CORPORATE PURPOSE IN THE ERA OF HASHTAG CAPITALISM: AN EXAMINATION OF NEW ZEALAND'S SOON-TO-BE-AXED AMENDMENT TO THE DIRECTORS' DUTY OF CARE

Akshaya Kamalnath*

This article argues that in the era of 'hashtag capitalism', the Companies (Directors' Duties) Amendment Act 2023 might incentivise more online activism in New Zealand, which has not seen as much hashtag capitalism as in some other countries. The upshot of this is that society will be encouraged to engage with companies along specific guidelines. The article will also reflect on the proposal to repeal the amendment so soon after its introduction and argue that the expressive value of the amendment might remain, especially because the proposal to repeal the amendment did not provide much explanation for the repeal, and because the forces of hashtag capitalism will eventually diffuse into New Zealand.

However, it will be important for New Zealand companies to learn from the experiences of jurisdictions like the United States where hashtag capitalism has been pronounced. Government and regulators must also be wary of the downsides of too much hashtag capitalism. In brief, these downsides include companies pandering to the loudest voices on social media and reacting quickly to these voices instead of careful consideration of issues in the interests of the company as a whole; people calling on companies to address social issues that are perhaps better addressed democratically; and as a corollary, companies rather than democratically elected leaders dictating the terms of important social issues.

* Associate Professor, ANU College of Law. I am grateful to participants of the 'Understanding Corporate Purpose' symposium held at Victoria University of Wellington (in conjunction with the University of Richmond School of Law) for commenting on an earlier version of this article and to Matteo Solinas and Da Lin for inviting me. I am also grateful to Eric Crampton and Roger Partridge for reading and commenting on the article. The usual disclaimers apply.

I INTRODUCTION

The issue of corporate purpose has been much debated over the years. The most recent iteration of this debate was catalysed by the Business Roundtable's statement on the purpose of the corporation.[1] However, it must be noted that Asian jurisdictions had focused on corporate purpose much before and this focus has resulted in specific legal provisions to address stakeholder concerns.[2] One such Asian jurisdiction is India, which this article will briefly discuss later.

As for developments in the Anglo-American world, the pandemic gave further impetus to discussions on corporate purpose. These ideas seem to have diffused to other countries including New Zealand. In New Zealand, this debate seems to have resulted in an amendment to the Companies Act 1993 (which is the legislation governing companies in New Zealand) being proposed in 2021.[3] Eventually, a watered-down version of what was originally proposed was enacted as the Companies (Directors' Duties) Amendment Act 2023. The result of this amendment was that s 131 of the Companies Act, which deals with directors' duty to act in the best interests of the company, now includes additional text clarifying that directors may consider matters other than maximising profit.[4] In 2024, the New Zealand government announced a phased reform of the Companies Act that will begin in 2025.[5] As part of this reform package, there is a proposal to do away with the newly introduced s 131(5). While there has been a lot of noise around this amendment and now its proposed removal, this article will first argue that it does not change anything substantial because directors already had enough discretion to consider matters beyond profit maximisation.

Secondly, the article will contextualise the amendment and its removal within the 'hashtag capitalism' phenomenon that we are currently in. Hashtag capitalism, a term I coined in a previous article, essentially refers to the phenomenon where social media activism – whether from small shareholders, employees, consumers or members of society more broadly – is able to elicit responses from companies because of the ability to overcome collective action problems (via hashtags) on social media.[6] Using that lens, I argue that the amendment might have had expressive value and encouraged retail investors and others to engage with companies on non-financial issues.

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1 See Business Roundtable *Statement on the Purpose of a Corporation* (19 August 2019).

2 Mariana Pargendler "Corporate Law in the Global South: Heterodox Stakeholderism" (ECGI Law Working Paper 718/2023, October 2023).

3 Companies (Directors Duties) Amendment Bill 2021 (75-1).

4 Companies Act 1993, s 131(5).

5 Andrew Bayly "Improving fairness and ease of doing business" (press release, 15 August 2024). See Ministry of Business, Innovation and Employment "Modernising the Companies Act 1993 and making other improvements for business" (15 August 2024) <www.mbie.govt.nz>.

