

SUPREME COURT OF NEW SOUTH WALES

ANNUAL CORPORATE LAW CONFERENCE

What is the Future of the Australian Business Corporation?

2019 Conference

Tuesday, 29 October 2019 at 5.15pm

Banco Court, Supreme Court of New South Wales,  
Level 13, Queen's Square, Sydney

[The transcript of the Panel Discussion is of remarks recorded and transcribed with consent, with the addition of some linking comments by Dr Austin.]

DR AUSTIN: We will now as a panel

10 move up to the bench. I will sit in the front and if the  
11 panellists could please take seats at the bench.

12

13 An important reason for having the panel discussion is  
14 to enable the speakers to respond to one another. I wonder  
15 whether the best way of proceeding in that respect is to  
16 start first with Daniel Crennan's presentation to see what  
17 responses we get from the other speakers and, in  
18 particular, I suspect Professor Mayer might have something  
19 to say about it.

20

21 There is an important and central issue about the  
22 extent to which the regulator is moving to rely on a  
23 concept of fairness, at least in the financial services  
24 industry and potentially elsewhere, and the extent to which  
25 that fairness might replace the kind of outcomes that  
26 Professor Mayer sees to be achieved from the concept of  
27 purpose being made central.

28

29 Then there is a question about fairness, which is to  
30 what extent does fairness incorporate non-compliance with a  
31 corporate purpose. Thank you, Colin.

32

33 PROFESSOR MAYER: It is absolutely central, and it is  
34 central to what we are discussing in the British Academy  
35 project.

36

37 I thought Daniel set it out extremely well, that the  
38 way in which it should be thought about and conceived of,  
39 both in a regulatory context and in a corporate context, is  
40 in terms of regarding it within a purpose framework. In  
41 essence, what a board of directors are doing is to weigh  
42 together the interests of different parties. If that is  
43 biased by a particular pressure that is exerted on a board,  
44 be it from the law defining the purpose of a company or be  
45 it from market pressures that in essence have the same  
46 effect irrespective of what the company believes to be its  
47 appropriate purpose, then that ability to weigh up  
1 different interests in an appropriate impartial sense is  
2 seriously compromised.

3

4 So what the British Academy project sets out is to the  
5 extent that it can be internalised within a firm, and  
6 thereby avoids the need for external determination by a  
7 regulatory body, that is all to the good.

8

9 Catherine made the point about, quite rightly, the  
10 need to have regulation moving along to keep pace with

11 technological changes in companies. In principle, that's  
12 highly desirable. In practice, it is extremely difficult  
13 to do because, as is well known, there is information  
14 asymmetry which underpins any relationship between the  
15 regulator and the regulated. To the extent that one can  
16 internalise this within a company, then there is benefit in  
17 terms of the avoidance of that often lagging, often  
18 inappropriate external imposition.

19

20 Furthermore, a key element of why it is potentially so  
21 beneficial for a company to do it itself is that, in doing  
22 that, and establishing the fact that it is dealing fairly  
23 with different parties, it builds up that element of being  
24 trustworthy, which I was arguing is so critical to the  
25 success of a company.

26

27 So I took that notion of the way in which regulation  
28 can essentially develop that notion of fairness as being  
29 very complementary to the way in which it should be thought  
30 about within companies themselves.

31

32 DR AUSTIN: Did you want to add something, Catherine?

33

34 MS LIVINGSTONE: Yes, thank you.

35

36 I suppose picking up on the difficulty of corporations  
37 working with regulators, it is not in corporations'  
38 interests to take regulators by surprise, and  
39 increasingly - and we have come back to the rapid change in  
40 technology and it is determining so many factors in all  
41 sectors - it will be incumbent on corporations and  
42 regulators to work together to make both of our jobs  
43 easier, but in the context of the broader social policy,  
44 which again is developing very rapidly.

