ARTICLES

DISCLOSURE OF COMPLIANCE WITH ENVIRONMENTAL OBLIGATIONS IN THE COMPANY LAW REVIEW ACT: A CASE STUDY

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1. Introduction
The *Company Law Review Act* (Cth) 1998 (the "CLR Act") imposes new reporting requirements for the content of directors' reports. Companies must now disclose how they comply with significant and particular environmental legislation. Dissemination of this information into the public domain is likely to have significant impacts for business, the users of annual reports, and for the environment. Analysed in the context of the wider regulatory debate, the new obligation adds some weight to the previously weak environmental regulatory regime. The system is based in a philosophy encouraging voluntary compliance. In view of recent research into the disclosure patterns of companies, low-level compliance will initially emerge as the norm. This is augmented by the finding that companies generally do not disclose details of prosecutions by the EPA in their annual reports. The impact of the new obligation at reaching positive environmental outcomes will be dependent upon the level of disclosure that companies choose to make. It is unlikely that high-level compliance will result without supplementing the legislation with compulsory audit requirements in accordance with specific (as yet undeveloped) accounting guidelines.

2. The New Law
A Generally
The new provision applies to all companies other than small proprietary companies. A general information requirement of the director's report is for the company to give details of the entity's performance in relation to environmental regulation. Section 298 is triggered 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. Unlike the financial report, the director's report is not audited. After an audit of the financial report, the directors must declare that the financial statements comply with accounting standards and any further requirements in the legislation. The financial

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8 *CLR Act* s 298.
9 Note that the phrase "positive environmental outcomes" will be used for the purpose of this case study generally as the focus is on the regulatory regime rather than the pros and cons of the multifarious environmental management strategies. It is clearly a problematic term as there is considerable debate in this area within the scientific, legal and accounting professions. However, a close analysis of this debate is beyond the scope of this paper.
11 Unless the small proprietary company is directed to prepare one: s 292.
12 Note that specific information requirements are also imposed under s 300.
13 An auditor's report must be obtained for the financial report: ss 301, 307, 308.
14 ss 303(4)(a), 304.
report, the director's report and the auditor's report must be sent to members\textsuperscript{15} and lodged with the ASC.\textsuperscript{16} If the report is amended after it is lodged, the amended report must be lodged with the ASC within 14 days after the amendment and a copy given to any member free of charge who asks for it.\textsuperscript{17} If the amendment is a material one, notice must be given to members.\textsuperscript{18} Public companies are also required to lay the reports before the Annual General Meeting.\textsuperscript{19} The ASC has the power to make specific exemption orders from this reporting requirement.\textsuperscript{20} The ASC must be satisfied that complying with the relevant requirements would make the report misleading, be inappropriate in the circumstances, or impose unreasonable burdens.\textsuperscript{21} In making this decision, the ASC may do a cost-benefit analysis of compliance, and consider any practical difficulties or unusual aspects of the operation of the company that it considers relevant.

Contravention of section 298 of the \textit{CLR Act} occurs when a director of the company, registered scheme or disclosing entity fails to take all reasonable steps to comply, or to secure compliance.\textsuperscript{22} This is contravention of a civil penalty provision.\textsuperscript{23} Failure to comply with s 298 would also be a breach of other provisions in the \textit{Corporations Law 1991} (Cth) s 995 and the \textit{Trade Practices Act 1974} (Cth) s 52. Such a breach would be almost guaranteed if the company has been subject to prosecution by the Environment Protection Authority ("EPA").

\textbf{B Underlying Philosophy}

Requiring a company to disclose how they comply with significant and particular environmental regulation discourages lax practices by companies who claim they are monitoring themselves. It is, hence, a negative regulatory tool which rests on the presumption that revelations of non-compliance or false and misleading statements by a company would be damaging to its public image. "Enforced self-regulation"\textsuperscript{24} subcontracts regulatory functions to private actors. Relegating some of the expense of regulatory functions of government is efficacious from the government's perspective. However, securing compliance requires a regulatory mix of increasingly severe penalties imposed incrementally for continuing or severe breaches.