6 Akshaya Kamalnath "Hashtag capitalism: An introduction" (2024) 49 Alt LJ 162:

Thirdly, I argue that while the removal of the amendment might reduce some of the expressive value that the amendment would have had, the fact that the issue was debated as a result of the amendment has brought corporate purpose front and centre in New Zealand. Finally, I caution that if there is more engagement on non-financial issues, companies will do well to avoid knee-jerk reactions but rather aim for long-term measures which are in the interests of the company.

The remainder of the article is organised as follows. Part II introduces the corporate purpose amendment in New Zealand and contextualises this within the wider corporate purpose debate. Part III assesses the impact of the amendment (and the proposal to repeal it) through the lens of the hashtag capitalism phenomenon. Part IV concludes by calling for a considered response on the part of companies, in the face of hashtag capitalism.

II CORPORATE PURPOSE AMENDMENTS IN NEW ZEALAND

Although I have framed the New Zealand amendment as one of corporate purpose, the term "corporate purpose" seems to have many faces.[7] Most of the scholarship discusses corporate purpose with reference to the theoretical debates between stakeholderism and shareholder primacy. However, some others look at corporate purpose as a north star or guiding light. My own view is that both of the above lenses are useful ways of thinking about corporate purpose and might in fact ultimately dovetail.[8]

There is a third way of looking at corporate purpose: the idea that corporations must contribute to solving some of the world's problems even if these problems are unrelated to the business of the company. While I do not object to this view of corporate purpose when companies choose to adopt it voluntarily, I would argue that mandating this understanding of corporate purpose or allowing for ad hoc state intervention to facilitate this is problematic. CSR (corporate social responsibility), expectations for sustainable operations and the ESG (environment, social and governance) movement

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> … social media has allowed people to participate in the corporate world, by coming together as investors and using that to effect change on environmental, social and governance (ESG) issues, or by coming together as customers or employees and bringing about policy change on relevant issues, or by acting as individuals and commenting on and reacting to issues in the corporate world that have social implications. Members of society have actively given themselves a voice in the corporate world, irrespective of how the law understands the corporation and its governance. Taken together, I have termed this phenomenon as hashtag capitalism.

7 Matthias Siems attempts to address this issue by conducting a bibliometric analysis to understand the ways in which this term has been used in scholarship over the years: see Matthias Siems "'Corporate Purpose' as a False Friend: A Bibliometric Analysis" (2024) 55 VUWLR, in this issue.

8 However, as Kershaw and Schuster explain, the difference between the two should not be dismissed: David Kershaw and Edmund Schuster "The Purposive Transformation of Corporate Law" (2021) 69 American Journal of Comparative Law 478 at 480.

can all be seen as an extension of a push towards more stakeholderism.[9] In fact, Elizabeth Pollman has noted that:[10]

> … the rise of ESG has coincided with a renaissance in thinking about corporate purpose and growing interest in sustainability and stakeholder capitalism, adding to the mix of concepts and terminology in contemporary debates.

However, one only has to look at the example of India to see that mandating CSR, at least in the way India has done it, simply results in the government passing the buck to private enterprise.[11]

The fourth is a historical perspective on the purpose or objective for which a company is set up. This refers to the business that the company intends to engage in and to the fact that historically, companies in most jurisdictions were required to set out their objective, or in other words, the type of business they intended to carry out.

Table 1 captures a snapshot of these different uses of corporate purpose:

Category 1	Corporate purpose as a push towards stakeholderism.	This is a call to end shareholder primacy, narrowly construed. ESG and CSR can be read within this category.
Category 2	Corporate purpose as a north star.	This sort of framing is more modern. It can allude to a values statement or mission purpose that speaks to how the company must act.
Category 3	Corporate purpose as requiring companies to solve world problems.	This is a call for companies to step in for government and take on social development activities. Not everyone goes this far.
Category 4	Corporate purpose as the type of business the corporation intends to engage in.	This is a historical framing. Can be clarified by referring to the "objects clause" in a company's constitution.

