even internationally, by the Foreign Corrupt Practices Act of the Congress that prevents them from donating to political parties, for example, and being involved in domestic political matters. That came from hard-fought problems of corruption among officials and working in developing countries where that sort of bribery and corruption was rife.

The 1980s brought an end to the 1970s movement of corporate governance reform due to a political shift in the right. In the US there was a more conservative approach through the 80s and it was not the best of times for proper transparent governance across the biggest economy in the world. We saw from the 80s onwards the rise of shareholder activism, and we see it here in Australia with organisations such as GetUp, for example, and shareholder representation groups that take small positions in listed companies in order to ensure that they bring a voice of transparency onto the floor of an AGM of a listed company. The financial crisis of 2008 is a watershed moment for corporate governance. We saw massive shifts in the global economy and massive downturns, and many businesses being called into question about what they did or did not know at a certain time. To this day, in some part those cases are ongoing.

As I have outlined, particularly more from a US point of view, but it reflects itself across the developed world, certainly in the European economies and increasingly in the development of Asian economies with some significant differences, the amendment bill before us today is of itself part of a long line of shifting from what was a very easy, relatively unregulated world of laissez-faire governance through to a much more structured governance. One of the biggest shifts in Australia was the Corporations Act. I cannot recall exactly when it was when it talked about a director's responsibility.

Ms M.M. Quirk: It was the early 2000s.

Mr P.C. TINLEY: Yes, it was around that time. The very important step was taken when the liability of any director was on the basis of what they could reasonably have known. If a company fell into trouble and the role of the directors, the minutes of the board meetings and all those things that matter were examined forensically, there would always be a point at which a director would be able to determine as a defence, if you like, that it was not reasonable that they would have known the information that caused the downfall or disruption to a company, or the shareholder price, or those sorts of things. That was removed. The idea that "a director could have reasonably known" was changed to "a director should have known". I am happy to have those words corrected. I am sure the member for Landsdale will have the exact words when she rises. It is like a captain of a ship: everything became the responsibility of those directors. The default position became, "If you did not know, then you should have known." It was not that they could have reasonably known. As a result, everything mattered. That is a very harsh measurement considering what the director is expected to know.

Members can imagine that with the scale and size of a Wesfarmers, Rio Tinto or BHP—which are global companies with the stretch of supply chains and a range of immersion in different economies and in different sectors of different economies, particularly in the mixed businesses—for a director to be across everything that is required is a very onerous task. I sometimes question the number of directorships that some people have in the corporate world. A very select group of people just go around and around the same companies and, in my view, they seem to have a significant amount of risk, given the number of companies and the span of the companies they are on. Some would be chair of a board, which takes on another particularly unique challenge in the world of commercial corporate governance.

Another matter that is worth talking about, as I began my remarks with, is that we all intersect with some form of boards of governance in our daily lives as members of Parliament. Many members of this house are on a school board. I was chair of the Hamilton Hill Senior High School board and have been on the board of one of my primary schools, Caralee Community School. They are serious roles to take on, even though obviously they have a certain diminished impact. The impact the activities of those organisations have on the lives of those in the organisations is no less significant. As a former Minister for Veterans Issues, I came into contact with different boards of larger organisations, especially service organisations and those that deal with significant funds from taxpayers and members. Directors' lack of understanding of both their personal liability and their role as a director of those entities never ceased to amaze me. Peak bodies are notorious in this state and across the country for having governing bodies that are more member representational bodies. If I am a member of a professional organisation, a peak body of a not-for-profit grouping, quite often the make-up of the boards are not independent directors; in some ways they are very much compromised because they have a conflict of interest from the moment they sit on those boards as typically they come from one of the member organisations that provides a certain input into those decisions, so they cannot see themselves as impartial.

[Member's time extended.]

Mr P.C. TINLEY: I have been a director of different commercial companies in my own time, but the greatest privilege I had was to be a director of another board called cabinet. The rules of cabinet as a governing body are extremely strict and extremely detailed, but the moral and ethical underpinning of that body is on the basis of it doing the common good for its shareholders, who are the citizens of Australia or, in this case, the residents of Western Australia, and to ensure that as a governing body we are considering all who are impacted by our decisions and not just a selected group with a particular advantage. It is entirely debatable whether cabinets in the past have always had the best interests of the people of Western Australia at heart. That is why this body exists—to scrutinise the decisions of executive government and to ensure that it is acting in a transparent way or in a way that is in the best interests of all Western Australians. Quite frankly, we are all members of one of the most significant governance bodies in this state. For the past 100 years, laws that have been made in this chamber have had a direct impact on those outside this building—at times, the very next day, after they receive royal assent.