Imposition of disclosure obligations assumes that the dissemination of information can act as a countervailing force to the interests of private enterprise which run counter to the interests of the environment. This mode of regulation fits the enforcement pyramid postulated by various commentators in relation to regulatory regimes generally. It is a strategy that aims to maximise the benefits and minimise the costs of regulation by

\begin{itemize}
  \item \textsuperscript{15} s 314.
  \item \textsuperscript{16} s 319.
  \item \textsuperscript{17} s 322(1).
  \item \textsuperscript{18} s 322(2).
  \item \textsuperscript{19} s 317.
  \item \textsuperscript{20} s 340.
  \item \textsuperscript{21} s 342(1).
  \item \textsuperscript{22} s 344.
  \item \textsuperscript{23} s 1317DA.
  \item \textsuperscript{24} A term adapted from "coregulation" theory by Peter Grabosky and John Braithwaite, \textit{Of manners gentle: enforcement strategies of Australian business regulatory agencies} (1986) 83.
\end{itemize}
governments. The enforcement pyramid assumes that business includes a range of actors: rational, economic actors; irrational resisters to government authority; and people who are technically incompetent to comply with the regulation. Voluntary audit is at the base of the pyramid. It assumes virtue by business. Increasingly interventionist strategies are invoked if the incentive-based systems fail, advancing to the tip of the pyramid.

The new disclosure requirement moulds the base of the enforcement pyramid. Its imposition encourages companies to conduct environmental audits in order to fulfil their disclosure obligations accurately. This gives some weight to the regime of environmental regulation in Australia. However, significant weaknesses in the legislation may fail to significantly alter the disclosure patterns of companies.

C Strengths of the Legislation
Acceleration of the use of environmental audits may result from the disclosure requirement. Conducting an environmental audit would assist a managing director in making a certain and accurate determination of how the company does in fact comply with relevant and particular environmental regulation. An environmental audit would ideally provide a company with specific information about their actual and potential environmental liabilities. Location of the requirement in the body of corporations legislation is another strength. Specific attention will most likely be paid to the detail of the legislation which amends the Corporations Law 1991 (Cth) by companies. Possibly this attention will be closer than the attention paid to, for example, legislation that is nominally “environmental”. However, this argument is predicated on the assumption that a company would strive to achieve high-level compliance, which is unlikely to be the case.

The requirement is imposed broadly on all companies, except small proprietary companies. Aiming the provision at companies generally may trigger a compliance reaction in which larger companies lead a trend to exemplary compliance practice. Slowly these practices can be expected to be adopted by medium sized companies, in accordance with a pattern of management personnel transience from larger to smaller enterprises. Small companies are in a position of relative isolation from the filtering of management expertise. Hence it is appropriate that they should be excluded from the operation of the requirement. That is, it could be expected that even if they were required to conform, they would not due to a lack in employee expertise and technical and financial resources.

26 Craig Deegan was quoted in 'Enviro reporting expert's plea: don't dump Corporations Law changes' (1998) 213 Environmental Manager 1 as saying that the appropriate place for enviro performance disclosure provisions "has to be" the Corporations Law.
27 See comment below in '0 Discussion' at page 21.
D  Weaknesses of the Legislation
Poor drafting of the legislation may be the major impediment to its implementation. Evidence of the last-minute nature of the amendment is the apparent omission of whole words. The section reads:

The directors' report for a financial year must:

... (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 — [provide]29 details of the entity's performance in relation to environmental regulation.

The required nexus of 'significant and particular' regulation is likely to become judicially defined as litigation inevitably ensues. It would appear to be a relatively loose choice of words, however, and the reporting requirement may have improved from the added certainty of the omission of this qualification entirely.

Grammatical errors aside, the provision is not given weight by requiring an audit, unlike the provisions which require the preparation of a financial statement. Furthermore, the accounting profession in Australia has not yet developed an accounting system for use in regulating the environment. Recently the Institute of Chartered Accountants in Australia called for suggestions regarding the development of a conceptual framework for environmental performance evaluation, reporting and auditing.30 An accounting system will significantly shape the compliance analysis. Currently there is a reported lack of consensus among accountant's attitudes on various issues related to environmental reporting.31 The question of what information should be gathered to enable the assessment of whether a disclosing entity is complying with a regulation is critical. Choice of a sufficiently rigorous and objective scientific method will also have a crucial influence on what data is produced and whether regulatory compliance can be verified.32 Currently we are a 'long way from any useful common meaningful and systematic environmental reporting practice by organisations'.33