Table 1: Ways of framing the concept of corporate purpose

Let us unpack what these different faces or conceptions of corporate purpose mean. Corporate purpose, as understood under "category 1", strikes at the heart of the debate between shareholder

9 "ESG" is another fluid term with a few different connotations. As Elizabeth Pollman "The Making and Meaning of ESG" (2024) 14 Harvard Business L Rev 403 at 407 notes:

> … ESG was coined to describe a set of issues to be integrated into enhanced financial or investment analysis, and has taken on meanings related to risk management, been treated as a synonym or subset of CSR or sustainability, and been characterized as a preference or activity. It has taken on connotations both positive and negative, as value-laden notions of "conscious" versus "woke" capitalism give way to perceptions of ESG as ideological, political, and subject to backlash.

10 Pollman, above n 9, at 6.

11 However, CSR in the context of India's legislative provision mandating spending on what the government designates as "CSR activities" can perhaps be seen more in the "corporations need to solve world problems" category: Akshaya Kamalnath "A Post Pandemic Analysis of CSR in India" (2021) 16 JCL 714.

primacy and stakeholderism – the debate catalysed by the Business Roundtable statement on corporate purpose.[12] In short, the stakeholderism side of the debate argues that directors of the company should consider the interests of all stakeholders while making corporate decisions. On the other end of the debate, a narrow conception of shareholder primacy would mean that the interests of shareholders should be prioritised.[13] The latter, I have to emphasise, is a narrow conception of shareholder primacy.

The broader conception of shareholder primacy would mean that the long-term interests of shareholders should be prioritised. Stephen Bainbridge would rather term this as "shareholder value maximisation", to avoid confusion. He defines the term "shareholder value maximisation" as "the normative proposition that directors are obliged to make a decision based solely on the basis of long-term shareholder gain".[14] Bainbridge also makes a point of noting that the caricature version of shareholder value maximisation, as told by stakeholderists, is that of short-term profit maximisation.[15] The poster boy for this caricature idea of shareholder primacy is Milton Friedman. I have been in a few academic conferences now where his picture is used on a slide simply to draw sharp reactions of horror from the audience. In fact, as Alex Edmans says, "to declare that you reject the Friedman doctrine has become almost a requirement for acceptance into polite society".[16] But what does Milton Friedman actually say? I have extracted a paragraph from his (in)famous article below:[17]

> In a free-enterprise, private-property system, a corporate executive is an employee of the owners of the business. He has direct responsibility to his employers. That responsibility is to conduct the business in accordance with their desires, which generally will be to make as much money as possible while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom.

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12 See Business Roundtable, above n 1.

13 The definition I have provided of shareholder primacy will suffice for current purposes. However, it is useful to note Bainbridge's more complete definition of the term; see Stephen M Bainbridge *The Profit Motive: Defending Shareholder Value Maximization* (Cambridge University Press, Cambridge, 2023) at 13:

> … shareholder primacy should be understood as making two distinct claims: "(1) that shareholders are the principals on whose behalf corporate governance is organized and (2) that shareholders do (and should) exercise ultimate control of the corporate enterprise".

14 At 13.

15 At 14.

16 Alex Edmans "What Stakeholder Capitalism Can Learn From Milton Friedman" (10 September 2020) ProMarket <www.promarket.org>.

17 Milton Friedman "A Friedman doctrine—The Social Responsibility of Business Is to Increase Its Profits" *The New York Times* (New York City, 13 September 1970).

Thus, Friedman actually says that corporate executives should conduct business per their employers: that is, shareholders so long as they comply with the rules – both law and societal expectations.[18] Later in his article, Friedman illustrates his argument by saying that:[19]

> … it may well be in the long-run interest of a corporation that is a major employer in a small community to devote resources to providing amenities to that community or to improving its government.

Edmans therefore notes that Friedman's view is actually not incompatible with stakeholderism, or "stakeholder capitalism" as he says.