The area this bill does not go to is more the intent and ambition of corporate governance to ensure that boards of directors and people in those positions who exert influence, power or decision-making over others apply the same principles that have been talked about as the Council of Australian Governments principles that were agreed to that form the basis of this amendment.

I have briefly talked about conflicts of interest when member organisations of peak bodies are resident or installed on boards but are, in fact, not really independent. They are more, as I said, associated with a representation of those memberships rather than independent governance. The other aspect I see, particularly in boards that are poorly led, is that they take an activist role in operations. In that classic sense, they ignore the executive. The executive of a business or an entity has a particular role and the board of directors has a different role as one of oversight. The executive presents plans, objectives, statements, accounts and all those things that are talked about between management and shareholders, and the executive presents that to the board. The board receives enough information to make a decision and provide strategic direction to the executive to undertake the work it does on a daily basis. As we permeate through different types of governance models, we see that some of those boards of directors are taking on executive decision-making and interfering with the executive, which creates complete ambiguity and problems for the executive as it tries to do its job. We see this most visibly in local government. The officers of a particular city or shire go about doing what they do, representing what they do to the council, but the council is deliberating on far too much detail and far too many operational matters. If we look at it on face value, that detail is already agreed to in the strategic plans of a particular town, city or shire and is simply being acted on by the executive. The activist role that I see some councillors making at the local government level is a problem that we should all be alive to. I know that the Minister for Local Government is focused on this, as was the former Minister for Local Government, to ensure that the behaviour of councillors is consistent with their role to provide strategic direction for a town, city or shire. As a result, we are seeing diffusion and confusion of what a local government authority should be doing.

We also see that in the not-for-profit areas, which does not make for efficient and effective leadership of an organisation, nor efficient and effective outcomes for the shareholders, no matter who they might be. Even though we often talk about shareholders as those with paid-up capital in a particular business, we are also talking about those people who have paid-up interest or who have paid up in kind—that is, a sporting club that a person joins and gives their time and invested effort to, and at which their child plays sport. They look for a particular return. The governance body of an organisation must act in the interests of the intent of the articles or items of that business or entity. If someone's local footy club is not fielding teams that are consistent with the selection process of that club, such as playing kids out of age or having alcohol available on a junior night when it should not under its arrangements, that is a failure of the governance model. If the club is not making inclusive arrangements for all to participate, even though its charter says that it has an inclusive approach to people in sport—I am using that as an example—its directors are failing in their duties. In my estimation, there is not enough awareness and education across the different organisations that have been identified here that are operating inside the context of what has been contemplated with this amendment.

As members can see, I have gone through a potted history of the role of governance from the sixteenth century and I have finally arrived at 2022 to talk about the complex nature of what it is to be a director. I touched only on the concept of environmental social governance. We saw this in the starkest terms with the committee report on sexual assault in the mining industry. In anybody's estimation, there was a clear failure, because the leadership in those organisations did not have any awareness of what was going on or had wilful blindness—we are not quite sure in all cases—and now there is a mad scramble to redress the issue to create a safe workplace for all. As a result, the organisations lost board members and executives, but, more importantly, they lost the confidence of the public to undertake their role as major employers in Western Australia. With those remarks and on that basis, I commend the bill to the house.

MS M.M. QUIRK (Landsdale) [3.35 pm]: We have heard a lot about the history of the Directors' Liability Reform Bill 2022, but I want to stress a couple of issues before I talk more generally about directors' duties. We have

heard that this legislation has had a long gestation, but I want to go back to some of the preliminary discussions that took place in the Council of Australian Governments because there were concerns about the inconsistencies and standards of personal responsibility both within and across jurisdictions that resulted in undue complexity and a lack of clarity about responsibilities and requirements for compliance. This bill certainly attempts to clarify the issue for Western Australia and catch up with other jurisdictions. It is important to say at the outset that it is not an expansion, nor an overreach, by the state into the behaviour or criminal conduct of directors when previously it may not have applied. In this regard, COAG developed a set of principles to guide the reforms and it is important to stress that the first principle states —

> Where a corporation contravenes a statutory requirement, the corporation should be held liable in the first instance.