Choice of a mode of accounting is likely to be a highly political debate. The government has announced recently that it intends to amend the legislation and take out the Democrat's provision.34 Meanwhile the Greens have been outspoken against the government’s GST reform package on the ground that it will block moves to tax waste and pollution, provide cheaper fuel for business and encourage increased greenhouse gas emissions and air pollution.35 The Democrats support the

29 Suggestion for evident word omitted from the section
33 Roger Gibson & James Guthrie ‘Recent Environmental Disclosures in Annual Reports of Australian Public and Private Sector Organisations’ (1995) 19 Accounting Forum 111, 123.
establishment of a Bureau of Environmental Economics with a brief to prepare Environmental Impact Statements on all major economic policy proposals, conduct inquiries on particular references and advise the Government on balancing environmental and economic considerations in sensitive industries. The government has openly stated that it opposes the disclosure requirement and will seek to remove it at the first available opportunity.

The pyramid of environmental regulation currently lacks the “big stick” necessary to secure compliance with the legislation. Lack of a significant hat on the enforcement pyramid may affect the level of compliance by companies obliged to comply with the regulation. As Braithwaite points out:

A paradox of the pyramid is that the signalled capacity to escalated regulatory response to the most drastic measures channels most of the regulatory action to the cooperative base of the pyramid. The bigger the sticks at the disposal of the regulator, the more able it is to achieve results by speaking softly. When the consequence of firms being non-virtuous is escalation ultimately to corporate capital punishment, firms are given reason to cultivate virtue.

It may be expected that businesses will only achieve medium- to low-level compliance with the relatively insignificant consequences of failing to meet disclosure requirements.

3. Impacts for Business
A Compliance Strategies
While the idealist regulatory structure neatly fits the pyramidal paradigm, most findings suggest that the majority of companies sit at the base of the pyramid and merely practice low-level compliance (refer Figures 1 and 2). Compliance strategies invoked by a company may be dependant upon the social standing of the company. If a company is already under the scrutiny of the public eye, it may provide legitimating information in seeking to justify the firm’s continued operation within the society. This is in line with the idea that if the organisation cannot justify its conduct within society, then the community will revoke its contract to operate. Reducing or eliminating the demand for its product, by eliminating the supply of labour and financial capital, by lobbying government for increased taxes, fines or laws to prohibit those actions which do not conform with the expectations of the community are means by which this could be achieved. Over time, compliance can be expected to become increasingly aligned with good environmental practices as the perceptions of

management of current social values and what is deemed to be appropriate social conduct falls in line with environmental interests.\(^{41}\)

Low-level compliance may occur where the company is ignorant of the legislation, is technically incapable of complying or actively chooses to disregard their obligation. Disclosure may be either absent or contain purely descriptive content which is difficult to compare and analyse. It may be the case that research into the companies practices or prosecution record reveals that clearly relevant material has been omitted. Companies may have an “end-of-pipe” or “end-of-smokestack” culture of cleaning up waste which then has to be disposed of.

Making some attempt to address the requirements of the legislation is indicative of medium-level compliance. Material that is relevant to the disclosure obligation imposed by the legislation may be included. These statements may be backed up by a quantified component or analysis of performance against standards or targets set by an independent body. The Australian experience has shown that this is relatively rare. Only 13% of disclosing entities in a recent study included a quantified target and even fewer organisations (3%) reported performance against targets or standards. At the one boundary of the medium-level category, inclusion of excessive superfluous information may, on close analysis, actually reveal very little about the environmental policy of an organisation. This would be in keeping with the experience in the U.S.A.\(^{42}\) Alternatively, a mere minimalist statement designed to deflect the attention of regulatory bodies by avoiding the omission of the section entirely is another exemplar of this level. Their objective may be to meet the requirements of the letter of the law and avoid litigation, fines and penalties. Most organisations which make environmental disclosures in the Gibson & Guthrie study disclosed information about the organisation’s environmental policy (78%) and/or a description of an environmental project or program (81%).\(^{43}\)

High-level compliance is only likely to be achieved only by a company that has embraced a positive attitude to environmental regulation. Such companies may use their environmental disclosure to meet a broader objective of improving the company’s marketing or public relations image. These organisations would be defined by a “cleaner production” culture of reducing raw material usage and recycling. As a marketing tool, an environmental disclosure provides an opportunity for the business to gain public acceptance. This would minimise the likelihood of strikes, product boycotts and the introduction of legislation which imposes more onerous reporting and other obligations.\(^{44}\) Many examples of cost-efficiency in sound environmental practices

\(^{41}\) Deegan and Rankin, ibid, found that during the period 1980 to 1991 the environmental disclosures by companies increased significantly in number as the environment increasingly became a matter of social debate.