Indeed, consideration of stakeholder issues is not verboten under existing laws in most jurisdictions, including New Zealand. When acting in the interests of the company, directors already have discretion to focus on broader stakeholders.[20] In previous work, I have explained this in terms of a company's long-term interests:[21]

> When one thinks of shareholder interests *in the long term*, one is forced to ensure that all relevant stakeholders that contribute to or interact with the corporations are well taken care of. Happy employees are productive employees. Happy customers become repeat customers. The community or society being happy with a company leads to reputational gains for the firm.

Ultimately, courts will not second-guess business decisions of directors as long as the company is outside the zone of insolvency. This is known as the business judgement rule and is well-developed in United States common law, particularly in Delaware, and through statute in Australia.[22] However, common law in the United Kingdom, and by extension New Zealand, also recognises this.[23] Thus, explicitly adding text to allow directors to do something that they were already allowed to do is really not a substantial addition.

Below is the text of s 131 of the New Zealand Companies Act, in relevant part, and the newly added text in italics:

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18 Friedman, above n 17. We would say that the corporation employs the executives but when the corporation is financially healthy, its interests are supposed to coincide with that of the shareholders.

19 Friedman, above n 17.

20 Akshaya Kamalnath *The Corporate Diversity Jigsaw* (Cambridge University Press, Cambridge, 2022) at ch 6.

21 At 192 (emphasis in original).

22 Michael Legg and Dean Jordan "The Australian Business Judgment Rule after *ASIC v Rich*: Balancing Director Authority and Accountability" (2014) 34 Adel L Rev 403.

23 Matteo Solinas "The NZ Companies (Directors Duties) Amendment Bill: Much Ado about Nothing?" (31 March 2023) Oxford Business Law Blog <www.blogs.law.ox.ac.uk>.

131 Duty of directors to act in good faith and in best interests of company

(1) Subject to this section, a director of a company, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the company.

…

(5) To avoid doubt, in considering the best interests of a company or holding company for the purposes of this section, a director may consider matters other than the maximisation of profit (for example, environmental, social, and governance matters).

The amendment as originally proposed would have added the following text as subsection (5):[24]

(5) To avoid doubt, a director of a company may, when determining the best interests of the company, take into account recognised environmental, social and governance factors, such as:

(a) recognising the principles of the Treaty of Waitangi (Te Tiriti o Waitangi):
(b) reducing adverse environmental impacts:
(c) upholding high standards of ethical behaviour:
(d) following fair and equitable employment practices:
(e) recognising the interests of the wider community.

While the amendment that was ultimately introduced was an easier sell because it really did not add anything new, the originally proposed amendment would have been more problematic. Specifically with regard to clause (a) of the originally proposed amendment, Roger Partridge noted as follows:[25]

> … the Bill's reference to "the principles of the Treaty of Waitangi" as one of the factors directors can consider is particularly problematic.
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> Important though the principles of the Treaty of Waitangi are – especially when it comes to the public law duties of the Crown – a future court will have little guidance on why they have been tucked into a Bill dealing with the private law obligations of company directors. And, therefore, what legal meaning they should be given. The reference to Treaty principles smacks of tokenism – or virtue signalling. And it will create legal uncertainty and consequently harm.

There are two points here. For one thing, if courts will not interfere in business decisions, it makes no difference to have such a clause (except to virtue signal). The second point is that a future court may find itself having to decide on a claim using the clause as support. One only needs to look at the recent tort case of *Smith v Fonterra Co-operative Group Ltd* to see how creative claims might crop

24 Companies (Directors Duties) Amendment Bill 2021 (75-1).

25 Roger Partridge "Directors' Duties Bill is well-meaning but harmful" *The New Zealand Herald* (online ed, Auckland, 4 May 2022).

up.[26] Ultimately, vague rules like this create legal uncertainty for companies. As Partridge noted, this is not to say that companies should be allowed to get away with conduct that negatively impacts society.[27] We need more specific laws and stronger enforcement.[28] For areas like technology and climate change, where corporate activity has negative externalities for society and where it is difficult for regulations to anticipate all problems, the gap can be filled by soft law.