That is very important to remember. The second principle states —

> Directors should not be liable for corporate fault as a matter of course or by blanket imposition of liability across an entire Act.

The fourth principle states —

> The imposition of personal criminal liability on a director for the misconduct of a corporation should be confined to situations where:
>
> a. there are compelling public policy reasons …
>
> b. liability of the corporation is not likely on its own to sufficiently promote compliance …
>
> c. it is reasonable in all the circumstances for the director to be liable having regard to factors …

The member for Mount Lawley outlined in some detail the criminal conduct of the directors of CSR after the board tried to obfuscate and obscure its level of liability in assessed asbestos cases. That is a good example of when directors should be held liable in addition to any sanctions that are imposed on the company. The COAG principles also state that directors could be held liable when they have encouraged or assisted in the commission of an offence or have been negligent or reckless in relation to the corporation's offending. That brings me to what we consider established principles for directors. Certainly these days, directors of listed companies are remunerated very well and what we expect of them is that they diligently comply with these duties. They include, for example, the duty of confidentiality. I recently read the Perth Casino Royal Commission report. I came across what I certainly considered to be a breach of confidentiality whereby one of the board members was paid a retainer to notify a third party—not a member of the board—of board activities.

Secondly, the directors must make due inquiry into the matters before them. It is not sufficient to rely on being told by a third party about certain facts; they must make some level of inquiry as to the veracity of the information they are making decisions on.

Thirdly, the directors must contemplate and consider risk to the company and must have mechanisms for managing risk. It always surprises me when I hear of big enterprises that have no risk management subcommittee. Again, going back to the casino example, one can think of the risk of money laundering or other illicit practices taking place, yet that board did not have a risk management committee.

The directors also owe duties to the company, and that includes the shareholders, employees and creditors, as well as the regulators. They must act honestly and carefully. They must know what the company is doing, although that needs to be distinguished. They do not have to delve into the operational activities of the company or the management per se, but they need to at least know what the company is doing and—it makes sense; it is obvious—they need to take care, because they are effectively handling other people's money. A very obvious example is that the company must be able to pay its debts as and when they fall due. The directors need to ensure that proper financial records are kept and, of course, submitted to the regulatory authorities.

As I noted, risk management is a key role of a director, and good corporate management governance programs are essential. Time and resources need to be devoted to ensuring that there is good compliance. That again makes commercial sense, because the resources spent in defending litigation or prosecutions are likely to be much greater than if sufficient resources were invested into corporate compliance in the first place.

Other members have spoken about community expectations of companies. I think that community expectations are increasing, and directors need to be mindful of this. Shareholder action groups and even institutional investors like super funds are requiring a level of corporate responsibility and for companies to act in an ethical fashion. For ethical investment, I suppose that there is an expectation of not only compliance with the legal obligations, but also a strong foundation of corporate citizenship. We are all very familiar with the destruction of Juukan Gorge by Rio Tinto. The investors there basically led a revolt, and I will talk briefly about that.

What happened with Juukan Gorge and the conduct of Rio Tinto made world news. I refer to a BBC news article titled "Juukan Gorge: Rio Tinto investors in pay revolt over sacred cave blast". The article states —

> **Mining giant Rio Tinto has faced a shareholder revolt over a $10m … bonus for its outgoing boss.**
>
> In a rare development, 61% of votes cast at its annual meeting opposed the firm's executive remuneration package.
>
> The backlash comes after the company destroyed sacred Aboriginal rock shelters in Western Australia last May.
>
> Rio Tinto blasted the 46,000-year-old rock shelters at Juukan Gorge to expand an iron ore mine, sparking an outcry and leading to several resignations.
>
> The pay package covers $55m earmarked in salary and bonuses for the company's top 14 executives.
>
> Despite the shareholder rebellion, the executives are still expected to receive their payouts …
>
> …
>
> In September, chief executive Jean-Sébastien Jacques —

That is my French pronunciation. I understand that he is South African, so I apologise if my pronunciation is flawed —

> and other senior executives, including the heads of its iron ore and corporate relations divisions, said they would be leaving the company.
>
> And earlier this year chairman Simon Thompson and non-executive director Michael L'Estrange also said that they would leave the company.