\(^{43}\) Gibson & Guthrie, above n 33, 119.

were found by Strasser in an investigation of pollution prevention and environmental technology projects. Adoption of this technology before the peak on the regulatory pyramid strengthens may be cost efficient, as future liability exposure is likely to become more expensive over time. Correcting the cause of pollution would enable a company to proudly report on its compliance with environmental regulations. Although it is not necessarily true that a company with poor environmental practices would not engage in high-level compliance, it is fairly unlikely as it would probably be viewed by management as a poor strategic move to make this information available in the public domain.

B Qualitative Analysis of Pre-amendment Reporting Practices
Prior to the enactment of section 298 of the *Company Law Review Act 1998* (Cth), companies had legal obligations to disclose and monitor their performance in relation to environmental laws. There can be little doubt that failure to disclose a material or potential liability arising from environmental regulation would constitute misleading conduct for the purposes of the *Trade Practices Act 1974* s 52. Where a director is made aware of an environmental liability, for example due to prosecution by the EPA, failure to report this fact may constitute breach of section 1308 of the *Corporations Law 1991* (Cth). This section makes it an offence to make or authorise a false or misleading statement or omission regarding a material particular of a document produced for the purposes of fulfilling a requirement in the *Corporations Law*. Despite these obligations, a survey of selected companies successfully prosecuted by the EPA during the period 1994 - 1997 showed that many companies failed to mention the action (refer Table 1).  

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46 Companies were selected on the basis of Annual Report availability in the Centre for Corporate Law and Securities Regulation library at the University of Melbourne.
<table>
<thead>
<tr>
<th>Charge</th>
<th>Date and Magistrate's court</th>
<th>Result</th>
<th>Disclosure in annual report regarding compliance with environmental regulation</th>
<th>Compliance level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pollution of Stony Creek (aesthetic enjoyment)</td>
<td>Sunshine MC 20/9/94</td>
<td>Without conviction; good behaviour for 12 months. To pay $1500 to court fund. Costs $1380.</td>
<td>none</td>
<td>Low</td>
</tr>
<tr>
<td>Air pollution (offensive to the senses of human beings)</td>
<td>Dandenong MC 24/4/95</td>
<td>Convicted and fined $7000. Costs $1482.</td>
<td>“No major environmental incidents occurred in the past year”</td>
<td>Low</td>
</tr>
<tr>
<td>Water pollution (harmful to fish or other aquatic life) s 39(1)*</td>
<td>Broadmeadows MC 1/4/96</td>
<td>Without conviction; good behaviour bond for 12 months. To pay $5000 to court fund. Costs $4996.</td>
<td>“There is scope for further progress and the areas of spill containment and the prevention of stormwater contamination require particular attention... [A]ction is being taken to remedy known shortcomings.”</td>
<td>Medium</td>
</tr>
<tr>
<td>Discharge waste into waters (Bino Creek) without a licence contrary to s 27(1)*</td>
<td>Dandenong MC 19/11/96</td>
<td>Without conviction, fined $5000. Costs $3223.</td>
<td>“Regrettably, during the year in Australia one $5000 fine was imposed for the release of turbid water”</td>
<td>High</td>
</tr>
</tbody>
</table>

Table 1: Compliance levels of companies prosecuted by the EPA.

*Environment Protection Act 1970 (Vic)*

C Discussion

The findings of this case study cover an interesting array of disclosures. The companies subject to the September 1994 and April 1995 prosecutions fit the boundaries of the low-level compliance category neatly. A company that makes no mention of an environmental policy, or anything related to their approach to managing the environment may not have turned their minds to the issue. However, it is hard to imagine that the director’s attention would not have been alerted by the EPA prosecution. Other studies have found that only 36% of companies make environmental disclosures voluntarily. Stating that no major environmental incidents occurred, when the company was in fact convicted by the EPA and fined $7000 is a

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47 EPA annual report 1994/95, 1995/96, 1996/97; company Annual Reports for the relevant period; copies of Annual Reports on file with author.
48 Deegan & Rankin, above n 39.
clear example of active disregard of the law. This example may support the findings that reporting of favourable environmental news increased around the time of prosecution. As discussed above, this report is likely to have been a breach of the Trade Practices Act 1974 (Cth) and the Corporations Law 1991 (Cth) as a misleading and deceptive statement. Companies in the low-level compliance category will have to take note of the new requirement in the CLR Act and review their annual reporting practices accordingly.