In any case, the subsection which was ultimately introduced is watered down and merely mentions ESG matters. Directors are already exhorted to take ESG matters into consideration by soft law across jurisdictions. The New Zealand Stock Exchange *Corporate Governance Code* (NZX Code) and the *Code of Practice for Directors* published by the Institute of Directors (IoD Code) are relevant soft law sources in New Zealand.[29] Explaining how these all fit together, the IoD Code notes as follows:[30]

> This Code is not intended to be an exhaustive statement. It should be read in conjunction with applicable law, any relevant codes of governance such as The New Zealand Exchange Limited's (NZX) Corporate Governance Code and the provisions of the company's constitution. Directors should also refer to the Institute of Directors' Four Pillars of Governance Best Practice for detailed guidance on specific governance issues.

The NZX has even issued a guidance note which provides further guidance on recommendation 4.4 of the NZX Code which deals with ESG disclosures. Recommendation 4.4 states as follows:[31]

> An issuer should provide non-financial disclosure at least annually, including considering environmental, social sustainability and governance factors and practices. It should explain how operational or non-financial targets are measured. Non-financial reporting should be informative, include forward looking assessments, and align with key strategies and metrics monitored by the board.

In explaining how to make ESG disclosures, the NZX guidance note says that companies "should consider who their key stakeholders are and how the reporting or gathering of data may affect those stakeholders or require their feedback".[32] It goes on to say that stakeholders "can include employees,

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26 *Smith v Fonterra Co-operative Group Ltd* [2024] NZSC 5, [2024] 1 NZLR 134. For a comment on the initial case, *Smith v Fonterra Co-Operative Group Ltd* [2020] NZHC 419, [2020] 2 NZLR 394, see Akshaya Kamalnath "Fantastic New Torts and Where to Find Them" (25 March 2020) The Hitchhiker's Guide to Corporate Governance <www.corporatelawacademic.wordpress.com>.

27 Partridge, above n 25.

28 Partridge, above n 25.

29 NZX *NZX Corporate Governance Code* (January 2025); and Institute of Directors New Zealand *Code of Practice for Directors* (23 June 2022).

30 Institute of Directors New Zealand, above n 29, at [1.3].

31 NZX, above n 29, at 26.

32 NZX *Guidance Note: NZX ESG Guidance* (24 May 2024) at 12.

customers, suppliers, distributors, creditors, lenders, community, unions, shareholders, investors and government".[33] The work of the External Reporting Board (XRB), which issued climate standards in 2023, is also relevant here.[34] Thus, soft law is already exhorting companies to take note of stakeholder interests and consider and report on ESG matters. There should be no doubt in the minds of directors that this is something they have discretion to consider.

Thus, with the business judgement rule already allowing directors discretion to consider stakeholder interests, and soft law encouraging corporate boards to consider ESG issues, what is the impact of the new amendment? Although I have noted above that it is not a substantial addition, a legislative amendment does not go unnoticed. It has generated discussion both in terms of the submissions during the consultation period and the commentary around it. In any case, when the amendment came into force, one could say that there was a signal being sent out that the government wanted companies to focus more on stakeholder concerns. The next part will discuss this signalling function and how it might be perceived within the phenomenon of hashtag capitalism outlined above.

III THE IMPACT OF THE AMENDMENT IN THE ERA OF HASHTAG CAPITALISM

Law can sometimes have an expressive function: that is, merely making a legislative statement has a value distinct from directly controlling behaviour.[35] Rather than using formal legal sanctions, well-designed laws can modify behaviour by changing social norms.[36] I have previously noted[37] that the expressive function of law has been invoked in the context of directors' duties,[38] disclosure rules for board gender diversity,[39] internal whistleblower protection codes of companies[40] and executive compensation.[41]

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33 At 12.