45

46 I come from a medical devices background and in that  
47 sector you work literally side by side with the regulator  
1 as you develop your products. I do not see why that model  
2 cannot be applied more broadly. I would go back to my  
3 contention and hope that we could get to a stage where  
4 there is not an asymmetry of information, where the  
5 corporations, the regulator and the government in terms of  
6 social policy are moving in a synchronised way as quickly  
7 as possible to address the challenges that not just the  
8 corporation, but also the society will have.

9

10 I don't think I am being altruistic or unrealistic in  
11 that regard, because from inside the corporations I see how  
12 quickly things are changing.

13

14 PROFESSOR MAYER: I was actively involved in designing a  
15 lot of the regulation that was adopted in the UK and is  
16 subsequently being used around the world, in particular in  
17 the regulated sectors of water, energy and at least  
18 initially in terms of telecoms, and I can tell you that the  
19 approaches that were developed, for example in relation to  
20 the regulatory asset base and the cost of capital, have in many  
21 respects simply failed.

22  
23 The reason why Britain is so seriously now considering  
24 renationalising whole swathes of its privatised industry is  
25 that there is the perception it simply is not working. The  
26 reason why it doesn't work is that what regulation attempts  
27 to do is to limit markets to precisely the types of rules  
28 that I was just describing, in terms of regulatory asset  
29 base and the cost of capital in terms of economic  
30 regulation. It is not right, because that's not the way  
31 that a market actually operates.

32  
33 When you come to think about it in terms of  
34 technological developments like artificial intelligence,  
35 the idea that regulators can keep up with businesses that  
36 are essentially using machine-learning processes to  
37 reinvent themselves on a continuous basis, I think suggests  
38 that the only way in which that can happen is if the  
39 regulators develop better machine-learning tools that  
40 out-perform companies. That is giving rise to an arms race  
41 that I don't think is going to be very productive for  
42 anybody.

43  
44 So one really needs to think about a way in which one  
45 is not having companies with one set of objectives dealing  
46 with regulators that have different purposes, and setting  
47 the rules externally from the companies, but thinking about  
1 how do you get a better alignment of interest of those  
2 companies for which there is a potential conflict between  
3 private and public purpose, in terms of the intrinsic  
4 nature of those purposes. That is relevant to what  
5 you were saying in your presentation about purpose not  
6 being adequate.

7  
8 Let me put it another way. If the purpose of a  
9 company isn't right, nothing follows. You might say that  
10 purpose isn't sufficient, but certainly if purpose is  
11 wrong, then everything else will be wrong. The case of  
12 where you are thinking about companies operating in a  
13 framework for which there is a need for external regulation  
14 means that that alignment of purpose is a sine qua non.

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*[There followed a discussion between Justice Edelman and Dr Austin about the concept of fairness and its relationship with Professor Mayer's idea of corporate purpose.]*

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DR AUSTIN: Daniel was, if I might say so, a little hesitant about the extent to which his reliance on fairness would actually be enlightened or affected by the adoption of a stronger purposive element in corporate regulation, and I was exploring that.

There is another issue here, and that is in Catherine's paper she said that it is hard to see how delivering value to customers investing in employees dealing fairly and ethically with suppliers supporting communities and protecting the environment is in any way inconsistent with generating long-term value for shareholders. We sometimes call that enlightened shareholder interest.

Therefore, the conclusion that is invited to be drawn is that there is no real difference between stakeholder theory and shareholder primacy when it's applied in the real world.

She goes on to say:

This is not to suggest that the interests of shareholders and other stakeholders are always fully aligned.

I think that's right. It seems to me there are occasions - they may not be very frequent - where the interests of shareholders, even the long-term interests of shareholders, point to a different conclusion on a difficult question that is before the board than the interests of some group of stakeholders such as employees or customers.

Then she says:

Deliberation, judgment and balanced decisions are required. This is core to the role of the director and is enabled by the law which points to acting in the best interests of the corporation.

We get to the stage where, in other words, there's some disjunction between the interests of the stakeholders and the interests of shareholders, we need to make a deliberated considered judgment balancing the interests.

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It is at that point, it seems to me, we need some further criteria. The question is whether we are better served by resorting to some concept of fairness, even explained by the judges, or whether a statement of purpose, which is of the kind articulated by Professor Mayer, is going to be more helpful.