This is the important admission —

> "I am ultimately accountable for the failings that led to this tragic event", Mr Thompson said in the statement.

As I said, institutional investors have been much more active in the issue of companies complying with their corporate responsibilities. For example, large institutional investor HESTA issued a press release in March 2021 stating —

> **Investor collaboration following heritage destruction at Juukan Gorge achieves agreement with Rio Tinto on improved disclosure and governance arrangements**

The media release continued —

> "Investors put forward very clear requests around what disclosure and governance arrangements we needed to see to ensure that the tragic heritage destruction at Juukan Gorge never happens again," …
>
> "It's pleasing that we've had constructive discussions with Rio Tinto that can support progress towards managing this clear financial risk for investors. The steps the company has agreed to will support broader improvements in practices, disclosure and oversight urgently needed across the mining sector."
>
> "Rio is at the start of a very long process of rebuilding trust. It will require long-term commitment to deep-seated cultural change and strong frameworks and processes in place to support genuine, open and ongoing partnership with Indigenous communities, no matter who is in management or Board roles."

The head of HESTA went on to say —

> … the investor group welcomed Rio's commitment to continue dialogue with investors on disclosure and governance improvements.
>
> "It's vital that we see ongoing public reporting so investors can monitor progress over time and all stakeholders can have confidence that what Rio commits to is implemented and is effective," …

Of course, members will be familiar with the fact that there was also a parliamentary inquiry that was scathing of Rio's conduct.

Communities have an expectation that companies will consider the needs of the environment. Directors need to strike a balance between the needs of shareholders and the needs of the environment. Companies need to try to reduce pollution waste, natural resource consumption and emissions through their processes. They need to recycle goods and materials through their own processes. They need to offset the negative impacts of their own conduct by replenishing natural resources. Of course, a lot of companies do quite aggressive tree planting in that context. Companies need to adopt measures to neutralise the impact of their company activities on the environment. Further, they can look at how they distribute goods.

[Quorum formed.]

Ms M.M. QUIRK: I will continue, after that rude interruption, by expanding further on some of the areas of environmental impact that companies need to be mindful of. One of those is distributing goods by methods that produce fewer emissions, and creating products that enhance the value of sustainability.

Companies also have ethical responsibilities. For example, they need to treat all customers fairly irrespective of their race, age, culture or sexual orientation. They need to treat all their employees in a positive way. That includes favourable pay, benefits and conditions in excess of mandated minimums. Companies should also consider expanding their vendor use so that they deploy a more diverse range of suppliers. Companies must disclose to investors honestly, and in a timely and respectful manner, any concerns that they have. Companies may also choose to communicate and have a relationship with external shareholders beyond what is legally required.

Of course, these days many companies also involve themselves in philanthropic endeavours. Companies need to look at how they can spend their resources to make the community a better place; whether the company donates profits to charities or causes it believes in; whether the company enters into transactions only with suppliers or vendors who are aligned with the company philosophy; whether the company supports employee philanthropic activity such as fundraising or taking time off work to undertake charitable work; and whether the company sponsors fundraising events or has a presence in the community for related events. These are all values and activities that, because of the evolution of corporate responsibility and community expectations, directors should be across and promote.

The final point is financial responsibility. That should include the undertaking of research and development for new products that will promote sustainability, and the recruitment of different types of talent to ensure a diverse workforce. I will add to what I am saying the remarks of the member for Bicton, who made the point that we need to have more women directors. Diversity should extend to not only employers, but also boards of companies, and include a range of skills. In order to maximise company performance, companies should undertake initiatives to train employees about the values of the company and promote positive cultural values in the company. Companies should also ensure that transparent and timely financial reporting occurs, including external audits.

Members have all commented that this bill is somewhat dry. I have to say that part of government is passing laws that will grease the wheels of compliance and regulation and make all our lives better and less dysfunctional. I am one of those people who think that introducing lots of non-sexy bills when there is a great need is an excellent thing to do. If anyone wants to ask me, I can give them a list of half a dozen bills that are overdue and will materially affect other people's lives, work and existence. I would equally commend those bills to the house, as I do this bill.

Debate adjourned, on motion by **Mr D.A. Templeman (Leader of the House)**.

House adjourned at 3.55 pm