34 See External Reporting Board "Aotearoa New Zealand Climate Standards" (18 June 2024) <www.xrb.govt.nz>.

35 Cass R Sunstein "On the Expressive Function of Law" (1996) 144 U Pa L Rev 2021.

36 At 2029–2035.

37 Kamalnath, above n 11, at 732.

38 Marc Moore and Martin Petrin *Corporate Governance: Law, Regulation and Theory* (Red Globe Press, 2017) at 145.

39 Aaron Dhir *Challenging Boardroom Homogeneity: Corporate Law, Governance, and Diversity* (Cambridge University Press, Cambridge, 2015) at 227.

40 Olivia Dixon "Honesty without Fear? Whistleblower Anti-Retaliation Protections in Corporate Codes of Conduct" (2016) 40 MULR 168.

41 Sandeep Gopalan "Say on Pay and the SEC Disclosure Rules: Expressive Law and CEO Compensation" (2008) 35 Pepp L Rev 207.

However, we should be careful not to overestimate the expressive function of law. Sandeep Gopalan argues that for any expressive law to work, "the underlying norm that is the basis for the law must be internalized" and such norm internalisation may "be the result of introspection and deep change within one's own self, or it might be a product of the actions of others following the passage of the law".[42] In the current time, when we have the perfect storm, in terms of discussions around ESG and corporate purpose kickstarted by the Business Roundtable statement and the phenomenon of hashtag capitalism, perhaps some companies will be forced to internalise them. I say "forced" because social media activism might pressure companies to respond accordingly and such companies might eventually internalise the need to consider ESG issues, even though the law already allows this.

In the United States, and to a lesser extent elsewhere, retail investors (especially millennials and Gen Z-ers) have increased in number, seem to have pro-social preferences and are willing to engage with companies on these issues publicly on social media.[43] Retail investors are already active in New Zealand and intermediaries like Sharesies Open are helping listed companies in the country to engage with them.[44] Susannah Batley, former general manager of company partnerships at Sharesies, specifically noted the pro-social preferences of retail investors when she said that "retail investors invest for all sorts of reasons apart from good returns" and that "younger generations are coming into investing and they want to support companies to create better futures for everyone".[45] Thus, in this ecosystem, the Amendment Act might result in some norm internalisation regarding the need to consider ESG issues. The flipside is that rather than norm internalisation, companies might focus their efforts on signalling that they consider ESG issues, whether or not they actually do. In other words, the amendment and the extant ecosystem might incentivise companies to engage in greenwashing. However, greenwashing has always been a concern, and it will be up to regulators to curtail this. In Australia, the regulator has issued statements about greenwashing being an area that it will address, and has gone on to be successful in an action to address this.[46]

Having discussed the potential impact that the Amendment Act could have had despite not making a substantial addition to the law, it is interesting to note that it is now set to be removed. In August 2024, the New Zealand government announced major reforms to modernise the companies legislation

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42 At 237.

43 Akshaya Kamalnath "Finfluencers and Other Tech Disruptions to Corporate Law—Insights from South Korea and India" (2025) 13 CJCL (forthcoming).

44 Andrea Malcolm "Listed companies beef up retail investor relations with new portal" (14 December 2023) Good Returns <www.goodreturns.co.nz>.

45 Malcolm, above n 44.

46 *Australian Securities and Investments Commission (ASIC) v Vanguard Investments Australia Ltd (No 2)* [2024] FCA 1086. For guidance statements from the market regulator, see Joe Longo, ASIC Chair "Greenwashing: A view from the regulator" (speech to the RIAA Conference Australia, Sydney, 2 May 2024).

in the country.[47] Buried amidst the suite of reform proposals categorised as "indicative additional proposals that are exempt from Regulatory Impact Analysis" is the proposal to repeal s 135(5), with little explanation as to why.[48] Thus an amendment that did not add much to begin with has received a death warrant in under 12 months since it came into effect. Some proponents of s 135(5) have argued that although the amendment did not change the law, it provided clarification.[49] Now that it will be removed, they further argue that such removal creates confusion.[50] I would argue that both the amendment and its planned removal do not create substantive change in the law. From the perspective of hashtag capitalism, while the amendment might have had the potential for norm creation, its removal may slightly nullify this effect in the longer term. However, I should qualify the latter point. Directors still have discretion to consider stakeholder interests, and soft law along with the phenomenon of hashtag capitalism are bound to further push companies in this direction. The amendment brought attention to ESG issues and its repeal might further give impetus to non-legal efforts (or hashtag capitalism) to pressure companies to make pro-social decisions. Although this sounds like a positive development, hashtag capitalism has significant risks associated with it and these must not be ignored. The next part will conclude by discussing these risks.