We need further criteria because we have two reasonably plausible claims - one is a claim to satisfy the shareholders' interests, and another is a claim to satisfy, say, the interests of employees. The Economist recently referred to that and said really we haven't had a case where directors have had to decide whether to give the shareholders a 10 per cent haircut in order to push up the wages of employees, but I think there are some occasions where there is a real choice to be made.

The question is by what criteria are those choices to be measured? Looking at the two forms of interest is not enough to point to the way forward, and it may be that if there is a statement of purpose offered in the company's constitution, for example, if the purpose is to move beyond the interests of shareholders and stakeholders in order to achieve some objective such as curing people from diabetes or weaning people off tobacco, that might be a criterion for the decision.

PROFESSOR MAYER: Let me illustrate why I think that is absolutely central.

Come back to this notion of enlightened shareholder interest and just think about what that statement that I made about the UK Companies Act is saying. That is a very clear statement of an enlightened shareholder view. It is basically saying that if a company is pursuing the long-term shareholder value of a company, it can take account of the interest of other parties to the extent that it increases the share value of the company. The share price reflects the long-term value of the company.

That means that it should be pursuing objectives that are associated with minimising its labour costs, minimising the conditions of its employees, maximising the extent to which it is selling addictive products, maximising its environmental damage, minimising its taxes, so long as that's associated with increasing the value of the company and the reputational effects of so doing do not undermine that value of the company.

28        You may say that that's unfair, that's not what we  
29        mean by "long-term value". It's not just the effect on the  
30        current share price. That's absolutely right. When we  
31        think about what do we mean by "long-term value", we mean  
32        in terms of an intergenerational view. That is to say, the  
33        company should be leaving the firm in the next generation  
34        with the same ability to earn benefits both for the  
35        shareholders and for the other parties to the company.

36  
37        In other words, it is thinking about the board of a  
38        company as acting in terms of the intrinsic interests of  
39        the various parties to a company, so that the notion of  
40        long-term shareholder value is taking everyone along with  
41        it, enhancing the well-being of employees, is just not the  
42        way in which the enlightened shareholder view works.

43  
44        You can have a steadily growing company that's  
45        sustainable over the long-term, but yet still has  
46        substantial disparities between what it pays its employees  
47        and what it earns at the top of the business.

1  
2        You can have a company that, over the long term, so  
3        long as it is minimising its taxes, is still creating a  
4        viable long-term value of the company.

5  
6        It is only once we shift in a direction of saying that  
7        the objectives of the company should be to state a purpose  
8        which incorporates the notion of enhancing in an intrinsic  
9        sense the benefits of other parties, not simply in terms of  
10        the notion of the extent to which it derives a benefit for  
11        the shareholders, that you then begin to address the  
12        questions about how do you really solve the sorts of  
13        problems that I'm talking about.

14  
15        So I think the idea that it is sufficient to think  
16        about it as being an enlightened shareholder view, without  
17        taking account of the notion of what the purpose of the  
18        company is, is not reflecting the extent to which there is  
19        a problem with the current arrangement.

20  
21        DR AUSTIN: Thank you. Can we get back to the sin stock  
22        companies, in light of those comments - tobacco, alcohol,  
23        gambling, armaments, possibly even fossil fuels. How would  
24        you advise them to articulate their purpose?

25  
26        PROFESSOR MAYER: I think those are very good  
27        illustrations of the difference that this approach makes,  
28        because if you think, for example, in relation to a tobacco  
29        company, then a tobacco company that's an enlightened  
30        tobacco company, following an enlightened shareholder

31 principle, will say, "Well, provided it is the case that we  
32 are earning returns for our shareholders and we're looking  
33 after our employees and we're not polluting the  
34 environment, and things like that, we're acting in a  
35 socially responsible fashion."  
36

37 But it is failing to address the underlying issue, and  
38 that is to say it is producing an addictive product. Now,  
39 according to the way in which I have defined the nature of  
40 the purpose of a company, that it should not profit from  
41 producing problems for people or planet, then it certainly  
42 is violating that condition: it is profiting from the  
43 addictive nature of the products that it is selling.  
44