An example of medium-level compliance is given by the qualitative statement issued by the company subject to the April 1996 prosecution. Clearly they made partial disclosure, and even pinned the statement down to a particular environmental problem. However, they failed to make mention of the prosecution. Explicit mention of this fact is likely to be required in order to comply with the CLR Act.

The explicit mention of the fine incurred by the company against whom the November 1996 prosecution was issued is an example of high-level disclosure. In fact, the company did not qualify the statement by adding that no conviction was recorded, which may have lessened the impact of the statement somewhat in the eyes of a critical reader. This company will have no trouble complying with the new provision in the CLR Act. It may well avoid future convictions which may incur heavier penalties by drawing its attention to the pollution’s source and acting promptly.

These findings add weight to the finding of Deegan and Rankin’s conclusion that Australian annual reports do not provide an accurate portrayal of corporate environmental performance. It must be noted that these single sentence statements were often qualified by pages of positive information outlining the pro-environment policies of the company. As such, the negative information would not be immediately apparent to a user who only skim-reads the report.

4. Impacts for Users

A Who Are They?

The director’s report must be sent to members of the company, its shareholders. In the case of public companies, it must also be laid before an AGM. However, readers of annual reports often include individuals beyond the shareholders of a company. Interested groups include:

- the Australian Securities Council ("ASC"), with whom the report must be lodged;
- the Environment Protection Authority ("EPA"), responsible for the maintenance, protection and improvement of the environment and in required to investigate and report on alleged non-compliance with environmental protection legislation for the purposes of prosecution or other regulatory action;

49 Deegan & Rankin, above n 39, 53.
50 See “Qualitative Analysis of Pre-amendment Reporting Practices” p 20.
51 Ibid.
52 CLR Act s 314.
53 CLR Act s 317.
54 CLR Act s 319.
non-government organisations ("NGOs") such as environmental pressure groups who most often seek the annual report as a source of company information;56

• the interested public including taxpayers, ratepayers and consumers;
• equity investors, creditors, employees, stockmarket analysts, corporate advisers and lawyers, business contact groups, government and university researchers.

While the breadth of users and their interests are wide, annual reports of most companies are most often a conduit of marketing strategies aimed at improving public relations and concurrently meet legal obligations. Rarely are they designed to convey both positive and negative information for the benefit of users.

B What Do They Want to Read?

A common complaint is that annual reports57 are too opaque.58 Narrowing the gap between the information that users require and what they receive in reports has been linked to higher share value.59 Australian investors have been reported as perceiving a number of benefits in improved disclosure, including increased management credibility (70%), improved access to new capital (60%), more long-term investors (44%) and higher share value (40%).60 Investors in the United States said that improved disclosure resulted in improved credibility, more long-term investors (63%) and higher share value (58%).61

Companies in the high-level compliance bracket who choose to make full disclosure in seeking compliance with the meaning rather than the letter of the CLR Act may reap significant economic benefit. Many companies do not seek to take an opportunistic approach to their annual report. They should perhaps view it as a conduit to imparting information to interested readers, rather than merely something that needs to be produced to satisfy legal obligations. Changing from a minimalist approach to compliance may improve investor confidence, as described above.

A precedent for the mining industry has been set by Western Mining’s ("WMC Limited") recent addendum to their annual report of the ‘Environment Progress Report’. This has been issued every year since 1994. The 1997 report was a substantial fifty-six pages. They recognise the diverse body of users comprising their audience.62 In preparing the report, they aim to improve community confidence in their performance, reduce costs by implementation of environmentally efficient processes and technologies and encouraging a change in the behaviour of their employees to

56 C Tilt ‘The influence of external pressure groups on corporate social disclosure: some empirical evidence’ (1994) 7 Accounting, Auditing and Accountability Journal 47.
57 The director’s report will be considered to be within the ambit of analysis of these studies. Although it is technically separate to the annual report, conceptually the conclusions of relevant studies are equally applicable to both reports.
60 Ibid.
61 Ibid.
improve environmental performance. The credibility of WMC's 1997 report was improved in the eyes of the World Wide Fund for Nature Australia's President, Professor Alistair Gilmour, by conducting not only an internal audit but by subjecting it to assessment by an external independent consultant and by establishing an external advisory group to assist the development of the report. Incorporating a relatively transparent review process is a significant test of the report's quality. Weaknesses in the report are the general lack of audit trail, making the verification process difficult. There is also no discussion on the method adopted by WMC Limited for determining the significance at a site or corporate level of the environmental aspects reported. Generally however, the report sets a significantly higher benchmark for the Australian mining industry to aspire to. WMC Limited have clearly embarked on a high-level compliance strategy.