IV CONCLUSION – SOME CAUTIONARY NOTES

Although hashtag capitalism sounds positive, it also has significant risks, and I would like to conclude on a cautionary note by discussing these. In essence, there are two key risks: (1) short-term reactions based on social media storms; and (2) governments passing the buck to companies on important ESG-related issues.

The risk of short-term corporate reactions to social media storms is important to consider because it results in pandering to the loudest voices on social media, who may or may not be right. Ultimately, it will also not be in the long-term interests of companies to address social media storms with knee-jerk reactions, without addressing the underlying problems in the company (if any).[51] Further, there may be instances where different stakeholder interests are in conflict and directors end up catering to the group that makes the loudest noise on social media. This is not optimal and does not assure the company of reputational gains. It is also possible that a company which always eschews profits to address stakeholder demands might ultimately have trouble attracting investors in the long term.

47 Bayly, above n 5. See Ministry of Business, Innovation and Employment, above n 5.

48 Cabinet paper "Modernising the Companies Act 1993 and making other improvements for business" (31 July 2024) at [18].

49 Lynn Buckley and Peter Underwood "NZ took the lead on director duties reform. Why are we set on giving it up?" (13 September 2024) Newsroom <www.newsroom.co.nz>.

50 Buckley and Underwood, above n 49.

51 For a more detailed discussion of this issue, see Akshaya Kamalnath "Social Movements, Diversity, and Corporate Short-Termism" (2022) 23 Georgetown Journal of Gender and the Law 449.

While retail investors (and even institutional investors) may find value in taking pro-social positions, they (especially retail investors) will not have the appetite to keep losing money. Finally, a strong expectation of stakeholder-oriented decision-making opens us up to the classic "many masters" problem, which is essentially that a director who has to serve many masters can find a way to justify self-dealing, thus allowing for mismanagement.[52]

The second issue of government passing the buck on social issues to companies is also an important one. We see evidence of this in India where the corporations legislation requires companies of a certain size to contribute a portion of their profits to activities designated by the government as "CSR activities".[53] This is a way of passing the buck to companies on developmental and social issues that the government would otherwise be required to address.[54] Ultimately, it is important to remember that this amounts to people calling on companies to address social issues that are perhaps better addressed democratically and, as a corollary, companies rather than democratically elected leaders dictating the terms on important social issues.[55] These cautionary notes are for both companies and governments to keep in mind.

To end on a more positive note, I should add that the New Zealand Companies Act has many fans, including myself, because of how lean and user-friendly it is (and forms a nice contrast to that of its neighbour, Australia).[56] The repeal of this unnecessary amendment, along with a suite of other reforms to modernise the legislation, are positive developments and will ensure that the New Zealand Companies Act continues to be lauded.

52 Timothy L Fort "The Corporation as Mediating Institution: An Efficacious Synthesis of Stakeholder Theory and Corporate Constituency Statutes" (1997) 73 Notre Dame L Rev 173 at 180–181.

53 Akshaya Kamalnath and Sandeep Gopalan "Mandatory Corporate Social Responsibility as a Vehicle for Reducing Inequality: An Indian Solution for Piketty and the Millennials" (2015) 10 Northwestern JLSP 34.

54 Kamalnath, above n 11.

55 Matteo Gatti and Chrystin Ondersma "Can A Broader Corporate Purpose Redress Inequality? The Stakeholder Approach Chimera" (2020) 46 J Corp Law 1 at 63–70.

56 Akshaya Kamalnath "The Development of Australian Corporate Law vis-à-vis Other Areas of Australian Law" (26 January 2023) The Hitchhiker's Guide to Corporate Governance <www.corporatelaw academic.wordpress.com>.