45 What should it do about it? It should recognise that  
46 that basis of profiting from producing an addictive product  
47 should be phased out as quickly as possible by essentially  
1 weaning people off the addictive product through  
2 introducing new forms of products that encourage people to  
3 move away from tobacco smoking, towards the purpose which  
4 is to produce safe, environmentally friendly, non-harmful  
5 products that promote the enjoyment, the relaxation, the  
6 social interaction of individuals.  
7

8 So you can think about the company essentially as,  
9 first of all, having as its purpose to move away from  
10 a product that is clearly damaging; secondly, if it wants  
11 to be a viable company going forward, to think about the  
12 development of a product that does not have the harmful  
13 elements associated with it.  
14

15 DR AUSTIN: So the purpose, in your conception of it, is  
16 never just descriptive, and it is at least almost always  
17 normative?  
18

19 PROFESSOR MAYER: It is, in terms of thinking about  
20 solving problems. That does not mean that it is having  
21 a social purpose imposed upon it; it is simply thinking in  
22 terms of what we are really here to do is to solve problems  
23 and not to profit from creating problems.  
24

25 DR AUSTIN: And to test it a little further, what happens  
26 if the tobacco company, having adopted that purpose,  
27 continues to manufacture cigarettes?  
28

29 PROFESSOR MAYER: That's exactly what the accounting  
30 framework is designed to do - namely, that is to say it has  
31 to recognise that it is imposing serious costs, in terms of  
32 health costs, on its customers, and it should understand  
33 that it has a responsibility for those harms it is doing.



34

35 Now, that, in essence, will make its current model an  
36 unviable model, and that will encourage the firm to move in  
37 exactly the direction that I'm talking about.

38

39 DR AUSTIN: And in terms of directors' fiduciary duties,  
40 are there any implications?

41

42 PROFESSOR MAYER: Yes. There are fiduciary  
43 responsibilities in terms of stating what the purpose is,  
44 establishing the period over which that purpose will be  
45 implemented, and if it fails to deliver effectively over  
46 that period, to make provisions for the costs associated  
47 with its failure to do so.

1

2 Let me take another example. Let's take oil  
3 companies, fossil fuel companies. What is the purpose of  
4 a fossil fuel company? Well, increasingly, oil companies  
5 are recognising that their purpose is not to produce oil;  
6 their purpose is to solve the energy problems that we as  
7 customers and societies face, and that means thinking about  
8 how one shifts from fossil fuels to alternative sources of  
9 energy. What is key in terms of that is not just an  
10 observation as to what the problem is and what needs to be  
11 solved, but the period over which it is going to be solved.  
12 That's the first objective of a fossil fuel company.

13

14 The second objective is, to the extent that it is  
15 a resource-extractive company, it should be benefiting the  
16 societies in which it is operating from the extraction of  
17 the resources that it is engaged in.

18

19 DR AUSTIN: That is a very succinct and important way of  
20 describing the centre of your advocacy, it seems to me.  
21 The idea of purpose really means something more than what  
22 the company is doing and what its business is, it is all  
23 about the interrelationship between the company and  
24 society. Does anyone want to pick up these themes?

*[Justice Edelman referred to his paper, where the point was made that,  
the more importance that is placed upon purpose, the more vital it will  
be to consider the level of abstraction that purposes expressed at.]*

5

6 PROFESSOR MAYER: If I could just say, I think you are  
7 describing it exactly correctly in terms of thinking about  
8 the business proposition as well as the legal element,  
9 insofar as it is in the interests of a company to get the  
10 level of detail associated with its purpose right. Why?  
11 Because by so doing, it thereby demonstrates a commitment  
12 to the delivery of that purpose, or at least through the

13 constitution of the company that it establishes to go with  
14 that purpose; it demonstrates a commitment which creates  
15 the trust of other parties in its delivery on that, which  
16 thereby gives rise to it enhancing its financial  
17 performance as well. But what is key to that is the  
18 ability of the company to be able to commit to that  
19 purpose, and that is why I think the law is very important  
20 in this regard in essentially enabling companies to put the  
21 purpose at the centre of what they are doing, to provide  
22 that element of commitment.