5. Impacts for the Environment
Beneficial impacts of the new reporting requirement will largely be dependent upon the aspirations of companies to achieve high-level compliance in their reporting strategies. The status quo currently tends to be for companies to present information that is self-laudatory, as borne out by the findings presented above. Presuming that this hurdle is overcome, a beneficial impact for the environment will be dependent upon enforcement strategies, the accuracy of reporting and the content of accounting standards that are ultimately applied. In the long-term, an approach that facilitates the invention of innovative technology will be more beneficial for the environment than investment in clean-up technology.

The interests of the 'environment' extend to entities above and below the earth's surface. It is a term used by different professions in different contexts, according to their interests. Section 298 of the CLR Act would fit in to the planning and protection arm of environmental law in the schema suggested by Fisher. The inherent vagueness of the term increases the necessity for articulating accounting standards for assisting companies to conduct environmental audits in order to comply with the requirement.

6. Alternative Strategies
Beneficial effects for the environment may be unlikely to be expected without supplementing the legislation with compulsory audit scheme and development of accounting standards. Conducting an environmental audit would be a failsafe way for a company to ensure that it meets all applicable significant and particular environmental legislation. Offering penalty mitigation for voluntary disclosure and internal auditing or adaption of compliance management systems may significantly increase the frankness and thoroughness of internal audits. An environmental audit may be defined as:

a total assessment of the nature and extent of any harm or detriment caused to, or the risk of any possible harm or detriment which may be caused to, and beneficial use

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63 Ibid.
64 Ibid.
made of any segment of the environment by any process or activity, waste, substance (including any chemical substance) or noise.\textsuperscript{67}

Environmental audits are currently required by the \textit{Environment Protection Act 1970} (Vic) s 57(1) as a term or condition of licence amendment or of the issue of a pollution abatement notice under s 31A(2). The privilege against self-incrimination is currently not extended to companies.\textsuperscript{68} Information obtained via audit and passed on to regulatory authorities may become publicly available through the \textit{Freedom of Information Act 1982} (Cth) s 11 and hence cause adverse publicity and damage the company's public image or even form the basis for third party legal action ("the citizen suit") against the company. An environmental audit may increase the exposure of company directors to liability by making them aware of the environmental problems of the company. Disincentives to environmental auditing suggest that in spite of the principle of the community's "right to know", confidentiality protection is necessary in order to avoid deterring voluntary audits.

An incentive-based audit scheme may be an effective second-best alternative to the compulsory audit. Allowing the attachment of "eco-logos" to the reports and products of a company may improve the standing of the company in the public's eye. It would be doubly effective if the citizens who have access to information about corporate and government agency pollution are granted the opportunity (1) to sue regulatory agencies for failure to enforce regulations and (2) to sue corporations if the Environment Protection Authority is unwilling to file suit itself.

7. Conclusions
Without supplementing the \textit{CLR Act} requirement with an additional mechanism to support the currently weak regulatory pyramid, the benefits for the environment may be relatively insignificant. However, the inclusion of the provision in the symbolically significant \textit{CLR Act} signifies that the appropriate place for companies to fix their attention in order to look for the obligations they must meet extends to environmental laws. Embracing a positive approach the obligation may see companies falling in behind the confident stride of large mining companies who have chosen to embark upon a path of not only fully disclosing their environmental performance, but also subjecting it to the rigours of independent auditing. This marks not only a change in the traditional negative approach of companies towards regulation, and fear of disclosure, to an approach which the users of annual reports may find fills their expectation gap. The \textit{CLR Act} is a significant step forward for Australian environmental law and for reinforcing the previously weak enforcement pyramid. However, it needs to be supported by an auditing scheme.

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\textsuperscript{68} \textit{Environment Protection Authority v Caltex Refining Co Pty Limited} (1993) 178 CLR 477.

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