23

*[Professor Mayer was asked how he would legislate to create a framework that would, in the example of "sin stocks", require them to adopt a purpose that would avoid causing problems to planet?]*

28

29 PROFESSOR MAYER: I will come back to the UK Companies  
30 Act, because I have demonstrated the problems that I see  
31 with it, but there is a second paragraph to the Act which  
32 states that companies, if they so choose, can substitute  
33 a purpose for the statement that the directors have a  
34 responsibility to promote the success of the company for  
35 the benefit of its members. So the law actually permits  
36 companies to put a purpose at the centre of what they are  
37 doing. The only problem is that the notes to that second  
38 paragraph then say, "Well, there may be some altruistic  
39 companies that wish to do that", so it is regarded as being  
40 an anomaly and, as a consequence, basically, no-one does  
41 it.

42

43 So part 1 would be to make that the central  
44 proposition, not an aberration; and part 2 then would be to  
45 have a note that said, "And in specifying the purpose,  
46 there are two components, first of all the purpose should  
47 demonstrate how the company is helping to produce  
1 profitable solutions; and, secondly, that it is not  
2 profiting from producing problems." So it would then give  
3 guidance on exactly the sorts of purposes that I have just  
4 been describing.

5

6 DR AUSTIN: Doing it that way would mean that those  
7 propositions are incorporated into the directors' duties,  
8 wouldn't it?

9

10 PROFESSOR MAYER: Yes. And that's the key element, that  
11 they should be incorporated.

12

13 MR CRENNAN: Just from a regulator's point of view, in  
14 that prescriptive formulation the problem that I would  
15 perceive, I think, is that the identification of the  
16 problems, as you have described them, would be key to the

17 directors and the companies understanding what their  
18 options are and what their obligations are in their  
19 identification of the purpose. So the arbiter of what are  
20 the problems of the day will be fundamental to anyone's  
21 appetite for being a director, given the prescription that  
22 they will be facing by way of that type of structure.

23

24 So how would you imagine that in a particular country,  
25 your own or another, the problems would be identified with  
26 sufficient precision and with sufficient bases such that  
27 those who wish to enter the director community or the  
28 corporate community will be well placed to understand that  
29 obligation?

30

31 PROFESSOR MAYER: That is a very good question. With all  
32 due respect, my answer would be, as far as possible, to  
33 keep you folks out of it --

34

35 MR CRENNAN: I'm happy.

36

37 PROFESSOR MAYER: -- and to make it a market process,  
38 because what I want to do is to encourage competition in  
39 definitions of purpose and competition in terms of  
40 demonstrating a credible delivery of that purpose. We have  
41 created competition in terms of maximising shareholder  
42 value, and whatever the position of the law states - and  
43 this is what Leo Strine makes very clear in the context of  
44 Delaware law - it is not so much just what the law states,  
45 it is the way in which the market operates. The market is  
46 forcing companies, whatever the law says, to focus  
47 exclusively on one-party interest, and why the law is  
1 important in correcting it is that by establishing the  
2 purpose at the heart of what the company is defining itself  
3 as doing, it opens up the possibility of creating  
4 a competition as a run to the top in terms of corporate  
5 purpose.

6

*[Professor Mayer was asked a question along the following lines:  
If I'm on the board of directors of  
a tobacco company and your legislative regime is in place,  
and we take the view that we produce a product that is  
lawful and we wish to continue to produce it so long as it  
remains lawful, and we wish to express our statement of  
purposes, consistent with that regime, at a sufficiently  
high level of abstraction that will enable us to continue  
to produce this product indefinitely so long as it remains  
lawful, is your suggestion that there is no difficulty with  
an expression of purpose at that high level of abstraction,  
or that there is a difficulty with it? And if there is no  
difficulty with it, is the suggestion that there will be*

*a competition amongst the tobacco firms for the ones who will be more competent?]*

23

24 PROFESSOR MAYER: An excellent question. The answer is  
25 two responses, one of which is, society will encourage the  
26 internalisation of these factors by imposing prices on the  
27 definition of "profit". So in this case, there would be  
28 the potential for companies to have to incorporate the  
29 health costs associated with the damage that they are doing  
30 to their customers. So the definition of what an  
31 accounting profit would be would incorporate the costs  
32 associated with remedying the damage that is being done to  
33 customers. So that is one way in which that can be done,  
34 not through the imposition of a regulatory rule, through  
35 a way of incorporating it in terms of the provisions, the  
36 cost provisions, that companies need to make in their  
37 stated profits.

38

39 Why does that matter? Because the stated profit  
40 determines the distributable profit and, therefore, it in  
41 essence determines what remains within the company as the  
42 resources with which to deal with the problem.

43

44 The second approach is a much more straightforward  
45 answer: well, if companies aren't doing it, there will  
46 have to be an imposition of a regulatory regime. So at the  
47 end of the day, it's that risk that will push companies in  
1 this direction, and one of the interpretations behind the  
2 Business Roundtable's development has been that that  
3 concern about regulatory implications is driving them in  
4 that direction.

5

6 DR AUSTIN: I think Catherine wanted to say something.

7

8 MS LIVINGSTONE: Yes, if I could, I suppose, and without  
9 wanting to be negative about this, to question some of the  
10 assertions. I think the first one, that corporations are  
11 hell-bent on making profit and that the detriment to other  
12 stakeholders is somewhat incidental in that long-term aim.  
13 I don't think that describes any director I know or any  
14 company I know. There may be companies that are like that,  
15 but as a general comment, I wouldn't accept that.

16

17 The other point about defining a purpose doesn't  
18 actually help directors in all of the decisions that have  
19 to be made, because the decisions go down to quite  
20 a detailed, quite a granular level, and so to form the view  
21 that your purpose will actually describe your  
22 responsibilities and accountabilities as a director is,  
23 I think, a simplification of the actual environment in

24 which directors work.

25

26 Not all corporations solve problems. For example,  
27 travel companies - do they solve the problem of  
28 entertainment? Maybe. I think being careful about  
29 requiring purpose to be related to a solution of a problem  
30 might limit the concept.

31

32 But taking it down to almost a "how to" guide for  
33 a corporation I think will constrain directors in terms of  
34 being able to make the decisions and the judgments that  
35 they have to make, if they feel they are, as I say,  
36 constrained within that construct.

37

38 Just on this point about relentless pursuit of profit  
39 and that that's the overriding objective, I just can't say  
40 how strongly that is not what I observe in the companies  
41 that I have been involved with. Yes, that's personal  
42 experience, but increasingly the judgments are around the  
43 interaction of the different interests of the stakeholders.  
44 It is not the intent to go out and pay people as little as  
45 possible so that you can maximise your profit. That is  
46 just not the case. I do reject that characterisation of  
47 the behaviour of corporations as a whole. It is not to say  
1 that individual corporations have not transgressed. I'm  
2 with the CBA and that transgression, without going into  
3 detail, has been pretty public. We are absolutely not  
4 proud of that and are doing everything we can - and I have  
5 described what we are doing in terms of governance and  
6 culture. But don't characterise every corporation or every  
7 part of a corporation as in some way evil in its pursuit of  
8 profit to the exclusion of all else. I think that is being  
9 very unfair to a part of the economy that is crucial and,  
10 as I said, for our ability to adapt over the next 10 years  
11 we have to have healthy corporations doing the job they do,  
12 in conjunction with regulators, in conjunction with  
13 governments. I feel very strongly about it.

14

15 PROFESSOR MAYER: And quite rightly so, because the two  
16 examples I gave in my presentation were of companies that  
17 were doing things extremely well and really solving very  
18 substantial problems, and there are many companies like  
19 that, and it just so happens that when you look around the  
20 world at which of those companies are really displaying  
21 those characteristics, in many cases, they have  
22 unconventional forms of ownership structures, of governance  
23 structures, but nearly always very clearly defined  
24 purposes.

25

26 Now, you said that you don't recognise the story of

27 companies that are pursuing harmful objectives. We have  
28 just talked about an industry that is doing that, and it is  
29 not just in relation to tobacco, it is in relation to  
30 a whole range of addictive products, of which gambling,  
31 tobacco --

32  
33 MS LIVINGSTONE: I agree with those particular sectors  
34 that do effectively lead to huge externalities costs,  
35 there's no question. I'm just saying to characterise all  
36 sectors and all companies in that way I think is being  
37 unfair.

38  
39 PROFESSOR MAYER: Sure. In many cases, companies are able  
40 to pursue a purpose beyond profit until they get subject to  
41 a hedge fund activist or a hostile bid, at which stage the  
42 focus on profit becomes very intense.

43  
44 MS LIVINGSTONE: But you are talking about particular  
45 circumstances, particular sectors and so on, and then  
46 inferring from that a sort of general framework, and I am  
47 rejecting that inference to a general framework. I am not  
1 rejecting the specific examples.

2  
3 PROFESSOR MAYER: Right. But the general framework that  
4 I am talking about in terms of thinking about a purpose is  
5 one - I do a lot of work advising companies on corporate  
6 governance matters and board effectiveness reviews. If you  
7 talk in terms of defining your purpose and thinking about  
8 your purpose, it is very liberating for a board to do so,  
9 and to have a clear notion as to, well, what problem are  
10 you seeking to solve or is your company capable of solving?  
11 It is actually a way of helping companies to really define  
12 the direction in which they are going.

13  
14 Having done that, you are absolutely right, the next  
15 level is to go from that clear notion as to why do we  
16 exist, what is our fundamental reason for being a company?  
17 It goes down to the granular level of thinking about, well,  
18 how in practice should that be implemented through culture,  
19 through --

20  
21 DR AUSTIN: I have to chip in here. I'm afraid I have to  
22 bring this discussion to an end in a formal sense, and  
23 invite people to continue it outside, just because of the  
24 time. I think the audience can see how intensely  
25 interesting it is from what has been exchanged in the last  
26 little while.

27  
28 My role is to express my personal gratitude to the  
29 speakers for putting this together. I think this is the

30 most important of these conferences - we have been doing  
31 them since about 2006 - and if the dialogue continues as  
32 a result of this and deepens in the Australian society,  
33 then we have done our job very well. I am very grateful for  
34 the way all of you have been prepared to participate and  
35 put so much effort into this.

36  
37 I am also very grateful to the Law Society for their  
38 excellent contribution to what is actually the biggest  
39 conference we have had in terms of audience, and I think it  
40 has gone very, very smoothly.

41  
42 We will adjourn for drinks, but I think Justice Black  
43 has something to say, which I'm not necessarily looking  
44 forward to.

45  
46 JUSTICE BLACK: Ladies and gentlemen, the Chief Justice,  
47 in his absence, has asked me to move a vote of thanks to  
1 Dr Austin for his work in organising this conference.

2  
3 Dr Austin, of course, has many careers. He started as  
4 a legal academic, it includes being a judge of this court,  
5 a solicitor, an advisor in corporate governance,  
6 a barrister and now over many years a very distinguished  
7 organiser of a very distinguished conference.

8  
9 This may or may not be his swan song in the area of  
10 conference organisation. If it is, he has ended on a high.  
11 This has been a most ambitious conference with an  
12 extraordinary level of interaction between the papers and  
13 a very, very important agenda for the conference. We  
14 should all be very grateful for Dr Austin's work in  
15 bringing this extraordinary conference to us. It has been  
16 a most interesting conference and I would ask us to thank  
17 Dr Austin in the customary way.

18  
19 DR AUSTIN: That wasn't too painful, but let's have  
20 a drink.

21  
22 AT 6PM THE CONFERENCE WAS ADJOURNED ACCORDINGLY